

~~INITIAL REVISED DRAFT~~

INTERNAL OPERATING PROCEDURES OF THE  
NORTH CAROLINA OIL & GAS COMMISSION

ARTICLE I.

Authority

These procedures are adopted pursuant to the authority contained in N.C.G.S. §§ 143B-293.1 through N.C.G.S. § 143B-293.6.

ARTICLE II.

Purpose

The purpose of the North Carolina Oil and Gas Commission (“Commission”) shall be to fulfill the duties prescribed for it in the General Statutes of North Carolina, particularly those provided at N.C.G.S.

~~Chapter 74 and Chapter 113, Art. 27.~~

ARTICLE III.

Membership

The membership of the Commission shall be as set forth in N.C.G.S. § 143B-293.2.

ARTICLE IV.

Officers

Pursuant to N.C.G.S. § 143B-293.4 the statutory officers of the Commission are a Chairman and a Vice-Chairman, which officers shall be elected by the Commission from among its members. The terms

**Commented [A1]:** This appears to be a holdover from the MEC, but the Mining Commission and the Commissioner of Labor share responsibilities related to Chapter 74.

**Commented [A2]:** I removed the reference to Chapter 74 because the Mining Commission and the Commissioner of Labor have authority, within their respective jurisdictions, for the administration of Chapter 74.

for each office are for one year beginning the first meeting of the commission after ~~January~~ August 1 and ending ~~July~~ December 31 of ~~the following~~ that year or until successors have been elected. The Chairman and Vice-Chairman may serve any number of terms, but not more than two terms consecutively. Officer elections shall be held at the first regularly scheduled meeting occurring after July 31 each year.

**Commented [A3]:** The terms are set by statute, which identifies the terms as lasting from August 1 until July 31 of the following year.

~~Elections for these offices will occur at the first regularly scheduled meeting that occurs each year, and the report of the nominating committee will be received at that time if not previously received. After the report of the nominating committee is received, the Chairman will receive nominations from the floor for each office and the nominations will be closed for each office before voting for any office takes place.~~

**Commented [A4]:** I recommend removing this section because the Commission does not maintain a nominating committee, and this section appears to be a holdover from the former MEC, which had 15 members.

## ARTICLE V.

### Meetings

Section 1. The Commission shall meet at such time and places as may become necessary to discharge its statutory duties as set forth in the General Statutes. The Commission shall meet at least once per quarter, as per ~~N.C.G.S. § 143B-293.5, and Sess. Law 2012-143, Part II, Section 2.(n).~~ The date(s) and location(s) of regular meetings shall be set by the Commission's adoption of a meeting schedule during the course of a regular meeting. The meeting schedule so adopted shall be filed with the North Carolina Secretary of State in accordance with N.C.G.S. § 143-318.12 and any changes to this formally adopted schedule, other than the call of special or emergency meetings, shall be made in accordance with N.C.G.S. § 143-318.12(a).

**Commented [A5]:** SL 2012-143 pertains to the former MEC and should be removed.

Section 2. Special meetings and work sessions are allowed at the call of the Chairman or, pursuant to N.C.G.S. § 143B-293.5, upon the written request of at least five (5) members; provided, timely notice in advance of all special meetings must be given to each and every member of the Commission, and further provided, the notice requirement shall be adequately discharged by letter or comparable

electronic means to the members of the Commission at their last known address. Notice to the public regarding special meetings and work sessions shall be given in accordance with N.C.G.S. § 143-318.12(b) unless it is an “emergency meeting,” in which case notice to the public shall be given in accordance with the provisions of N.C.G.S. § 143-318.12(b)(3).

Section 3. Information concerning the Commission’s meetings shall be posted on the Commission’s website, as provided in N.C.G.S. § 143-318.12(d) and (e).

Section 4. A majority of duly appointed members of the Commission shall constitute a quorum, as provided in N.C.G.S. § 143B-293.2(e).

Section 5. Participation in regular, special, and emergency meetings will normally be conducted in person at a location that can accommodate participation by Commission members and key participants, and allow for public observance. Departmental ~~support~~ staff will make reasonable efforts to allow for meeting participation via telephone connection. Where telephonic participation or telephonic monitoring by the public is possible, these accommodations will be made known in the meeting’s public notice. Commissioners participating via telephone will be extended the same authority and privileges as if they were physically present at the site of the meeting.

Section 6. Meetings of the Commission shall be open to the public; provided, the Commission may hold closed sessions where allowed by N.C.G.S. § 143-318.11. ~~Commissioners may not participate in closed session meetings of the Commission via telephone or other electronic means.~~

**Commented [A6]:** Consider striking this provision or allowing for an exception upon the ruling of the chair.

ARTICLE VI.

Records Retention and Rulemaking Responsibilities

Section 1. Minutes and other records of all Commission meetings shall be kept under the direction of the Director of the Division of Energy, Mineral, and Land Resources (“DEMLR”), said resources

to be supplemented, where possible, by electronic recording. Minutes shall be maintained according to the retention scheduled approved by the ~~Division~~ Department of Natural and Cultural Resources.

Section 2. The Secretary of the Department of Environmental Quality ("DEQ"), or his designee, shall be responsible for filing all rules (as defined in N.C.G.S. § 150B-2) of the Commission in proper form as required by Chapter 150B, Articles 2A, of the North Carolina General Statutes. The Commission hereby designates DEQ's rulemaking coordinator as the rulemaking coordinator for the Commission, reporting to the Chairman of the Commission, pursuant to N.C.G.S. § 150B-21.

Section 3. The Secretary of DEQ, or his designee, shall be responsible for filing all reports of the Commission as required by N.C.G.S. § 143B-293.1(c). ~~and Sess. Law 2012-143, Part 2, Section 2.(j) (m).~~

**Commented [A7]:** SL 2012-143 pertains to the former MEC and this reference should be removed.

#### ARTICLE VII.

##### Standard Order of Business

Section 1. The Commission adopts the following as its Standard Order of Business; provided that for any given meeting the order of business may be altered by the Chairman in his discretion, ~~at the request of the Steering Committee,~~ or upon a properly made motion and majority vote in order to more efficiently carry out the Commission's business or for the convenience of the public.

**Commented [A8]:** The Commission does not currently maintain a steering committee, and this appears to be a holdover from the former MEC, which had 15 members.

##### A. Preliminary Matters

1. Call to Order by the Chairman
2. Moment of Silence or Invocation
3. Pledge of Allegiance

4. Reading of Ethics Reminder and members' disclosure of known actual and potential conflicts of interest

5. Roll call of Commissioners ~~in attendance and members' disclosure of known actual and potential conflicts of interest~~

6. Revisions or Additions to Agenda

7. Opening Remarks, Ceremonies or Presentations

8. Approval of Minutes of Previous Meetings

B. Action Items

C. Committee and other Status Reports

D. Informational Items

E. Announcements

F. Public Comment

G. Concluding Remarks

1. Commission Members

2. Counsel

3. Chairman

H. Adjournment

Section 2. The Commission may take action on a rulemaking matter that has a State or federal deadline occurring before the next regularly scheduled Commission meeting at any time after the

Rulemaking Committee has acted on the matter. Except as otherwise provided ~~for in this or other sections of these Internal Operating Procedures,~~ the Commission shall take no actions on rulemaking issues that have not been acted on by the Rules Committee at a scheduled meeting of the committee held at least 30 days prior to the Commission meeting at which the rulemaking issues is presented to the Commission for action. ~~which was held prior to a previous Commission meeting.~~ The Commission may suspend this rule by the affirmative vote of at least a two-thirds majority of those present and voting.

#### ARTICLE VIII.

##### Notice Requirements

Section 1. In accordance with the General Statutes of North Carolina, the Secretary of DEQ, or an appropriate designee shall be responsible for the timely issuance of any applicable notices to those parties upon whom the right of legal notice of Commission hearings, meetings, decisions, and official action is conferred.

Section 2. The Commission may adopt special notice procedures as it deems necessary, subject to the requirements of the General Statutes.

#### ARTICLE IX

##### Appearances before the Commission

The Chairman of the Commission is charged with the responsibility for evaluating all requests for appearance before the Commission for their appropriateness and timeliness for consideration and to assess the ability of the Commission to give full consideration to the item of business proposed if added to previously scheduled agenda items. The chairman of each committee will set the agenda and evaluate requests for appearance at that committee's meetings.

ARTICLE X.

Committees

Section 1. Pursuant to N.C.G.S. § 143B-293.2(g) the Chairman may establish committees, standing or special, from members of the Commission to address specific issues as appropriate. The Chairman shall designate the chairman of each committee from among its members and shall be ex officio member of all committees, ~~except the nominating committee.~~ A majority of duly appointed members of committees shall constitute a quorum. The chairman of each standing committee shall report on the committee's activities to the Commission during regularly scheduled meetings.

**Commented [A9]:** The Commission does not currently maintain a nominating committee.

The Chairman of the Commission shall appoint all members of each such committee and designate the chairman of each committee. A vice-chairman for each standing committee shall be elected by the members of that committee. Members shall serve for a term corresponding to that of Officers or until their successors are chosen; therefore, a new body of committee members shall be appointed within 30 days following the first commission meeting of each calendar year. Vacancies on any Committee shall be filled by the Chairman using the procedures set forth in this Section. Committees may adopt at their discretion any internal procedures necessary to the discharge of their business; provided, no procedures adopted by any committee shall be inconsistent with these procedures or any other rules adopted by the Commission, or with any statutes applicable to the Commission. The chairman of the committee shall report on the work of the committee and shall make any majority recommendation of the committee.

The Commission may be required to conduct studies and to provide findings and recommendations to the Joint Legislative Oversight Committee for Energy Policy, the Environmental Review Commission, or other such legislative body. In addition, the Chairman may determine the need for special studies or research to be accomplished pursuant to the Commission's roles and responsibilities. To accomplish these specialized activities, the Chairman may direct the formation of study groups

comprised of Commission members and specially educated or qualified citizens who add value to the study efforts. The Chairman will appoint one commissioner to lead each such effort as Study Group Director. The Director of each study group will ensure that all study group participants are informed about the group's planned meetings and that all participants are allowed to express their opinions and recommendations that will be forwarded to the full Commission for consideration.

Section 2. A Steering Committee composed of the Commission Chairman, the Commission Vice-Chairman and the chairman of each of the Commission's standing committees shall be appointed by the Commission Chairman. The Chairman of the Commission shall be chairman of the Steering Committee and the Vice-Chairman of the Commission shall be vice-chairman of the Steering Committee. The Director of the Division of Energy, Mineral, and Land Resources, or his designee, shall be ex officio member of the Steering Committee. The Steering Committee shall carry out such administrative functions as the Commission Chairman may direct and may make recommendations to the full Commission on any matters it deems relevant to the Commission's work, including assignment of tasks to standing committees.

**Commented [A10]:** This appears to be a holdover from the former MEC ere are currently four proposed committees and two study groups. The Commission does not currently maintain a Steering Committee so I recommend this section be deleted.

Section 3. ~~The following committee is established as a standing committee of the Commission by statute, specifically N.C.G.S. §§ 143B-293.2(g) and 143B-293.6:~~

~~Civil Penalty Remissions Committee~~

**Commented [A11]:** The only standing committee maintained by the Commission is the Civil Penalty Remission Committee, which is required by statute.

~~—The Commission shall maintain as a standing committee. The~~ Civil Penalty Remissions Committee, which shall make the final agency decision for the Commission on matters involving a request for remission of the amount of civil penalties pursuant to N.C.G.S. § 143B-293.6 and Article XII of these Internal Operating Procedures. ~~Notwithstanding this exclusive authority, the~~The chairman of the Civil Remissions Committee shall report on the committee's activities, if any, to the Commission during each regularly scheduled meeting.

Section 4. Additional one-issue special committees may be appointed by the Chairman of the Commission as needed. ~~In addition, committees may establish sub-committees as needed, which subcommittees shall consist of members of the committee.~~

**Commented [A12]:** Given the size of the Commission, as well as the committees, it is unlikely that additional sub-committees will be necessary.

ARTICLE XI.

Parliamentary Authority

Section 1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and not inconsistent with these procedures, and any special rules of order the Commission may adopt, or with any statutes or rules applicable to the Commission.

Section 2. In the event the Chairman excuses himself from participation in any matter due to an actual or potential conflict of interest, the Vice-Chairman shall serve as presiding officer for that matter.

ARTICLE XII.

Hearings

Section 1. The Chairman shall appoint any Commission member or members, or appropriate qualified employees of DEQ, as hearing officers for any required public hearing to receive comments on regulations or as presiding officer for any public hearing conducted under any statutes applicable to the Commission.

Section 2. In making hearing officer appointments, the Chairman shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter, and the necessity of having an impartial hearing officer without personal bias.

Section 3. All hearing officers appointed pursuant to this Article shall report their recommendations, along with the record of the hearing, to the full Commission for decision or action, and may move adoption thereof.

Section 4. The appropriate time for public comment on the adoption of rules is during the comment period before the hearing officer; therefore, the Commission will refrain from allowing additional public comment during its deliberations on the proposed rules, since the matter is not then in public hearing. However, the Commission may allow limited public discussion during the agenda item for action on the rule(s) if the circumstances warrant and all positions appear to be adequately represented by those present. Additionally, the Commission provides a separate time during its standard order of business outside of Commission deliberations for public comment.

Section 5. With respect to any individual quasi-judicial matter pending before the Commission, such as requests for remissions or requests for declaratory ruling, all members of the Commission and hearing officers shall refrain from directly or indirectly communicating outside of formal hearing process with any person, party or their representative, regarding issues of fact or law pertaining to the pending matter unless all parties are provided notice of the communication and given an opportunity to participate therein. This prohibition on ex parte communication also applies to the members of the Committee on Civil Penalty Remissions when exercising quasi-judicial powers. This section shall not be deemed to limit discussion of such pending matters among Commission members during an official meeting or to limit discussion among Commission members and state employees not directly involved in investigating or prosecuting the pending case.

Section 6. Declaratory Rulings are governed by N.C.G.S. § 150B-4. Motions filed with the Commission by persons seeking leave to intervene in pending proceedings for declaratory rulings or seeking leave to file amicus curiae briefs shall be referred, with any response timely filed by DEQ or the

party filing the declaratory ruling request, to the Chairman who shall rule on the motion. Persons seeking to intervene shall establish through their motion that they qualify for intervention consistent with N.C.G.S. § 1A-1, Rule 24. With respect to persons seeking leave to file amicus curiae briefs, the motion should state the nature of the applicant's interest, the reasons why the brief is desirable, the questions of law to be addressed in the brief, and the applicant's position on those questions. The proposed amicus brief may be conditionally filed with the motion for leave. The Chairman's ruling shall be communicated to the applicant, the Department and any party of record.

ARTICLE XIII.

Remission Requests

~~Section 1. The Chairman shall designate at least three members of the Committee on Civil Penalty Remissions to meet together when necessary to review the remission requests that were unable to be resolved by the Secretary and the violator and have been delivered to the Committee. The members will conduct a review of the documents comprising each remission request and the Division Director's recommendation before making a recommendation to the Committee on the best manner of handling the individual remission requests when the full Committee meets to make the final decision.~~

~~Section 2. After reviewing the record documents for each remission request sent to the Committee, the designated members will make a recommendation of one of the following possible actions:~~

~~a. that no grounds for remission under N.C.G.S. § 143B-293.6 are shown by the record and the civil penalty should be upheld without further oral presentation before the Committee;~~

~~b. that one or more grounds for remission under N.C.G.S. § 143B-293.6 are shown by the record and the civil penalty should be remitted in some amount without further oral presentation to the Committee;~~

~~c. that the chairman, pursuant to Article IX of these Procedures, allow a violator's request for oral presentation before the Committee.~~

**Commented [A13]:** These sections should be removed, as the review of the materials and consideration of the request, as well as the final decision, will be made as part of the Committee meeting.

Section ~~31~~. The Committee on Civil Penalty Remissions will meet as necessary to consider requests for remission and make the final decisions on such requests. When the Chairman of the Commission has allowed a violator's request for oral presentation, the Committee will hear oral presentation by the violator and the staff of DEQ. The violator will be notified of the date, time, and location of the meeting when his oral presentation on the remission request will be heard and the matter decided.

Section ~~42~~. By submitting a request under N.C.G.S. § 143B-293.6 for remission of a civil penalty assessed by DEQ, the violator agrees, and the Committee recognizes that an evidentiary hearing is unnecessary, that all facts alleged in the assessment by DEQ are stipulated, and that the only issue for resolution is the reasonableness of the penalty imposed. The amount of the penalty will be determined by the Committee in accordance with N.C.G.S. § 143B-293.6 and these Internal Operating Procedures. The Secretary's recommendation on the remission request shall be the final agency decision unless it is modified by the Committee through a motion and vote of a majority of the Committee members in attendance. The Committee may order the full penalty be paid, accept the recommendation of the Director, or reduce the penalty in accordance with N.C.G.S. § 143B-293.6. When a request to make an oral presentation is allowed, parties to the proceeding, but not the general public, will be given the opportunity to address the Committee after the recommendation of the staff is received. Oral presentations are limited to issues of record, and should not exceed five (5) minutes per side unless the

chairman of the Civil Penalty Remissions Committee rules otherwise. Pursuant to N.C.G.S. § 143-318.11, the Committee may vote to move into executive session for discussion of legal issues.

#### ARTICLE XIV.

##### Attendance

Regular attendance at Commission meetings is a duty of each member. Commission members recognize that, pursuant to N.C.G.S. § 143B-13(b)(vi), their position becomes vacant by their ceasing to discharge the duties of their office over a period of three consecutive meetings except when attendance is prevented by sickness.

Pursuant to Executive Order ~~34~~<sup>24</sup> those Commission members appointed by the Governor shall attend at least seventy-five percent (75%) of all regularly scheduled meetings of the Commission during the Commission's calendar year. Failure of a Commission member appointed by the Governor to attend Commission meetings in a manner consistent with Executive Order ~~24-34 mayshall~~ constitute grounds for removal from the Commission for misfeasance, malfeasance, or nonfeasance pursuant to N.C.G.S. § 143B-13(d), N.C.G.S. § 143B-16, or other applicable statutes or regulations. The Director of DEMLR will report on the attendance of gubernatorial appointees annually, at the request of the Governor.

**Commented [A14]:** EO 24 banned gifts, while 34 established certain attendance requirements.

#### ARTICLE XV.

##### Conflicts of Interest

Section 1. The Commission is subject to the State Government Ethics Act (N.C.G.S. Chapter 138A), establishing the State Ethics Commission, including any subsequent amendments or editions. The members of the Commission, regardless of appointing authority, are bound by the standards enunciated in the State Government Ethics Act and the interpretations of the standards as developed through promulgations and advisory opinions of the State Ethics Commission.

**Commented [A15]:** Chapters 120C, 138A, 163 were recodified into Chapter 163A, the Elections and Ethics Enforcement Act; however, SL 2018-146 authorized the Revisor of Statutes to "re-recodify Chapter 163A" back into the previous Chapters. The session law went into effect on December 27, 2018, but the revision is still in process. Because some of the requirements and standards were changed as part of the recodification, it will be necessary to revisit this Article after the "re-recodification" has been completed.

Section 2. Members of the Commission must police themselves against actual and potential conflicts in the discharge of their statutory duties. In circumstances involving actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of the matter with other members of the Commission or staff to the Commission. Members who disqualify themselves for actual conflict of interest must file a written statement with the Chairman of the Commission, which statement will be read into the minutes of the Commission.

Section 3. Members recusing themselves for a potential conflict of interest should make a statement, verbal or written, regarding the potential conflict, which statement will be ~~captured~~recorded in the minutes of the Commission. Unless a member of the Commission with a potential conflict of interest places it in the public record, the member must withdraw from participation in the matter. When a member withdraws from a matter due to a potential conflict of interest, no further explanation is required. Should the potential conflict of interest be disclosed in a written document, it must be read into the minutes of the Commission before deliberation or discussion of the matter begins. A member with a potential conflict of interest who decides to participate in the pending matter must disclose, in the Commission meeting when the matter is called as an agenda item the nature of the potential conflict of interest and the reason it does not cause them to withdraw from further participation in the matter.

Section 4. For members appointed by the Governor, Executive Order 34 requires appointees to always act in the public's best interest, without regard to their own financial interests, and to recuse themselves from voting on any matter in which the appointee has a financial interest. Executive Order 34 sets forth a standard to be applied in determining whether the member has a financial interest requiring recusal, as follows:

A member derives a financial benefit from a matter under consideration if the person or his or her spouse (i) has an ownership interest in an entity that is directly affected by the matter under

consideration; (ii) will derive any income or commission as a direct result of action on the matter under consideration; or (iii) will acquire property as a direct result of action on the matter under consideration.

~~Section 5. — Members of the Commission may appear to defend themselves if actions are initiated against them by the State Board of Elections and Ethics Enforcement . The record of the Commission member's actions during the Commission meetings may be offered in support of the Commission member's position that he complied with the requirements of the Ethics Act.~~

**Commented [A16]:** The procedures for appearing before the State Ethics Commission and defending against actions brought by it are governed by the State Ethics Commission. In addition, the Commission's minutes are public record.

#### ARTICLE XVI.

##### Voting

Section 1. Except as otherwise specifically provided by other Articles of these Procedures, all Commission members shall be entitled to make motions, second, and vote on all matters coming before the Commission.

Section 2. The Chairman of the Commission and the chairman of any committee may or may not vote on any issue before the body over which that person is presiding. If a tie occurs, the motion fails.

Section 3. The Director or his designee shall record in the minutes each member's vote on all decisions on remissions and rule adoptions, repeals, and amendments. Votes shall be recorded on any other matter when so requested by any member.

Section 3. Motions to call the previous question or otherwise limit debate shall be considered extraordinary measures and shall require the affirmative vote of three-fourths of those members present and voting.

#### ARTICLE XVI.

##### Amendments

These procedures may be amended at any regular or special meeting of the Commission by a three-fourths vote of the members present; provided that a copy of the amendment must be sent by first-class mail or electronically mailed to each Commission member seven (7) days prior to the adoption of the amendment or otherwise be made available to each Commission member five (5) days prior to the adoption of the amendment.

Effective: \_\_\_\_\_

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James Womack, Chairman

North Carolina Oil and Gas Commission