

**RULES REVIEW COMMISSION MEETING
MINUTES
September 19, 2019**

The Rules Review Commission met on Thursday, September 19, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, and Tommy Tucker.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:00 a.m. with Chairman Dunklin presiding.

Chief Administrative Law Judge, the Honorable Julian Mann, addressed the Commission. Judge Mann introduced the Honorable Paul Newby, Senior Associate Justice of the North Carolina Supreme Court, to the Commission.

Justice Newby administered the oath of office to new Commissioner, the Honorable Tommy Tucker.

Chairman Dunklin read into the record the statement of economic interest for Tommy Tucker, which stated there was no actual conflict of interest.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the August 15, 2019 meeting. There were none and the minutes were approved as distributed.

The Chairman notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matter for DHHS/ Division of Health Benefits and Permanent Rules for Criminal Justice Education and Training Standards Commission.

FOLLOW UP MATTERS

Board of Elections

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

Social Services Commission

10A NCAC 06S .0101, .0102, .0203, .0204, .0301, .0302, .0402, .0403, .0404, .0405, .0501, .0508; and 06T .0201 - The agency is addressing the objections from the August meeting. No action was required by the Commission.

Chairman Dunklin introduced OAH extern Alyssa Wright, to the Commission.

DHHS/ Division of Health Benefits

10A NCAC 23G .0304 was approved with Commissioner LiVecchi voting against.

Matthew Cochran, with Ott Cone and Redpath, speaking in opposition to the rule, addressed the Commission.

Shazia Keller, the rulemaking coordinator for the agency, addressed the Commission.

Prior to the review of the rule from the DHHS/ Division of Health Benefits, Commissioner Tucker recused himself and did not participate in any discussion or vote concerning the rule because he may have a conflict.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Social Services Commission

10A NCAC 67A .0101, .0201, .0202; 68 .0103, .0104, .0105, .0106, .0202, .0203, .0204, .0205, .0206, .0208, .0301, and .0303; 69 .0602, .0604, .0605; and 72 .0101. In accordance with G.S. 150B-21.12(d), the agency requested that the Rules be returned. Because the objections were to language currently in the code, these Rules will be removed from the NCAC.

Department of Justice

At the June meeting, the RRC voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the adoption of 12 NCAC 02I .0306 has a substantial economic impact and therefore requires a fiscal note. The RRC is awaiting a response from the Office of State Budget and Management. No action was required by the Commission.

Environmental Management Commission 15A NCAC 02B

15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0201, .0202, .0203, .0204, .0205, .0206, .0208, .0211, .0212, .0214, .0215, .0216, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0230, .0231, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, .0317 - The agency is addressing the technical change requests from the August meeting. No action was required by the Commission.

Environmental Management Commission 15A NCAC 02B, 02H

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, .1206 - The agency is addressing the objections from the July meeting. No action was required by the Commission.

Board of Dietetics/Nutrition

The agency is addressing the objections for 21 NCAC 17 .0101 and .0303. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Department of Administration

All rules were unanimously approved except for 01 NCAC 05B .1520.

The Commission objected to 01 NCAC 05B .1520 in accordance with G.S. 150B-21.10 for lack of statutory authority and ambiguity.

The Commission objected to this Rule for lack of statutory authority as none of the cited authority in the history note of this Rule provides the Department authority to promulgate rules regarding the “debarment” of a vendor as eligibility and ineligibility requirements for vendors are specifically set forth in Statute. Specifically, G.S. 143-59.1 and 143-59.2 address eligibility of vendors. G.S. 143-59.1 sets forth eligibility requirements for foreign vendors. G.S. 143-59.2 indicates when vendors are prohibited from contracting with the State. Because none of the cited authority in the History Note of this Rule gives specific authority regarding debarment or eligibility requirements of vendors, the Commission

determined that the agency does not have the authority to create additional grounds for debarment and ineligibility beyond the circumstances set forth in Statute.

Additionally, the Commission objected to this Rule for ambiguity. Specifically, Paragraph (a) of this Rule states that the “SPO may debar the vendor from receiving an award under a State Contract or conducting further business with the State for up to a one-year term in accordance with this Rule.” However, while this Rule does provide circumstances upon which this determination may be applicable, this Rule does not provide factors that the SPO is to use in determining whether and for how long a Vendor will be debarred.

Further, it is unclear in Subparagraph (b)(1) what “deliberate failure without good cause” means and how it is to be determined.

Board of Agriculture

02 NCAC 02D .0209 was unanimously approved.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved. 12 NCAC 09F .0313 was approved contingent upon a technical change to Paragraph (a) to change the term “public school unit” to “local school administrative unit as defined in G.S. 115C-5(6)” and to state that the requirements of Paragraph (a) will govern the memorandum. The technical change was subsequently received.

Ameshia A. Cooper, with the Attorney General’s office and representing the agency, addressed the Commission.

Alcoholic Beverage Control Commission

14B NCAC 15B .1013 was unanimously approved.

Private Protective Services Board

The Commission extended the period of review for 14B NCAC 16 .0110, .0805, .0806, .0807, .0808, .0809, .0904, and .0906 in accordance with G.S. 150B-21.10. It did so in response to a request from the agency to extend the period in order to allow the agency additional time to address technical change requests.

The Commission objected to 14B NCAC 16 .0804, .0901, and .0909 in accordance with G.S. 150B-21.10.

The Commission objected to 14B NCAC 16 .0804 for lack of statutory authority and ambiguity. Specifically, the Commission found that Paragraph (a) of the rule states that there shall be “such further investigation of the applicant as deemed necessary.” The rule does not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous. In Paragraph (b), the rule states that any denial of the registration by the Director will be subject to review of the Board. However, G.S. 74C-13(f) requires the Board to determine whether to issue or deny an applicant for a firearm registration permit. The agency did not cite to any authority for the Director to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph.

The Commission objected to Rules 14B NCAC 16 .0901 and .0909 for lack of statutory authority. Specifically, both rules require applicants seeking licensure pursuant to G.S. 93B-15.1 (military trained applicants and spouses of those individuals) to submit application fees. The assessment of an application fee against those individuals is forbidden by G.S. 93B-15.1(k). The Commission found that the agency does not have authority to charge these fees in either rule.

Wildlife Resources Commission 15A NCAC 10B, 10F

All rules were unanimously approved.

Wildlife Resources Commission 15A NCAC 10H

All rules were unanimously approved.

Commission for Public Health

15A NCAC 18A .2816 was unanimously approved.

Board of Certified Public Accountant Examiners

21 NCAC 08F .0105 was unanimously approved.

Board of Cosmetic Art Examiners

All rules were unanimously approved with the following exceptions: The Commission objected to 21 NCAC 14H .0101 and .0102 in accordance with G.S. 150B-21.10.

The Commission objected to 21 NCAC 14H .0101 and .0102 for lack of statutory authority as the only cited authority has been repealed.

Prior to the review of the rules from the Board of Cosmetic Art Examiners, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

Board of Dental Examiners

All rules were unanimously approved with the following exceptions: The Commission extended the period of review for 21 NCAC 16V .0101 and .0102. It did so in response to a request from the agency to extend the period in order to allow the agency additional time to address technical change requests.

State Board of Opticians

All rules were unanimously approved with the following exceptions: The Commission extended the period of review for 21 NCAC 40 .0104, .0209, .0314, .0319, and .0325. It did so in response to a request from the agency to extend the period in order to allow the agency additional time to address technical change requests.

The Commission objected to 21 NCAC 40 .0109, .0321, and .0323 in accordance with G.S. 150B-21.10 as follows:

The Commission objected to 21 NCAC 40 .0109 for lack of statutory authority, ambiguity, and necessity. Specifically, the Commission objected to Paragraph (b) for lack of statutory authority for use of the language "eligible to vote;" Paragraph (d) for ambiguity related to the make-up of the Election Committee; Paragraph (e) for ambiguity, lack of statutory authority, and necessity related to the nomination process; and Paragraph (f) for lack of statutory authority and necessity for requiring the governor to make appointments to Board vacancies.

The Commission objected to 21 NCAC 40 .0321 for lack of statutory authority and ambiguity. Specifically, the Commission objected to ambiguity for failure to list the Board's factors for determining or provide a list of the "minimum equipment specified by the Board," the "curriculum approved by the board," "any test required by the Board," and for failure to delineate the scope or purpose of the on-site inspection requirement. The Commission objected for lack of statutory authority for failure to limit the Board's inspections to ensuring compliance with a training program.

The Commission objected to 21 NCAC 40 .0323 for ambiguity. Specifically, the rule is unclear because it does not provide any guidance regarding under what circumstances the Board will conduct a background check. Additionally, the use of the term “applicants” is ambiguous.

Prior to the review of the rules from the State Board of Opticians, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal advice to the Board on rulemaking.

LOG OF FILINGS (TEMPORARY RULES)

Wildlife Resources Commission

15A NCAC 10F .0317 and .0327 were unanimously approved.

EXISTING RULES REVIEW

DHHS – Division of Health Service Regulation

10A NCAC 14E - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Commission for Public Health

15A NCAC 18A –The Commission voted to have the agency come to a later meeting with a detailed schedule to support its requested readoption date.

Virginia Niehaus, the rulemaking coordinator for the agency, addressed the Commission.

COMMISSION BUSINESS

The Commission voted to approve the Administrative Rule Style Guide for circulation to rulemaking coordinators as a tool to provide guidance to rulemaking coordinators.

Gerry Cohen, who wrote the Style Guide, addressed the Commission.

The Commission’s Bylaws require that elections be held at the September meeting.

The following members were elected as officers:

Jeff Hyde was elected Chairman.

Jeanette Doran was elected 1st Vice-Chair.

Anna Baird Choi was elected 2nd Vice-Chair.

The meeting adjourned at 11:04 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 17, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

September 19, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Shazia Keller	DHB
Virginia Niehaus	DPH/CPH
Nadine Pfeiffer	DHHS/DHHR
Hannah Junigan	NC DOT
Larry Michael	DHHS/DPH
Ameshia A. Cooper	NC DOS / CJ Comm.
Sue M. Hodgins	State Bd of Opticians
Shannon Gerger	Dept Admin
Christy Wagner	NCPA + CS
John P. Barkley	DOJ + CPH DPH
Lynda Elliott	NC State Reg Cosmetic Arts
Nancy Lauer	Duke University
Kirsten Overdahl	Duke University
Vikki Crause	NC Child
Tom Vitagliano	NC Child
Dawn Bertley	Dental Board
Bob Brooks	NC STATE OF CPA Exam
EMMA WELLBAUM	Duke University
WALKER REAGAN	ABC Comm
Michelle O'Leary	Duke
Steven Cook	CS Standards

September 19, 2019

Rules Review Commission
Meeting
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Name	Agency
Charonique W. Hall	C JETS
M. Smallwood	NC WRC
Krista Early	environment NC
Betty Haywood	NC Wildlife Resources
Misty Pitt	DHS
Blenda Artis	DAAS - NC DHTS
Cechran	OCR



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September 19, 2019

Nadine Pfeiffer, Rulemaking Coordinator
DHHS – Division of Health Service Regulation
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 14E**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to re adoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the September 19, 2019 Rules Review Commission meeting regarding the scheduling of these rules for re adoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be re adopted by the agency no later than November 30, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
June 20, 2019
APO Review: August 24, 2019
Total: 3**

HHS - Health Service Regulation, Division of

Rule	Determination
<u>10A NCAC 14E .0105</u>	Necessary with substantive public interest
<u>10A NCAC 14E .0312</u>	Necessary with substantive public interest
<u>10A NCAC 14E .0316</u>	Necessary with substantive public interest