

**RULES REVIEW COMMISSION MEETING
MINUTES
June 18, 2014**

The Rules Review Commission met on Wednesday, June 18, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Stephanie Simpson.

Staff members present were: Commission counsels Abigail Hammond, Amber Cronk May, and Amanda Reeder; and Julie Brincefield, Tammara Chalmers, and Dana Vojtko.

The meeting was called to order at 10:02 a.m. with Vice-Chairman Dunklin presiding.

Vice-Chairman Dunklin introduced OAH Extern Elizabeth Lerner.

Vice-Chairman Dunklin read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

APPROVAL OF MINUTES

Vice-Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the May 15, 2014 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

Home Inspectors Licensure Board

11 NCAC 08 .1103 - The agency has not responded in accordance with G.S. 150B-21.12. There was no action for the Commission to take at the meeting.

Department of Justice, Division of Criminal Information

12 NCAC 04H .0101, .0102, .0103, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0401, .0402, .0403; 04I .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0501, .0601, .0602, .0603, .0701, .0801; 04J .0101, .0102, .0103, .0201, .0301 - All rules were approved unanimously.

State Human Resources Commission

25 NCAC 01J .1321 was withdrawn at the request of the agency.

LOG OF FILINGS

Medical Care Commission

All rules were unanimously approved with the following exception:

The period of review was extended for 10A NCAC 13D .3201 at the request of the agency.

Commission for Public Health

All rules were unanimously approved.

Rule 10A NCAC 41A .0104 was approved pending receipt of technical corrections from the agency, specifically changing "does" to "dose" in (a)(2)(B) and changing "rubella" to "measles" in (a)(3)(C). Those changes were subsequently received.

Prior to the review of Rule 10A NCAC 41A .0401 2nd Vice-Chairman Simpson recused herself and did not participate in any discussion or vote concerning these rules because of a possible perception of conflict with her husband's law firm.

Private Protective Services Board

12 NCAC 07D .0901 was unanimously approved.

Department of Public Safety

14B NCAC 07A .0116

The Commission received ten letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review for 14B NCAC 07A .0116.

Misty Scarlett with Garrett's Towing and Recovery addressed the Commission.

Terry Scarlett with Garrett's Towing and Recovery addressed the Commission.

Freddie Johnson with the State Highway Patrol addressed the Commission.

Jeff Babb with the State Highway Patrol addressed the Commission.

Joe Dugdale with the agency addressed the Commission.

Kerry O'Neal with Fred's Towing addressed the Commission.

Gary Wheeler, President NC Towing and Recovery Specialists addressed the Commission.

The Commission objected to the Rule based upon ambiguity and lack of statutory authority. The Rule contained references to forms in Subparagraphs (a)(1), (5) and (10) and did not tell what was contained in the forms or how to obtain them. In addition, there were several ambiguous terms in the Rule that made the language unclear. The Rule's organization also made the rule unclear. Finally, there were areas in the Rule where the agency's statutory authority to require wrecker services to not charge storage fees until the next day or to require criminal background checks was unclear.

The Commission also voted pursuant to G.S. 150B-21.9 to ask OSBM to determine whether the Rule creates a substantial economic impact and is therefore required to have a fiscal note.

Commissioner Choi was not present during the vote.

The Commission recessed from 12:00 to 12:10.

Board of Architecture

All rules were unanimously approved.

Prior to the review of the rules from the Board of Architecture, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides legal representation to the board.

Board of Chiropractic Examiners

All rules were unanimously approved.

Board of Examiners for Nursing Home Administrators

All rules were unanimously approved.

Prior to the review of the rules from the Board of Examiners for Nursing Home Administrators, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because her law firm provides legal representation to the board.

Board of Licensed Professional Counselors

All rules were unanimously approved.

Board of Examiners for Engineers and Surveyors

The Commission extended the period of review for the all the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the Board to make technical changes and submit the rewritten rules at a later meeting.

Appraisal Board

All rules unanimously approved.

Real Estate Commission

Vice-Chairman Dunklin stepped away and 2nd Vice Chairman Simpson presided over the discussion and vote on the Real Estate Commission.

All rules were unanimously approved with the following exceptions:

21 NCAC 58A .0110 – The Commission objected to the Rule, finding it was ambiguous and outside of the agency’s statutory authority. As initially submitted, the Rule did not state what topics would be required for the training. This made the Rule ambiguous and allowed the rule to change outside of rulemaking.

21 NCAC 58A .1709 - The Commission objected to the Rule, finding it was ambiguous. Specifically, in the language on lines 17 through 20 of the Rule, it stated that the length of any extension granted and the requirements for education would be “wholly discretionary” on the behalf of the agency. The language gives no guidance to the regulated public regarding the possible lengths of time or requirements.

21 NCAC 58E .0102 - The Commission objected to the Rule, finding it was ambiguous and outside of the agency’s statutory authority. As initially submitted, the rule did not state what topics would be required for the training. This made the rule ambiguous and allowed the rule to change outside of rulemaking.

Following the objections by the Commission, the Real Estate Commission asked the Commission to waive Rule 26 NCAC 05 .0108(a) and review rewritten versions of Rules 58A .0110 and 58E .0102 at the June meeting, in order for them to become effective July 1, 2014. The Commission granted the request, with Commissioner Doran opposed. The Commission unanimously approved Rules 58A .0110 and 58E .0102 as rewritten.

Prior to the review of these rules, Vice-Chairman Dunklin recused himself and did not participate in the discussion or vote for these rules because he practices in front of the Commission and been actively involved in the discussion of these rules.

Prior to the review of these rules, Chairman Currin recused herself and did not participate in the discussion or vote for these rules because she holds an inactive Real Estate Broker’s license.

Charlene Moody with the agency addressed the Commission.

TEMPORARY RULES

Commission for Public Health

The Commission reviewed three temporary rules filed by the North Carolina Commission for Public Health. The Findings of Need forms filed indicated that the reason for the temporary rulemaking action was pursuant to a recent act of the General Assembly. The Commission declined to approve the above-captioned temporary rules based on the failure to comply with the Administrative Procedure Act (APA) in accordance with G.S. 150B-21.1(a) and 150B-21.9.

Dr. Gerri Mattson with the agency addressed the Commission.

Chris Hoke with the agency addressed the Commission.

Bob Martin with the agency addressed the Commission.

Betsy Vetter with the American Heart Association addressed the Commission.

Wildlife Resources Commission

15A NCAC 10D .0102 was unanimously approved.

G.S. 150B-19.1(h) RRC CERTIFICATION

Board of Agriculture

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 02 NCAC 09O .0103; 20B .0413.

Private Protective Services Board

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 07D .0105, .0116, .0809, .1408, .1508.

Criminal Justice Education and Training Standards Commission

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09A .0103; 09B .0203, .0228, .0401; 09C .0303; 09G .0101, .0102, .0202, .0203, .0204, .0205, .0206, .0301, .0302, .0303, .0304, .0306, .0413, .0504, .0602.

COMMISSION BUSINESS

Staff gave the Commission a brief legislative update.

Staff reminded the Commission that reports for the periodic review and expiration of existing rules will start in July of .2014. Staff identified an agency that had not complied with the Rule 26 NCAC 05 .0211 and G.S. 150B-21.3A. A form letter was prepared by staff for submission to the identified agency and future agencies that fail to comply.

The meeting adjourned at 1:42 p.m.

The next regularly scheduled meeting of the Commission is Thursday, July 17th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Julie Brincefield
Administrative Assistant

Minutes approved by the Rules Review Commission:

Garth Dunklin, Vice-Chair

Rules Review Commission
Meeting
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Name	Agency
Jane Baker	NCBENHA
Martha Bell	NCBENHA
Gerr. Mattson	NC DPH
FREDDY JOHNSON	NCSHP
JOE DWIGDALE	NCSHP
JEFF BARRB	NCSHP
Wendy Holmes	NC DPH
Beth Mendes	NC DPH
Trevor All	CJETC
Sonda Panco	NC DOJ
Janice Davidson	NC DOR
Tommy Soper	NOVARTIS
Joseph Vireh	Allen, Pinnick & Nichols
Betsy Vetter	AHA
Kim Chidester	AHA
Chris Bonmark	CA
Judy M. Grant	PMSB, ASLR
Shari Howard	OSHR
Kristy Craig	DHHS
Harrie O'Neal	Fred's Towing
CHARLENE MOODY	NCREC

Rules Review Commission

Meeting

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JUNE 18, 2014

Name	Agency
Nathan Sink	Clark's Towing and TMC
Brandon CLBB	Buck's Wrecker
Vicki Martin	Martin Towing
Don Williams	Coastal Wrecker Serv
VANCE KINLAW	NC BOARD OF CHIROPRACTIC EX.
Chris Greene	NC Board of LPC
Becky Witz	DHSR
Cody Hill	DHSR
Gary Bulitz	DHSR
Buck Gardner	DHSR
Misty Scallone	Garrett's Towing
Jay Scarlato	Garrett's Towing
Tyler Barrick	NCBA
Julie Piatek	NCBA
Nadine Pfeiffer	DHHS
Corbis Alden	NEREC
Melissa Vuotto	NEREC
Bob Martin	NC DPH
Roberta Oultelle	NC Appraisal Bd
Gary Wheeler	TRPNC GTS Road Service
Jay Lee	TRPNC Wayne Lee Towing