

TEMPORARY RULE
RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Code Officials Qualifications Board

RULE CITATION: 11 NCAC 08 .0602

RECOMMENDED ACTION:

Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

COMMENT:

Staff recommends approval of the proposed temporary rule cited above. G.S. 150B-21.1(a) sets forth a two-part test to engage in temporary rulemaking: (1) adherence to the notice and hearing requirements of the permanent rulemaking process would be contrary to the public interest; and (2) the immediate adoption of the rule is required by a serious and unforeseen threat to the public health, safety, or welfare. The Code Officials Qualifications Board (Board) has submitted a written statement of its findings of need stating why adherence to the notice and hearing requirements would be contrary to the public interest and why the immediate adoption of the rule is required. Staff Counsel believes the Board has met the requirements of G.S. 150B-21.1 and has filed this temporary rule due to a serious and unforeseen threat to the public health, safety, or welfare.

Pursuant to G.S. 143-151.12, the Board is authorized to, and responsible for, adopting rules necessary to "establish minimum standards for employment as a Code-enforcement official: (i) in probationary or temporary status, and (ii) in permanent positions."

Pursuant to G.S. 143-151.13, the Board shall issue certificates to Code-enforcement officials who have demonstrated the necessary qualifications to engage in Code enforcement. Subsection (d) states, the "Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board's rules, to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). The Board may provide for appropriate levels of probationary or temporary certificates and

may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.”

The current language of 11 NCAC 08 .0602(a)(4) allows an applicant to qualify for a probationary Level III code enforcement certificate solely by passing a community college course examination, without satisfying the experience or comprehensive examination requirements otherwise established by the Board for Level I, II, or III standard certificates, and without first obtaining a Level I or Level II probationary certificate. Under the existing rule, an individual who possesses only a high school diploma or equivalent and who has no prior inspection experience may obtain a probationary Level III certificate and immediately exercise the statutory powers of a code enforcement official. A Level III certificate authorizes inspection of complex and high-risk structures, including highrise buildings, large assembly occupancies, and sophisticated mechanical, electrical, plumbing, and fire protection systems. These inspections require advanced technical knowledge and demonstrated competency in enforcing the North Carolina State Building Code.

Because G.S. 143-151.13 authorizes the holder of a probationary certificate to exercise the powers of a code enforcement official during the certificate’s effective period, the current Rule permits individuals who have not demonstrated adequate qualifications or competency to perform critical inspection duties. This circumstance presents a serious threat to public health, safety, and welfare that necessitates corrective action.

The findings of need submitted by the Board explain that they “did not anticipate, at the time of its most recent amendment to 11 NCAC 08 .0602(a)(4), that community colleges allow individuals to register for and complete a Level III inspector course without first completing Level I and Level II coursework or possessing relevant field experience. The Board’s recent awareness of this practice revealed a regulatory gap that allows individuals to bypass the progressive qualification structure intended to ensure competency before performing advanced inspections. Temporary rulemaking is therefore necessary to promptly delete Subparagraph (a)(4) while the Board undertakes permanent rulemaking through the standard notice and hearing process.”

The Board further contends that, “Adherence to the full notice and hearing requirements for permanent rulemaking would delay correction of the existing regulatory gap for several months. During that time, additional applicants could qualify for probationary Level III certificates under the current rule and immediately exercise inspection authority over complex and high-risk buildings without first demonstrating sufficient experience or competency.

Issuance of a probationary Level III certificate under the existing language increases the risk that inspections of life-safety systems, structural elements, and fire protection features may be conducted by individuals who have not completed the progressive training and experience requirements established by the Board. Deficient inspections in such occupancies can result in undetected code violations, unsafe building conditions, and increased risk of injury, loss of life, and property damage. Because probationary certificate holders are authorized by statute to perform inspections immediately upon issuance, the threat to public safety is ongoing and immediate. Waiting for completion of the permanent rulemaking process would allow the continued issuance of certificates under a rule that the Board has determined undermines the integrity of the State’s building code enforcement system.

Accordingly, immediate adoption of the temporary rule is required to prevent further issuance of probationary Level III certificates based solely on passage of a single course examination and to preserve the public health, safety, and welfare while permanent rulemaking proceeds.”

Arguably, it was foreseeable that the existing language in 11 NCAC 08 .0602(a)(4) would cause a “threat to the public health, safety, or welfare” at the time it was adopted by the Board. It is conceivable that the Board’s omission of language indicating their intent to create a “progressive qualification structure” would permit community colleges to interpret the current Rule in this fashion. Also, the Board could have exercised due diligence by contacting the community college system to determine how the language in 11 NCAC 08 .0602(a)(4) would be implemented.

However, it was reasonable for the Board to believe community colleges would require individuals to complete the coursework and pass the Level I and Level II examinations prior to being allowed to complete a Level III inspector course. In Staff Counsel’s opinion, it was reasonably unforeseeable that community colleges would carry out 11 NCAC 08 .0602(a)(4) in this manner. Thus, temporary rulemaking is required to address this serious and existential threat to the public’s health, safety, and welfare, and to maintain the integrity of the State’s building inspection program.

The temporary rule meets the criteria in G.S. 150B-21.1(a)(1), (a3), (a4), and G.S. 150B-21.9. Staff Counsel recommends that the RRC approve temporary rule 11 NCAC 08 .0602 at its February 2026 meeting.

§ 150B-21.1.1 PROCEDURE FOR ADOPTING A TEMPORARY RULE

(a) Adoption-An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(a3) Unless otherwise provided by law, the agency shall:

- (1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.
- (2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.
- (3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.
- (4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and why immediate adoption of the rule is required.

§ 143-151.13. Required standards and certificates for Code-enforcement officials.

(a) No person shall engage in Code enforcement under this Article unless that person possesses one of the following types of certificates, currently valid, issued by the Board attesting to that person's qualifications to engage in Code enforcement: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c) of this section; or (iii) a probationary certificate provided for in subsection (d) of this section. To obtain a standard certificate, a person must pass an examination, as prescribed by the Board or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina State Building Code and administrative procedures required for Code enforcement. The Board may issue a standard certificate of qualification to each person who successfully completes the examination. The certificate authorizes that person to engage in Code enforcement and to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board.

(b) The Board shall issue one or more standard certificates to each Code-enforcement official demonstrating the qualifications set forth in subsection (b1) of this section. Standard certificates are available for each of the following types of qualified Code-enforcement officials:

- (1) Building inspector.
- (2) Electrical inspector.
- (3) Mechanical inspector.
- (4) Plumbing inspector.
- (5) Fire inspector.
- (6) Residential changeout inspector.

(b1) The holder of a standard certificate may practice Code enforcement only within the inspection area and level described upon the certificate issued by the Board. A Code-enforcement official may qualify and hold one or more certificates. These certificates may be for different levels in different types of positions as defined in this section and in rules adopted by the Board.

(b2) A Code-enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position may hold a position calling for that type of qualification anywhere in the State. With respect to all types of Code-enforcement officials, those with Level I, Level II, or Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings as specified in rules adopted by the Board.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the level, in the particular type of position, and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population - July 1, 1979

Counties and Municipalities between 50,001 and 75,000 - July 1, 1981

Counties and Municipalities between 25,001 and 50,000 - July 1, 1983

Counties and Municipalities 25,000 and under - July 1, 1985

All fire prevention inspectors holding office - July 1, 1989. Fire prevention inspectors have until July 1, 1993, to complete in-service training.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for such period (not less than one year nor more than three years) as specified by the Board's rules, or until June 30, 1983, whichever is later, to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have a probationary or temporary certificate extended beyond the specified period by renewal or otherwise. The Board may provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(e) The Board shall, without requiring an examination, issue a standard certificate to any person who is currently certified as a county electrical inspector pursuant to G.S. 160D-1102. The certificate issued by the Board shall authorize the person to serve at the electrical inspector level approved by the State Fire Marshal in G.S. 160D-1102.

(f) The Board shall issue a standard certificate to any person who is currently licensed to practice as a(n):

- (1) Architect, registered pursuant to Chapter 83A;
- (2) General contractor, licensed pursuant to Article 1 of Chapter 87;
- (3) Plumbing or heating contractor, licensed pursuant to Article 2 of Chapter 87;
- (4) Electrical contractor, licensed pursuant to Article 4 of Chapter 87; or,
- (5) Professional engineer, registered pursuant to Chapter 89C;

provided the person successfully completes a short course, as prescribed by the Board, relating to the North Carolina State Building Code regulations and Code-enforcement administration. The standard certificate shall authorize the person to practice as a qualified Code-enforcement official in a particular type of position at the level determined by the Board, based on the type of license or registration held in any profession specified above.

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with Part 2 of this Article.