



**TEMPORARY RULE-MAKING
FINDINGS OF NEED**
[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Examiners of Electrical Contractors	
2. Rule citation & name: 21 NCAC 18B.308 Bidding Projects Pursuant to G.S. 87-1.1	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 10/1/2021 b. Proposed Temporary Rule published on the OAH website: 10/5/2021 c. Public Hearing date: 10/28/2021 and 11/15/21 d. Comment Period: 10/1/2021 - 10/28/2021 e. Notice pursuant to G.S. 150B-21.1(a3)(2): N/A f. Adoption by agency on: 11/15/21 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: 2021-122 Effective date: 10/1/2021 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain: Session law 2021-122 allows for the bidding of projects by licensees of the State Board of Examiners of Electrical Contractors even if those projects include work requiring a license issued by either the State Licensing Board for General Contractors or the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors under certain conditions and subject to rules adopted by the State Board of Examiners of Electrical Contractors. Temporary rules are needed to provide clarity to the marketplace for contractors.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

SL 2021-122 allows for the bidding of projects to begin on October 1, 2021 and allows for Rulemaking to clarify the requirements for bidding projects under this new authority by licensees of this Board. Waiting for additional time to pass before putting in place a rule will result in confusion in the marketplace. Regulatory clarity will eliminate confusion. There is no known opposition.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator:

Nick Fountain

Phone:

919.782.6880

E-Mail:

jnf@youngmoorelaw.com

Agency contact, if any:

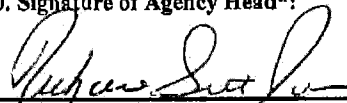
Tim Norman

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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Temporary Rule 0500 – 11/2014

TEMPORARY RULE
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Examiners of Electrical Contractors

RULE CITATION: 21 NCAC 18B .0308

DEADLINE FOR RECEIPT: December 10, 2021

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the Temporary Rule-Making Findings of Need Form:

In Box 5(c), what was the date of the public hearing? The notice published on the OAH website (link:<https://files.nc.gov/ncoah/documents/Rules/21-NCAC-18B-.0308-proposed-temporary-rule.pdf>) states:

Public Hearing:

Date: October 22, 2021

Time: 8:00 a.m.

Location: 3101 Industrial Drive, Suite 206, Raleigh, NC 27609

In Box 5(e), what is the date you sent notice to your mailing list and "any other interested parties," pursuant to G.S. 150B-21.1(a3)(2)? Did you notify your licensees? If so, please provide that date and explain how notice was provided.

In Box 10, please provide the typed name of the agency head, his title, and his email in the space provided below his signature.

In the Rule:

Please change the header to say: "21 NCAC 18B .0308 ~~is proposed as a temporary rule~~ is adopted under temporary procedures as follows:"

*What statutory authority does the Board have for Item (2), lines 7-9? As I read the Rule, Item (2) limits the total amount of work to be performed by **plumbing, heating, and fire sprinkler** contractors to 25% of a bid submitted under G.S. 87-1.1. The Session Law cited as authority only gives the Board the authority to set the percentage of the bid that can be performed by a **general** contractor. Is there any other statutory authority to support the Board's ability to set the percentage of a bid for electrical contractors?*

If indeed there is statutory authority for Item (2), please end the introductory sentence with a colon, instead of a comma, and add either an “and” or an “or” between items (1) and (2), depending on whether these requirements are conjunctive or disjunctive.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

21 NCAC 18B .0308 is proposed as a temporary rule as follows:

21 NCAC 18B .0308 BIDDING PROJECTS PURSUANT TO G.S. 87-1.1

If a building project is bid or performed pursuant to G.S. 87-1.1,

(1) the total amount of work to be performed by all licensed general contractors shall not exceed 25% of the total bid price;

(2) the total amount of work to be performed by all licensed contractors issued a license by the State Board of Plumbing, Heating and Fire Sprinkler Contractors under Article 2 of Chapter 87 of the North Carolina General Statutes shall not exceed 25% of the total bid price.

Authority S.L. 2021-122; G.S. 87-1.1; G.S. 87-42