



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 Plumbing, Heating and Fire Sprinkler Contractors

2. Rule citation & name:

21 NCAC 50.0415 Proposal, Bid, Estimate, Performance

3. Action:

☒ Adoption

☐ Amendment

☐ Repeal

4. Was this an Emergency Rule:

☐ Yes

☒ No

Effective date:

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: 10/15/2021

d. Comment Period: 10/1/2021 - 10/29/2021

e. Notice pursuant to G.S. 150B-21.1(a3)(2): N/A

f. Adoption by agency on: 11/16/21

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.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: SL 2021-122
Effective date: 10/1/2021
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

Session law 2021-122 allows for the bidding of projects by licensees of the State Board of Examiners of Plumbing, Heating and Fire Sprinkler 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 Electrical Contractors under certain conditions and subject to rules adopted by the State Board of Examiners of Plumbing, Heating and Fire Sprinkler 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:

Reed Fountain

Phone:

919-861.5122

E-Mail:

reed.fountain@youngmoorelaw.com

Agency contact, if any:

Dale Dawson

Phone:

919.875.3612

E-Mail: ddawson@nclicensing.org

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 Plumbing, Heating, and Fire Sprinkler Contractors

RULE CITATION: 21 NCAC 50 .0415

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 2, please provide the full name of the Rule, which is: 21 NCAC 50_.0415 Proposal, Bid, Estimate, Performance under G.S. 87-1.1. As reflected, please also add a space between "50" and ".0415."

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, below his signature.

In the Rule:

Please change the header to say: "21 NCAC 50_.0415 ~~is proposed as a temporary rule~~ is adopted under temporary procedures as follows:" As reflected, please also add a space between "50" and ".0415."

Also add a space between "50" and ".0415." in the title of the Rule.

*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 **electrical** 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?*

Brian Liebman
Commission Counsel
Date submitted to agency: November 30, 2021

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.

Brian Liebman
Commission Counsel
Date submitted to agency: November 30, 2021

21 NCAC 50.0415 is proposed as a temporary rule as follows:

21 NCAC 50.0415 PROPOSAL, BID, ESTIMATE, PERFORMANCE UNDER 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 Examiners of Electrical Contractors under Article 4 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. 87-18