

**\*\*Based upon the response of the agency that the fees are "reasonable and based on the actual cost incurred" as provided in G.S. 132-6.2, staff counsel is no longer recommending objection to this Rule. (01/17/2017)**

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: State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors

RULE CITATION: 21 NCAC 50 .1104

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

The above-identified Rule contains fees that do not appear to be within the statutory authority of the agency to charge. The agency published and adopted the following rule for review by the Rules Review Commission:

**21 NCAC 50 .1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS**

The Board charges the following fees:

(1) copies of license	\$20.00
(2) abstract of license record per license record search	\$25.00
(3) processing fee for returned checks	maximum allowed by law
(4) copy of Board rules	\$10.00
(5) processing fee for late renewal	\$25.00
(6) Business and Project Management for Contractors	<del>\$45.00</del> <u>Publisher's Retail Price</u>

Authority G.S. 25-3-506; 87-18; 87-22; 150B-19.

The following statute is the constraint placed on agencies by the Administrative Procedure Act in adoption of fees in rules:

**§ 150B-19. Restrictions on what can be adopted as a rule.**

Abigail M. Hammond  
Commission Counsel

An agency may not adopt a rule that does one or more of the following:

....

(5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:

- a. A service to a State, federal, or local governmental unit.
- b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.
- c. A transcript of a public hearing.
- d. A conference, workshop, or course.
- e. Data processing services.

The following two statutes appear to be the only statutes authorizing fees in Article 2 of G.S. 87:

**§ 87-22. License fee; expiration and renewal; reinstatement.**

All persons, firms, or corporations engaged in the business of either plumbing or heating contracting, or both, shall pay an annual license fee not to exceed one hundred fifty dollars (\$150.00). The annual fee for a piping or restricted classification license shall not exceed that for a plumbing or heating license. All persons, firms, or corporations engaged in the business of fire sprinkler contracting shall pay an initial application fee not to exceed seventy-five dollars (\$75.00) and an annual license fee not to exceed three hundred dollars (\$300.00). In the event the Board refuses to license an applicant, the license fee deposited shall be returned by the Board to the applicant. All licenses shall expire on the last day of December in each year following their issuance or renewal. Persons who obtain a license by passing an examination on or after October 1 of any year may receive a license for the remainder of the year by paying one-half of the usual license fee for that classification of license. It shall be the duty of the secretary and treasurer to send by United States mail or e-mail to every licensee registered with the Board, notice to the licensee's last known address reflected on the records of the Board of the amount of fee required for renewal of license, the notice to be mailed at least one month in advance of the expiration of the license. The Board may require payment of all unpaid annual fees before reissuing a license. In the event of failure on the part of any person, firm or corporation to renew the license certificate annually and pay the required fee during the month of January in each year, the Board shall increase the license fee by twenty-five dollars (\$25.00) to cover any additional expense associated with late renewal. The Board shall require reexamination upon failure of a licensee to renew license within three years after expiration. The Board may adopt regulations requiring attendance at programs of continuing education as a condition of license renewal. A licensee employed full time as a local government plumbing, heating, or mechanical inspector and holding qualifications from the Code Officials Qualifications Board may renew the license at a fee not to exceed twenty-five dollars (\$25.00). (1931, c. 52, s. 7; 1939, c. 224, s. 4; 1971, c. 768, s. 5; 1979, c. 834, s. 8; 1981, c. 332, s. 2; 1989, c. 623, s. 2; 1989 (Reg. Sess., 1990), c. 842, s. 4; 1997-382, s. 2; 2001-270, s. 3; 2005-131, s. 2.)

**§ 87-22.1. Examination fees; funds disbursed upon warrant of chairman and secretary-treasurer.**

The Board shall charge a nonrefundable application and examination fee not to exceed one hundred fifty dollars (\$150.00) for each examination or any part of an examination, and the funds collected shall be disbursed upon warrant of the chairman and secretary-treasurer, to partially defray general expenses of the Board. The application and examination fee shall be retained by the Board whether or not the applicant is granted a license. Until changed by the Board pursuant to rules adopted by the Board, the fee for each examination or any part taken on a particular day shall be one hundred dollars (\$100.00). (1959, c. 865, s. 2; 1989, c. 623, s. 3; 2001-270, s. 4; 2005-131, s. 3.)

In light of G.S. 150B-19(5), the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors does not appear to have statutory authority to charge the following fees:

- copies of license \$20.00
- abstract of license record per license record search \$25.00

The copy of Board rules for \$10.00 should qualify as “a copy of a part of all of a State publication or other document,” as allowed by G.S. 150B-19(5)b.

PLEASE NOTE: A technical change has requested that the “processing fee for returned checks” be clarified by stating the \$25.00 fee allowed by G.S. 25-3-506. A technical change has also inquired as to the current “publisher’s retail price” and the payee of the “Business and Project Management for Contractors” cost.

**Summary:**

As written, this Rule contains two fees that are not specifically authorized in Article 2 of G.S. 87, or in any authority cited by the agency in the history note. Therefore, it is staff’s recommendation to object to this Rule as lacking statutory authority for the fees for “copies of license” or “abstract of license record per license record search.”

1 **21 NCAC 50 .1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS** is proposed to be  
2 amended as follows:

3 The Board charges the following fees:

4	(1)	copies of license	\$20.00
5	(2)	abstract of license record	\$25.00 per license record
6			search
7	(3)	processing fee for returned checks	maximum allowed by law
8	(4)	copy of Board rules	\$10.00
9	(5)	processing fee for late renewal	\$25.00
10	(6)	Business and Project Management for Contractors	<del>\$45.00</del> <u>Publisher's Retail Price</u>

11  
12 *History Note: Authority G.S. 25-3-506; 87-18; 87-22; 150B-19;*  
13 *Eff. September 1, 1994;*  
14 *Amended Eff. February 1, 2017; July 1, 1998; November 1, 1994;*  
15 *Temporary Amendment Eff. August 31, 2001;*  
16 *Amended Eff. July 1, 2010; December 1, 2003; December 4, 2002;*  
17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22,*  
18 *2015.*

19  
20  
21 310040-2261/3987396