



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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November 21, 2011

John N. Fountain
State Board of Examiners for Plumbing,
Heating and Fire Sprinkler Contractors
P.O. Box 31627
Raleigh, NC 27612

Re: 21 NCAC 50 .0107, .0301, .0306, .0505, .0516, .1401

Dear Mr. Fountain:

At its November 17, 2011 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0107 based on lack of necessity. This rule only deals with the internal management of the agency and is not necessary to be included in the N.C. Administrative Code. G.S. 150B-2(8a)a. exempts from the definition of "rule" for purposes of the Administrative Procedure Act "[s]tatements concerning only the internal management of an agency...if the statement does not affect the procedural or substantive rights or duties of a person not employed by the agency..." This rule appears to only affect Board members and would be more appropriately included in a set of bylaws.

The Commission objected to Rule .0301 based on lack of statutory authority and ambiguity. There does not appear to be authority for the provisions in Paragraphs (d), (f) and (i) that allow a person to obtain a license without passing an examination. G.S. 87-21(b)(3) requires the Board to give an examination and issue a license as a result of the examination. G.S. 87-21(b)(4) does make an exception and allows the Board to either provide an examination for fire sprinkler contracting or accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technicians, Level III, subfield of Automatic Sprinkler System Layout. None of these paragraphs require that certification. In Paragraph (i), it is not clear what is meant by "an Authority Hearing Jurisdiction."

Administration
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Judges and
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The Commission objected to Rule .0306 based on lack of statutory authority. There does not appear to be authority for the provision in Paragraph (h) that applicants for licensure in the Residential Fire Sprinkler Installation Contractor classification must hold an active Plumbing Class I or Class II Contractor license for a minimum of three years. G.S. 87-21(b)(3) limits experience that can be required to two years.

The Commission objected to Rule .0505 based on lack of statutory authority. In Paragraphs (e) and (f), there is no authority cited for this board to determine what a Licensed Professional Engineer is required to do.

The Commission objected to Rule .0516 based on lack of statutory authority. There is no authority cited for this board to determine what a Licensed Professional Engineer is required to do.

The Commission objected to Rule .1401 based on lack of statutory authority. It is not clear what standards the Board will use in approving continuing education classes. There do not appear to be any standards in the rules.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert A. Bryan, Jr.", written in black ink.

Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc

1 21 NCAC 50.0107 is amended as published in 26:03 NCR 168 as follows:

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21 NCAC 50.0107 BOARD COMMITTEES

- (a) The chair of the Board shall appoint regular committees for oversight and to implement implementation ~~prescribed phases of the Board's Board~~ functions, and may appoint special committees for to undertake specific ~~tasks assignments of the Board as necessary.~~
- (b) The chair of the Board shall appoint the chair and members of the committees designate the membership of the ~~committees and may designate one member as committee chair.~~
- (c) Members of committees serve at the pleasure of the chair of the Board.

*History Note: Authority G.S. 87-18;
Eff. February 1, 1976;
Readopted Eff. September 29, 1977;
Amended Eff. December 31, 2011; May 1, 1989.*

1 21 NCAC 50.0301 is amended with changes as published in 26:03 NCR 168 as follows:

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3 **21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION**

4 (a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by
5 computer in the following categories:

- 6 Plumbing Contracting, Class I
- 7 Plumbing Contracting, Class II
- 8 Heating, Group No. 1 - Contracting, Class I
- 9 Heating, Group No. 1 - Contracting, Class II
- 10 Heating, Group No. 2 - Contracting, Class I
- 11 Heating, Group No. 3 - Contracting, Class I
- 12 Heating, Group No. 3 - Contracting, Class II
- 13 Fuel Piping Contractor
- 14 Fire Sprinkler Inspection Technician
- 15 Fire Sprinkler Installation Contractor
- 16 Fire Sprinkler Inspection Contractor
- 17 ~~Fire Sprinkler Maintenance Technician~~
- 18 Residential Fire Sprinkler Installation Contractor
- 19 Plumbing Technician
- 20 Heating Group No. 1 Technician
- 21 Heating Group No. 2 Technician
- 22 Heating Group No. 3 Technician
- 23 Fuel Piping Technician

24 (b) Each person being examined by the Board for a contractor license other than a Fire Sprinkler Installation or
25 Inspection Contractor license shall be required to read, interpret and provide answers to both the business and law
26 part and the technical part of the examination required by G.S. 87-21(b).

27 (c) Applicants for licensure as a fire sprinkler installation contractor, must submit evidence of current certification
28 by the National Institute for Certification and Engineering Technology (NICET) for ~~Fire Protection Engineering~~
29 ~~Technician, Level III, subfield of Automatic Sprinkler~~ Water-based Fire Protection System Layout as the
30 prerequisite for licensure. Current certification by NICET is in lieu of separate technical examination conducted by
31 the Board. Applicants for licensure as a fire sprinkler installation ~~contractor, contractor~~ must take and pass the
32 business and law part of the exam administered by the Board.

33 (d) Applicants for licensure in the Fire Sprinkler Inspection Technician classification must either pass the technical
34 examination offered by the Board or submit evidence of Level II Certification in "Inspection and Testing of Water-
35 based ~~Protection Systems~~" by NICET in lieu of examination.

36 (e) Applicants for the Fire Sprinkler Inspection Contractor classification must submit evidence of Level III
37 certification in "Inspection and Testing of Water-based Fire ~~Protection Systems~~" by NICET in lieu of technical

1 examination. Contractors who obtain license by NICET certification must maintain such certification thereafter as a
2 condition of license renewal. Applicants for licensure as a fire sprinkler inspection contractor must take and pass the
3 business and law part of the examination administered by the Board in addition to demonstrating NICET
4 certification as set out herein.

5 (f) Applicants for a license in the Limited Fire Sprinkler Maintenance Technician classification must obtain a
6 license based on maintenance experience, education and job classification set forth in Rule .0306.

7 (g) Applicants for a license as a Residential Fire Sprinkler Installation Contractor must obtain a license based on
8 experience set forth in Rule .0306 and must take and pass the technical part of the Residential Fire Sprinkler
9 Installation Contractor examination.

10 (h) Applicants for license as a Plumbing, Heating or Fuel Piping Technician must obtain a license based on
11 experience set forth in Rule .0306 and must take and pass the Class I technical and Board laws and rules
12 examination related to the category for which a technician license is sought.

13 (i) Applicants for plumbing, heating or fuel piping technician license who present a current plumbing or heating
14 journeyman certificate from an Authority Having Jurisdiction in North Carolina in the same classification as set
15 forth in this Rule will not be required to take the technical portion of the exam if application is made on or before
16 December 31, 2012

17 (j) Applicants who hold active Plumbing, Heating or Fuel Piping Technician license obtained by examination may
18 obtain the Plumbing, Heating or Fuel Piping Contractor license in the same category by meeting the experience
19 requirement listed in 21 NCAC 50.0306 (a) for the specific contractor license sought and passage of the business
20 portion of the examination only.

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22 *History Note: Authority G.S. 87-18; 87-21(a); 87-21(b);*
23 *Eff. February 1, 1976;*
24 *Readopted Eff. September 29, 1977;*
25 *Amended Eff. July 1, 1991; May 1, 1989; August 1, 1982;*
26 *Temporary Amendment Eff. September 15, 1997;*
27 *Amended Eff. March 1, 2005; January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998;*
28 *Emergency Amendment Eff. December 5, 2005;*
29 *Emergency Amendment Expired February 13, 2006;*
30 *Amended Eff. December 31, 2011; January 1, 2010; May 1, 2006.*
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1 21 NCAC 50.0306 is amended as published in 26:03 NCR 169 as follows:

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3 **21 NCAC 50.0306 APPLICATIONS: ISSUANCE OF LICENSE**

4 (a) All applicants for licensure or examination shall file an application in the Board office on a form provided by the
5 Board:

6 (b) Applicants for plumbing or heating examination shall present evidence at the time of application to establish
7 two years of full-time experience in the installation, maintenance, service or repair of plumbing or heating systems
8 related to the category for which a license is sought, whether or not a license was required for the work performed.

9 Applicants for fuel piping examination shall present evidence at the time of application to establish one year of
10 experience in the installation, maintenance, service or repair of fuel piping, whether or not a license was required for
11 the work performed. Up to one-half the experience may be in academic or technical training related to the field of
12 endeavor for which examination is requested. The Board will prorate part-time work of less than 40 hours per week
13 or part-time academic work of less than 15 semester or quarter hours.

14 (c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

15 (d) Fire Sprinkler Installation Contractors ~~in the unlimited classification~~ shall meet experience requirements in
16 accordance with NICET examination criteria.

17 (e) Applicants for examination or licensure in the Limited Fire Sprinkler Inspection Technician classification shall
18 submit evidence adequate to establish that the applicant has either:

19 (1) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler
20 systems, consistent with NFPA-25, as a full-time employee of a Fire Sprinkler Inspection
21 Contractor or fire insurance underwriting organization; or

22 (2) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler
23 systems, consistent with NFPA-25 as a full time employee of a hospital, manufacturing,
24 government or university facility and under direct supervision of a Fire Sprinkler Inspection
25 Contractor or a Fire Sprinkler Inspection Technician; or

26 (3) 4000 hours experience involved in installation of fire sprinkler systems as a full-time employee of
27 a Fire Sprinkler Installation Contractor; or

28 (4) a combination of 4000 hours experience in any of the categories listed in this Paragraph.

29 (f) Applicants for licensure in the Fire Sprinkler Inspection Contractor classification shall meet experience
30 requirements in accordance with NICET certification criteria.

31 (g) Applicants for initial licensure in the Fire Sprinkler Maintenance Technician classification must submit evidence
32 of 4000 hours experience at the place for which license is sought as a full-time maintenance employee in facility
33 maintenance with exposure to periodic maintenance of fire protection systems as described in 21 NCAC 50. 0515 of
34 this Chapter or 2000 hours of such experience, together with six hours classroom instruction in courses approved by
35 the Board consisting entirely of training in fire system maintenance, repair and restoration to service. Applicants
36 who have held Fire Sprinkler Maintenance Technician license previously at a different facility are not required to

1 demonstrate experience in addition to the experience at the time of initial licensure but shall submit a new
2 application for the new location at which they wish to be licensed.

3 (h) Applicants for licensure in the Residential Fire Sprinkler Installation Contractor classification must hold an
4 active Plumbing Class I or Class II Contractor license issued by this Board for a minimum of three years and must
5 ~~document attendance at a 16-hour course approved by the Board pursuant to these Rules covering NFPA 13D~~
6 Multipurpose Residential Plumbing and Residential Fire Sprinkler Systems. Residential Fire sprinkler Installation
7 Contractors must maintain Plumbing Contractor license as a condition of renewal of the Residential Fire sprinkler
8 Installation Contractor license.

9 (i) Applicants for license as a plumbing or heating technician shall present evidence adequate to establish 3,000
10 hours of full-time experience in the installation, maintenance, service or repair of plumbing or heating systems
11 related to the category for which a technician license is sought, whether or not a license was required for the work
12 performed. Applicants for license as a fuel piping technician shall present evidence adequate to establish 1,500
13 hours of experience in the installation, maintenance, service or repair of fuel piping, whether or not a license was
14 required for the work performed. Up to one-half the experience may be in academic or technical training related to
15 the field of endeavor for which examination is requested.

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17 *History Note: Authority G.S. 87-18; 87-21(b);*
18 *Eff. February 1, 1976;*
19 *Readopted Eff. September 29, 1977;*
20 *Amended Eff. January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; September 1, 1994;*
21 *November 1, 1993; April 1, 1991; May 1, 1990;*
22 *Temporary Amendment Eff. August 31, 2004;*
23 *Amended Eff. December 31, 2011; January 1, 2010; June 1, 2006; March 1, 2005.*
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1 21 NCAC 50.0505 is amended as published in 26:03 NCR 172 as follows:

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3 **21 NCAC 50 .0505 GENERAL SUPERVISION AND STANDARD OF COMPETENCE**

4 (a) The general supervision required by G.S. 87-26 is that degree of supervision which is necessary and sufficient to
5 ensure that the contract is performed in a workmanlike manner and with the requisite skill and that the installation is
6 made properly, safely and in accordance with applicable codes and rules. General supervision requires that review
7 of the work done pursuant to the license be performed by a licensee of the firm while the work is in progress. If a
8 Plumbing, Heating or Fuel Piping Contractor licensed by this Board employs a properly licensed Plumbing, Heating
9 or Fuel Piping Technician, whose Technician license is listed under the name of that Licensed contractor, then the
10 licensed technician can review and supervise work in lieu of the licensed contractor as a means to assure that the
11 contract is performed in a workmanlike manner and with the requisite skill and that the installation is made properly,
12 safely and in accordance with applicable codes and rules.

13 (b) The provisions of the North Carolina Building Code, including the provisions of codes and standards
14 incorporated by reference, and adopted by the Building Code Council of North Carolina are the minimum standard
15 of competence applicable to contractors licensed by the Board. Licensees shall design and install systems which
16 meet or exceed the minimum standards of the North Carolina State Building Code, manufacturer's specifications and
17 installation instructions and standards prevailing in the industry.

18 (c) Work performed under Rule .0513, Rule .0514, and Rule .0515 shall be performed by the licensed technician
19 pursuant to the license held by that person.

20 (d) Every newly installed residential heating system, air conditioning system or both shall be designed and installed
21 to maintain a maximum temperature differential of four degrees Fahrenheit room-to-room and floor-to-floor. On
22 multilevel structures, contractors are required to either provide a separate HVAC system for each floor or to install
23 automatically controlled zoning equipment for each level with individual thermostats on each level to control the
24 temperature for that level. The seasonal adjustment needed to maintain the four degrees Fahrenheit room-to-room
25 and floor-to-floor maximum temperature differential shall not be accomplished through the use of manual dampers.

26 (e) All licensed HVAC contractors or licensed technicians are required to perform a thorough room-by-room load
27 calculation for all ~~new~~ newly installed residential structures prior to installing heating systems, air conditioning
28 systems, or both, prior to the installation, which calculations shall be specific to the location and orientation where
29 the HVAC system or equipment is to be installed. A written record of the system and equipment sizing information
30 shall be provided to the homeowner, owner or general contractor upon request and a copy shall be maintained in the
31 job file of the licensee for a minimum of six years. Load calculations are required to be performed by licensee who
32 holds the appropriate license from this Board or by a North Carolina Licensed Professional Engineer.

33 (f) When either a furnace, ~~eondenser~~ condenser, package unit or air handler in an existing residential heating or air
34 conditioning system is replaced, the licensed HVAC contractor or licensed technician is required to perform a
35 minimum of a whole house block load calculation. When a furnace, ~~eondenser~~ condenser, package unit or air
36 handler in a residential heating or air conditioning system is replaced, it is the responsibility of the licensee to ensure
37 that all systems and equipment are properly sized. The licensee may utilize industry standards, reference materials,

1 evaluation of the structure, and load calculations. A written record of the system and equipment sizing information
2 shall be provided to the homeowner, owner or general contractor upon request and a copy shall be maintained in the
3 job file of the licensee for a minimum of six years. If a load calculation was not performed or if a load calculation
4 was performed and it is later determined by the Board that the unit installed was undersized or oversized, the
5 installation will be considered as evidence of incompetence. Load calculations are required to be performed by
6 licensee who holds the appropriate license from this Board or by a North Carolina Licensed Professional Engineer.

7 (g) A licensed plumbing contractor involved in installation or replacement of a well pump or pumping equipment
8 which includes installation or reinstallation of a well seal is required to be present on site until the well is disinfected
9 and sealed.

10 (h) At the time of completion of initial installation and upon any subsequent alteration, licensees who install
11 multipurpose residential fire sprinkler systems shall assure that the two most remote fire sprinkler heads, as
12 identified by the design professional who designed the system, undergo a water flow test at the water supply
13 delivery volume and delivery pressure and assure that the system flows the required amount of water through each
14 of the tested fire sprinkler heads. Failure to carry out the flow test or failure of a system to provide the required
15 volume or water when placed in operation due to fire or otherwise shall be considered evidence of misconduct and
16 incompetence on the part of the installing licensee.

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19 *History Note: Authority G.S. 87-18; 87-23; 87-26;*
20 *Eff. February 1, 1976;*
21 *Readopted Eff. September 29, 1977;*
22 *Amended Eff. December 31, 2011; January 1, 2010; March 1, 2005; January 1, 2004; July 1,*
23 *2003; July 1, 1991; October 1, 1989; May 1, 1989.*
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1 21 NCAC 50.0516 is amended as published in 26:03 NCR 173 as follows:
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3 **21 NCAC 50 .0516 RESIDENTIAL FIRE SPRINKLER INSTALLATION LICENSE**

4 License in the Residential Fire Sprinkler Installation Contractor classification is required of persons who engage in
5 the business of contracting to perform or performing the installation of multipurpose ~~single-one or two~~ family
6 residential water-based plumbing and fire sprinkler piping systems consistent with NFPA-13D. All multipurpose
7 ~~single-one or two~~ family residential plumbing and fire sprinkler piping systems are required to be hydraulically
8 calculated and designed by a licensed North Carolina Fire Sprinkler Installation Contractor or a North Carolina
9 Licensed Professional Engineer for each specific installation. Residential Fire Sprinkler Installation Contractors are
10 required to perform each installation consistent with the calculation and design. Any single purpose ~~single family~~
11 residential water-based fire sprinkler system shall be installed by a licensed Fire Sprinkler Installation Contractor.
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13 *History Note: Authority G.S. 87-21;*
14 *Eff. July 1, ~~2010~~2010;*
15 *Amended Eff. December 31, 2011.*
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1 21 NCAC 50.1401 originally proposed to be repealed but is amended as published in 26:03 NCR 174 with changes as
2 follows:

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4 **21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS**

5 ~~(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing,~~
6 ~~Heating or Fuel Piping license, must have completed six hours of approved continuing education for each calendar year~~
7 ~~as a condition of license renewal.~~

8 ~~(b) Beginning with renewals of license for years beginning on or after January 1, 2010, as part of and not in addition to~~
9 ~~the requirements set out in Paragraph (a) of this Rule, each applicant for license renewal, other than fire sprinkler~~
10 ~~licensees, must complete two hours of instruction devoted entirely to N.C. Building Code including recent changes or~~
11 ~~amendments' to those codes annually.~~

12 ~~(c) Courses accredited for renewal of Plumbing, Heating or Fuel Piping license, must be in areas related to plumbing,~~
13 ~~heating, air conditioning or fuel piping contracting such as the technical and practical aspects of the analysis of plans and~~
14 ~~specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code~~
15 ~~requirements, fire hazards and other business ethics, taxation, payroll, cash management, bid and contract preparation,~~
16 ~~customer relations subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or~~
17 ~~to plumbing or heating systems.~~

18 ~~(d) Persons holding multiple qualifications from the Board must complete at least six hours annually, but are not required~~
19 ~~to take hours each year in each qualification, except Plumbing Contractor licensees who also hold a Residential Fire~~
20 ~~Sprinkler Installation Contractor license must obtain six hours continuing education annually in plumbing and four hours~~
21 ~~continuing education annually in residential fire sprinkler installation. Licensees with multiple qualifications shall take~~
22 ~~instruction so as to remain current in all areas of contracting work in which engaged.~~

23 ~~(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and~~
24 ~~teacher. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses~~
25 ~~and disciplinary action, including revocation or suspension of licenses.~~

26 ~~(f) Individuals who obtained licensure by means of the NICET certification as a Fire Sprinkler Installation Contractor,~~
27 ~~Fire Sprinkler Inspection Contractor, or Fire Sprinkler Inspection Technician, must maintain current certification with~~
28 ~~NICET as a condition of annual license renewal, and shall present evidence of same to the Board. In addition, licensees~~
29 ~~in this class must also obtain six hours of Board-approved continuing education classes for each calendar year as a~~
30 ~~condition of license renewal.~~

31 ~~(g) Beginning with renewals of license on or after January 1, 2003, each holder of a Fire Sprinkler Installation~~
32 ~~Contractors or Fire Sprinkler Inspection Contractor or Technician license not required to be current on the continuing~~
33 ~~education requirements of NICET must complete six hours of approved continuing education in areas related to fire~~
34 ~~sprinkler contracting during the preceding calendar year as a condition of license renewal. Licensees in the Fire Sprinkler~~
35 ~~Maintenance Technician classification shall obtain four hours of approved classroom continuing education annually~~
36 ~~relevant to the systems they maintain.~~

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1 *History Note: Authority G.S. 87-21(b)(3); 87-22;*
2 *Eff. April 1, 2001;*
3 *Amended Eff. December 31, 2012; January 1, 2010; May 1, 2006; January 1, 2004; April 1, 2003.*

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