

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

RULE CITATION: 21 NCAC 50 .0301

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:

It appears that the intent of Paragraph (1) is to grant the restricted licensure as a limited plumbing contractor to an individual who is currently licensed as an irrigation contractor, so long as the applicant has evidence of certification or experience and completes a course. Under the proposed language, the applicant who meets those requirements would then be exempted from taking the examination for licensure. While I am sure there are good intentions for this, I do not see that the Board has the authority to abrogate the requirement for an examination.

G.S. 87-21(b)(4) states:

- (4) Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, or each restricted classification, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.

I believe the statute requires the Board to hold examinations for this restricted license.

Amanda J. Reeder
Commission Counsel

§ 87-21. Definitions; contractors licensed by Board; examination; posting license, etc.

(a) Definitions. - For the purpose of this Article:

(1) The word "plumbing" is hereby defined to be the system of pipes, fixtures, apparatus and appurtenances, installed upon the premises, or in a building, to supply water thereto and to convey sewage or other waste therefrom.

(2) The phrase "heating, group number one" shall be deemed and held to be the heating system of a building, which requires the use of high or low pressure steam, vapor or hot water, including all piping, ducts, and mechanical equipment appurtenant thereto, within, adjacent to or connected with a building, for comfort heating.

(3) The phrase "heating, group number two" means an integral system for heating or cooling a building consisting of an assemblage of interacting components producing conditioned air to raise or lower the temperature, and having a mechanical refrigeration capacity in excess of fifteen tons, and which circulates air. Systems installed in single-family residences are included under heating group number three, regardless of size. Holders of a heating group number three license who have heretofore installed systems classified as heating group number two systems may nevertheless service, replace, or make alterations to those installed systems until June 30, 2004.

(4) The phrase "heating, group number three" shall be deemed and held to be a direct heating or cooling system of a building that raises or lowers the temperature of the space within the building for the purpose of comfort in which electric heating elements or products of combustion exchange heat either directly with the building supply air or indirectly through a heat exchanger using an air distribution system of ducts and having a mechanical refrigeration capacity of 15 tons or less. A heating system requiring air distribution ducts and supplied by ground water or utilizing a coil supplied by water from a domestic hot water heater not exceeding 150 degrees Fahrenheit requires either plumbing or heating group number one license to extend piping from valved connections in the domestic hot water system to the heating coil and requires either heating group number one or heating group number three license for installation of coil, duct work, controls, drains and related appurtenances.

(5) Any person, firm or corporation, who for a valuable consideration, (i) installs, alters or restores, or offers to install, alter or restore, either plumbing, heating group number one, or heating group number two, or heating group number three, or (ii) lays out, fabricates, installs, alters or restores, or offers to lay out, fabricate, install, alter or restore fire sprinklers, or any combination thereof, as defined in this Article, shall be deemed and held to be engaged in the business of plumbing, heating, or fire sprinkler contracting; provided, however, that nothing herein shall be deemed to restrict the practice of qualified registered professional engineers. Any person who installs a plumbing, heating, or fire sprinkler system on property which at the time of installation was intended for sale or to be used primarily for rental is deemed to be engaged in the business of plumbing, heating, or fire sprinkler contracting without regard to receipt of consideration, unless exempted elsewhere in this Article.

(6) The word "contractor" is hereby defined to be a person, firm or corporation engaged in the business of plumbing, heating, or fire sprinkler contracting.

(7) The word "heating" shall be deemed and held to mean heating group number one, heating group number two, heating group number three, or any combination thereof.

(8) Repealed by Session Laws 1997-298, s. 1.

(9) The word "Board" means the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.

(10) The word "experience" means actual and practical work directly related to the category of plumbing, heating group number one, heating group number two, heating group number three, or fire sprinkler contracting, and includes related work for which a license is not required.

(11) The phrase "fire sprinkler" means an automatic or manual sprinkler system designed to protect the interior or exterior of a building or structure from fire, and where the primary extinguishing agent is water. These systems include wet pipe and dry pipe systems, preaction systems, water spray systems, foam water sprinkler systems, foam water spray systems, nonfreeze systems, and circulating closed-loop systems. These systems also include the overhead piping, combination standpipes, inside hose connections, thermal systems used in connection with the sprinklers, tanks, and pumps connected to the sprinklers, and controlling valves and devices for actuating an alarm when the system is in operation. This subsection shall not apply to owners of property who are building or improving farm outbuildings. This subsection shall not include water and standpipe systems having no connection with a fire sprinkler system. Nothing herein shall prevent licensed plumbing contractors, utility contractors, or fire sprinkler contractors from installing underground water supplies for fire sprinkler systems.

(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. -

(1) In order to protect the public health, comfort and safety, the Board shall establish two classes of licenses: Class I covering all plumbing, heating, and fire sprinkler systems for all structures, and Class II covering plumbing and heating systems in single-family detached residential dwellings.

(2) Restricted licenses or classifications. -

a. The Board shall establish and issue a fuel piping license for use by persons who do not possess the required Class I or Class II plumbing or heating license, but desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used to supply fuel to any systems, equipment, or appliances located inside the premises.

b. The Board shall establish and issue a limited plumbing contractor license for use by persons who do not possess the required Class I or Class II plumbing license but desire to engage in the contracting or installation, repair, or replacement of either of the following:

1. Exterior potable water service lines or backflow preventers serving irrigation systems or domestic water service systems of two inch diameter or smaller.

2. Exterior building sewer or water service piping of two inch diameter or smaller.

c. The Board may also establish additional restricted classifications to provide for: (i) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of

heating, plumbing, or fire sprinkling contracting; (ii) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting; or (iii) the licensing of persons desiring to engage in contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

(3) The Board shall prescribe the standard of competence, experience and efficiency to be required of an applicant for license of each class, and shall give an examination designed to ascertain the technical and practical knowledge of the applicant concerning the analysis of plans and specifications, estimating costs, fundamentals of installation and design, codes, fire hazards, and related subjects as these subjects pertain to plumbing, heating, or fire sprinkler systems. The examination for a fire sprinkler contractor's license shall include such materials as would test the competency of the applicant and which may include the minimum requirements of certification for Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET). As a result of the examination, the Board shall issue a certificate of license of the appropriate class in plumbing, heating, or fire sprinkler contracting, and a license shall be obtained, in accordance with the provisions of this Article, before any person, firm or corporation shall engage in, or offer to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof. The obtaining of a license, as required by this Article, shall not of itself authorize the practice of another profession or trade for which a State qualification license is required. Prior to taking the examination, the applicant may be required by the Board to establish that the applicant is at least 18 years of age and is of good moral character. The Board may require experience as a condition of examination, provided that (i) the experience required may not exceed two years, (ii) that up to one-half the experience may be in the form of academic or technical courses of study, and (iii) that registration is not required at the commencement of the period of experience.

(4) Conditions of examination set by the Board shall be uniformly applied to each applicant within each license classification. It is the purpose and intent of this section that the Board shall provide an examination for plumbing, heating group number one, or heating group number two, or heating group number three, or each restricted classification, and may provide an examination for fire sprinkler contracting or may accept a current certification of the National Institute for Certification in Engineering Technologies for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout.

(5) The Board is authorized to issue a certificate of license limited to either plumbing or heating group number one, or heating group number two, or heating group number three, or fire sprinkler contracting, or any combination thereof. The Board is also authorized to issue a certificate of license limited to one or more restricted classifications that are established pursuant to this section.

(6) Examinations shall be given at least twice each year, and additional examinations may be given as the Board deems wise and necessary. The examination shall be conducted in two parts to include a business and law portion and a technical portion. Requests for examination applications and information shall be made available online without charge and supplied at no cost to the potential examinee. The Board may offer written examinations or administer examinations by computer within 30 days after approving an application. Applicants shall be permitted to obtain the test score from each part of computerized examinations immediately upon completion of the

examination. Upon passing the examination and paying the annual license fee, the applicant shall be issued a license. A person who fails to pass any examination shall not be reexamined until after 90 days from the date the person was last examined. An applicant who fails to pass any examination may take the failed portion within six months of the date approved to take the examination without retaking the portion passed. The Board may require applicants who fail any part of the examination three times to receive additional education before the applicant is allowed to retake the examination or wait one year before retaking any portion of the examination.

(c) To Whom Article Applies. - The provisions of this Article shall apply to all persons, firms, or corporations who engage in, or attempt to engage in, the business of plumbing, heating, or fire sprinkler contracting, or any combination thereof as defined in this Article. The provisions of this Article shall not apply to those who make minor repairs or minor replacements to an already installed system of plumbing, heating or air conditioning, but shall apply to those who make repairs, replacements, or modifications to an already installed fire sprinkler system. Minor repairs or minor replacements within the meaning of this subsection shall include the replacement of parts in an installed system which do not require any change in energy source, fuel type, or routing or sizing of venting or piping. Parts shall include a compressor, coil, contactor, motor, or capacitor.

(c1) Exemption. - The provisions of this Article shall not apply to a person who performs the on-site assembly of a factory designed drain line system for a manufactured home, as defined in G.S. 143-143.9(6), if the person (i) is a licensed manufactured home retailer, a licensed manufactured home set-up contractor, or a full-time employee of either, (ii) obtains an inspection by the local inspections department and (iii) performs the assembly according to the State Plumbing Code.

(c2) Exemption. - The provisions of this Article shall not apply to electric generating facilities that are subject to G.S. 62-110.1 or that provide power sold at wholesale that is regulated by the Federal Energy Regulatory Commission.

(d) Repealed by Session Laws 1979, c. 834, s. 7.

(d1) Expired December 31, 1991.

(e) Posting License; License Number on Contracts, etc. - The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the license number upon the payment of a ten dollar (\$10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection.

(f) Repealed by Session Laws 1971, c. 768, s. 4.

(g) The Board may, in its discretion, grant to plumbing, heating, or fire sprinkler contractors licensed by other states license of the same or equivalent classification without written examination upon receipt of satisfactory proof that the qualifications of such applicants are substantially equivalent to the qualifications of holders of similar licenses in North Carolina and upon payment of the usual license fee.

(h) Expired December 31, 1993.

(i) The provisions of this Article shall not apply to a retailer, as defined in G.S. 105-164.3(35), who, in the ordinary course of business, enters into a transaction with a buyer in which the retailer of a water heater sold for installation in a one- or two-family residential dwelling contracts with a licensee under this Article to provide the installation services for the water heater if the retail sales and installation contract with the buyer is signed by the buyer, the retailer, and the licensee and bears the licensee's license number and telephone number. All installation services rendered by the licensee in connection with any such contract must be performed in compliance with all building code, permit, and inspection requirements.

(j) The provisions of this Article shall not apply to a person primarily engaged in the retail sale of goods and services who contracts for or arranges financing for the sale and installation of a single-family residential heating or cooling system for which a license to install such system is required under this Article, provided all of the following requirements are met:

(1) No contract or proposal for sale or installation may be presented to or signed by the buyer unless either (i) the specifications for and design of the system have been first reviewed and approved by an employee of the retail seller who is licensed under this Article or (ii) the specifications for and design of the system have been first reviewed and approved by the person licensed under this Article who will install the system, if the installer is not an employee of the retail seller. This subdivision does not prohibit the retailer from providing a written estimate to a potential buyer so long as no contract or proposal for contract is presented or signed prior to the review and approval required by this subsection.

(2) The person installing the system is licensed under this Article.

(3) The contract for sale and for installation is signed by the buyer, by an authorized representative of the retail seller, and by the licensed contractor and contains the contractor's name, license number, and telephone number and the license number of the person approving the system design specifications.

(4) Installation services are performed in compliance with all applicable building codes, manufacturer's installation instructions, and permit and inspection requirements.

(5) The retailer provides, in addition to any other warranties it may offer with respect to the system itself, a warranty for a period of at least one year for any defects in installation.

(k) The provisions of subsections (i) and (j) of this section shall not apply to a system meeting the definition of subdivision (a)(11) of this section. (1931, c. 52, s. 6; 1939, c. 224, s. 3; 1951, c. 953, ss. 1, 2; 1953, c. 254, s. 2; 1967, c. 770, ss. 1-6; 1971, c. 768, ss. 2-4; 1973, c. 1204; 1979, c. 834, ss. 4-7; 1981, c. 332, s. 1; 1983, c. 569, ss. 1, 2; 1989, c. 623, s. 1; 1989 (Reg. Sess., 1990), c. 842, s. 3; c. 978, s. 2; 1991, c. 355, s. 1; c. 507, s. 1; c. 761, s. 13; 1993, c. 78, s. 1; 1997-298, s. 1;

1997-382, ss. 1, 4; 2001-270, s. 2; 2002-159, s. 36(a); 2003-2, s. 1; 2003-31, ss. 1-3.1; 2004-203, s. 69; 2005-131, s. 1; 2005-289, s. 3; 2013-332, s. 1.)