

STATE OF NEW YORK

7510

2019-2020 Regular Sessions

IN ASSEMBLY

May 8, 2019

Introduced by M. of A. FAHY -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to establishment of the water-based fire protection licensure act, and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "water-based fire protection licensure act".

2
3 § 2. Legislative intent. It is declared that there exists and may in the future exist within the state of New York locations where water-based fire protection systems are installed and improper installation and improper inspection, testing, and maintenance of existing fire protection systems may adversely affect the public health, safety and general welfare. It is further acknowledged that fire protection systems are critical life and property safety systems and such systems whose layout, installing, repairing, inspecting, testing, or maintenance require specialized knowledge and experience. Therefore the purpose of this act is to protect, promote and preserve the public health, safety and general welfare by providing for the establishment of minimum standards for licensure of water-based fire protection system installation and inspecting contractors as well as designating and utilization of responsible managing employees as qualifiers of said license with establishment of penalties for improper layout, installing, repairing, inspecting, testing, or maintaining of water-based fire protection systems and prohibit unlicensed activities. Furnishing and installing underground water-supply and one-family and two-family residential systems, unless a residential system in a "group home" are exempt from this act.

23 § 3. The general business law is amended by adding a new article 35-G to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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ARTICLE 35-G
WATER-BASED FIRE PROTECTION
LICENSURE ACT

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§ 759-g. Definitions. As used in this article, unless the context requires otherwise:

1. "Board" means the state fire protection advisory board under the department. Such board shall be the approving body for all rules, requirements, regulations, and future modifications affecting licensure, certificates and certification, exams, training, and other topics covered under this act.

2. "Business entity" means a firm, company, partnership, limited liability company, or corporation.

3. "Department" means the department of state division of licensing services.

4. "Engineer of record" means an education department-licensed professional engineer, qualified by experience and training to provide design criteria for fire protection systems including:

(a) selection of system types and components;

(b) classification of potential hazards and commodities to be protected;

(c) density, water flow, and pressure requirements for system designs;

(d) confirmation of available water supply data;

(e) preliminary hydraulic calculations verifying the adequacy of proposed water supply arrangements;

(f) ability to identify water supplies that could lead to microbiologically influenced corrosion; and

(g) familiarity with seismic information and other items identified by law or the uniform fire and building codes of the state.

5. "Fee" means any examination fee, license fee, registration fee, or renewal fee accompanying an application or issuance of any license, certification, or registration, including any temporaries or renewals, pursuant to this article. Such fee shall be non-refundable.

6. "Fire control" or "fire suppression" means:

(a) the practices, or materials and equipment in or adjacent to a building or premises, used in the installation, maintenance, extension, or alteration of all piping materials and equipment, as defined by the

1 state uniform fire prevention and building code, in connection with the
2 discharge of water and backflow prevention for the express purpose of
3 extinguishing and controlling fire; and

4 (b) the practice of installing, repairing, inspecting, testing, and
5 maintaining water-based fire protection systems as defined by the state
6 uniform fire prevention and building code.

7 7. "Fire sprinkler system" means any water-based fire protection
8 system, fire suppression system, or fire control system employing fire
9 sprinklers and consisting of underground and overhead piping, including
10 fire pumps and associated piping, fire standpipes that convey water with
11 or without other agents to dispersal openings or devices for the purpose
12 of extinguishing, controlling, suppressing, or containing fire, and
13 which provide protection from fire exposure or exposure to the products
14 of combustion, and are installed in accordance with the state uniform
15 fire prevention and building code and referenced standards and state-ap-
16 proved local standards.

17 8. "Full-time employee" means an employee of a business entity who is
18 expected to work at least one thousand five hundred sixty hours per
19 year. Earned, paid time for leave such as vacation, sick, or personal
20 days shall not count against the one thousand five hundred sixty hours.

21 9. "Geographical area" means distinct areas of the state as follows:

22 (a) Geographical area one: counties of Westchester, Putnam, Rockland,
23 Orange, Sullivan, Dutchess, Ulster, Columbia, Greene, Delaware, Otsego,
24 Schoharie, Schenectady, Albany, Rensselaer, Montgomery, Fulton, Sarato-
25 ga, Washington, Herkimer, Hamilton, Warren, Essex, Franklin, Clinton,
26 and Saint Lawrence.

27 (b) Geographical area two: counties of Jefferson, Lewis, Oswego, Onei-
28 da, Madison, Chenango, Broome, Tioga, Cortland, Onondaga, Cayuga, Tomp-
29 kins, Chemung, Schuyler, Seneca, Yates, Ontario, Wayne, Stueben, Living-
30 ston, Monroe, Orleans, Genessee, Wyoming, Alleghany, Cattaraugus,
31 Chautauqua, Erie, and Niagara.

32 10. "Inspection" means the visual examination of a building's water-
33 based fire protection system, or a portion thereof, to verify that such
34 system appears to be in operating condition and is free of physical
35 damage.

36 11. "Inspection, testing, and maintenance" means a program provided by
37 a state-licensed water-based fire protection contractor who has
38 contracted with a property or building owner, or such property or build-
39 ing owner's representative, in which all components unique to such prop-
40 erty or buildings' systems are inspected and tested at required times
41 and in which necessary maintenance is provided. Such programs shall
42 include logging and retention of relevant records and reporting of defi-
43 ciencies and malfunctions to the property or building owner or his or
44 her authorized representative, and the appropriate authorities as
45 required.

46 12. "Inspector" means a person certified in NICET II inspections and
47 testing of water-based systems and who is employed by a state-licensed
48 water-based fire protection contractor, who performs inspection and
49 testing on a water-based fire protection system, the state uniform fire
50 prevention and building code, and a program provided by a state-licensed
51 water-based fire protection contractor.

52 13. "Inspector trainee" means an inspector-in-training who may perform
53 inspections under the supervision of a NICET II inspector for up to one
54 year prior to obtaining NICET level I status and who may subsequently
55 perform inspections under supervision up to an additional two years
56 prior to obtaining NICET level II status in the field of inspections and

1 testing of water-based systems. Such inspector trainee and NICET level
2 II inspector must both be in the direct employment of the contractor I,
3 II, or III. The department shall issue a card once per lifetime with a
4 three-year limitation, and shall be maintained to prove such durations
5 are met. If such inspector trainee does not obtain the minimum NICET
6 level II certification, he or she shall not be permitted to continue to
7 perform inspections.

8 14. "Install" or "installation" means the initial placement of a
9 water-based fire protection system, or its extension or alteration after
10 the initial placement.

11 15. "Layout" means the placement of risers, cross mains, branch lines,
12 fire sprinklers, and hanger locations, and sizing of pipe and supple-
13 mental hydraulic calculations in accordance with the provisions of
14 water-based fire protection design standards and design criteria as
15 provided by the engineer of record.

16 16. "License holder" means a business entity as defined by this
17 section and as licensed by the department to engage in the business of
18 the layout, installing, repairing, inspecting, testing, or maintaining
19 of water-based fire protection systems. A single license may name no
20 more than one business entity.

21 17. "Limited maintenance" means adjustment of or replacement of system
22 components like and kind, inclusive of maintenance requirements per NFPA
23 25, as defined in this section.

24 18. "Maintenance" means work performed by a licensed water-based fire
25 protection contractor to keep water-based fire protection equipment
26 operable including repairs.

27 19. "NCCI" means the national council on compensation insurance.

28 20. "NFPA" means the national fire protection association, inc.

29 21. "NFPA 13D" means the NFPA's most recently updated publication
30 titled NFPA 13D, which establishes appropriate measures for protection
31 against fire hazards in one-family and two-family dwellings and manufac-
32 tured homes.

33 22. "NFPA 25" means the NFPA's most recently updated publication
34 titled NFPA 25, which establishes the minimum requirements for the peri-
35 odic inspection, testing, and maintenance of water-based fire protection
36 systems and the actions to undertake when changes in occupancy, use,
37 process, materials, hazard, or water supply that potentially impact the
38 performance of such water-based system are planned or identified.

39 23. "NFSA" means the national fire sprinkler association, inc.

40 24. "NICET" means the national institute for certification in engi-
41 neering technologies or other entities recognized as being equal to or
42 better than NICET, as determined by the department.

43 25. "OFPC" means the state office of fire prevention and control.

44 26. "Repair" means any work on a system after the initial installation
45 to replace, correct or maintain such system.

46 27. "Responsible managing employee" or "RME" means an individual with
47 appropriate NICET certification who is a full-time employee of a water-
48 based fire protection contractor, and who is designated as such water-
49 based fire protection contractor's qualifier to do business as a water-
50 based fire protection contractor. A RME may serve to qualify only one
51 water-based fire protection contractor under this article in the state.

52 28. "Supervise" or "supervision" means the direction, management, and
53 oversight by the RME named on a contractor's business license of the
54 activities of personnel in the layout, installing, repairing, inspect-
55 ing, testing, or maintaining repair of any water-based fire protection
56 system. Notwithstanding this subdivision, supervision shall not require

1 such RME to be at the site of each layout, install, repair, inspection,
2 test, or maintenance of water-based fire protection systems at all
3 times.

4 29. "Testing" means testing water-based fire protection systems as
5 defined by the state uniform fire prevention and building code.

6 30. "Water-based fire protection contractor" or "contractor" means any
7 of the following classes:

8 (a) "Contractor I" or "water-based fire protection contractor" means a
9 business entity that offers to undertake, represents itself as being
10 able to undertake, or does undertake the layout, installing, repairing,
11 inspecting, testing, or maintaining of all types of water-based fire
12 protection systems and components.

13 (b) "Contractor II" or "water-based fire protection systems inspection
14 contractor" means a business entity that is limited to the execution of
15 contracts requiring the inspection and testing along with limited main-
16 tenance of fire protection systems. Contractor II inspectors shall be
17 certified NICET II or better in inspection and testing of water-based
18 systems.

19 (c) "Contractor III" or "fire sprinkler system contractor" means a
20 business entity that offers to undertake, represents itself as being
21 able to undertake, or does undertake the layout, installing, repairing,
22 inspecting, testing, or maintaining of all types of water-based fire
23 protection systems and components with the exception of foam systems.

24 31. "Water-based fire protection contractor business license" or
25 "license" means a license issued by the department to a business entity
26 to operate as a water-based fire protection contractor.

27 32. "Water-based fire protection system" means a commercial or resi-
28 dential system individually designed to protect the interior or exterior
29 of a specific building, structure, or other potential hazard from fire,
30 or to promote life safety. Such systems include, but are not limited to,
31 water fire-sprinkler systems, water spray systems, foam-water sprinkler
32 systems, foam-water spray systems, and foam extinguishing systems used
33 for fire protection.

34 § 759-h. License and RME requirements; scope of practice; penalties
35 for non-compliance. 1. (a) It is unlawful for any organization, busi-
36 ness entity, or individual to engage in the business of layout, install-
37 ing, repairing, inspecting, testing, or maintaining water-based fire
38 protection systems, to act in the capacity of a water-based fire
39 protection contractor, or to advertise itself as being a water-based
40 fire protection contractor without having been duly licensed and without
41 holding a valid license, except as otherwise provided in this section.
42 The RME named to qualify an organization or business entity under this
43 article must be a full-time employee of such organization or business
44 entity. A RME who is employed by more than one water-based fire
45 protection contractor during the same period of time shall not be the
46 qualifier for more than one of such water-based fire protection contrac-
47 tors at the same time.

48 (b) The department shall revoke, for a period of time determined by
49 the department, the RME as a qualifier for all water-based fire
50 protection contractors if such RME makes use of or allows the use of
51 NICET or equivalent certification to qualify a contractor of which such
52 RME is not a full-time employee.

53 (c) All entities performing layout of drawings, installing, repairing,
54 inspecting, testing, or maintaining water-based fire protection systems
55 within the state (exempting systems within the jurisdictions of the five
56 boroughs of New York city, Nassau county, and Suffolk county) must have

1 in their employ one or more RMEs with appropriate NICET certification
2 for the layout of water-based fire protection system shop drawings to be
3 performed, or for the practice of inspection, testing, and maintenance
4 of water-based fire protection systems. This includes contractors based
5 in other states, New York city, Nassau county, and Suffolk county, or
6 any other location work covered under this article is to be performed.

7 (d) Nothing in this subdivision shall prohibit an employee acting on
8 behalf of any government entity or insurance provider from inspecting
9 and enforcing the state uniform fire prevention and building code and
10 local laws, provided such employee is acting solely on behalf of such
11 government entity or insurance provider. All fire protection cards,
12 registrations, certificates, and licenses required by this article and
13 issued by the department shall have statewide application (exempting the
14 jurisdictions of the five boroughs of New York city, Nassau county, and
15 Suffolk county). Local governments (exempting the jurisdictions of the
16 five boroughs of New York city, Nassau county, and Suffolk county) shall
17 not establish or impose any further standards, licensing, certification,
18 or registration upon state-licensed water-based fire protection contrac-
19 tors or their employees.

20 (e) Local governments (exempting the jurisdictions of the five
21 boroughs of New York city, Nassau county, and Suffolk county) shall not
22 require any type of business certificate, licensing, certification, or
23 registration of a water-based fire protection contractor, its RME, or
24 its employees that are licensed, certified, or registered by the depart-
25 ment of state unless such contractor maintains a physical office within
26 such local government's jurisdiction.

27 2. As of one year after the effective date of this article, no person
28 or business entity shall engage in the business of layout, installing,
29 repairing, inspecting, testing, or maintaining water-based fire
30 protection systems beginning at the point of fire protection service to
31 the most remote parts of the system, or hold himself or herself out as
32 being able so to do unless he or she is licensed pursuant to this arti-
33 cle.

34 3. As of twenty-four months after the effective date of this article,
35 the department shall require the minimum level of inspection to be the
36 NICET level II program of inspection and testing of fire protection
37 systems, or an equivalent inspection program acceptable to the fire
38 protection advisory board, as proof that the inspectors are knowledge-
39 able of the state required and nationally accepted standards for the
40 inspection, testing, and maintenance of water-based fire protection
41 systems.

42 4. Retrofitting of a backflow prevention device: It is the responsi-
43 bility of the building or property owner, commercial or residential to
44 obtain a state licensed professional engineer to become engineer of
45 record to evaluate any water-based fire protection system, supply docu-
46 mented findings to the water-based fire protection contractor, and
47 approve the installation of any backflow prevention device, in order to
48 avoid the introduction or addition of a backflow prevention device to an
49 existing water-based fire protection system, that causes a reduction in
50 available water pressure and may create a system malfunction.

51 5. A water-based fire protection contractor licensed under this arti-
52 cle shall not:

53 (a) enter into a written or oral agreement to authorize, subcontract,
54 or otherwise knowingly allow any individual or entity who is not
55 licensed under this article to engage in the business of, or act in the
56 capacity of, a water-based fire protection contractor; or

(b) apply for or obtain a construction permit for water-based fire protection work unless such water-based fire protection contractor or a business entity qualified by such contractor has contracted to conduct the work specified in his or her application for the required permit.

6. Any person who violates any provision of this article or commits any of the acts constituting a cause for disciplinary action as set forth by this article shall be guilty of a class B misdemeanor, punishable as provided by this article, and the laws of the state.

7. In addition to the penalties provided in subdivision six of this section, a water-based fire protection contractor licensed under this article who violates any provision of this section or who commits any act constituting cause for disciplinary action is subject to the suspension or revocation of his or her license and such administrative fines as prescribed by this article.

8. A license holder has an affirmative duty to provide supervision of employees and all business activities. Such supervision shall consist of regular, frequent personal guidance, instruction, oversight, and superintendence by the qualifying RME or RMEs with respect to the general business conducted by a firm, and all matters relating thereto.

9. Nothing in this article shall prohibit a principal of a given business entity from qualifying as such business entity's RME as long as such principal meets the qualifications of this article.

10. Licenses issued to contractors shall clearly identify the level of such license for ease of identification by field staff of the department and OFPC, local code enforcement officials, the public, and any other interested parties.

11. License applicability shall be in accordance with the following table:

<u>FUNCTION</u>	<u>CLASS I</u>	<u>CLASS II</u>	<u>CLASS III</u>
<u>Inspect</u>	<u>All</u>	<u>All</u>	<u>Water, not foam</u>
<u>Test</u>	<u>All</u>	<u>All</u>	<u>Water, not foam</u>
<u>Maintain</u>	<u>All</u>	<u>Limited</u>	<u>Water, not foam</u>
<u>Install</u>	<u>All</u>	<u>N/A</u>	<u>Water, not foam</u>
<u>Repair</u>	<u>All</u>	<u>N/A</u>	<u>Water, not foam</u>

§ 759-i. Powers of the department and board. 1. In addition to the powers and duties elsewhere prescribed in this article, the department and board shall have the following powers:

(a) To prescribe the duties of, fix the compensation of, and appoint an adequate number of assistants, field inspectors, and other employees as may be necessary to carry out the provisions of this article.

(b) To examine the qualifications of applicants for licenses or registrations under this article.

(c) To keep records of all licenses, certifications, and registrations issued, suspended, or revoked, and to publish such information on a website accessible to the public.

(d) To prepare a manual of rules and regulations for the licensure process of water-based fire protection contractors and to publish such information on a website accessible to the public.

(e) To promulgate such rules and regulations as may be necessary prescribing the form, content, and reception of applications for licenses and registrations, the manner of investigation and examination of applicants and their qualifications, and any other matters incidental or appropriate to the powers and duties as prescribed by this article and for the proper administration and enforcement of the provisions of this article, and to make recommendations to add, amend, or repeal any of such rules and regulations.

2. The secretary of state shall create a state fire protection advisory board and have the first meeting within ninety days of the effective date of this article. Such board shall be composed of the following members:

(a) one position for the secretary of state or his or her designee;

(b) one position for the state fire administrator or his or her designee;

(c) one position for the state department of state division of building standards and codes or his or her designee;

(d) three persons appointed by the president of the NFSA who shall be from separate geographical areas of New York state, and whose businesses must have been actively engaged in the business of layout, installing, inspecting, testing, altering, or maintaining water-based fire protection systems for at least five years immediately prior to their appointment;

(e) one position for the NFSA regional manager; and

(f) one state education department licensed professional engineer with experience in water-based fire protection.

3. The chair of the board shall be the secretary of state or his or her designee. The state fire administrator or his or her designee, or the director of building standards and codes division or his or her designee, may serve as chair in the chair's absence so as to conduct business.

4. The board shall direct the department in the administration of the requirements established by this article and all other future fire protection system licensing. The board shall meet at least once quarterly. The board shall have the authority to review complaints and disputed administrative action and to make non-binding recommendations for disciplinary action to the department at the request of a certificate holder, license holder, or the department. The board shall make decisions and supply in writing to the department rules, codes, standards, interpretations, and training. The board members' terms shall expire on the thirtieth day of June following the effective date of this article and biennially thereafter. Term limits shall be limited to four consecutive terms. No member of the board shall be paid a salary as such member, but each shall receive necessary expenses for attending board meetings and reimbursement, including travel for performance of his or her board duties.

5. The board shall review and make determinations regarding all new applications and the department shall administer new licenses following board approval and renewals with proper documentation.

6. Members of the board shall exercise due diligence to participate in all scheduled and special meetings as required. The department shall take minutes and make minutes available as soon as reasonably possible to board members that are absent.

7. The majority of the board with at least one fire protection contractor board member must be present to constitute a quorum.

8. Motions shall not move forward without a minimum of two fire protection contractor board members in support of the motion.

§ 759-j. New licensure requirements. 1. As a prerequisite for licensure as a contractor I, a RME qualifier must be at least twenty-three years of age, be of good moral character, and shall possess five years of proven experience and progressive training in the employment of a water-based fire protection system contractor I or a combination of equivalent education and experience. It is the intent that the contractor I RME meet the criteria of NICET III certification in the specific

1 technical discipline of water-based layout, or equivalent criteria
2 accepted by the board and the department as a prerequisite, along with
3 NICET special hazards suppression systems or equivalent criteria
4 accepted by the board and department. Two RMEs are permitted, with one
5 in each discipline.

6 2. As a prerequisite for licensure as a contractor II, a RME qualifier
7 must be at least eighteen years of age and be of good moral character
8 and shall be certified NICET II for inspection and testing of water-
9 based systems or equivalent certification accepted by the board and the
10 department. NICET I inspection and testing of water-based systems or an
11 equivalent accepted by the board and by the department may perform
12 inspection and testing under direct on-site supervision of a NICET II or
13 equivalent inspector.

14 3. As a prerequisite for licensure as a contractor III, the RME qual-
15 ifier must be at least twenty-three years of age, be of good moral char-
16 acter, and shall possess five years of proven experience and progressive
17 training in the employment of a water-based fire protection system
18 contractor I or III, or a combination of equivalent education and expe-
19 rience. The RME qualifier for the contractor III license shall meet the
20 criteria of NICET III certification in the specific technical discipline
21 of water-based layout, or an equivalent accepted by the board and
22 department, as a prerequisite.

23 4. A state professional engineer license along with education and
24 documented experience in water-based fire protection system engineering
25 may be substituted for the NICET requirements in this section.

26 § 759-k. Licensure for existing contractors. Each existing contractor
27 shall file for a license as an existing contractor by presenting to the
28 department satisfactory evidence that such contractor has been actively
29 engaged in the proper class of contracting in the scope of the license
30 applied for in layout, installing, repairing, inspecting, testing, or
31 maintaining of water-based fire protection systems, as a contractor I,
32 contractor II, or contractor III, and shall show proof of proper insur-
33 ance as a water-based fire protection contractor. Such evidence shall
34 include proof of insurance which includes the latest NCCI rating sheet
35 for workers compensation showing the appropriate code for fire sprinkler
36 fitters. All existing contractors shall file for a license pursuant to
37 this section within one year of the effective date of this article.

38 § 759-l. Licensure: application; insurance; display; duplicates. 1.
39 Once a representative RME meets the provisions of this act to be a qual-
40 ifier, any business entity desiring a license to engage in the business
41 of layout, installing, inspecting, altering, or maintaining of water-
42 based fire protection systems under this article, may make an applica-
43 tion to the department. The RME shall be subscribed by the license
44 applicant and affirmed by him or her as true under the penalties of
45 perjury. The license application shall be in such form and shall contain
46 the RME's NICET certification number, category of discipline, and level
47 of discipline. Each license application shall be accompanied by a copy
48 of required certifications as established in this article, proving the
49 level of certification for inspection by the department.

50 2. All licenses shall be valid for a period of one year.

51 3. No license shall be assignable or transferable except as otherwise
52 provided by this section.

53 4. If a RME, who has met the requirements of this article, ceases to
54 act in the capacity of RME, the license holder shall notify the depart-
55 ment in writing within five business days from such termination or
56 cessation. The license holder may continue to conduct the business of

1 layout, installing, repairing, inspecting, testing, or maintaining
2 water-based fire protection systems for a period not to exceed sixty
3 days from the date of such termination or cessation, except that such
4 period may be extended upon an application to the department with good
5 cause for an additional period not to exceed one hundred twenty days. By
6 the end of such period a new RME must be designated who has met the
7 certification requirements of this article.

8 5. (a) As a prerequisite to issuance of a license, the department
9 shall require a business entity to submit satisfactory evidence that
10 such business entity has obtained appropriate water-based fire
11 protection contracting commercial general liability insurance, showing
12 proof of appropriate coverage amounts for the appropriate contractor
13 level being applied for, with a minimum of one million dollars for
14 contractor I, contractor II, and contractor III. Said evidence shall
15 show appropriate coverage for comprehensive general liability for bodily
16 injury and property damages, products liability, completed operations,
17 contractual liability, and workers' compensation. The board may adopt
18 rules providing for the minimal amount of insurance for all contractor
19 classes.

20 (b) Water-based fire protection contractor certificates of insurance
21 shall provide that such insurance shall not be modified, that there
22 shall be no material changes in coverage or any termination, non-rene-
23 wal, or cancellation unless thirty days' notice is given to the depart-
24 ment.

25 (c) Water-based fire protection contractor certificates of insurance
26 must include the policy number, date of expiration, and physical address
27 of each contractor location. Each contractor's operation of business
28 must be noted in the description part of such contractor's certificate.

29 (d) The "State of New York" shall be named as the certificate holder.

30 (e) An insurer who fails to so notify the department shall be subject
31 to the penalties provided within this article.

32 6. A license shall be issued upon satisfaction of the requirements of
33 this section. No license shall remain in effect if, after issuance, the
34 license holder fails to maintain insurance coverage required by this
35 article.

36 7. The department may, at any time subsequent to the issuance of a
37 license or renewal, require, upon demand and within thirty days of
38 notice of such demand, the license holder to provide proof of insurance
39 coverage on a form provided by the department, containing confirmation
40 of insurance coverage as required by this article. Failure to provide
41 proof of insurance coverage as required, for any length of time, shall
42 result in the immediate suspension of the license until proof of insur-
43 ance is provided to, and accepted by, the department.

44 8. A license issued to conduct the business of layout, installing,
45 repairing, inspecting, testing, or maintaining of water-based fire
46 protection systems shall be conspicuously posted upon the premises where
47 the license holder is engaged in such business of layout, installing,
48 repairing, inspecting, testing, or maintaining of water-based fire
49 protection systems.

50 9. Upon obtaining a license, all documents or receipts issued by or on
51 behalf of a contractor licensed pursuant to this article shall contain
52 the license identification number issued to such contractor.

53 10. A duplicate license may be issued for one lost, destroyed, or
54 mutilated upon an application for such duplicate license on a form
55 prescribed by the department and upon payment of the fee prescribed by
56 this article. Each such duplicate license shall have the word "dupli-

1 cate" clearly stamped or watermarked across its face and shall bear the
2 same number as the original license. All information from the original
3 license shall be transposed identically.

4 11. Notice in writing shall be given to the department by a license
5 holder of any change in address of such license holder together with the
6 return of such holder's license, whereupon a properly signed endorsement
7 shall be made on the face of such license as to such change, and such
8 license shall then be returned to the license holder.

9 12. Each license to conduct the business of layout, installing,
10 repairing, inspecting, testing, or maintaining of water-based fire
11 protection systems issued to a business entity may be used after the
12 death of the RME for a period of not more than sixty days from the date
13 of such RME's death. Such sixty-day period may be extended upon an
14 application to the department and for good cause shown for an additional
15 period not to exceed one hundred twenty days total.

16 § 759-m. License renewals and RMEs. The contractor shall submit an
17 application and fees for license renewal along with all required
18 documentation including RME qualifications to the department.

19 § 759-n. Inspection of water-based fire protection systems. 1. The
20 department and OFPC shall have the right to inspect any water-based fire
21 protection system during and after construction to determine whether
22 such system meets the standards set forth in the laws and rules of the
23 state. This does not diminish the capacity and duties of the local code
24 enforcement office having jurisdiction.

25 2. A building owner who has water-based fire protection systems
26 installed in public or private properties, including group homes, but
27 not including private one-family or two-family dwellings or manufactured
28 housing, shall cause such building to be inspected in compliance with
29 the procedures set forth in NFPA 25 by a state licensed water-based fire
30 protection contractor. This section does not prohibit governmental enti-
31 ties and code enforcement officials in the performance of their duties
32 from inspecting and enforcing state uniform fire prevention and building
33 code and local laws.

34 3. A building owner shall cause to be corrected all deficiencies
35 discovered during inspection.

36 4. A building owner or building owner's authorized representative
37 shall contract with a state-licensed contractor for scheduled inspection
38 and testing before any certificate of occupancy is issued. The inspect-
39 ing contractor shall provide to such building owner a copy of the
40 inspection report detailing applicable state code requirements and NFPA
41 25 standard inspection, testing, and maintenance criteria. The mainte-
42 nance of water-based fire protection systems as well as corrective
43 actions on deficient systems is the responsibility of the owner of the
44 water-based fire protection system connected thereto. It is recognized
45 that the inspecting contractor and the installing contractor may or may
46 not be one and the same. The limit of liability of inspecting contrac-
47 tors shall be that of the dollar value of the inspection, testing, and
48 maintenance contract. The installing water-based fire protection
49 contractor shall be reposed and may not be sued for latent construction
50 defects, more than ten years after substantial completion of a project.

51 5. A building owner shall ensure that inspections, testing, and main-
52 tenance of water-based fire protection systems for detached one-family
53 dwellings, detached two-family dwellings, and manufactured housing, meet
54 the standards set forth in NFPA 13D. Group homes shall be subject to the
55 standards set forth in NFPA 25 and shall be governed by this article.

1 6. Maintenance of water-based fire protection systems as well as
2 corrective actions on deficient systems is the responsibility of the
3 owner of the system. Notwithstanding inspection contracts with
4 conflicting language, the owner of the water-based fire protection
5 system shall indemnify and hold harmless the other party to the
6 contract, and their officers and employees, from liabilities, damages,
7 losses and costs, including, but not limited to, reasonable attorney's
8 fees, to the extent caused by the negligence, recklessness, or inten-
9 tional failure of the system owner to maintain or take corrective action
10 to maintain a water-based fire protection system.

11 7. Effective thirty-six months from the effective date of this arti-
12 cle, the department shall require NICET III inspection and testing of
13 water-based fire protection systems or equivalent training and education
14 as determined by the department for the RME or RMEs qualifying a
15 contractor II as proof that they are knowledgeable in nationally
16 accepted standards for the inspection of water-based fire protection
17 systems.

18 8. It is the responsibility of the contractor II RME to maintain NICET
19 III inspection and testing of water-based fire protection systems
20 certification or equivalent certification as a condition of license
21 renewal after thirty-six months of the effective date of this article.

22 9. No jurisdiction through local law or code enforcement office policy
23 shall require any forms or documents for water-based fire protection
24 system inspections, testing, or maintenance beyond what is in the scope
25 of the fire code of the state and NFPA 25. All inspection, testing, and
26 maintenance reporting forms and documentation required shall come from
27 the building owner or such owner's legal representative unless local law
28 requires otherwise.

29 10. Building owners or such owner's legal representatives shall cause
30 a copy of all water-based fire protection system inspection, testing,
31 and maintenance forms for their properties to be forwarded to the appro-
32 priate code enforcement office within ten days of receipt of any
33 inspection or testing form or report.

34 11. Code enforcement offices shall review all water-based fire
35 protection inspection, testing, and maintenance forms and documents for
36 system deficiencies that are noted and shall determine time limitations
37 for correction of such deficiencies noted on fire protection system
38 inspection reports with the building owner or such owner's legal repre-
39 sentative.

40 § 759-o. Fees. 1. The fee for a license to engage in the business of
41 layout, installing, repairing, inspecting, testing, or maintaining of
42 water-based fire protection systems shall be two hundred dollars. For
43 each renewal thereof, the fee shall be one hundred dollars.

44 2. The fee for issuing a duplicate certificate or license in substi-
45 tution for one lost, destroyed, or mutilated shall be twenty-five
46 dollars.

47 3. The fee for changing a name or address on a license shall be ten
48 dollars.

49 4. The fees set forth in this section shall be for registrations,
50 certificates, and licenses issued for the period of two years or frac-
51 tion of such period.

52 § 759-p. Suspension and revocation of licenses. 1. A license to engage
53 in the business of layout, installing, repairing, inspecting, testing,
54 or maintaining of water-based fire protection systems may be suspended
55 or revoked, or in lieu thereof a fine not exceeding one thousand dollars

1 per violation payable to the department may be imposed, or a penalty may
2 be issued by the department or board, for any of the following causes:

3 (a) fraud or bribery in securing a license;

4 (b) making any false statement as to a material matter in an applica-
5 tion or other statement or certificate required by or pursuant to this
6 article;

7 (c) incompetence;

8 (d) failure to display the license as provided in this article;

9 (e) violation of any provision of this article, or of any rule or
10 regulation adopted pursuant to this article;

11 (f) conviction of a felony involving fraud, theft, perjury or bribery
12 or any other cause which would permit disqualifications from receiving a
13 license upon the original application;

14 (g) failure to supervise the installation of a fire protection system
15 covered by a building permit signed by a RME;

16 (h) a RME or license holder's violation of any provision of this arti-
17 cle or any rule or regulation adopted and promulgated pursuant to this
18 article or the failure or refusal to comply with any notice or order to
19 correct a violation or any cease and desist order;

20 (i) improper layout, installing, repairing, inspecting, testing, or
21 maintaining a water-based fire protection system;

22 (j) having rendered inoperative a water-based fire protection system
23 except during such time as the system is being inspected, tested,
24 repaired, altered, or maintained, or except pursuant to a court order;

25 (k) while holding a certificate or license allowing another person to
26 use such certificate or license number, or using a certificate or
27 license number other than the valid certificate or license number;

28 (l) failure to provide proof of insurance to the department or failure
29 to maintain insurance coverage required by this article; or

30 (m) loss of a RME for more than one hundred twenty consecutive days.

31 2. An order of suspension shall state the length of such suspension,
32 which may not exceed two years from the date of such order. Such orders
33 shall affect suspension or revocation of a RME qualifier or licenses
34 held by a contractor and during such period of time no license shall be
35 issued to such contractor. During the period of suspension or revocation
36 of any license, the former license holder shall not engage in or attempt
37 or profess to engage in any transaction or business for which a license
38 is required under this chapter, or directly or indirectly own, control,
39 or be employed in any manner by any business entity for which a license
40 under this chapter is required. If, during the period between the
41 beginning of proceedings and the entry of an order of suspension or
42 revocation by the department, a new license has been issued to the busi-
43 ness entity so charged, the order of suspension or revocation shall
44 operate to suspend or revoke such new license held by such business
45 entity.

46 3. So long as a revocation or suspension remains in effect, the
47 department shall not grant any new license for the establishment of any
48 new business entity to any person, business entity, or qualifier that
49 has or will have the same or similar management, ownership, control,
50 employees, or license holders, or will use the same or similar name as
51 such previously revoked or suspended business entity, person, or qual-
52 ifier. In addition, the department shall not issue a new license if it
53 finds that the circumstances for which such license was previously
54 revoked or suspended still exist or are likely to recur.

55 4. Whenever a license to engage in the business of layout, installing,
56 inspecting, testing, repairing, or maintaining of water-based fire

1 protection systems is revoked, such license shall not be reinstated or
2 reissued until five years from the date of such revocation.

3 5. The filing of a petition in bankruptcy, either voluntary or invol-
4 untary, or the making of a composition of creditors or the appointment
5 of a receiver for a business entity's license may be considered by the
6 department as just cause for suspension of such license.

7 6. The lapse or suspension of a license by operation of law or by
8 order of the department or a court or the voluntary surrender of such
9 license by its license holder does not deprive the department of its
10 authority to investigate or act in disciplinary proceedings against the
11 license holder.

12 7. A contractor filing an application for a water-based fire
13 protection license following the revocation of a previous license in any
14 category shall follow all procedures for obtaining a new license.

15 § 759-q. Hearing on charges; decision. No certificate or license shall
16 be suspended or revoked nor shall any fine or penalty be imposed until
17 after a hearing is held before an officer or employee of the department
18 designated for such purpose by the department, upon notice to the
19 certificate or license holder of at least ten days. The department
20 shall consider the recommendations of the board. The notice shall be
21 served either personally or by registered mail and shall state the date
22 and place of the hearing and set forth the ground or grounds constitut-
23 ing the charges against the certificate or license holder. Such certif-
24 icate or license holder shall have the opportunity to be heard either in
25 person or by counsel and may produce witnesses and testify on his or her
26 own behalf. A stenographic record of the hearing shall be taken and
27 preserved. The hearing may be adjourned from time to time. The person
28 conducting the hearing shall make a written report including his or her
29 findings and a recommendation to the department for decision. The
30 department shall review such findings and recommendation and, after due
31 deliberation, shall issue an order accepting, modifying, or rejecting
32 such recommendation and dismissing the charges or suspending or revoking
33 the certificate or license, or in lieu thereof, imposing a fine or
34 penalty upon the certificate or license holder. For the purposes of this
35 article, the department or any officer or employee of the department
36 designated by the secretary of state, may administer oaths, take testi-
37 mony, subpoena witnesses, and compel the production of books, papers,
38 records, photographs, and documents deemed pertinent to the subject of
39 investigation.

40 § 759-r. Judicial review. The action of the department in suspending,
41 revoking or refusing to issue or renew a certificate or license, or
42 imposing a fine or penalty upon the holder of such license may be
43 reviewed in a proceeding brought under and pursuant to article seventy-
44 eight of the civil practice law and rules.

45 § 759-s. Violations and penalties. Any person or business entity who
46 directly or indirectly engages in the business of layout, installing,
47 repairing, inspecting, testing, or maintaining water-based fire
48 protection systems or holds oneself out to the public as being able to
49 perform such work and is without a license, or who shall violate any of
50 the provisions of this article, or having had a license suspended or
51 revoked, continues to engage in the business of layout, installing,
52 repairing, inspecting, testing, or maintaining water-based fire
53 protection systems or who, without a license to engage in the business
54 of layout, installing, repairing, inspecting, testing, or maintaining
55 water-based fire protection systems, directly or indirectly employs,
56 permits or authorizes an uncertified person to engage in the business of

1 layout, installing, repairing, inspecting, testing, or maintaining
2 water-based fire protection systems, shall be guilty of a misdemeanor
3 and, upon conviction, shall be punishable by imprisonment of not more
4 than six months, or by a fine of not more than one thousand dollars or
5 both upon the first conviction, and by imprisonment of not more than one
6 year or by a fine of not less than one thousand dollars or more than
7 five thousand dollars or both upon a subsequent conviction. Each
8 violation of this article shall be deemed a separate offense.

9 § 759-t. Official acts used as evidence. The official acts of the
10 secretary of state and the department shall be prima facie evidence of
11 the facts therein and shall be entitled to be received in evidence in
12 all actions at law and other legal proceedings in any court or before
13 any board, body, or officer.

14 § 759-u. Disposition of moneys derived from operation of this article.
15 Fees collected pursuant to this article shall be paid into the appropri-
16 ate account for the department pursuant to the state finance law, for
17 administration of this article. All remaining moneys derived from the
18 operation of this article shall on or before the tenth day of each month
19 be paid into the general fund of the state treasury to the credit of the
20 state purposes account therein.

21 § 759-v. Severability. If any part or provision of this article or the
22 application thereof to any person or circumstance be adjudged invalid by
23 any court of competent jurisdiction, such judgment shall be confined in
24 its operation to the part, provision or application directly involved in
25 the controversy in which such judgment shall have been rendered and
26 shall not affect or impair the validity of the remainder of this article
27 or the application thereof to other persons or circumstances, and the
28 legislature hereby declares that it would have enacted this article or
29 the remainder thereof had the invalidity of such provision or applica-
30 tion thereof been apparent.

31 § 759-w. Applicability. 1. This article shall not apply to water-based
32 fire protection work performed under the jurisdiction of the five
33 boroughs of New York city, Nassau county, or Suffolk county. Any munici-
34 pality or local government agency located in New York city, Nassau coun-
35 ty, or Suffolk county may require other licenses or evidence of a
36 person's competence to layout, install, repair, inspect, test, or main-
37 tain all types of water-based fire protection systems and components.
38 Nothing in this section shall be construed to imply that a holder of a
39 New York city, Nassau county, or Suffolk county license shall have any
40 standing outside the boundaries of the jurisdiction issuing such
41 license.

42 2. This article shall not apply to:

43 (a) a person who performs water-based fire protection work with
44 respect to any one-family or two-family dwelling owned or leased by such
45 person unless otherwise specified;

46 (b) a person who, while employed by a public utility or its affiliate,
47 performs water-based fire protection work in connection with the
48 furnishing of such public utility service;

49 (c) any work covered by any national, state, or municipal electrical
50 code including but not limited to pull stations, strobes, heat detec-
51 tors, smoke detectors, fire alarms or bells, and any electrical wiring
52 including conduit connected to raceway control cabinets; or

53 (d) underground water supply for fire protection up to the floor
54 flange where the water-based fire protection system above ground begins.

55 3. This act shall not be held to invalidate any provision of the laws
56 of this state or any subdivision thereof unless there is a direct

1 conflict between the provision of this article and the provision of such
2 law or unless such law is duplicative of this article, in which case
3 this article shall prevail. No local law shall require any fee, license,
4 or certificate for the layout, installing, repairing, inspecting, test-
5 ing, or maintaining of water-based fire protection systems, except when
6 the water-based fire protection contractor business is located within a
7 political jurisdiction. Any jurisdiction may apply business licensure
8 criteria and fees consistent with other businesses in such jurisdiction.

9 4. Nothing in this article shall limit the power of a municipality or
10 county to regulate the quality and character of work performed by
11 water-based fire protection contractors through a system of permits,
12 fees, and inspections which are designed to secure compliance with, and
13 aid in the implementation of, state and local laws or to enforce other
14 local laws for the protection of the public health and safety.

15 5. Nothing in this article shall limit the power of a municipality or
16 county to adopt any system of permits requiring submission to and
17 approval by such municipality or county of plans and specifications for
18 work to be performed by contractors before commencement of such work,
19 except that no municipality or county shall require a water-based fire
20 protection contractor's shop drawings to be stamped or sealed by a
21 professional engineer or registered architect.

22 6. Any elected or appointed official authorized to issue a building,
23 fire protection, or other related permit for a project that includes
24 water-based fire protection shall ascertain that the applicant contrac-
25 tor or subcontractor is appropriately licensed before issuing such
26 permit. The evidence shall consist only of the presentation to the offi-
27 cial of evidence of the current contractor license I or III. If the
28 water-based fire protection contractor is not known at time of permit
29 request by a general contractor or other party applying for permit, the
30 required information above shall be supplied before any water-based fire
31 protection work commences. Any permits for the layout, installing,
32 repairing, inspecting, testing, or maintaining of a water-based fire
33 protection system may only be issued to a licensed water-based fire
34 protection contractor of the appropriate classification to conduct the
35 work.

36 § 759-x. Contractual agreements. 1. Any portion of any agreement or
37 contract for or in connection with, or any guarantee of or in connection
38 with any layout, installing, repairing, inspecting, testing, maintain-
39 ing, or demolition of a water-based fire protection system between an
40 owner of real property or general contractor and the water-based fire
41 protection contractor wherein any party promises to indemnify or hold
42 harmless the other party to the agreement, contract, or guarantee for
43 liability for damages to persons or property caused in part by any act,
44 omission, or default of the indemnitee arising from the contract or its
45 performance, shall be void and unenforceable unless the contract
46 contains a monetary limitation on the extent of the indemnification that
47 bears a reasonable commercial relationship to the contract and is part
48 of the project specifications or bid documents, if any. Notwithstanding
49 the foregoing, the monetary limitation on the extent of the indemnifica-
50 tion provided to the owner of real property by any party in privity of
51 contract with such owner shall not be less than one million dollars per
52 occurrence, unless otherwise agreed by the parties. Indemnification
53 provisions in any such agreements, contracts, or guarantees may not
54 require that the indemnitor indemnify the indemnitee for damages to
55 persons or property caused by the sole negligence of another party, or

1 in whole or in part by any act, omission, or default of a party other
2 than:

3 (a) the indemnitor;

4 (b) any of the indemnitor's contractors, subcontractors, sub-subcon-
5 tractors, materials person, or agents of any tier or their respective
6 employees; or

7 (c) the indemnitee or its officers, directors, agents, or employees.
8 However, such indemnification shall not include claims of, or damages
9 resulting from gross negligence, or willful, wanton or intentional
10 misconduct of the indemnitee or its officers, directors, agents or
11 employees, or for statutory violation or punitive damages except and to
12 the extent the statutory violation or punitive damages are caused by or
13 result from the acts or omissions of the indemnitor or any of the
14 indemnitor's contractors, subcontractors, sub-subcontractors, material-
15 persons, or agents of any tier or their respective employees.

16 2. A construction contract for a public agency or in connection with a
17 public agency's project may not require one party to indemnify, defend,
18 or hold harmless the other party, its employees, officers, directors, or
19 agents from any liability, damage, loss, claim, action, or proceeding,
20 and any such contract provision is void as against public policy of this
21 state.

22 3. This section does not affect any contracts, agreements, or guaran-
23 tees entered into before the effective date of this article but affects
24 renewals thereof when such renewal takes place after the effective date
25 of this article.

26 4. Water-based fire protection contractors shall be granted sufficient
27 time to inspect any perceived construction defect in a building that
28 they may disprove or accept as in their purview before any legal actions
29 or suits are brought forth. If such contractor takes responsibility for
30 such defect, reasonable time shall be allowed for such contractor or his
31 or her representative to correct such defect without fear of any legal
32 actions or suit. A water-based fire protection contractor shall not be
33 held liable for economic damages caused by others.

34 5. An owner has an obligation to install fire protection systems in
35 compliance with adopted fire protection system standards.

36 § 4. This act shall take effect one year after it shall have become a
37 law, provided, however that the provisions of section 759-k of the
38 general business law as added by section three of this act shall expire
39 one year after the effective date of this act when upon such date the
40 provisions of such section shall be deemed repealed. Effective imme-
41 diately, the addition, amendment and/or repeal of any rule or regulation
42 necessary for the implementation of this act on its effective date are
43 authorized to be made and completed on or before such effective date.