STATE OF NEW YORK

5804--A

2019-2020 Regular Sessions

IN SENATE

May 15, 2019

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 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

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

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systems, unless a residential system in a "group home" are exempt from this act.

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

ARTICLE 35-G
WATER-BASED FIRE PROTECTION
LICENSURE ACT

Section 759-g. Definitions.
759-h. License and RME requirements; scope of practice; penalties for non-compliance.
759-i. Powers of the department and board.
759-j. New licensure requirements.
759-k. Licensure for existing contractors.
759-l. Licensure: application; insurance; display; duplicates.
759-m. License renewals and RMEs.
759-n. Inspection of water-based fire protection systems.
759-o. Fees.
759-p. Suspension and revocation of licenses.
759-q. Hearing on charges; decision.
759-r. Judicial review.
759-s. Violations and penalties.
759-t. Official acts used as evidence.
759-u. Disposition of moneys derived from operation of this article.
759-v. Severability.
759-w. Applicability.
759-x. Contractual agreements.

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

1. "AFSA" means the American fire sprinkler association.

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

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

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

5. "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.

6. "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.

7. "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 state uniform fire prevention and building code, in connection with the discharge of water and backflow prevention for the express purpose of extinguishing and controlling fire; and

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

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

9. "Full-time employee" means an employee of a business entity who is expected to work at least one thousand five hundred sixty hours per year. Earned, paid time for leave such as vacation, sick, or personal days shall be inclusive within the one thousand five hundred sixty hours.

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

11. "Inspection, testing, and maintenance" means a program provided by a state-licensed water-based fire protection contractor who has contracted with a property or building owner, or such property or building owner's representative, in which all components unique to such property or buildings' systems are inspected and tested at required frequencies and in which necessary maintenance is provided. Such programs shall include logging and retention of relevant records and reporting of deficiencies and malfunctions to the property or building owner or his or her authorized representative, and the appropriate authorities as required.

12. "Inspector" means a person who is employed by a state-licensed water-based fire protection contractor, who performs inspection and testing on a water-based fire protection system, as per the state uniform fire prevention and building code, and a program provided by a state-licensed water-based fire protection contractor.

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

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

15. "License holder" means a business entity as defined by this section and as licensed by the department to engage in the business of

the layout, installing, repairing, inspecting, testing, or maintaining of water-based fire protection systems. A single license may name no more than one business entity.

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

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

18. "NCCI" means the national council on compensation insurance.

19. "NFPA" means the national fire protection association, inc.

20. "NFPA 25" means the NFPA's most recent state referenced publication, which establishes the minimum requirements for the periodic inspection, testing, and maintenance of water-based fire protection systems and the actions to undertake when changes in occupancy, use, process, materials, hazard, or water supply that potentially impact the performance of such water-based system are planned or identified.

21. "NFSA" means the national fire sprinkler association, inc.

22. "NICET" means the national institute for certification in engineering technologies or other entities recognized as being equal to or better than NICET, as determined by the department.

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

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

25. "Responsible managing employee" or "RME" means an individual with appropriate NICET certification or state-approved equivalent who is a full-time employee of a water-based fire protection contractor, and who is designated as such water-based fire protection contractor's qualifier to do business as a water-based fire protection contractor. A RME may serve to qualify no more than two water-based fire protection contractor under this article in the state. Where an RME qualifies multiple business entities, the entities must be shown to have common ownership or controlling interest and the RME must be a full-time employee.

26. "Supervise" or "supervision" means the direction, management, and oversight by the RME named on a contractor's business license of the activities of personnel in the layout, installing, repairing, inspecting, testing, or maintaining repair of any water-based fire protection system. Notwithstanding this subdivision, supervision shall not require such RME to be at the site of each layout, install, repair, inspection, test, or maintenance of water-based fire protection systems at all times.

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

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

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

(b) "Contractor II" or "water-based fire protection systems inspection contractor" means a business entity that is limited to the execution of contracts requiring the inspection and testing along with limited maintenance of fire protection systems. Contractor II businesses shall have an RME certified NICET II or better or state equivalent in inspection and testing of water-based systems.

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

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

§ 759-h. License and RME requirements; scope of practice; penalties for non-compliance. 1. (a) It is unlawful for any organization, business entity, or individual to engage in the business of layout, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems, to act in the capacity of a water-based fire protection contractor, or to advertise itself as being a water-based fire protection contractor without having been duly licensed and without holding a valid license, except as otherwise provided in this section. The RME named to qualify an organization or business entity under this article must be a full-time employee of such organization or business entity.

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

(c) All entities performing layout of drawings, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems within the state (exempting systems within the jurisdictions of the five boroughs of New York city, Nassau county, and Suffolk county) must have in their employ one or more RMEs with appropriate certification for the layout of water-based fire protection system shop drawings to be performed, or for the practice of inspection, testing, and maintenance of water-based fire protection systems. This includes contractors based in other states, New York city, Nassau county, and Suffolk county, or any other location work covered under this article is to be performed.

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

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

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

3. Retrofitting of a backflow prevention device: It is the responsibility of the building or property owner, commercial or residential to obtain a state licensed professional engineer to become engineer of record to evaluate any water-based fire protection system, supply documented findings to the water-based fire protection contractor, and approve the installation of any backflow prevention device, in order to avoid the introduction or addition of a backflow prevention device to an existing water-based fire protection system, that causes a reduction in available water pressure and may create a system malfunction.

4. A water-based fire protection contractor licensed under this article shall not:

(a) enter into a written or oral agreement to authorize, subcontract, or otherwise knowingly allow any individual or entity who is not licensed under this article to engage in the business of, or act in the 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.

5. 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.

6. In addition to the penalties provided in subdivision five 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.

7. 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.

8. 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.

9. 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.

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

FUNCTION	CLASS I	CLASS II
Inspect	All	All
Test	All	All
Maintain	All	Limited
Install	All	N/A
Repair	All	N/A

§ 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 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) three persons appointed by the president of AFSA who shall be 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;

(f) one position for the NFSA staff person or designee;

(g) one position for the AFSA staff person or designee; and

(h) 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. The chair of the board shall serve as the deciding vote where there are tie votes.

4. The board shall advise the department in the administration of the requirements established by this article and all other future fire protection system licensing.

5. The board shall be the author of water-based fire protection certification exams for RMEs in the state of New York.

6. 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.

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

8. 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.

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

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

11. Proxy votes shall be allowed.

12. Remote electronic audio or audio and visual participation shall be allowed.

§ 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 so as not to adversely impact his or her ability to perform the duties and responsibilities of a licensed contractor, 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 requirements or state equivalent set forth by the advisory board in the specific technical discipline of water-based layout, or equivalent criteria accepted by the board and the department as a prerequisite, along with NICET special hazards suppression systems or equivalent criteria accepted by the board and department. Two RMEs are permitted, with one in each discipline. More than one RME may be permitted per company.

2. As a prerequisite for licensure as a contractor II, a RME qualifier must be at least eighteen years of age and shall be certified NICET II for inspection and testing of water-based systems or equivalent certification accepted by the board and the department.

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

§ 759-k. Licensure for existing contractors. Each existing contractor shall file for a license as an existing contractor by presenting to the department satisfactory evidence that such contractor has been actively engaged in the proper class of contracting in the scope of the license applied for in layout, installing, repairing, inspecting, testing, or maintaining of water-based fire protection systems, as a contractor I or contractor II and shall show proof of proper insurance as a water-based fire protection contractor. Such evidence shall include proof of insur-

ance which includes the latest NCCI rating sheet for workers compensation showing the appropriate code for fire sprinkler fitters. All existing contractors shall file for a license pursuant to this section within eighteen months of the effective date of this article.

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

2. All licenses shall be valid for a period of two years and shall not be based on certification obligations.

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

4. If a RME, who has met the requirements of this article, ceases to act in the capacity of RME, the license holder shall notify the department in writing within thirty business days from such termination or cessation. The license holder may continue to conduct the business of layout, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems for a period not to exceed one hundred eighty days from the date of such termination or cessation, except that such period may be extended upon an application to the department with good cause for an additional period not to exceed one hundred twenty days. By the end of such period a new RME must be designated who has met the certification requirements of this article.

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

(b) Water-based fire protection contractor certificates of insurance shall provide that such insurance shall not be modified, that there shall be no material changes in coverage or any termination, non-renewal, or cancellation unless thirty days' notice is given to the department.

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

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

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

6. A license shall be issued upon satisfaction of the requirements of this section. No license shall remain in effect if, after issuance, the

license holder fails to maintain insurance coverage required by this article.

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

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

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

10. A duplicate license may be issued for one lost, destroyed, or mutilated upon an application for such duplicate license on a form prescribed by the department and upon payment of the fee prescribed by this article. Each such duplicate license shall have the word "duplicate" clearly stamped or watermarked across its face and shall bear the same number as the original license. All information from the original license shall be transposed identically.

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

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

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

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

2. A building owner who has water-based fire protection systems installed in public or private properties, including group homes, but not including private one-family or two-family dwellings or manufactured housing, shall cause such building to be inspected in compliance with the procedures set forth in NFPA 25 by a state licensed water-based fire protection contractor. This section does not prohibit governmental entities and code enforcement officials in the performance of their duties

from inspecting and enforcing state uniform fire prevention and building code and local laws.

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

4. A building owner or building owner's authorized representative shall contract with a state-licensed contractor for scheduled inspection and testing before any certificate of occupancy is issued and does not detract liability of the building owner and the building owner's responsibilities. The inspecting contractor shall provide to such building owner a copy of the inspection report detailing applicable state code requirements and NFPA 25 standard inspection, testing, and maintenance criteria. The maintenance of water-based fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the water-based fire protection system connected thereto. It is recognized that the inspecting contractor and the installing contractor may or may not be one and the same. The limit of liability of inspecting contractors shall be that of the dollar value of the inspection, testing, and maintenance contract. The installing water-based fire protection contractor shall be reposed and may not be sued for latent construction defects, more than ten years after substantial completion of a project.

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

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

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

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

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

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

2. The fee for issuing a duplicate certificate or license in substitution for one lost, destroyed, or mutilated shall be twenty-five dollars.

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

4. The fees set forth in this section shall be for registrations, certificates, and licenses issued for the period of two years or a fraction of such period.

5. Fees collected shall be deposited for the department's administration of this article. Excess fees shall assist in providing education for state certified code enforcement officials, building safety inspectors, and firefighters.

§ 759-p. Suspension and revocation of licenses. 1. A license to engage in the business of layout, installing, repairing, inspecting, testing, or maintaining of water-based fire protection systems may be suspended or revoked, or in lieu thereof a fine not exceeding one thousand dollars per violation payable to the department may be imposed, or a penalty may be issued by the department or board, for any of the following causes:

(a) fraud or bribery in securing a license;

(b) making any false statement as to a material matter in an application or other statement or certificate required by or pursuant to this article;

(c) incompetence;

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

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

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

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

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

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

(j) having rendered inoperative a water-based fire protection system except during such time as the system is being inspected, tested, repaired, altered, or maintained, using impairment procedures as per state uniformed code, or except pursuant to a court order;

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

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

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

2. An order of suspension shall state the length of such suspension, which may not exceed two years from the date of such order. Such orders shall affect suspension or revocation of a RME qualifier or licenses held by a contractor and during such period of time no license shall be issued to such contractor. During the period of suspension or revocation

of any license, the former license holder shall not engage in or attempt or profess to engage in any transaction or business for which a license is required under this chapter, or directly or indirectly own, control, or be employed in any manner by any business entity for which a license under this chapter is required. If, during the period between the beginning of proceedings and the entry of an order of suspension or revocation by the department, a new license has been issued to the business entity so charged, the order of suspension or revocation shall operate to suspend or revoke such new license held by such business entity.

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

4. Whenever a license to engage in the business of layout, installing, inspecting, testing, repairing, or maintaining of water-based fire protection systems is revoked, such license shall not be reinstated or reissued until five years from the date of such revocation.

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

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

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

§ 759-q. Hearing on charges; decision. No certificate or license shall be suspended or revoked nor shall any fine or penalty be imposed until after a hearing is held before an officer or employee of the department designated for such purpose by the department, upon notice to the certificate or license holder of at least ten days. The department shall consider the recommendations of the board. The notice shall be served either personally or by registered mail and shall state the date and place of the hearing and set forth the ground or grounds constituting the charges against the certificate or license holder. Such certificate or license holder shall have the opportunity to be heard either in person or by counsel and may produce witnesses and testify on his or her own behalf. A stenographic record of the hearing shall be taken and preserved. The hearing may be adjourned from time to time. The person conducting the hearing shall make a written report including his or her findings and a recommendation to the department for decision. The department shall review such findings and recommendation and, after due deliberation, shall issue an order accepting, modifying, or rejecting such recommendation and dismissing the charges or suspending or revoking the certificate or license, or in lieu thereof, imposing a fine or penalty upon the certificate or license holder. For the purposes of this article, the department or any officer or employee of the department

designated by the secretary of state, may administer oaths, take testimony, subpoena witnesses, and compel the production of books, papers, records, photographs, and documents deemed pertinent to the subject of investigation.

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

§ 759-s. Violations and penalties. Any person or business entity who directly or indirectly engages in the business of layout, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems or holds oneself out to the public as being able to perform such work and is without a license, or who shall violate any of the provisions of this article, or having had a license suspended or revoked, continues to engage in the business of layout, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems or who, without a license to engage in the business of layout, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems, directly or indirectly employs, permits or authorizes an uncertified person to engage in the business of layout, installing, repairing, inspecting, testing, or maintaining water-based fire protection systems, shall be guilty of a misdemeanor and, upon conviction, shall be punishable by imprisonment of not more than six months, or by a fine of not more than one thousand dollars or both upon the first conviction, and by imprisonment of not more than one year or by a fine of not less than one thousand dollars or more than five thousand dollars or both upon a subsequent conviction. Each violation of this article shall be deemed a separate offense.

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

§ 759-u. Disposition of moneys derived from operation of this article. Fees collected pursuant to this article shall be paid into the appropriate account for the department pursuant to the state finance law, for administration of this article. All remaining moneys derived from the operation of this article shall on or before the tenth day of each month be paid into a fund of the state treasury to the credit of the department's account to assist in providing education for state certificated code enforcement officials, building safety inspectors, and firefighters.

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

§ 759-w. Applicability. 1. This article shall not apply to water-based fire protection work performed under the jurisdiction of the five boroughs of New York city, Nassau county, or Suffolk county. Any munici-

pality or local government agency located in New York city, Nassau county, or Suffolk county may require other licenses or evidence of a person's competence to layout, install, repair, inspect, test, or maintain all types of water-based fire protection systems and components. Nothing in this section shall be construed to imply that a holder of a New York city, Nassau county, or Suffolk county license shall have any standing outside the boundaries of the jurisdiction issuing such license.

2. This article shall not apply to:

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

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

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

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

3. This act shall not be held to invalidate any provision of the laws of this state or any subdivision thereof unless there is a direct conflict between the provision of this article and the provision of such law or unless such law is duplicative of this article, in which case this article shall prevail. No local law shall require any fee, license, or certificate for the layout, installing, repairing, inspecting, testing, or maintaining of water-based fire protection systems, except when the water-based fire protection contractor business is located within a political jurisdiction. Any jurisdiction may apply business licensure criteria and fees consistent with other businesses in such jurisdiction.

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

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

6. Any elected or appointed official authorized to issue a building, fire protection, or other related permit for a project that includes water-based fire protection shall ascertain that the applicant contractor or subcontractor is appropriately licensed before issuing such permit. The evidence shall consist only of the presentation to the official of evidence of the current contractor license I. If the water-based fire protection contractor is not known at time of permit request by a general contractor or other party applying for permit, the required information above shall be supplied before any water-based fire protection work commences. Any permits for the layout, installing, repairing, inspecting, testing, or maintaining of a water-based fire protection system may only be issued to a licensed water-based fire

protection contractor of the appropriate classification to conduct the work.

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

(a) the indemnitor;

(b) any of the indemnitor's contractors, subcontractors, sub-subcontractors, materialsperson, or agents of any tier or their respective employees; or

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

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

3. This section does not affect any contracts, agreements, or guarantees entered into before the effective date of this article but affects renewals thereof when such renewal takes place after the effective date of this article.

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

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

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