

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:

1 Section 1. This act shall be known and may be cited as the "water-
2 based fire protection licensure act".
3 § 2. Legislative intent. It is declared that there exists and may in
4 the future exist within the state of New York locations where water-
5 based fire protection systems are installed and improper installation
6 and improper inspection, testing, and maintenance of existing fire
7 protection systems may adversely affect the public health, safety and
8 general welfare. It is further acknowledged that fire protection systems
9 are critical life and property safety systems and such systems whose
10 layout, installing, repairing, inspecting, testing, or maintenance
11 require specialized knowledge and experience. Therefore the purpose of
12 this act is to protect, promote and preserve the public health, safety
13 and general welfare by providing for the establishment of minimum stand-
14 ards for licensure of water-based fire protection system installation
15 and inspecting contractors as well as designating and utilization of
16 responsible managing employees as qualifiers of said license with estab-
17 lishment of penalties for improper layout, installing, repairing,
18 inspecting, testing, or maintaining of water-based fire protection
19 systems and prohibit unlicensed activities. Furnishing and installing
20 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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1 systems, unless a residential system in a "group home" are exempt from
2 this act.

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

5 ARTICLE 35-G
6 WATER-BASED FIRE PROTECTION
7 LICENSURE ACT

8 Section 759-g. Definitions.

9 759-h. License and RME requirements; scope of practice; penal-
10 ties for non-compliance.

11 759-i. Powers of the department and board.

12 759-j. New licensure requirements.

13 759-k. Licensure for existing contractors.

14 759-l. Licensure: application; insurance; display; duplicates.

15 759-m. License renewals and RMEs.

16 759-n. Inspection of water-based fire protection systems.

17 759-o. Fees.

18 759-p. Suspension and revocation of licenses.

19 759-q. Hearing on charges; decision.

20 759-r. Judicial review.

21 759-s. Violations and penalties.

22 759-t. Official acts used as evidence.

23 759-u. Disposition of moneys derived from operation of this
24 article.

25 759-v. Severability.

26 759-w. Applicability.

27 759-x. Contractual agreements.

28 § 759-g. Definitions. As used in this article, unless the context
29 requires otherwise:

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

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

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

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

40 5. "Engineer of record" means an education department-licensed profes-
41 sional engineer, qualified by experience and training to provide design
42 criteria for fire protection systems including:

43 (a) selection of system types and components;

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

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

47 (d) confirmation of available water supply data;

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

50 (f) ability to identify water supplies that could lead to microbiolog-
51 ically influenced corrosion; and

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

54 6. "Fee" means any examination fee, license fee, registration fee, or
55 renewal fee accompanying an application or issuance of any license,

1 certification, or registration, including any temporaries or renewals,
2 pursuant to this article. Such fee shall be non-refundable.

3 7. "Fire control" or "fire suppression" means:

4 (a) the practices, or materials and equipment in or adjacent to a
5 building or premises, used in the installation, maintenance, extension,
6 or alteration of all piping materials and equipment, as defined by the
7 state uniform fire prevention and building code, in connection with the
8 discharge of water and backflow prevention for the express purpose of
9 extinguishing and controlling fire; and

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

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

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

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

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

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

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

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

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

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

4 16. "Limited maintenance" means adjustment of or replacement of system
5 components like and kind, inclusive of maintenance requirements per NFPA
6 25, as defined in this section.

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

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

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

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

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

19 22. "NICET" means the national institute for certification in engi-
20 neering technologies or other entities recognized as being equal to or
21 better than NICET, as determined by the department.

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

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

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

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

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

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

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

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

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

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

11 § 759-h. License and RME requirements; scope of practice; penalties
12 for non-compliance. 1. (a) It is unlawful for any organization, busi-
13 ness entity, or individual to engage in the business of layout, install-
14 ing, repairing, inspecting, testing, or maintaining water-based fire
15 protection systems, to act in the capacity of a water-based fire
16 protection contractor, or to advertise itself as being a water-based
17 fire protection contractor without having been duly licensed and without
18 holding a valid license, except as otherwise provided in this section.
19 The RME named to qualify an organization or business entity under this
20 article must be a full-time employee of such organization or business
21 entity.

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

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

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

50 (e) Local governments (exempting the jurisdictions of the five
51 boroughs of New York city, Nassau county, and Suffolk county) shall not
52 require any type of additional licensing, certification, or registration
53 of a water-based fire protection contractor, its RME, or its employees
54 that are licensed, certified, or registered by the department of state
55 unless such contractor maintains a physical office within such local
56 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:

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

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

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

7 (b) To examine the qualifications of applicants for licenses or regis-
8 trations under this article.

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

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

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

23 2. The secretary of state shall create a state fire protection advi-
24 sory board and have the first meeting within ninety days of the effec-
25 tive date of this article. Such board shall be composed of the following
26 members:

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

28 (b) one position for the state fire administrator or his or her desig-
29 nee;

30 (c) one position for the state department of state division of build-
31 ing standards and codes or his or her designee;

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

37 (e) three persons appointed by the president of AFSA who shall be of
38 New York state and whose businesses must have been actively engaged in
39 the business of layout, installing, inspecting, testing, altering or
40 maintaining water-based fire protection systems for at least five years
41 immediately prior to their appointment;

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

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

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

46 3. The chair of the board shall be the secretary of state or his or
47 her designee. The state fire administrator or his or her designee, or
48 the director of building standards and codes division or his or her
49 designee, may serve as chair in the chair's absence so as to conduct
50 business. The chair of the board shall serve as the deciding vote where
51 there are tie votes.

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

55 5. The board shall be the author of water-based fire protection
56 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-

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

5 § 759-1. Licensure: application; insurance; display; duplicates. 1.
6 Once a representative RME meets the provisions of this act to be a qual-
7 ifier, any business entity desiring a license to engage in the business
8 of layout, installing, inspecting, altering, or maintaining of water-
9 based fire protection systems under this article, may make an applica-
10 tion to the department. The RME shall be subscribed by the license
11 applicant and affirmed by him or her as true under the penalties of
12 perjury. The license application shall be in such form and shall contain
13 the RME's NICET certification number, category of discipline, and level
14 of discipline. Each license application shall be accompanied by a copy
15 of required certifications as established in this article, proving the
16 level of certification for inspection by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 § 759-m. License renewals and RMEs. The contractor shall submit an
41 application and fees for license renewal along with all required
42 documentation including RME qualifications to the department.

43 § 759-n. Inspection of water-based fire protection systems. 1. The
44 department and OFPC shall have the right to inspect any water-based fire
45 protection system during and after construction to determine whether
46 such system meets the standards set forth in the laws and rules of the
47 state. This does not diminish the capacity and duties of the local code
48 enforcement office having jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 5. Fees collected shall be deposited for the department's adminis-
14 tration of this article. Excess fees shall assist in providing education
15 for state certified code enforcement officials, building safety inspec-
16 tors, and firefighters.

17 § 759-p. Suspension and revocation of licenses. 1. A license to engage
18 in the business of layout, installing, repairing, inspecting, testing,
19 or maintaining of water-based fire protection systems may be suspended
20 or revoked, or in lieu thereof a fine not exceeding one thousand dollars
21 per violation payable to the department may be imposed, or a penalty may
22 be issued by the department or board, for any of the following causes:

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

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

27 (c) incompetence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 § 759-q. Hearing on charges; decision. No certificate or license shall
37 be suspended or revoked nor shall any fine or penalty be imposed until
38 after a hearing is held before an officer or employee of the department
39 designated for such purpose by the department, upon notice to the
40 certificate or license holder of at least ten days. The department
41 shall consider the recommendations of the board. The notice shall be
42 served either personally or by registered mail and shall state the date
43 and place of the hearing and set forth the ground or grounds constitut-
44 ing the charges against the certificate or license holder. Such certif-
45 icate or license holder shall have the opportunity to be heard either in
46 person or by counsel and may produce witnesses and testify on his or her
47 own behalf. A stenographic record of the hearing shall be taken and
48 preserved. The hearing may be adjourned from time to time. The person
49 conducting the hearing shall make a written report including his or her
50 findings and a recommendation to the department for decision. The
51 department shall review such findings and recommendation and, after due
52 deliberation, shall issue an order accepting, modifying, or rejecting
53 such recommendation and dismissing the charges or suspending or revoking
54 the certificate or license, or in lieu thereof, imposing a fine or
55 penalty upon the certificate or license holder. For the purposes of this
56 article, the department or any officer or employee of the department

1 designated by the secretary of state, may administer oaths, take testi-
2 mony, subpoena witnesses, and compel the production of books, papers,
3 records, photographs, and documents deemed pertinent to the subject of
4 investigation.

5 § 759-r. Judicial review. The action of the department in suspending,
6 revoking or refusing to issue or renew a certificate or license, or
7 imposing a fine or penalty upon the holder of such license may be
8 reviewed in a proceeding brought under and pursuant to article seventy-
9 eight of the civil practice law and rules.

10 § 759-s. Violations and penalties. Any person or business entity who
11 directly or indirectly engages in the business of layout, installing,
12 repairing, inspecting, testing, or maintaining water-based fire
13 protection systems or holds oneself out to the public as being able to
14 perform such work and is without a license, or who shall violate any of
15 the provisions of this article, or having had a license suspended or
16 revoked, continues to engage in the business of layout, installing,
17 repairing, inspecting, testing, or maintaining water-based fire
18 protection systems or who, without a license to engage in the business
19 of layout, installing, repairing, inspecting, testing, or maintaining
20 water-based fire protection systems, directly or indirectly employs,
21 permits or authorizes an uncertified person to engage in the business of
22 layout, installing, repairing, inspecting, testing, or maintaining
23 water-based fire protection systems, shall be guilty of a misdemeanor
24 and, upon conviction, shall be punishable by imprisonment of not more
25 than six months, or by a fine of not more than one thousand dollars or
26 both upon the first conviction, and by imprisonment of not more than one
27 year or by a fine of not less than one thousand dollars or more than
28 five thousand dollars or both upon a subsequent conviction. Each
29 violation of this article shall be deemed a separate offense.

30 § 759-t. Official acts used as evidence. The official acts of the
31 secretary of state and the department shall be prima facie evidence of
32 the facts therein and shall be entitled to be received in evidence in
33 all actions at law and other legal proceedings in any court or before
34 any board, body, or officer.

35 § 759-u. Disposition of moneys derived from operation of this article.
36 Fees collected pursuant to this article shall be paid into the appropri-
37 ate account for the department pursuant to the state finance law, for
38 administration of this article. All remaining moneys derived from the
39 operation of this article shall on or before the tenth day of each month
40 be paid into a fund of the state treasury to the credit of the depart-
41 ment's account to assist in providing education for state certificated
42 code enforcement officials, building safety inspectors, and firefight-
43 ers.

44 § 759-v. Severability. If any part or provision of this article or the
45 application thereof to any person or circumstance be adjudged invalid by
46 any court of competent jurisdiction, such judgment shall be confined in
47 its operation to the part, provision or application directly involved in
48 the controversy in which such judgment shall have been rendered and
49 shall not affect or impair the validity of the remainder of this article
50 or the application thereof to other persons or circumstances, and the
51 legislature hereby declares that it would have enacted this article or
52 the remainder thereof had the invalidity of such provision or applica-
53 tion thereof been apparent.

54 § 759-w. Applicability. 1. This article shall not apply to water-based
55 fire protection work performed under the jurisdiction of the five
56 boroughs of New York city, Nassau county, or Suffolk county. Any munici-

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

9 2. This article shall not apply to:

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

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

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

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

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

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

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

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

1 protection contractor of the appropriate classification to conduct the
2 work.

3 § 759-x. Contractual agreements. 1. Any portion of any agreement or
4 contract for or in connection with, or any guarantee of or in connection
5 with any layout, installing, repairing, inspecting, testing, maintain-
6 ing, or demolition of a water-based fire protection system between an
7 owner of real property or general contractor and the water-based fire
8 protection contractor wherein any party promises to indemnify or hold
9 harmless the other party to the agreement, contract, or guarantee for
10 liability for damages to persons or property caused in part by any act,
11 omission, or default of the indemnitee arising from the contract or its
12 performance, shall be void and unenforceable unless the contract
13 contains a monetary limitation on the extent of the indemnification that
14 bears a reasonable commercial relationship to the contract and is part
15 of the project specifications or bid documents, if any. Notwithstanding
16 the foregoing, the monetary limitation on the extent of the indemnifica-
17 tion provided to the owner of real property by any party in privity of
18 contract with such owner shall not be less than one million dollars per
19 occurrence, unless otherwise agreed by the parties. Indemnification
20 provisions in any such agreements, contracts, or guarantees may not
21 require that the indemnitor indemnify the indemnitee for damages to
22 persons or property caused by the sole negligence of another party, or
23 in whole or in part by any act, omission, or default of a party other
24 than:

25 (a) the indemnitor;

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

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

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

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

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

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

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