

STATE OF NEW YORK

3272

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

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

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

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

1 Section 1. This act shall be known and may be cited as the "water-
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
21 systems, unless a residential system in a "group home" are exempt from
22 this act.
23 § 3. The general business law is amended by adding a new article 35-G
24 to read as follows:

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

LBD07013-01-1

ARTICLE 35-G
WATER-BASED FIRE PROTECTION
LICENSURE ACT

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

1. "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,

1 or alteration of all piping materials and equipment, as defined by the
2 state uniform fire prevention and building code, in connection with the
3 discharge of water and backflow prevention for the express purpose of
4 extinguishing and controlling fire; and

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

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

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

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

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

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

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

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

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

1 16. "Limited maintenance" means adjustment of or replacement of system
2 components like and kind, inclusive of maintenance requirements per NFPA
3 25, as defined in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 § 759-h. License and RME requirements; scope of practice; penalties
9 for non-compliance. 1. (a) It is unlawful for any organization, busi-
10 ness entity, or individual to engage in the business of layout, install-
11 ing, repairing, inspecting, testing, or maintaining water-based fire
12 protection systems, to act in the capacity of a water-based fire
13 protection contractor, or to advertise itself as being a water-based
14 fire protection contractor without having been duly licensed and without
15 holding a valid license, except as otherwise provided in this section.
16 The RME named to qualify an organization or business entity under this
17 article must be a full-time employee of such organization or business
18 entity.

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

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

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

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

54 2. As of eighteen months after the effective date of this article, no
55 person or business entity shall engage in the business of layout,
56 installing, repairing, inspecting, testing, or maintaining water-based

1 fire protection systems beginning at the point of fire protection
2 service to the most remote parts of the system, or hold himself or
3 herself out as being able so to do unless he or she is licensed pursuant
4 to this article.

5 3. Retrofitting of a backflow prevention device: It is the responsi-
6 bility of the building or property owner, commercial or residential to
7 obtain a state licensed professional engineer to become engineer of
8 record to evaluate any water-based fire protection system, supply docu-
9 mented findings to the water-based fire protection contractor, and
10 approve the installation of any backflow prevention device, in order to
11 avoid the introduction or addition of a backflow prevention device to an
12 existing water-based fire protection system, that causes a reduction in
13 available water pressure and may create a system malfunction.

14 4. A water-based fire protection contractor licensed under this arti-
15 cle shall not:

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

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

24 5. Any person who violates any provision of this article or commits
25 any of the acts constituting a cause for disciplinary action as set
26 forth by this article shall be guilty of a class B misdemeanor, punisha-
27 ble as provided by this article, and the laws of the state.

28 6. In addition to the penalties provided in subdivision five of this
29 section, a water-based fire protection contractor licensed under this
30 article who violates any provision of this section or who commits any
31 act constituting cause for disciplinary action is subject to the suspen-
32 sion or revocation of his or her license and such administrative fines
33 as prescribed by this article.

34 7. A license holder has an affirmative duty to provide supervision of
35 employees and all business activities. Such supervision shall consist of
36 regular, frequent personal guidance, instruction, oversight, and super-
37 intendence by the qualifying RME or RMEs with respect to the general
38 business conducted by a firm, and all matters relating thereto.

39 8. Nothing in this article shall prohibit a principal of a given busi-
40 ness entity from qualifying as such business entity's RME as long as
41 such principal meets the qualifications of this article.

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

46 10. License applicability shall be in accordance with the following
47 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>

54 § 759-i. Powers of the department and board. 1. In addition to the
55 powers and duties elsewhere prescribed in this article, the department
56 and board shall have the following powers:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 6. The board shall meet at least once quarterly. The board shall have
55 the authority to review complaints and disputed administrative action
56 and to make non-binding recommendations for disciplinary action to the

1 department at the request of a certificate holder, license holder, or
2 the department. The board shall make decisions and supply in writing to
3 the department rules, codes, standards, interpretations, and training.
4 The board members' terms shall expire on the thirtieth day of June
5 following the effective date of this article and biennially thereafter.
6 Term limits shall be limited to four consecutive terms. No member of the
7 board shall be paid a salary as such member, but each shall receive
8 necessary expenses for attending board meetings and reimbursement,
9 including travel for performance of his or her board duties.

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

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

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

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

21 11. Proxy votes shall be allowed.

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

24 § 759-j. New licensure requirements. 1. As a prerequisite for licen-
25 sure as a contractor I, a RME qualifier must be at least twenty-three
26 years of age, be of good moral character so as not to adversely impact
27 his or her ability to perform the duties and responsibilities of a
28 licensed contractor, and shall possess five years of proven experience
29 and progressive training in the employment of a water-based fire
30 protection system contractor I or a combination of equivalent education
31 and experience. It is the intent that the contractor I RME meet the
32 criteria of NICET III certification requirements or state equivalent set
33 forth by the advisory board in the specific technical discipline of
34 water-based layout, or equivalent criteria accepted by the board and the
35 department as a prerequisite, along with NICET special hazards
36 suppression systems or equivalent criteria accepted by the board and
37 department. Two RMEs are permitted, with one in each discipline. More
38 than one RME may be permitted per company.

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

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

46 § 759-k. Licensure for existing contractors. Each existing contractor
47 shall file for a license as an existing contractor by presenting to the
48 department satisfactory evidence that such contractor has been actively
49 engaged in the proper class of contracting in the scope of the license
50 applied for in layout, installing, repairing, inspecting, testing, or
51 maintaining of water-based fire protection systems, as a contractor I or
52 contractor II and shall show proof of proper insurance as a water-based
53 fire protection contractor. Such evidence shall include proof of insur-
54 ance which includes the latest NCCI rating sheet for workers compen-
55 sation showing the appropriate code for fire sprinkler fitters. All

1 existing contractors shall file for a license pursuant to this section
2 within eighteen months of the effective date of this article.

3 § 759-1. Licensure: application; insurance; display; duplicates. 1.
4 Once a representative RME meets the provisions of this act to be a qual-
5 ifier, any business entity desiring a license to engage in the business
6 of layout, installing, inspecting, altering, or maintaining of water-
7 based fire protection systems under this article, may make an applica-
8 tion to the department. The RME shall be subscribed by the license
9 applicant and affirmed by him or her as true under the penalties of
10 perjury. The license application shall be in such form and shall contain
11 the RME's NICET certification number, category of discipline, and level
12 of discipline. Each license application shall be accompanied by a copy
13 of required certifications as established in this article, proving the
14 level of certification for inspection by the department.

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

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

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

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

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

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

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

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

53 6. A license shall be issued upon satisfaction of the requirements of
54 this section. No license shall remain in effect if, after issuance, the
55 license holder fails to maintain insurance coverage required by this
56 article.

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

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

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

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

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

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

38 § 759-m. License renewals and RMEs. The contractor shall submit an
39 application and fees for license renewal along with all required
40 documentation including RME qualifications to the department.

41 § 759-n. Inspection of water-based fire protection systems. 1. The
42 department and OFPC shall have the right to inspect any water-based fire
43 protection system during and after construction to determine whether
44 such system meets the standards set forth in the laws and rules of the
45 state. This does not diminish the capacity and duties of the local code
46 enforcement office having jurisdiction.

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

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

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

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

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

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

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

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

54 § 759-o. Fees. 1. The fee for a license to engage in the business of
55 layout, installing, repairing, inspecting, testing, or maintaining of

1 water-based fire protection systems shall be two hundred dollars. For
2 each renewal thereof, the fee shall be one hundred dollars.

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

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

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

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

15 § 759-p. Suspension and revocation of licenses. 1. A license to engage
16 in the business of layout, installing, repairing, inspecting, testing,
17 or maintaining of water-based fire protection systems may be suspended
18 or revoked, or in lieu thereof a fine not exceeding one thousand dollars
19 per violation payable to the department may be imposed, or a penalty may
20 be issued by the department or board, for any of the following causes:

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

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

25 (c) incompetence;

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

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

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

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

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

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

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

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

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

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

50 2. An order of suspension shall state the length of such suspension,
51 which may not exceed two years from the date of such order. Such orders
52 shall affect suspension or revocation of a RME qualifier or licenses
53 held by a contractor and during such period of time no license shall be
54 issued to such contractor. During the period of suspension or revocation
55 of any license, the former license holder shall not engage in or attempt
56 or profess to engage in any transaction or business for which a license

1 is required under this chapter, or directly or indirectly own, control,
2 or be employed in any manner by any business entity for which a license
3 under this chapter is required. If, during the period between the
4 beginning of proceedings and the entry of an order of suspension or
5 revocation by the department, a new license has been issued to the busi-
6 ness entity so charged, the order of suspension or revocation shall
7 operate to suspend or revoke such new license held by such business
8 entity.

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

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

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

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

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

34 § 759-q. Hearing on charges; decision. No certificate or license shall
35 be suspended or revoked nor shall any fine or penalty be imposed until
36 after a hearing is held before an officer or employee of the department
37 designated for such purpose by the department, upon notice to the
38 certificate or license holder of at least ten days. The department
39 shall consider the recommendations of the board. The notice shall be
40 served either personally or by registered mail and shall state the date
41 and place of the hearing and set forth the ground or grounds constitut-
42 ing the charges against the certificate or license holder. Such certif-
43 icate or license holder shall have the opportunity to be heard either in
44 person or by counsel and may produce witnesses and testify on his or her
45 own behalf. A stenographic record of the hearing shall be taken and
46 preserved. The hearing may be adjourned from time to time. The person
47 conducting the hearing shall make a written report including his or her
48 findings and a recommendation to the department for decision. The
49 department shall review such findings and recommendation and, after due
50 deliberation, shall issue an order accepting, modifying, or rejecting
51 such recommendation and dismissing the charges or suspending or revoking
52 the certificate or license, or in lieu thereof, imposing a fine or
53 penalty upon the certificate or license holder. For the purposes of this
54 article, the department or any officer or employee of the department
55 designated by the secretary of state, may administer oaths, take testi-
56 mony, subpoena witnesses, and compel the production of books, papers,

1 records, photographs, and documents deemed pertinent to the subject of
2 investigation.

3 § 759-r. Judicial review. The action of the department in suspending,
4 revoking or refusing to issue or renew a certificate or license, or
5 imposing a fine or penalty upon the holder of such license may be
6 reviewed in a proceeding brought under and pursuant to article seventy-
7 eight of the civil practice law and rules.

8 § 759-s. Violations and penalties. Any person or business entity who
9 directly or indirectly engages in the business of layout, installing,
10 repairing, inspecting, testing, or maintaining water-based fire
11 protection systems or holds oneself out to the public as being able to
12 perform such work and is without a license, or who shall violate any of
13 the provisions of this article, or having had a license suspended or
14 revoked, continues to engage in the business of layout, installing,
15 repairing, inspecting, testing, or maintaining water-based fire
16 protection systems or who, without a license to engage in the business
17 of layout, installing, repairing, inspecting, testing, or maintaining
18 water-based fire protection systems, directly or indirectly employs,
19 permits or authorizes an uncertified person to engage in the business of
20 layout, installing, repairing, inspecting, testing, or maintaining
21 water-based fire protection systems, shall be guilty of a misdemeanor
22 and, upon conviction, shall be punishable by imprisonment of not more
23 than six months, or by a fine of not more than one thousand dollars or
24 both upon the first conviction, and by imprisonment of not more than one
25 year or by a fine of not less than one thousand dollars or more than
26 five thousand dollars or both upon a subsequent conviction. Each
27 violation of this article shall be deemed a separate offense.

28 § 759-t. Official acts used as evidence. The official acts of the
29 secretary of state and the department shall be prima facie evidence of
30 the facts therein and shall be entitled to be received in evidence in
31 all actions at law and other legal proceedings in any court or before
32 any board, body, or officer.

33 § 759-u. Disposition of moneys derived from operation of this article.
34 Fees collected pursuant to this article shall be paid into the appropri-
35 ate account for the department pursuant to the state finance law, for
36 administration of this article. All remaining moneys derived from the
37 operation of this article shall on or before the tenth day of each month
38 be paid into a fund of the state treasury to the credit of the depart-
39 ment's account to assist in providing education for state certificated
40 code enforcement officials, building safety inspectors, and firefight-
41 ers.

42 § 759-v. Severability. If any part or provision of this article or the
43 application thereof to any person or circumstance be adjudged invalid by
44 any court of competent jurisdiction, such judgment shall be confined in
45 its operation to the part, provision or application directly involved in
46 the controversy in which such judgment shall have been rendered and
47 shall not affect or impair the validity of the remainder of this article
48 or the application thereof to other persons or circumstances, and the
49 legislature hereby declares that it would have enacted this article or
50 the remainder thereof had the invalidity of such provision or applica-
51 tion thereof been apparent.

52 § 759-w. Applicability. 1. This article shall not apply to water-based
53 fire protection work performed under the jurisdiction of the five
54 boroughs of New York city, Nassau county, or Suffolk county. Any munici-
55 pality or local government agency located in New York city, Nassau coun-
56 ty, or Suffolk county may require other licenses or evidence of a

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

7 2. This article shall not apply to:

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

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

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

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

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

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

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

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

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

23 (a) the indemnitor;

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

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

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

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

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

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

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