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LC003232/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - UNDERGROUND UTILITY
CONTRACTORS

Introduced By: Senator William A. Walaska

Date Introduced: February 12, 2014

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 65.3

4 UNDERGROUND UTILITY CONTRACTORS

5 **5-65.3-1. Purpose.** -- The purpose of this chapter is to establish provisions, qualifications
6 and procedures for licensing underground utility contractors engaged in the laying or repairing of
7 underground utilities.

8 **5-65.3-2. Definitions.** -- When used in this chapter:

9 (1) "Board" means the contractors registration and licensing board as defined in § 5-65-1.

10 (2) "Underground utility" means the installation, repair, alteration, or replacement of
11 underground utilities, sewer lines, storm drainage lines or water lines, water service and laterals,
12 laying drains and related services outside of buildings, making connections with public and/or
13 private underground utilities, provided that such work is to be done between the main, lateral,
14 related services and/or appurtenances to within five feet (5') of the outer wall of a building or
15 structure and specifically excluding gas and telecommunications work and any work defined in §
16 28-27-28.

17 (3) "Underground utility contractor" means any corporation, association, sole
18 proprietorship, firm, partnership, limited liability corporation, limited liability partnership, or

1 other business organization that is engaged in the installation, repair, alteration, or replacement of
2 underground utilities, outside of buildings, making connections with public and/or private
3 underground utilities provided that such work is to be done between the main, laterals, services
4 and/or appurtenances to within five feet (5') of the outer walls of a building or structure. The term
5 "underground utility contractor" shall include any agent, servant, and/or employee of a licensed
6 underground utility contractor. The term "underground utility contractor" does not include
7 individuals licensed under chapter 20 of this title entitled "Plumbers and Irrigators."

8 **5-65.3-3. License required.** -- (a) It is unlawful for any underground utility contractor to
9 engage in the installation, repair, alteration, or replacement of an underground utility as defined in
10 this chapter without a valid license issued by the board.

11 (b) Any person licensed as a master plumber under the provisions of chapter 20 of this
12 title or as a master pipefitter under the provisions of chapter 27 of this title shall be exempt from
13 the requirement to obtain both an underground utility contractor's license as required by chapter
14 65.3 of this title and an installer's license, as required by chapter 56 of this title provided that such
15 master plumber or master pipefitter shall be required to comply with the provisions of §§ 5-65.2-3
16 and 5-56-7.

17 (c) Any public utility, or agent thereof, regulated by the public utilities commission or the
18 division of public utilities and carriers shall be exempt from the provisions of this chapter.

19 **5-65.3-4. Conditions for obtaining an underground utility contractor's license.** -- To
20 obtain a license under chapter 65.3 of this title, an underground utility contractor must submit to
21 the contractors' registration and licensing board an application for an underground utility
22 contractor's license completed in its entirety, together with a fee of two hundred dollars (\$200).
23 The application must also comply with the following requirements:

24 (1) The applicant must have demonstrated to the board that the underground utility
25 contractor is capable of installing, repairing, alternating, or replacing sewer lines, storm drainage
26 lines or waterlines, and services in accordance with approved plans and specifications.

27 (2) The applicant must obtain a passing grade on a written examination provided by a
28 third party approved by the board, intended to demonstrate an understanding of the rules and
29 regulations, and ability to read and interpret approved plans and specifications. Any applicant
30 who fails an examination for a license is permitted to take further examinations upon payment of
31 the prescribed fee for each examination. The board shall assure that these services are provided
32 and conduct examinations at least three (3) times each year. All examinations shall be conducted
33 at places designated by the board.

34 (3) The board shall approve or deny applications for an underground utility contractor's

1 license as soon after the examination as is practicable. Each applicant who has successfully
2 passed the examination and has had an application approved for a license as an underground
3 utility contractor shall have issued and mailed to them, by the board, a certificate of license
4 specifying that applicant is an underground utility contractor.

5 (4) Any contractor licensed in accordance with this chapter shall not be required to obtain
6 another license or to take any other test by any other municipality in order to perform
7 underground utility work.

8 **5-65.3-5. Expiration and renewal of licenses.--** All licenses of underground utility
9 contractors issued by the board expire every two (2) years on the anniversary date of the license's
10 issuance and may be renewed on or before that date for a period of two (2) years upon payment of
11 a two hundred dollar (\$200) fee.

12 **5-65.3-6. Duties of the contractor's registration and licensing board.--** The
13 contractors' registration and licensing board shall:

14 (1) Prepare, provide, and conduct examinations in conjunction with a third-party
15 provider;

16 (2) Prepare license certificates and issue them in conformity with this chapter and the
17 rules and regulations;

18 (3) Maintain an up-to-date record specifying the names and addresses of licensed
19 underground utility contractors of this state. Such record shall include the dates of issuance of
20 licenses and shall be open to public inspection; and

21 (4) Maintain an up-to-date record of any complaints filed with the board, the nature of
22 those complaints, dates of complaints, and any final orders made based on the complaints.

23 **5-65.3-7. Licensing of underground utility contractors granted without examination.**

24 -- (a) After enactment of this chapter, and at any time prior to the expiration of six (6) months
25 following enactment of this section, the board shall, without examination, upon payment of the
26 fees required in this chapter and approval of the issuance of the license by the board, issue a
27 license to any applicant who shall present satisfactory evidence as described in subsection (b) of
28 this section that the applicant has the qualification for issuance of an underground utility
29 contractor license. Thereafter, in order to qualify for an underground utility contractor license
30 after the initial "grandfather" window, said licensee may renew the license pursuant to § 5-65.3-5.

31 (b) The owner(s) of a business entity as defined in § 5-65.3-2(3) shall meet the
32 requirements of this section for issuance of a license without examination, provided, that any city
33 or town that has previously granted a contractor or licensee a license within the last five (5) years
34 shall continue to grant such license for work specifically related to the license and where work is

1 to be performed in that city or town, provided the contractor continues to meet all other local
2 requirements for licensure, and shall not require the contractor or licensee to take and pass the
3 statewide licensing examination.

4 **5-65.3-8. Responsibilities, performance and conduct.** -- A licensed, underground utility
5 contractor shall perform all work in compliance with the plans and specifications approved by the
6 local municipality or other appropriate authority having jurisdiction over the utility and/or work
7 to be performed.

8 **5-65.3-9. Insurance required of underground utility contractors.** -- (a) Throughout
9 the period of licensure, the contractor shall have in effect public liability and property damage
10 insurance covering the work of that contractor that shall be subject to this chapter in not less than
11 the following amount: one million dollars (\$1,000,000) combined single limit, bodily injury and
12 property damage.

13 (b) In addition, all contractors shall be in compliance with workers' compensation
14 insurance as required under chapter 29 of title 28. Failure to maintain insurance shall not preclude
15 claims from being filed against a contractor.

16 (c) The contractor shall provide satisfactory evidence to the board at the time of license
17 and renewal that the insurance required by subsections (a) and (b) of this section has been
18 procured and is in effect. Failure to maintain insurance shall invalidate registration and may result
19 in a fine to the licensee.

20 **5-65.3-10. Bond requirement.**-- Every applicant for a certificate of license as an
21 underground utility contractor to carry on the business of installing, repairing or servicing,
22 altering or replacing sewer lines, storm drainage lines or water lines and related services in
23 accordance with this chapter, shall furnish a bond, satisfactory to the board, in the sum of twenty
24 thousand dollars (\$20,000), conditioned substantially that the applicant indemnifies and holds
25 harmless the several cities and towns of this state and their officers from all suits and actions of
26 every name and description brought against any of those cities, towns, and state or any of their
27 officers for, or on account of, any injuries or damages received or sustained by any person in
28 consequence of, or resulting from, any work performed by the applicant or its employees,
29 servants, or agents; or of or from any improper materials used in the work; or of or from any
30 negligence in guarding the work; or of or from any act or omission of the applicant, or its
31 employees, servants, or agents.

32 **5-65.3-11. License not transferable or assignable.** -- Underground utility contractor's
33 licenses are not transferable or assignable and automatically become invalid upon a change of
34 ownership or upon suspension or revocation of a license.

1 **5-65.3-12. Denial, suspension and revocation of licenses.** -- (a) The board may suspend
2 or revoke the license of any underground utility contractor after a hearing when the weight of the
3 evidence establishes any one or more of the following specific violations:

4 (1) Obtaining or conspiring with others to obtain a license by inducing the issuance of
5 that license in consideration of the payment of money or any other thing of value, or by and
6 through a willful or fraudulent misrepresentation of facts in the procurement of a license;

7 (2) Gross negligence or incompetence in the performance of any licensed work in
8 accordance with any underground utility ordinance, or rules of any city or town, or any law of
9 this state regulating the conduct of sewer drain and water work;

10 (3) Willfully and fraudulently loaning its license to any other underground utility
11 contractor for the purpose of permitting that underground utility contractor to engage in any
12 underground utility work in violation of the provision of this chapter;

13 (4) Willfully violating any of the provisions of this chapter; and

14 (5) For any violation to § 5-65-10.

15 (b) When an application for a license is denied, a hearing shall be granted provided the
16 aggrieved applicant requests a hearing, in writing, within ten (10) days of the denial with the
17 board.

18 **5-65.3-13. Procedure for revocation of license.** -- (a) No proceeding to revoke a license,
19 as provided in this section, shall be instituted unless filed with the board within one year
20 immediately following the date or dates of violation.

21 (b) No license of an underground utility contractor shall be revoked or cancelled until
22 after a full and impartial hearing is completed as provided in this section.

23 (c) No hearing for the purpose of revoking any license of an underground utility
24 contractor shall be held unless there is first placed on file with the board a verified complaint, in
25 writing, reciting in the complaint, with reasonable particularity, a statement of facts that, if
26 proved, would be sufficient to constitute a violation of one or more of the specifications for
27 revocation of license as prescribed in this chapter.

28 (d) Upon the filing of a verified complaint as provided in this section, the board shall
29 promptly set a date for a hearing of the charges of the complaint. The board shall promptly, by
30 registered or certified mail, forward to the licensee charged in the complaint a true and correct
31 copy of the complaint and notification of the time and place when and where a hearing of those
32 charges is to be held.

33 (e) At the time and place fixed in the notification, the board shall proceed to a hearing of
34 the charges specified in the complaint. No hearing upon the charges of the complaint shall be held

1 unless the records of the board contain evidence that the licensee charged in the complaint has
2 been served with a copy of the complaint and notification at least twenty (20) days prior to the
3 date of the hearing; provided, that the appearance of the charged licensee, either on its own behalf
4 or by counsel, constitutes proof that sufficient notice of the hearing was served.

5 (f) A complaining party, individually or by counsel, may aid in the presentation of
6 evidence toward sustaining the complaint. Ample opportunity shall be accorded for a hearing of
7 all evidence and statement of counsel either in support of or against the charges of the complaint.
8 Upon good cause shown, the date of the hearing on the complaint may be continued provided the
9 licensee and other interested parties are reasonably notified about the date of continuance.

10 **5-65.3-14. Subpoena of witness. --** The board shall have the power to subpoena and
11 bring before it any witness to take testimony, either orally or by deposition, or both, in any
12 proceeding authorized by law.

13 **5-65.3-15. Administration of oaths. --** The board shall have the power to administer
14 oaths to witnesses at a hearing, which the board is authorized by law to conduct, and any other
15 oaths authorized or administered by the board.

16 **5-65.3-16. Recommendations of board - Order - Rehearing - Review. --** Any applicant
17 or licensee aggrieved by any decision or ruling of the board may appeal that decision to the board
18 which shall review the decision or ruling. Upon review, the board shall order that the license of
19 the licensee charged in the complaint be revoked or the complaint shall be dismissed. A copy of
20 the order shall be immediately served upon the licensee either personally or by registered or
21 certified mail. The order of the board is final unless the charged licensee, the division or
22 complainant, within twenty (20) days after receipt of that order, files his or her motion, in writing,
23 for a review of the order specifying in the motion the points and reasons for the order. The filing
24 of a motion for a review stays the operation of the order pending final decision on that motion. A
25 motion for a review shall be immediately scheduled for a hearing. The decision review shall be
26 issued, in writing, to the licensee.

27 **5-65.3-17. Penalties for violations. --** Violations of any provision of this chapter shall be
28 subject to the penalties as follows: any corporation, association, sole proprietorship, firm
29 partnership, limited liability corporation, limited liability partnership or other business
30 organization licensed by the board shall be subject to a fine up to five thousand dollars (\$5,000)
31 for the first offense and up to ten thousand dollars (\$10,000) for the second and subsequent
32 violations of this chapter.

33 **5-65-18. Enforcement. --** It shall be the duty of the board to enforce the provisions of
34 this chapter. The appropriate local municipality authority; involved in the day-to-day inspection

1 of sewer or drain installations, shall assist the board in enforcing the provision of this chapter.
2 The appropriate local municipality shall have the authority to demand the production of the
3 licenses required by this chapter on any site where underground utility contractor work is being
4 installed and have the authority to investigate, and where appropriate, make complaints, pursuant
5 to § 5-65.3-12, where sufficient evidence has been obtained to sustain a reasonable belief that a
6 violation of this chapter has occurred.

7 **5-65.3-19. Prosecution of violations and penalties.** -- It is the duty of the board to fine
8 any corporation, association, individual proprietorship, firm, partnership, limited liability
9 corporation, limited liability partnership, or other business organization violating any of the
10 provisions of this chapter, upon complaint being made, whether brought pursuant to §§ 5-65.3-12
11 and/or 5-65-18.

12 **5-65.3-20. Injunctions.** -- Violations of this chapter may be enjoined upon a complaint
13 being filed in the superior court for the county in which those violations have been committed, by
14 the board or by any appropriate local municipal authority. An injunction may be granted by the
15 superior court after a hearing in open court against any corporation, association, individual
16 proprietorship, firm, partnership, limited liability corporation, limited liability partnership, or
17 other business organization that has violated any provision of this chapter without regard to
18 whether proceedings have been, or may be, instituted before the board or whether criminal
19 proceedings have been or may be instituted. No ex parte restraining orders shall be issued in suits
20 brought pursuant to this section.

21 **5-65.3-21. Investigation and prosecution of violations.** -- The board shall act as an
22 investigator with respect to the enforcement of all sections of this statute; shall act as an
23 investigator with respect to the enforcement of all provisions of laws relative to the licensing of
24 underground utility contractors; and to this effect whenever a complaint is made to the board, or
25 its designee, that provisions of this chapter are being violated, the board may issue an order to
26 cease and desist from that violation and may impose penalties against the violator and against the
27 contractors.

28 **5-65.3-22. Judicial review of proceedings.** -- Any further appeal from the actions of the
29 board is in accordance with the provisions of the administrative procedures act, chapter 35 of title
30 42.

31 **5-65.3-23. Licensing authority.** -- The board shall carry out the functions and duties
32 conferred upon it by this chapter. The licensing authority shall adopt standards, rules and
33 regulations, pursuant to chapter 35 of title 42, for the administration of the licensing program
34 established under this chapter and related activities.

1 **5-65.3-24. Municipal inspectors and installation permits.** -- Nothing contained in this
2 chapter prohibits any city or town from requiring permits for the installation, maintenance, and
3 repair of underground utility systems and collecting fees for the installation and repair of an
4 underground utility system.

5 **5-65.3-25. Severability.** -- If any provision or part of this chapter, or its application to
6 any entity or circumstances is held unconstitutional or otherwise invalid, the remaining provision
7 of this chapter and the application of the provisions to the other entities or circumstances other
8 than those to which it is held invalid shall not be affected by the invalidity.

9 SECTION 2. Section 5-20-11 of the General Laws in Chapter 5-20 entitled "Plumbers
10 and Irrigators" is hereby repealed.

11 ~~**5-20-11. Licensing of drainlayers and installers.** -- (a) Nothing in this chapter prohibits~~
12 ~~any city or town from granting a license to any person as a drainlayer to engage in the laying of~~
13 ~~drains outside of buildings, making connections with the public sewers, private drains and~~
14 ~~cesspools; provided, that the holder of a certificate or license issued by the department of labor~~
15 ~~and training in conformity with this chapter is not required by any city or town to obtain any other~~
16 ~~license for the installation, maintenance, or repair of plumbing or the laying of drains.~~

17 ~~(b) Persons licensed as master plumbers under the provisions of this chapter are not~~
18 ~~required to obtain an installer's license as required by chapter 56 of title 5; provided, that master~~
19 ~~plumbers are required to comply with the provisions of section 5-56-7.~~

20 SECTION 3. Section 5-65-14 of the General Laws in Chapter 5-65 entitled "Contractors
21 Registration and Licensing Board" is hereby amended to read as follows:

22 **5-65-14. Builder board - Member - Terms - Confirmation - Vacancies -**
23 **Qualification.** -- (a) The board shall consist of ~~fifteen (15)~~ seventeen (17) members appointed by
24 the governor, ~~eight (8)~~ ten (10) of whom shall be registered contractors, of which two (2) shall be
25 licensed roofers; one shall be a current member of the building codes standards committee
26 pursuant to ~~section~~ §23-27.3-100.1.4; one shall be a representative of the general public; one shall
27 be a licensed and practicing architect; and two (2) shall be licensed home inspectors; one who
28 shall be the president of the Rhode Island Builders Association or designee; one shall be the
29 executive director of the Utility Contractors Association of Rhode Island, or designee; one shall
30 be the executive director of the Rhode Island Independent Contractors and Associates, or
31 designee; and one who shall be the executive director of the Rhode Island Association of General
32 Contractors or designee. The building code standards committee member shall be designated by
33 the state building commissioner, and shall be appointed as provided in subsection (b) of this
34 section.

1 (b) Except for the commissioner's designee, the governor shall appoint seven (7)
2 members for a term of three (3) years and five (5) members for a term of two (2) years. The
3 governor shall appoint the member designated by the state building commissioner for a term of
4 two (2) years. Each member reappointed by the governor shall serve for the term of his or her
5 original appointment. Before the expiration of the term of a member, the governor shall appoint a
6 successor. A member is eligible for reappointment. If there is a vacancy for any cause, the
7 governor shall make an appointment immediately effective for the unexpired term. At the
8 expiration of their terms, members shall remain and shall continue in their official capacity until a
9 new member is appointed and confirmed.

10 (c) In order to be eligible for board membership, the ~~six (6)~~ eight (8) contractor members
11 of the board must be registered and/or licensed under this chapter and maintain their registrations
12 and/or licenses in good standing during their term of office. In order to be eligible for board
13 membership, the two (2) home inspector members shall be licensed pursuant to chapter 65.1 of
14 this title and shall maintain their license in good order during their terms of office.

15 SECTION 4. This act shall take effect on January 1, 2015.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO BUSINESSES AND PROFESSIONS - UNDERGROUND UTILITY
CONTRACTORS

1 This act would establish qualifications and procedures to license underground utility
2 contractors. It would also enlarge the contractor's registration and licensing board from fifteen
3 (15) to seventeen (17) members to administer and to oversee the licensees.

4 This act would take effect on January 1, 2015.

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