



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
BUDGET OFFICE
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Memorandum

To: The Honorable Helio Melo
Chairman, House Finance Committee

The Honorable Daniel DaPonte
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: May 15, 2012

Subject: Amendments to Article 30 of the FY 2013 Appropriations
Act (12-H-7323)

The Governor requests that several amendments be made to Article 30, Relating to Department of Environmental Management, of the FY 2013 Appropriations Act, which was submitted to the General Assembly on January 31, 2012. As originally submitted, Article 30 eliminated two programs currently administered by the Rhode Island Department of Environmental Management (RIDEM). Section 1 eliminates a water monitoring program known as the use fee program and is unchanged from its original form. Section 2 modifies three state laws and creates a new section of law in order to streamline state oversight of the installation of water wells, primarily those for drinking water purposes.

At the state level, Section 2 of the article affects activities of RIDEM, the State Building Code Commission, the Building Contractors' Registration Board and the Department of Health. The article is designed to reduce overlapping state program requirements related to both the regulation of well drilling contractors and the specific well construction standards that such contractors must follow. Pursuant to the article, well construction standards would be fully integrated into the appropriate portions of the state building code during FY 2013 and allow for the concurrent elimination of overlapping regulations previously promulgated by the RIDEM. The revisions provide more flexible authority to the Building Code Commission to incorporate well construction standards in any appropriate section of the state building code and change the variance procedure to conform to existing Commission practices.

The program for qualifying and registering well drilling contractors would be consolidated within the Building Contractors' Registration Board allowing RIDEM to phase out and eliminate its overlapping registration program.

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The revisions reflect a new section of law that provides the Building Contractors' Registration and Licensing Board direction to establish a licensing program for well drilling contractors that was deemed necessary in order to achieve the objective on ensuring such contractors are properly qualified to perform such work. The affected statutes are cross-referenced in order to achieve the intended program integration. The amendments to the article, which grew out of additional inter-agency discussions, constitute refinements to the approach taken to streamline the oversight of well drilling activities. The changes will facilitate implementation of the intended streamlining in a manner more compatible with agency existing procedures and programs.

Although the responsibility for collecting fees related to well drilling registration and licensing is being modified among the agencies currently involved, the total estimated revenues collected from such fees, which are slightly less than \$10,000, are not expected to significantly change for FY13. The effective date of the article is also modified such that Section 1 takes effect July 1, 2012 and Sections 2 through 6 take effect as of January 1, 2013. This change was also made to support the transition of the well drilling program responsibilities among the state programs.

Attached are the revised Article 30 and a narrative summary of the proposed changes. The proposed changes in the revised Article 30 are shaded in grey.

If you have any questions regarding Article 30, please feel free to call me Sue Kiernan at 222-4700, extension 7600.

TAM:12-28
Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Peter Marino, Senate Fiscal Advisor
Kelly Mahoney, Policy Director, Office of the Governor
Richard Licht, Director, Department of Administration
Gregory Stack

REVISED ARTICLE 30 (5/15/12)

RELATING TO DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

SECTION 1. Sections 46-12-4 and 46-12-4.1 of the General Laws in Chapter 46-12 entitled "Water Pollution" are hereby repealed.

~~**§ 46-12-4. Pollution monitoring system.** — The director shall establish a pollution monitoring system, and a fee system for point source dischargers who discharge sewage into the surface waters of the state. Money derived from the fee system shall be deposited as general revenues. The director shall monitor the levels of conventional and hazardous pollutant especially toxic pollutants discharged into the surface waters and shall assess the impact thereof. Nothing herein shall be deemed to apply to dredging, disposal of dredge materials and/or the transportation thereof regulated under § 46-23-18 and/or 46-23-18.1.~~

~~**§ 46-12-4.1. Fees — Limits — Recovery of costs.** — The fee established by the director pursuant to § 46-12-4 shall be based on the individual discharger's need for monitoring and the effluent's potential for environmental degradation as determined by the director; provided, however, that any fees charged dischargers shall be in addition to and not substituted for funds appropriated by or monitoring required by the state or federal government for similar purposes; and further provided:~~

~~(1) The director shall annually adopt by regulation, in accordance with the provisions of chapter 35 of title 42, the maximum cost of the monitoring program for the next fiscal year. The fee charged any discharger shall not exceed the actual cost of the pollution monitoring program of that discharger.~~

~~(2) The operating authority for any publicly owned treatment facility is hereby empowered to recover any costs incurred under the provisions of this chapter, including administrative costs, by levying an assessment on their customers. Money derived from the fees shall be deposited as general revenues and shall be usable to match any federal funds appropriated for these purposes.~~

SECTION 2. Sections 46-13.2-1, ~~46-13.2-2~~, 46-13.2-3, 46-13.2-4, 46-13.2-5, and 46-13.2-7 of the General Laws in Chapter 46-13.2 entitled "Drilling of Drinking Water Wells" are hereby amended to read as follows:

§ 46-13.2-1. Definitions. — For the purpose of this chapter:

(1) "Abandoned well" means a well whose use has been permanently discontinued; (1) "Building official" means the local building official authorized in accordance with section 23-27.3-107 or the state building code commissioner authorized in accordance with section 23-27.3-108.2, as applicable;

(2) "Board" means the Rhode Island well drilling contractors' registration and licensing board;

(3) "Director" means the director of the department of environmental management;

(4) "Groundwater" means subsurface water;

(5)(3) "Person" means an individual, partnership, corporation, association, or organization, or any combination thereof;

(6)(4) "Well" means an artificial sanitary excavation or opening in the ground, by which groundwater can be obtained or through which it flows under natural pressure or is artificially withdrawn; and for the purposes of this chapter, excepting section 46-13.2-3(c), attached as an appurtenance to a building or structure.

(7)(5) "Well drilling contractor" means a person who engages in well drilling, including the installation of pumps as provided herein.

(8)(6) "Well drilling" means and includes the industry, procedure and all operations engaged in by any person, full-time or part-time, for compensation or otherwise, to obtain water from a well or wells by drilling, or other methods, for any purpose or use.

§ 46-13.2-2. Rhode Island well drilling board. (a) ~~There shall be a board to be known as the Rhode Island well drilling board which shall advise the director according to this chapter. The board shall consist of seven (7) residents of the state appointed by the governor; one member shall be a member of the general public; three (3) members shall be active well drillers or pump installers who shall have had at least five (5) years experience as such; one member shall be an employee of the department of health; one member shall be an employee of the department of environmental management, environmental protection branch; and one member shall be a hydrologist experienced in well construction; four (4) members shall constitute a quorum.~~

~~(b) The board shall meet within thirty (30) days after its members are first appointed, and, thereafter, at least three (3) times a year. The board shall elect a chairperson and a secretary annually from~~

its membership. The secretary shall keep a complete record of all meetings and proceedings of the board and shall perform the usual duties pertaining to the office.

(e) No member of the board shall be compensated for their service including state employees who shall only be entitled to their usual and customary salary and not any additional compensation.

§ 46-13.2-2. Purpose. — The purpose of this act is to promote public health and welfare and protect the environment by providing specifying standards for the installation of a well and providing a mechanism to ensure that all well drilling contractors conducting business in the state of Rhode Island have the requisite skills, training and experience necessary to safely and adequately install water wells within this state.

§ 46-13.2-3. Regulations. -- (a) For the purpose of safeguarding the public health, the director, and the board shall promote and encourage cooperation among well drillers and governmental agencies in the development and protection of records of underground water formations and resources. The director shall prepare and disseminate such information as may be necessary for the benefit of the industry and the public.

(b) The director Rhode Island building standards committee, pursuant to section 23-27.3-100.1.5 shall by no later than December 31, 2013 promulgate regulations incorporate in the appropriate portions of the state building codes establishing minimum standards for the location, design, construction and installation, and maintenance of wells that are appurtenances to buildings in consultation with the board, the department of health, and the division of statewide planning and the department of environmental management, with due regard for the preservation of public health, preservation, allocation, and management of the groundwater of the state, the protection of the consuming public, and the maintenance of geological and other scientific data protection of public welfare and the environment.

(b) In those circumstances in which compliance with the requirements for locating a new or replacement well would result in undue hardship, property owners may seek a variance from any one or more of the siting requirements, in accordance with the following:

(1) except as specified in (3), from the building code board of appeals authorized in the municipality with jurisdiction over the property on which the well is proposed;

(2) except as specified in (3), in the absence of a local building code board of appeals, from the state building code board of appeals; and

(3) from the Department of Environmental Management in all cases in which the well is proposed to be installed as part of an application for the new construction of or repair of an on-site wastewater disposal system. The appropriate authority specified above may grant a variance to the extent necessary to ameliorate the undue hardship and to the extent the exemption can be granted without impairing the intent and purpose of this chapter.

(c) Any regulations or amendments thereto promulgated by the director under this chapter shall be submitted to the board for approval. To protect public health and the environment, the Rhode Island Department of Environmental Management is authorized to promulgate regulations applicable to the owners of on-site wastewater systems that limit the installation of any type of well, including wells installed for irrigation systems, near the on-site wastewater treatment systems on the owner's property.

§ 46-13.2-4. Registration and Licensing of for well drilling contractors and pump installers

Suspension or revocation. -- (a) Subject to the approval of the board, the director shall establish registration requirements setting forth minimum standards for well drilling contractors and pump installers. The well drilling contractors shall be required to have ability and proficiency in the skill of well drilling demonstrated by experience or training and sufficient financial resources to have and maintain adequate tools and machines for the work. After the publication of these regulations by the director, a person, before engaging in the business of well drilling or pump installing, shall obtain a certificate of registration annually as a well drilling contractor or pump installer. The applicant shall pay a registration fee of two hundred dollars (\$200) and an annual renewal registration fee of one hundred dollars (\$100). A certificate of registration is not transferable and expires one year after issuance. After the renewal date, a certificate of registration may be renewed only upon application for renewal and payment of a late fee of ten dollars (\$10.00) in addition to the regular registration fee. A lost, destroyed, or mutilated certificate may be replaced by a duplicate upon payment of a fee of two dollars (\$2.00). One seal shall be issued to each registrant as provided in subsection (b) of this section, and additional seals may be obtained at a fee of two dollars (\$2.00) each. No person shall install a well or a pump within a water well unless registered

~~or licensed with the proper authorities in accordance with this chapter, §5-65 and §5-65.2 of the Rhode Island General Laws. Well drilling contractors are subject to the jurisdiction of contractors' registration and licensing board including the registration procedures of the board authorized by §5-65 and in effect at the time of passage of this act.~~

~~(b) A well drilling contractor or pump installer shall place in a conspicuous location on both sides of his or her well drilling machine or service rig, his or her registration number in letters not less than two inches (2") high. A seal furnished by the director of the department of environmental management designating the year the certificate of registration was issued or renewed, and the words "Rhode Island registered water well drilling contractor or pump installation contractor", shall be affixed directly adjacent to the registration number.~~

(c) A municipality engaged in well drilling shall be exempt from the registration ~~or license~~ provisions of this chapter if the drilling is done by regular employees of, and with equipment owned by, the municipality, and the work is on wells intended for use by the municipality.

(d) This chapter shall not restrict a plumber or electrician from engaging in the trade for which he or she has been licensed.

~~(e) (1) A certificate of registration may be refused, or a certificate of registration duly issued may be suspended or revoked, or the renewal thereof refused by the director on the director's own investigation and motion or upon motion of an interested party or motion of the board if the director has good and sufficient reason to believe or finds that the applicant for or the holder of a certificate has:~~

~~(i) Made a material misstatement in the application for a registration or any application for renewal thereof; or (ii) Obtained the registration through willful fraud or misrepresentation; or~~

~~(iii) Demonstrated incompetency to act as a well driller as determined by the director; or~~

~~(iv) Been guilty of failure to comply with the provisions of this chapter or the rules and regulations issued pursuant hereto; or~~

~~(v) Refused to file reports of wells drilled as required by § 46-13.2-5; or~~

~~(vi) Has been found guilty by a court of competent jurisdiction, of any fraud, deceit, gross negligence, incompetence, or misconduct in the industry, operations, or business of well drilling.~~

~~(2) Before any certificate of registration shall be refused, suspended, or revoked, or the renewal thereof refused, the director shall give notice of the intention to do so by registered mail. Upon receipt of the notice, the person affected may, within ten (10) days, request a hearing. No revocation or suspension of a registration shall take place until the hearing is completed unless the director shall find immediate revocation or suspension is necessary to avoid imminent peril to life or property.~~

~~(3) Appeal from the decisions of the director may be taken within thirty (30) days after the decision of the commissioner, to the superior court in accordance with the provisions of § 42-35-15.~~

~~(f) The director shall prepare a roster of all registered well drillers and pump installers and distribute the roster annually to the local building inspector, if there is one, and the town clerk of each town.~~

~~(g) Any well driller or pump installer registered as of July 1, 1987, shall be deemed to be registered under this chapter, but shall comply with the other provisions of this chapter.~~

~~(h) After one year from the date of refusal or revocation of a certificate of registration, an application to register may be made again by the person affected.~~

§ 46-13.2-5. Record of wells. -- (a) Within ~~thirty (30)~~ ten (10) days after completion of a new or replacement well, a well drilling contractor shall provide the owner, ~~the board,~~ the building official and the department of health, ~~the department of environmental management a~~ record well installation report conforming to the form, content, and means specified by the Department of Health.

~~indicating:~~ This well installation report will at a minimum indicate:

- (1) The well owner's name and address,
- (2) The physical location of the well,
- (3) The well depth,
- (4) The geologic materials and thickness of materials penetrated,
- (5) The ~~amount~~ length and type of casing,
- (6) The static water levels, and
- (7) The results of a well yield test that conforms to industry standards, and

~~(8) Any other additional information which may be required by regulations adopted under this chapter the Department of Health.~~

~~(b) A record for a drive point well where no earth materials are removed from the well bore shall be sufficient if the owner's name, well location, depth, casing, static water level, and screen data are indicated.~~

§ 46-13.2-7. Well constructed for farming or private use. -- A landowner may ~~drill~~ construct his or her own well to provide water for the consumption by himself or herself, his or her family, pets, livestock, or for farming of his or her land where the water obtained shall not be intended for use by the general public or in any residence other than the landowner's, and the landowner shall not be required to be registered under § 46-13.2-4, but must submit ~~the drilling record a well installation report as~~ required by § 46-13.2-5, comply with all applicable regulations and codes of construction adopted under this chapter ~~and section 23-27.3 and comply as applicable with requirements of § 23-1-5.3.~~

SECTION 3. Sections 46-13.2-6, 46-13.2-8, and 46-13.2-10 of the General Laws in Chapter 46-13.2 entitled "Drilling of Drinking Water Wells" are hereby repealed.

~~**§ 46-13.2-6. Wells constructed for oil, gas, brine, or mining.** -- Drilling, excavating, and pumping associated with the oil, gas, or brine well industries, and the construction, quarrying, and mining industries, and the disposal of any materials shall be subject to this chapter only insofar as they relate to the pollution and depletion of underground water resources.~~

~~**§ 46-13.2-8. Exemptions.** -- Where the director finds that compliance with all requirements of this chapter or regulations adopted pursuant thereto would result in undue hardship, an exemption from any one or more of the requirements may be granted by the director to the extent necessary to ameliorate the undue hardship and to the extent the exemption can be granted without impairing the intent and purpose of this chapter.~~

~~**§ 46-13.2-10. Violations.** -- Any person who engages in well drilling or offers to engage in well drilling, or advertises or holds himself or herself out or acts temporarily or otherwise as a well driller, without first having obtained the required certificate of registration, and any person who violates any provisions of this chapter, including, but not limited to, the accurate reporting of wells drilled, shall be~~

~~guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than one year, and each day that violation shall continue shall be deemed a separate offense.~~

SECTION 4. Sections 5-65-1, 5-65-3 and 5-65-5 of the General Laws in Chapter 5-65 entitled "Contractors' Registration and Licensing Board" are hereby amended to read as follows:

§ 5-65-1 Definitions. – As used in this chapter:

(1) "Board" means the contractors' registration and licensing board established pursuant to the provisions of Rhode Island general laws § 5-65-14 or its designees.

(2) "Commission" means the building code commission supportive of the contractors' registration and licensing board.

(3) "Contractor" means a person who, in the pursuit of an independent business, undertakes or offers to undertake or submits a bid, or for compensation and with or without the intent to sell the structure arranges to construct, alter, repair, improve, move over public highways, roads or streets or demolish a structure or to perform any work in connection with the construction, alteration, repair, improvement, moving over public highways, roads or streets or demolition of a structure, and the appurtenances thereto. For the purposes of this chapter, "appurtenances" includes the installation, alteration or repair of wells connected to a structure consistent with Chapter 46-13.2. "Contractor" includes, but is not limited to, any person who purchases or owns property and constructs or for compensation arranges for the construction of one or more structures.

(ii) A certificate of registration is necessary for each "business entity" regardless of the fact that each entity may be owned by the same individual.

(4) "Dwelling unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(5) "Hearing officer" means a person designated by the executive director, to hear contested claims or cases, contested enforcement proceedings, and contested administrative fines, in accordance with the Administrative Procedures Act, chapter 35 of title 42.

(6) "Monetary damages" means the dollar amount required in excess of the contract amount necessary to provide the claimant with what was agreed to be provided under the terms of the contract reduced by any amount due and unpaid to the respondent inclusive of any and all awards and restitution.

(7) "Staff" means the executive director for the contractors' registration and licensing board, and any other staff necessary to carry out the powers, functions and duties of the board including inspectors, hearing officers and other supportive staff.

(8) "State" means the state of Rhode Island.

(9) "Structure" means (i) any commercial building; or (ii) any building containing one or more residences and their appurtenances. The board's dispute resolution process shall apply only to residential structures containing dwelling units as defined in the state building code or residential portions of other types of buildings without regard to how many units any structure may contain. The board retains jurisdiction and may conduct hearings regarding violations against all contractors required to be registered or licensed by the board.

(10) "Substantially" means any violation, which affects the health, safety, and welfare of the general public.

§ 5-65-3 Registration for work on a structure required of contractor – Issuance of building permits to unregistered or unlicensed contractors prohibited – Evidence of activity as a contractor – Duties of contractors. – (a) A person shall not undertake, offer to undertake, or submit a bid to do work as a contractor on a structure or arrange to have work done unless that person has a current, valid certificate of registration for all construction work issued by the board. A partnership, corporation, or joint venture may do the work, offer to undertake the work, or submit a bid to do the work only if that partnership, corporation, or joint venture is registered for the work. In the case of registration by a corporation or partnership, an individual shall be designated to be responsible for the corporation's or partnership's work. The corporation or partnership and its designee shall be jointly and severally liable for the payment of the registration fee, as requested in this chapter, and for violations of any provisions of this chapter. Disciplinary action taken on a registration held by a corporation, partnership, or sole

proprietor may affect other registrations held by the same corporation, partnership, or sole proprietorship, and may preclude future registration by the principal of that business entity.

(b) A registered partnership or corporation shall notify the board in writing immediately upon any change in partners or corporate officers.

(c) A city, town, or the state shall not issue a building permit to anyone required to be registered under this chapter who does not have a current, valid certificate of registration identification card or valid license which shall be presented at the time of issuance of a permit and shall become a condition of a valid permit. Each city, town, or the state which requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenance to the structure shall also require that each applicant for the permit file as a condition to issuing the permit a written affidavit subject to the penalties of perjury, subscribed by the applicant, that the applicant is registered under the provisions of this chapter, giving the number of the registration and stating that the registration is in full force and effect, or, if the applicant is exempt from the provisions of this chapter, listing the basis for the exemption. The city, town, or the state shall list the contractor's registration number on the permit obtained by that contractor, and if a homeowner is issued a permit, the building inspector or official must ascertain registration numbers of each contractor on the premises and shall inform the registration board of any non-registered contractors performing work at the site.

(d) Every city and town which requires the issuance of a business license as a condition precedent to engaging, within the city or town, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of the license file, or has on file, with the city or town a signed statement that the licensee or applicant is registered under the provisions of this chapter and stating that the registration is in full force and effect.

(e) It shall be prima facie evidence of doing business as a contractor when a person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure, arranges to have performed any work described in § 5-65-1(3) if within any one twelve (12) month period that person offers for sale one or more structures on which that work was performed.

(f) Registration under this chapter shall be prima facie evidence that the registrant conducts a separate, independent business.

(g) The provisions of this chapter shall be exclusive and no city or town shall require or shall issue any registrations or licenses nor charges any fee for the regulatory registration of any contractor registered with the board. Nothing in this subsection shall limit or abridge the authority of any city or town to license and levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon business conducted by any firm within the city or town's jurisdiction, if permitted under the laws of the state.

(h) Every contractor shall maintain a list which shall include the following information about all subcontractors or other contractors performing work on a structure for that contractor:

(i) Names and addresses.

(ii) Registration numbers or other license numbers.

(2) The list referred to in subdivision (h)(1) of this subsection shall be delivered to the board within twenty-four (24) hours after a request is made during reasonable working hours, or a fine of twenty-five dollars (\$25.00) may be imposed for each offense.

(i) The following subcontractors who are not employees of a registered contractor must obtain a registration certificate prior to conducting any work: (1) carpenters, including finish carpenters and framers; (2) siding installers; (3) roofers; (4) foundation installers, including concrete installers and form installers; (5) drywall installers; (6) plasterers; (7) insulation installers; (8) ceramic tile installers; (9) floor covering installers; (10) swimming pool installers, both above ground and in ground; (11) masons, including chimney installers, fireplace installers, and general masonry erectors. This list is not all inclusive and shall not be limited to the above referenced contractors. No subcontractor licensed by another in-state agency pursuant to § 5-65-2 shall be required to register, provided that said work is performed under the purview of that license.

(j) A contractor including, but not limited to, a general contractor, shall not hire any subcontractor or other contractor to work on a structure unless the contractor is registered under this chapter or exempt from registration under the provisions of § 5-65-2.

(k) A summary of this chapter, prepared by the board and provided at cost to all registered contractors, shall be delivered by the contractor to the owner when the contractor begins work on a structure; failure to comply may result in a fine.

(l) The registration number of each contractor shall appear in any advertising by that contractor. Advertising in any form by an unregistered contractor shall be prohibited, including alphabetical or classified directory listings, vehicles, business cards, and all other forms of advertisements. The violations could result in a penalty being assessed by the board per administrative procedures established.

(i) The board may publish, revoke or suspend registrations and the date the registration was suspended or revoked on a quarterly basis.

(ii) Use of the word "license" in any form of advertising when only registered may subject the registrant or those required to be registered to a fine of one hundred dollars (\$100) for each offense at the discretion of the board.

(m) The contractor must see that permits required by the state building code are secured on behalf of the owner prior to commencing the work involved. The contractor's registration number must be affixed to the permit as required by the state building code.

(n) The board may assess an interest penalty of twelve percent (12%) annually when a monetary award is ordered by the board.

(o) All work performed, including labor and materials, in excess of one thousand dollars (\$1,000) shall be accompanied by a contract in writing. Contracts required pursuant to this subsection shall include a location on or near the signature line location on or in which the parties to the contract shall initial to evidence the receipt of certain consumer education materials or information approved and provided by the board to the contractor. Said educational materials and/or information shall include, but not be limited to, the following notice and shall be provided by the contractor to the homeowner:

NOTICE OF POSSIBLE MECHANIC'S LIEN

To: Insert name of owner, lessee or tenant, or owner of less than the simple fee.

The undersigned is about to perform work and/or furnish materials for the construction, erection, alterations or repair upon the land at (INSERT ADDRESS) under contract with you. This is a notice that

the undersigned and any other persons who provide labor and materials for the improvement under contract with the undersigned may file a mechanic's lien upon the land in the event of nonpayment to them. It is your responsibility to assure yourself that those other persons under contract with the undersigned receive payment for their work performed and materials furnished for the construction, erection, alteration or repair upon the land. Failure to adhere to the provisions of this subsection may result in a one thousand dollar (\$1,000) fine against the contractor and shall not affect the right of any other person performing work or furnishing materials of claiming a lien pursuant to Chapter 34-28. However, such person failing to provide such notice shall indemnify and hold harmless any owner, lessee or tenant, or owner of less than the fee simple from any payment or costs incurred on account of any liens claims by those not in privity with them, unless such owner, lessee or tenant, or owner of less than the fee simple shall not have paid such person.

(p) Contracts entered into must contain notice of right of rescission as stipulated in all pertinent Rhode Island consumer protection laws.

(q) The contractor must stipulate whether or not all the proper insurances are in effect for each job contracted.

(r) Contractors who are in compliance with the provisions of this subsection shall be exempt from the requirements of section 34-28-4.1.

(s) In addition to the requirements of this chapter, contractors engaged in well drilling activities shall also be subject to regulations pertaining to licensing and registration promulgated by the contractors' registration and licensing board pursuant to section 5-65.2 and section 46-13.2-4.

§ 5-65-5. Registered application. -- (a) A person who wishes to register as a contractor shall submit an application, under oath, upon a form prescribed by the board. The application shall include:

(1) Workers' compensation insurance account number, or company name if a number has not yet been obtained, if applicable;

(2) Unemployment insurance account number if applicable;

(3) State withholding tax account number if applicable;

(4) Federal employer identification number, if applicable, or if self-employed and participating in a retirement plan;

(5) The individual(s) name and business address and residential address of:

(i) Each partner or venturer, if the applicant is a partnership or joint venture;

(ii) The owner, if the applicant is an individual proprietorship;

(iii) The corporation officers and a copy of corporate papers filed with the Rhode Island secretary of state's office, if the applicant is a corporation;

(iv) Post office boxes are not acceptable as the only address.

(6) A signed affidavit subject to the penalties of perjury of whether or not the applicant has previously applied for registration, or is or was an officer, partner, or venturer of an applicant who previously applied for registration and if so, the name of the corporation, partnership, or venture.

(7) Valid insurance certificate for the type of work being performed.

(b) A person may be prohibited from registering or renewing registration as a contractor under the provisions of this chapter or his or her registration may be revoked or suspended if he or she has any unsatisfied or outstanding judgments from arbitration, bankruptcy, courts and/or administrative agency against him or her relating to their work as a contractor, and provided, further, that an affidavit subject to the penalties of perjury shall be provided to the board attesting to the information herein.

(c) Failure to provide or falsified information on an application, or any document required by this chapter is punishable by a fine not to exceed ten thousand dollars (\$10,000).

(d) Applicant must be at least eighteen (18) years of age.

(e) Satisfactory proof shall be provided to the board evidencing the completion of five (5) hours of continuing education units which will be required to be maintained by residential contractors as a condition of registration as determined by the board pursuant to established regulations.

(f) An affidavit issued by the board shall be completed upon registration or license or renewal to assure contractors are aware of certain provisions of this law and shall be signed by the registrant before a registration can be issued or renewed.

SECTION 5. Section 23-27.3-100.1.5 of the General Laws in Chapter 23-27.3 entitled "State Building Code" is hereby amended to read as follows:

§ 23-27.3-100.1.5. Building code – Adoption and promulgation by committee. -- The state building standards committee has the authority to adopt, promulgate, and administer a state building code, which shall include: (a) provisions and amendments as necessary to resolve conflicts between fire safety codes and building codes, as provided for in § 23-28.01-6; and (b) a rehabilitation building and fire code for existing buildings and structures. The building code may be promulgated in several sections, with a section applicable to one and two (2) family dwellings, to multiple dwellings and hotels and motels, to general building construction, to plumbing, and to electrical. The building code shall incorporate minimum standards for the location, design, construction and installation of wells which are appurtenances to a building in applicable sections. The building code and the sections thereof shall be reasonably consistent with recognized and accepted standards adopted by national model code organizations and recognized authorities. To the extent that any state or local building codes, statutes, or ordinances are inconsistent with the Americans with Disabilities Act, Title III, Public Accommodations and Services Operated by Private Entities, 42 U.S.C. § 12181 et seq., and its regulations and standards, they are hereby repealed. The state building code standards committee is hereby directed to adopt rules and regulations consistent with the Americans with Disabilities Act, Title II and III (28 CFR 35 and 28 CFR 36, as amended), as soon as possible, but no later than February 15, 2012, to take effect on or before March 15, 2012. The state building code standards committee is hereby authorized and directed to update those rules and regulations consistent with the future revisions of the Americans with Disabilities Act Accessibility Standards.

SECTION 6. Title 5 of the General Laws entitled "Businesses and Professions" is hereby amended by adding thereto the following chapter:

CHAPTER 5-65.2

RHODE ISLAND WELL DRILLING CONTRACTORS LICENSING LAW

§5-65.2-1. Short title. -- This chapter shall be known and may be cited as the "Rhode Island Well Drilling Contractors Licensing Law".

§5-65.2-2. Definitions. – When used in this chapter:

(1) "Board" means the contractors' registration and licensing board.

(2) "Person" means an individual, partnership, corporation, association, or organization, or any combination thereof.

(3) "Well" means an artificial sanitary excavation or opening in the ground, by which groundwater can be obtained or through which it flows under natural pressure or is artificially withdrawn; and for the purposes of this chapter attached as an appurtenance to a building or structure.

(4) "Well drilling contractor" means a person who engages in well drilling, including the installation of pumps as provided herein.

(5) "Well drilling" means and includes the industry, procedure and all operations engaged in by any person, full-time or part-time, for compensation or otherwise, to obtain water from a well or wells by drilling, or other methods, for any purpose or use.

§5-65.2-3. Licensing Procedure. (a) In addition to the provisions of chapter 5-65, the contractors' registration and licensing board is authorized to establish a program to license well drilling contractors to ensure persons performing well drilling work are properly qualified to conduct the work. On or before January 1, 2014, the board shall promulgate regulations to establish a licensing program that provides for appropriate categories of well drilling work to ensure proper qualifications pertaining to the use of different equipment and approaches to install wells and well pumps, and that will allow the well drilling contractor to fulfill the registration requirements of 5-65 through the licensing program. Upon promulgation of applicable regulations, the license issued by the board to a well drilling contractor shall serve to fulfill the contractor registration requirements of chapter 5-65.

(b) Pursuant to board regulations, all persons seeking to be qualified as a licensed well drilling professional shall submit an application to the contractors' registration and licensing board on the form or forms that the board requires. As specified by the board, the application shall include the following information:

(1) The name of the applicant;

(2) The business address of the applicant;

(3) The mailing address of the applicant;

(4) The telephone number of the applicant;

(5) Any registration number and/or other license numbers issued by the state, or any city or town;

(6) A statement of the skills, training and experience of the applicant sufficient to ensure public safety, health and welfare; and

(7) Agent of service for out of state contractors.

(c) To be eligible for licensure as a well drilling contractor an applicant shall also fulfill the following requirements:

(1) Be of good moral character;

(2) Pass appropriate examinations approved or administered by the contractors' registration and licensing board unless otherwise exempted in accordance with §5-65.3-3(g) and has met all the requirements of the rules and regulations established by the board;

(3) Be in good standing with the contractors' registration and licensing board;

(4) Take ten (10) hours continuing education per year as set forth and recognized by the contractors' registration and licensing board;

(d) The contractors' registration and licensing board is authorized to adopt rules and regulations pursuant to the Administrative Procedures Act, chapter 35 of title 42, necessary to effectuate the purposes of this chapter. Rules and regulations shall provide a fine schedule, which will establish grounds for discipline for licensee holders or non-licensed contractors. Fines shall be structured not to exceed five thousand dollars (\$5,000) per day per offense for conduct injurious to the welfare of the public as well as those required pursuant to § 5-65-10.

(e) Any person applying for a license or registration and making any material misstatement as to his or her experience or other qualifications, or any person, firm, or corporation subscribing to or vouching for any misstatement shall be subject to the discipline and penalties provided in § 5-65-10.

(f) No corporation, firm, association, or partnership shall engage in the business of well drilling or represent itself as a well drilling contractor unless a licensed commercial well drilling professional as

provided in this chapter is continuously engaged in the supervision of its well drilling work, provided that the well drilling professional is a general partner or an officer and shareholder in the firm or corporation. If the license holder dies or otherwise becomes incapacitated, the corporation, firm, or association shall be allowed to continue to operate until the next examination shall be given or such times as the board shall see fit. In no event, shall the corporation, firm, association, or partnership continue to operate longer than twelve (12) months or in accordance with the board's established rules and regulations without satisfying the license requirements of this chapter.

(g) Those well drilling contractors who were previously registered with the department of environmental management, and remain in good standing as of December 31, 2012, and that were previously exempted from fulfilling the testing requirements required for registration by the department shall also be exempt from the testing requirements set forth in this chapter.

§5-65.2-4. Fees. All persons seeking a well drilling professional license shall submit a payment in the amount of two-hundred dollars (\$200), which shall support the licensing program, representing a license fee. All fines and fees collected pursuant to this chapter shall be deposited into a restricted receipt account for the exclusive use of supporting programs established by the board.

SECTION 7. Section 1 of this article shall take effect as of July 1, 2012. Sections 2, 3, 4, 5 and 6 of this article shall take effect as of January 1, 2013.

Explanation of Revised Article 30

As originally submitted, Article 30 reflected changes in four state laws intended to eliminate two programs currently administered by the Rhode Island Department of Environmental Management (RIDEM). Section 1 eliminates a water monitoring program known as the use fee program and is unchanged from its original form. Section 2 modifies three state laws and creates a new section of law in order to streamline state oversight of the installation of water wells, primarily those for drinking water purposes. At the state level, Section 2 of the article affects activities of RIDEM, the State Building Code Commission, the Contractors Registration Board and the Department of Health. Pursuant to the article, well construction standards would be fully integrated into the appropriate portions of the state building code during 2013 and allow for the concurrent elimination of overlapping regulations previously promulgated by the RIDEM. The program for qualifying and registering well drilling contractors would be consolidated within the Contractors Registration Board allowing RIDEM to phase out and eliminate its overlapping registration program. The statutes are cross-referenced in order to achieve the intended program integration. The amendments to the article, which grew out of additional inter-agency discussions, constitute refinements to the approach taken to streamline the oversight of well drilling activities and are as follows:

SECTION 2.

In Section 2, a definition for Contractors' Registration and Licensing Board was added and the definition of "well" and "well driller" were clarified. The definition of "well" was modified to allow a broader use of the term in section 46-13.2-3(c). "Well driller" was modified by the addition of text to make clear that the inclusion of persons that install pumps in water wells as well drilling contractors. This reflects the existing regulatory program at RIDEM which includes pump installers as a category among well drilling contractors. There are currently thirty-eight (38) companies registered to install pumps. The term "well driller" was changed to "well drilling contractor" to be consistent with other references later in the statute.

In Section 2, the original article deleted in its entirety section 46-13.2-2 which established a well drilling board. In the revised article, this section remains deleted but is now amended to add a purpose statement to reflect the legislative intent to protect the public health and welfare as well as the environment. The Section heading also reflects this change.

Section 46-13.2-3 (a) directs the State Building Code Commission to incorporate into well construction standards into the state building code. The original article narrowly referenced the plumbing code. This has been changed to give the Commission the needed authority to integrate the well construction standards into any appropriate portion of the overall state building code. This will allow for the needed modifications of both the plumbing code as well as residential code. In addition, existing language pertaining to purpose was modified to eliminate references not germane to the purposes of the Building Code Commission.

Section 46-13.2-3 (b) specifies procedures for variance from well construction standards, which typically involve locational setbacks; e.g. distance to the road, septic system etc. The original article assigned responsibility for granting variances to local building officials with the exception that setbacks from certain pollution sources would still be reviewed and granted by RIDEM. Based upon additional input from the State Building Code Commission, this section has been modified to conform to existing variance procedures used by local building officials. Rather than the building official himself or herself making the decision, the variances will be granted through

either the local or state building code board of appeals with jurisdiction over the well installation site. The only exception to this practice will be new or replacement wells proposed as part of an on-site wastewater application filed with RIDEM. To support a streamlined process for deciding such variances, RIDEM will retain the authority to decide the variance in these instances. This was deemed appropriate in that the determination usually involves considerations related to locating both the well and the wastewater disposal field on the property.

Section 46-13.2-3 (c) was added to clarify the authority of RIDEM to prevent the installation of wells in close proximity to existing or approved on-site wastewater systems within a property. The change makes clear that RIDEM can regulate the installation of wells in close proximity to existing or approved on-site wastewater systems. The change would allow RIDEM to prevent property owners from installing any type of well in locations that would interfere with the functioning of the on-site wastewater system or would present a potential public health and prevent wells from being installed in inappropriate locations. RIDEM has some experience with wells being installed too close to approved wastewater systems after such systems are installed.

Section 46-13.2-4 reference the registration and licensing of well drillers. The original article made reference the existing Contractors' Registration and Licensing Board registration process with corresponding changes in chapter 5-65. The original article proposed to modify the contractor registration process by incorporating qualification requirements for well drilling contractors. Upon further review, it was determined that it would be more appropriate to manage this group of contractors through a licensing procedure similar to those established by the Contractors' Board for certain other types of contractors; e.g. commercial roofers. This change avoids complicating the administration of the Board's existing registration program. See SECTION 6 for additional discussion. As modified this section provides the appropriate cross-reference to statutes applicable to the Contractors' Board and makes clear that well drilling contractors are under the jurisdiction of the Board.

Section 46-13.2-5 outlining the requirements for well installation reports was modified at the request of the Department of Health to require a well report be produced within 10 days of a well being installed instead of the existing 30 days. Text was added to clarify that DOH would have the authority to specify the form and content of the well installation report. Modifications also included minor changes in language for clarity.

Section 46-13.2-7 was modified at request of the Department of Health to provide consistency in the use of the term "well installation report", to provide a cross-reference to the statute authorizing the well construction standards and a cross-reference to a statute that governs water quality testing of newly installed drinking water wells. This is intended to reinforce compliance with the water quality testing in the situations in which a landowner constructs their own well. Note: While existing law provides for this, RIDEM is not aware of any instances in which a drinking water well has been constructed in this manner.

SECTION 3

No change other than a deletion in the heading to section 46-13.2-2. This text was modified instead of deleted (see above.)

SECTION 4

This section was modified to support integration of the well drilling into existing Contractors Board programs. Specifically, for clarity, the definition of contractor in section 5-65-1 was

modified to make clear that the installation of wells attached to structures was an included activity. This is consistent with both the intent of the article as well as prior interpretation of chapter 5-65.

New text was added to section 5-65-3 to provide a cross-reference to other applicable sections of law referring to contractor licensing. This is intended to make clear that the well drilling contractors are currently subject to the requirements of 5-65 as well as additional licensing requirements that will be forthcoming from the Contractors' Board.

Section 5-65-5 was also modified to broaden the applicability of a Contractors' Board affidavit procedure to licenses in addition to registrations.

SECTION 5

The phrasing to reflect the integration of well construction standards into the building code was modified for consistency with section 46-13.2-3. The change provides the Building Code Commission with sufficient flexibility to integrate and refine well construction standards in any appropriate section of the state building code. This is expected to include the plumbing code, which currently addresses wells, and the residential code, which currently does not address wells.

SECTION 6.

This new section was added to create a section of law in parallel to other sections of law that have authorized licensing functions for the Contractors' Registration and Licensing Board. It includes an expanded description of the intended licensing procedure. As a result of the article, the intended transition regarding registration and licensing will be as follows. The well drilling contractor registrations issued by DEM pursuant to section 46-13.2 for calendar year 2012 will remain valid through December 31, 2012; after which DEM will no longer issue registrations. Well drilling contractors will need to register with the Contractors' Registration and Licensing Board to continue to conduct business in 2013. They are currently required to do so under existing law but most of those firms registered with DEM have not complied with the overlapping Board requirement. During 2013, the Contractors' Board will promulgate rules to implement the licensing procedure described in this section and provide a means for transitioning from the contractor registrations to a well drilling contractor license. The license will integrate the contractor requirements of 5-65 addressing insurance, etc. and provide for an appropriate system of qualifying well drilling contractors in the categories of work generally accepted in the industry. The system is expected to reflect the categories of professional exams currently made available via the National Groundwater Association that have been relied upon by DEM in its registration process. The exams pertain to different well drilling technologies as well as different size categories of pumps.

SECTION 7.

The effective date of the article was modified to support the needed transition between the affected state programs. Specifically, the Building Code Commission will require time to adopt changes to its codes to reflect minimum standards for wells. Concurrently, the Contractor's Board will need time to develop its program to properly qualify well drilling contractors. This change will result in some additional work for DEM through the transition period.

Other Information

Regarding fees, under current state law well drilling contractors are required to pay a DEM registration fee of \$200 (new) and \$100 (renewal) annually for well drilling and pump installation categories of work as well as a \$200 contractors' board registration fee which corresponds to a two-year registration equating to \$100/yr. As noted above, to date most well drilling contractors have not complied with the Contractors' Registration and Licensing Board requirement.

Under the revised article, effective January 1, 2013, DEM will no longer issue registrations or collect a fee and the Department's authority to do so will be rescinded. At the same time, it is intended that well drilling contractors will register with the existing Contractors' Registration and Licensing Board registration program and pay the existing \$200 fee for a two-year registration.

By 2014, the Contractors' Registration and Licensing Board will implement a licensing procedure pursuant to Chapter 5-65.2. Well drilling contractors will be transitioned into this program and will pay a comparable license fee of \$200 for a two year license. Once they are transitioned, the well drillers will no longer be paying the \$200 registration fee under 5-65. So while the authority for the fee is new in Article 30, it is not an additional fee, nor should it have any significant impact on FY 2013 revenues.

The intent has been to be revenue neutral based on level fee amounts. DEM collected \$9,560 in the prior fiscal year. The Department currently has 54 well drilling contractors registered within the program in various categories of work, with 29 being out of state firms. DEM treats well drilling and pump installation activities separately so that a company doing both will pay \$200/year to renew its registration. The Department does not have a lot of new firms coming into the business of well drilling, so that the number of firms registered in state is fairly stable. It is harder to predict the behavior of the out of state firms who may register for the purpose of a specific job. Seven of the DEM-registered contractors are currently registered with the Contractors' Registration and Licensing Board. With the \$200 fee that will be collected in the next state fiscal year by the Contractors' Registration and Licensing Board, the Department estimates that the revenue to be collected by the Contractors' Registration and Licensing Board for the next fiscal year to be \$9,400, or very close to the revenue from this year.