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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - UNDERGROUND UTILITY
CONTRACTORS

Introduced By: Representatives San Bento, Carnevale, Williams, Petrarca, and Gallison

Date Introduced: February 16, 2012

Referred To: House Corporations

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 20.1

4 UNDERGROUND UTILITY CONTRACTORS

5 **5-20.1-1. 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 **5-20.1-2. Definitions.** - The following words and phrases shall have the meanings stated
9 herein when used in this chapter:

10 (1) "Board" means the board of underground utility contractor licensing.

11 (2) "Department" means the department of labor and training.

12 (3) "Director" means the director of the department of labor and training.

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

1 (5) “Underground utility contractor” means any corporation, association, sole
2 proprietorship, firm, partnership, limited liability corporation, limited liability partnership, or
3 other business organization which is engaged in the installation, repair, alteration or replacement
4 of underground utilities outside of buildings, making connections with public and/or private
5 underground utilities provided that such work is to be done between the main, laterals, services
6 and/or appurtenances to within five feet (5’) of the outer walls of a building or structure. The term
7 “underground utility contractor” shall include any agent, servant and/or employee of a licensed
8 underground utility contractor. The term “underground utility contractor” does not include
9 individuals licensed under chapter 20 of title 5, entitled “plumbers and irrigators.”

10 **5-20.1-3. License required.** -(a) It is unlawful for any underground utility contractor to
11 engage in the installation, repair, alteration or replacement of an underground utility as defined in
12 this chapter without a valid license issued by the director.

13 (b) Any person licensed as a master plumber under the provisions of chapter 20 of title 5
14 shall be exempt from the requirement to obtain both an underground utility contractor’s license as
15 required by this chapter and an installers license as required by chapter 56 of title 5 provided that
16 master plumbers are required to comply with the provisions of sections 5-20.1-10 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 **5-20.1-4. Conditions for obtaining an underground utility contractor’s license.** — (a)
20 To obtain a license under this chapter an underground utility contractor must submit to the
21 director an application for an underground utility contractor’s license completed in its entirety,
22 together with a fee of two hundred dollars (\$200). The application must also comply with the
23 following requirements:

24 (1) The applicant must have demonstrated to the board that the underground utility
25 contractor is capable of installing, repairing, altering 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 given by the
28 director, intended to demonstrate an understanding of the rules and regulations, and ability to read
29 and interpret approved plans and specifications. Any applicant who fails an examination for a
30 license is permitted to take further examinations upon payment of the prescribed fee for each
31 examination. The department shall provide and conduct examinations at least three (3) times each
32 year. All examinations shall be conducted at places designated by the department within the state;

33 (3) The board shall approve or deny applications for an underground utility contractor’s
34 license as soon after the examination as is practicable and shall submit that approval or denial to

1 the director. Each applicant who has successfully passed the examination and has had an
2 application approved for a license as an underground utility contractor shall have issued and
3 mailed to him/her, by the department, a certificate of license specifying that applicant as an
4 underground utility contractor; and

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 (b) Beginning July 1, 2013, all fines and fees collected pursuant to this chapter shall be
9 deposited into a restricted receipt account for the exclusive use of the director of the department
10 of labor and training in carrying out the functions and duties conferred upon by this chapter.

11 **5-20.1-5. Expiration and renewal of licenses.** — All licenses of underground utility
12 contractors issued by the department in cooperation with the board shall expire every two (2)
13 years on the anniversary date of the license's issuance and may be renewed on or before that date
14 for a period of two (2) years, upon payment of two hundred dollars (\$200).

15 **5-20.1-6. Duties of director.** — The director of the department of labor and training
16 shall:

17 (1) Prepare, provide and conduct examinations in cooperation with the board of
18 underground utility contractor licensing;

19 (2) Prepare license certificates and issue them in conformity with this chapter;

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

23 (4) Maintain an up-to-date record of any complaints filed with the department, the nature
24 of those complaints, date of complaints and any final orders made based on the complaints; and

25 (5) Forward copies of all complaints to the board for review and determination of action
26 to be taken in accordance with this chapter.

27 **5-20.1- 7. Duties of the board of underground utility contractor licensing.** — (a) There
28 shall be in the department of labor and training, a board of underground utility contractor
29 licensing, responsible for the licensing and regulating of underground utility contractors. The
30 board of underground utility contractor licensing shall:

31 (1) Assist the director in the creation of an examination to be administered to applicants
32 seeking an underground utility contractor license;

33 (2) Approve applications for licensure of underground utility contractors; and

34 (3) Review all complaints filed with the department, and make determinations as to the

1 absence or presence of violations of this chapter

2 (b) The board shall consist of five (5) members to be appointed by the governor with
3 advice and consent of the senate for a term of three (3) years:

4 (1) Three (3) members who shall possess a state sewer/drainlayers license; provided
5 however, that the initial board shall have three (3) members that possess a Rhode Island
6 municipal sewer/drainlayer license;

7 (2) The administrator of the division of occupational safety;

8 (3) The director of the department of labor and training or his/her designee.

9 (c) On or before January 31, the governor shall annually appoint a member or members
10 of the board to succeed the member or members whose term is at that time expiring who shall
11 serve for three (3) years or until his or her successor is elected and qualified. Any vacancy that
12 occurs in the board from any cause shall be filled by the governor for the remainder of the
13 unexpired term.

14 **5-20.1-8. Licensing of underground utility contractors granted without examination.**

15 -(a) After enactment of this chapter and at any time prior to the expiration of six (6) months
16 following enactment of this section, the department shall, without examination, upon payment of
17 the fees required in this chapter and approval of the issuance of the license by the board, issue
18 through the department of labor and training, a license to any applicant who shall present
19 satisfactory evidence as described in subsection (b) of this section that the applicant has the
20 qualification for issuance of an underground utility contractor license. Thereafter, in order to
21 qualify for an underground utility contractor license after the initial “grandfather” window, said
22 licensee may renew the license pursuant to section 5-20.1-5.

23 (b) Satisfactory evidence shall be any two (2) of the following that is applicable:

24 (1) The owner(s) of a business entity as defined herein in subdivision 5-20.1-2(1) must
25 have been actively engaged as a sewer/drainlayer water installer for the previous three (3) years;

26 (2) Notarized confirmation by three (3) sewer/drain layer installers of his, her or its active
27 standing as a sewer/drain layer installer; or

28 (3) The contractor or licensee shall provide satisfactory evidence that they have been
29 previously granted a license within the past three (3) years as a sewer/drain layer installer by three
30 (3) or more Rhode Island cities or towns granting or issuing such a license.

31 **5-20.1-9. Responsibilities performance and conduct.** — A licensed underground utility
32 contractor shall perform all work in compliance with the plans and specifications approved by the
33 local municipality or other appropriate authority having jurisdiction over the utility and/or work
34 to be performed.

1 **5-20.1-10. Insurance required of underground utility contractors.** — (a) Throughout
2 the period of licensure, the contractor shall have in effect public liability and property damage
3 insurance covering the work of that contractor which shall be subject to this chapter in not less
4 than the following amount: one million dollars (\$1,000,000) combined single limit, bodily injury
5 and property damage.

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

9 (c) The contractor shall provide satisfactory evidence to the department of labor and
10 training at the time of registration and renewal that the insurance required by subsections (a) and
11 (b) of this section has been procured and is in effect. Failure to maintain insurance shall invalidate
12 registration and may result in a fine to the registrant.

13 **5-20.1-11. Bond requirement.** — Every applicant for a certificate of license as an
14 underground utility contractor to carry on the business of installing, repairing or servicing
15 alteration or replacement of sewer lines, storm drainage lines or water lines and related services in
16 accordance with this chapter, shall furnish a bond, satisfactory to the board, in the sum of twenty
17 thousand dollars (\$20,000), conditioned substantially that the applicant indemnifies and holds
18 harmless the several cities and towns of this state and their officers from all suits and actions of
19 every name and description brought against any of those cities or towns or any of their officer or
20 officers, for or on account of any injuries or damages received or sustained by any person in
21 consequence of, or resulting from, any work performed by the applicant, or its employees,
22 servants or agents, or of or from any improper materials used in the work, or of or from any
23 negligence in guarding the work, or of or from any act or omission of the applicant, or its
24 employees, servants or agents.

25 **5-20.1-12. License not transferable or assignable.** — Underground utility contractor's
26 licenses are not transferable or assignable and automatically become invalid upon a change of
27 ownership or upon suspension or revocation of a license.

28 **5-20.1-13. Denial suspension and revocation of licenses.** — (a) The board of
29 underground utility contractor licensing of the department of labor and training shall suspend or
30 revoke the license of any underground utility contractor after a hearing when the weight of the
31 evidence establishes any one or more of the following specific violations:

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

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

4 (3) Willfully and fraudulently loaning its license to any other underground utility
5 contractor for the purpose of permitting that underground utility contractor to engage in any
6 underground utility work in violation of the provisions of this chapter;

7 (4) Willfully violating any of the provisions of this chapter.

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

10 **5-20.1-14. Procedure for revocation of license.** — (a) No proceeding to revoke a
11 license, as provided in this section, shall be instituted unless filed with the board within one year
12 immediately following the date or dates of violation.

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

15 (c) No hearing for the purpose of revoking any license of an underground utility
16 contractor shall be held unless there is first placed on file with the department a verified
17 complaint, in writing, reciting in the complaint with reasonable particularity a statement of facts
18 which if proved would be sufficient to constitute a violation of one or more of the specifications
19 for revocation of license as prescribed in this chapter.

20 (d) Upon the filing of a verified complaint as provided in this section, the department
21 shall promptly set a date for a hearing of the charges of the complaint. The department shall
22 promptly, by registered or certified mail, forward to the licensee charged in the complaint a true
23 and correct copy of the complaint and notification of the time and place when and where a
24 hearing of those charges is to be held.

25 (e) At the time and place fixed in the notification, the department shall proceed to a
26 hearing of the charges specified in the complaint. No hearing upon the charges of the complaint
27 shall be held unless the records of the department contain evidence that the licensee charged in
28 the complaint has been served with a copy of the complaint and notification at least twenty (20)
29 days prior to the date of the hearing; provided, that the appearance of the charged licensee, either
30 in its own behalf or by counsel, constitutes proof that sufficient notice of the hearing was served.

31 (f) A complaining party, individually or by counsel, may aid in the presentation of
32 evidence toward sustaining the complaint. Ample opportunity shall be accorded for a hearing of
33 all evidence and statement of counsel either in support of or against the charges of the complaint.
34 Upon good cause shown, the date of the hearing on the complaint may be continued provided the

1 licensee and other interested parties are reasonably notified about the date of continuance.

2 **5-20.1-15. Subpoena of witness.** — The board shall have the power to subpoena and
3 bring before it, any witness to take testimony, either orally or by deposition, or both, in any
4 proceeding authorized by law.

5 **5-20.1-16. Administration of oaths.** -- The board shall have the power to administer
6 oaths to witnesses at a hearing which the board is authorized by law to conduct, and may
7 administer other oaths authorized or administered by the board.

8 **5-20.1-17. Recommendations of board — Order - Rehearing — Review.** -- Any
9 applicant or licensee aggrieved by any decision or ruling of the board may appeal that decision to
10 the board which shall review the decision or ruling. Upon review, the board shall order that the
11 license of the licensee charged in the complaint be revoked or the complaint shall be dismissed. A
12 copy of the order shall be immediately served upon the licensee either personally or by registered
13 or certified mail. The order of the board is final unless the charged licensee, the division or
14 complainant, within twenty (20) days after receipt of that order, files with the director his or her
15 motion, in writing, for a review of the order by the director, specifying in the motion the points
16 and reasons for the order. The filing of a motion for a review stays the operation of the order
17 pending final decision on that motion. A motion for a review by the director shall be immediately
18 scheduled for a hearing by the director. The decision of the director after his or her review shall
19 be issued in writing to the licensee.

20 **5-20.1-18. Penalties for violations.** — Violation of any provision of this chapter shall be
21 subject to the penalties as follows: any corporation, association, sole proprietorship, firm,
22 partnership, limited liability corporation, limited liability partnership or other business
23 organization licenses by the board shall be subject to a fine of five hundred dollars (\$500) for the
24 first offense and for the second and subsequent violations of this chapter subject to a fine of not
25 less than nine hundred fifty dollars (\$950).

26 **5-20.1-19. Enforcement.** — (a) It is the duty of the director of the department of labor
27 and training to enforce the provisions of this chapter. The appropriate local municipality
28 authority, involved in the day-to-day inspection of sewer or drain installations, shall assist the
29 department in enforcing the provision of this chapter. The appropriate local municipality shall
30 have the authority to demand the production of the licenses required by this chapter on any site
31 where underground utility contractor work is being installed and have the authority to investigate,
32 and where appropriate, make complaints, pursuant to section 5-20.1-13, where sufficient evidence
33 has been obtained to sustain a reasonable belief that a violation of this chapter has occurred.

34 **5-20.1-20. Prosecution of violations and penalties.** — It is the duty of the director of the

1 department of labor and training to fine any corporation, association, individual proprietorship
2 firm, partnership, limited liability corporation, limited liability partnership or other business
3 organization violating any of the provisions of this chapter upon complaint being made whether
4 brought pursuant to section 5-20.1-13 and/or section 5-20.1-17.

5 **5-20.1-21. Injunctions.** - Violations of this chapter may be enjoined upon a bill of
6 complaint being filed in the superior court for the county in which those violations have been
7 committed, by the department or by any appropriate local municipal authority. An injunction may
8 be granted by the superior court after hearing in open court against any corporation, association,
9 individual proprietorship, firm, partnership, limited liability corporation, limited liability
10 partnership or other business organization which has violated any of the provision of this chapter
11 without regard to whether proceedings have been or may be instituted before the department or
12 whether criminal proceedings have been or may be instituted. No ex parte restraining orders shall
13 be issued in suits brought pursuant to this section.

14 **5-20.1-22. Investigation and prosecution of violations.** — The director of the
15 department of labor and training or his/her designee shall act as an investigator with respect to the
16 enforcement of all sections of the department, relative to the licensing of underground utility
17 contractors, and to this effect whenever a complaint is made to the director of the department of
18 labor and training, or his or her designee, the provisions of this chapter are being violated, the
19 director, or his or her designee, may issue an order to cease and desist from that violation and
20 may impose penalties against the violator, and against the contractors.

21 **5-20.1-23. Judicial review of proceedings.** — Any further appeal from the actions of the
22 board or the director is in accordance with the provisions of the administrative procedures act,
23 chapter 35 of title 42.

24 **5-20.1-24. Licensing authority.** — The board shall carry out the functions and duties
25 conferred upon it by this chapter. The licensing authority adopts standards, rules and regulations,
26 pursuant to chapter 35 of title 42, for the administration of the licensing program established
27 under this chapter and related activities.

28 **5-20.1-25. Municipal inspectors and installation permits.** — Nothing contained in this
29 chapter prohibits any city or town from requiring permits for the installation, maintenance and
30 repair of underground utility systems and collecting fees for the installation and repair of an
31 underground utility system.

32 **5-20.1-26. Severability.** — If any provision or part of this chapter, or its application to
33 any entity or circumstances is held unconstitutional or otherwise invalid, the remaining provision
34 of this chapter and the application of the provisions to the other entities or circumstances other

1 [than those to which it is held invalid shall not be affected by the invalidity.](#)

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

4 ~~**5-20-11. Licensing of drainlayers and installers.** (a) Nothing in this chapter prohibits~~
5 ~~any city or town from granting a license to any person as a drainlayer to engage in the laying of~~
6 ~~drains outside of buildings, making connections with the public sewers, private drains and~~
7 ~~cesspools; provided, that the holder of a certificate or license issued by the department of labor~~
8 ~~and training in conformity with this chapter is not required by any city or town to obtain any other~~
9 ~~license for the installation, maintenance, or repair of plumbing or the laying of drains.~~

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

13 SECTION 3. This act shall take effect on January 1, 2013.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO BUSINESSES AND PROFESSIONS - UNDERGROUND UTILITY
CONTRACTORS

- 1 This act would establish provisions, qualifications and procedures for licensing
- 2 underground utility contractors engaged in the laying or repairing of underground utilities.
- 3 This act would take effect on January 12, 2013.

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