

Comment By : **George Whalen**

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Comment : **Please note these comments refer to all 6 of the new and modified regulations being proposed. Comments regarding modifications and new regulations being implemented 1. 1.1 Authority, Believe you still need reference to and in accordance with the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq. in the authority. 2. 1.2 Purpose, part c goes back to July 1, 2019 do not believe you can back date rules and regulations before adopted? As well as the section that states "this part shall be liberally construed," should be eliminated in must be construed in accordance to laws enacted. 3. Previously numbers were not allowed and had to use letter formatting. This is much better to read and understand using numbers .1.4 Definitions, should add one for Board Designees in anyone could be selected by board as a designee. Should show conditions and reasons to delegate authority as described in law. Board is already defined in general law. 4. #6 restitution is that inclusive of services rendered or return of monies paid? 5. Definitions, should have included: 'Dishonest or fraudulent conduct injurious to the welfare of the public' means conduct that includes, but is not limited to, any of the following: 1. Acting in a manner that, because of a wrongful or fraudulent act(s) by the applicant, registrant, or licensee results in injury or damage to another person; 2. Failing to pay monies when due for materials or services rendered in connection with the applicant's, registrant's, or licensee's operations when the applicant, registrant, or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; 3. Accepting payment in advance on a contract or agreement and failing to perform work or provide services required by the contract or agreement and failing to return the payment; 4. Giving false, misleading or deceptive advertising whereby a reasonable person could be misled or injured; 5. Using a revoked, invalid, or suspended registration or license; or 6. Working using another person's registration or license. 6. Defined in law but was clarified in rules and regulations 'Monetary damages' means the dollar amount required in excess of the contract amount to provide the claimant what was agreed to be provided under the terms of the contract minus any amount due and unpaid to the registrant/licensee. It is in general law that needs to be explained more in rules and regulations. 7. 'Nature and complexity' means, but is not limited to, the following meanings: 1. Involves legal issues outside the scope and expertise of the Board; 2. Requires rulings on persons or entities outside the jurisdiction of the Board; or 3. Involves technical, expert, or other issues outside the scope and expertise of the Board. 8. 'Pursuit of an independent business' or 'Working as an independent contractor' means that the person operates as an independent contractor. Evidence of operating as an independent contractor and not as an employee may include, but not be limited to, the following criteria: 1. The person is free from close supervision by the homeowner or contractor over the details of the work being performed, including hours of work; 2. The person enters into a contract, either oral or written, which calls for the completion of certain work on a specific project or job site for which payment is made on a per-hour, time-and**

materials, barter, or entire job basis; 3. The person may have one or more effective contracts at any one time; 4. The person hires and supervises other subcontractors and/or employees and may be responsible for business insurance and payroll taxes if help is hired; 5. The person enters into a contract, either oral or written, which does not require the employer to consider remuneration paid to be wages for the purposes of unemployment compensation benefits, workers' compensation payments, or federal or state withholding; 6. The person uses as normal business practice telephone services, business cards, or any form of advertising; 7. The person furnishes substantially all of the equipment, tools, and supplies necessary to carry out contractual obligations; and 8. The person is not an independent contractor if he/she performs services that can be controlled by an employer (what will be done and how it will be done). 9. Documents such as 1099's, taxes and IRS forms may be requested by the Board to substantiate an independent contractor's status, and the Board may also consider IRS definitions and criteria in determining the independent contractor's status. 9. 1.5 A RIGL 5-65-19 b requires service of final orders which could be for claims or violations. This modification would be in violation of the general law. 10. Information Requests: Concerns as to how they be made in that telephone and electronic methods have been omitted? Consumer protection legislation and should be readably assessable including phone inquiries. A claim filed with the Board should be initially classified as under investigation, and any information in regard to that claim will not be provided in response to a telephone inquiry or written request until such time as a Board investigator has had the opportunity to review the matter filed. Upon investigation and a determination that the claim is valid, information related to the claim will be deemed public record. This was omitted but should be put back in order to be fair to contractors and prevent loss of business due to false claims. 11. 1.61 D & E modifications will cause a lot of problems in regard to enforcement as to who is an employee and workers compensation enforcement. Additionally refunding partial fees for officers in that it is a two year cycle and not getting what was paid for will be a time consuming and costly process. Could put a date that is in future to avoid this rather than end of year. 12. 1.6.4 What happens if you don't notify board? Fines does it invalidate license or registration. 13. 1.7.1 What happens if you don't abide by statement? 14. 1.7.2 Is it a board approved provider or approved by another party? Why only three times a year? These companies test six days a week. Seems like hurting the industry and economy. Should be at least once a month. 15. No where do I see the requirement as specified in law of the issuance of a picture ID card. 5-65-8 (b) The board shall issue a pocket-card certificate of registration to a contractor registered under this chapter including a picture of the registrant as prescribed by the board in the rules and regulations. This was never removed when opportunity existed and must be addressed by law. 16. 1.8.10A Nowhere does it require testing but request testing information? 17. 1.9 Complaints, RIGL 5-65-12 and 12.1 sets forth process for claims and needs to be followed. The language used is claim and sets forth determinations which need to be explained in rules and regulations. 18. Instructor Qualification No person may act as an

instructor unless such person holds a registration/license and is in good standing with the Board for the discipline in which the course is offered for. Why? If person is qualified should be able to serve as an instructor. The next item seems to be in conflict with this in it is not clear if both items are needed and refers back to same section? 19. Limitations on Complaint Process : If the investigation determines that the potential monetary damages and/or restitution exceeds ten-thousand dollars (\$10,000), in accordance with R.I. Gen. Laws § 5-65-12(b), the Board may refuse to continue processing the claim and refer the complainant to Superior Court. No where in this section does it set a limitation as to how much a claim can be for, so why bother to have a board if you are not willing to take action on one of the biggest expenditures you may make, your home? In the past the board had settlements over \$250,000.00 and were able to use the discretion that the law allows to resolve disputes. Looks like this an arbitrary amount and no authority in law to establish this exceeding authority. Even allowed Board the right to fine up to the value of the contract which is in law and cannot be changed in rules and regulations. 20. A Hearing Officer cannot order the Respondent to pay monetary damages and/or restitution. Why? Law allows it and rules and regulations cannot supersede the authority of the statute. Payment of monetary damages and/or restitution can be agreed to by the Parties as part of any settlement/agreement at any time even outside the Board so why bother going to Board? Going to court is always an option that is why Board was established to reduce costs to consumers and resolve disputes and reduce the court cases. Instead of making it easier on consumers and contractors making it more timely and costly. 21. The initial Board investigation and attempts to informally resolve the matter shall be completed within sixty (60) days of acceptance of the complaint. Time may be extended for good cause, but in no event shall the matter remain at the initial investigation stage for more than ninety (90) days. Some claims need more time to resolve due to issues outside the control of the contractor and do not think a 90 day time frame is adequate and will result in more cases going to court and consumers paying more legal costs than necessary. 22. Alternative Dispute Resolution is a great idea and was used in pass but tends to extend the process longer and allow other things to happen like a contractor filing bankruptcy. Additionally, using other methods to resolve issues are great but the Board was established to reduce the cost and need for consumers to pay additional monies to resolve a dispute with a contractor who the state has given credentials to and should be able to assist to resolve issues that occur. 23. Monetary fines and administrative penalties shall be imposed in accordance with R.I. Gen. Laws Chapter 5-65, need to define and explain difference? Are not the other disciplines also impacted? 24. In determining the appropriate fine(s) and/or penalties to impose, the Board shall look to past precedence and may consider any mitigating or aggravating circumstances as known to the Board at the time of the determination, but also to the General Laws which clearly makes fines for first and second offenses substantial to prevent this from frequently happening and homeowners being taken advantage of especially the elderly, that is why a separate section was put into the law recently. 25. In accordance with R.I. Gen. Laws § 5-65-6, the

decision shall be considered delivered when deposited in the United States mail and/or sent registered or certified or post office receipt secured to the last known address of record. This is in conflict to the general laws and rules and regulations cannot modify what is written in law. Also in that no longer have a proposed order should explain clearly that the final order time frame to court is stayed until board addresses this matter. 26. Service This section needs modification to assure that an agent of service for out of state contractors is considered service. Additionally must follow law established in hand not address. Additionally didn't see the felony law recently pass, addressed anywhere in regulations. 27. The original intent of the boards dispute resolution process was to reduce cost incurred to the consumer, expedite a simple but fair process for all involved to resolve disputes. This new method of operation is making it a much more lengthy process where by attorneys will more than likely need to be part of the process which will be more costly and move many to the thousands of claims previously resolved by the board over the years into a prolonged process in court. 28. A complete record of the proceedings shall be recorded on audiotape, or at the discretion of the Hearing Officer, by stenographic record. In this day and age a digital recording should be allowed. 29. Default Judgement, is that an issuance of a Final Order, if so it should state that here. 30. If any statute has different requirements than those contained within this Regulation, the statute shall be controlling. Many of the items proposed in these regulations are controlled by the law and would be considered invalid in the regulations proposed. 31. Publication of Orders and Notices, All final order's claims and violations are by law required to be posted on boards website. This includes violations as well as claims which seems to be missing from the site. 32. 1.8.9 hard to provide picture ID and sign attendance sheet for on line courses. As required by this section. 33. 1.14 Once all appeal rights have been extinguished, if a Respondent fails to comply with a Final Order, or a decision of the Full Board, the Board may refer the case to the Office of the Attorney General for criminal prosecution. What type of decision? Only Final Orders by law can be prosecuted? 34. 1.15.1 Is it possible to bypass the Board and go directly to Superior court to appeal a final order? 35. Found section two as well as three to be very difficult for the average person to understand with referrals. Rules and regulations are supposed to make it easier to understand intent of law. 36. An applicant registered as a commercial roofing contractor by the Board as of December 31, 2015, and who remains in good standing, may obtain a commercial roofing contractor's license without examination, and upon submission of a completed application. This date is not in law and seems to be arbitrary. Law needs to be reviewed or may need to be modified for a new date. 37. 6.7 Prior to January 1, 2020, the Board shall, without examination, upon receipt of the fees required in this chapter, issue a residential water-filtration/treatment-system installer's license to any applicant who shall present satisfactory evidence that they have the qualifications for the type of license applied for. After January 1, 2020, in order to qualify for a residential water-filtration/treatment installer's license the eligible individual shall be required to pass a written examination and show proof

as required by the Contractors' Registration and Licensing Board of their eligibility. The law does not give board this authority like it did in the underground utility law and can't just arbitrarily say you will establish a grandfather clause. If in the law could follow date but rules can't establish date unless specified in act. Additional comments: Concerns that open meeting violations exist in meeting minutes are not being filed in timely fashion and posted within time frame specified in law and information is not available to public. The Board was established over 29 years ago to help the construction industry and protect consumers, not to become a "cash cow" to fund other programs outside the scope of the Board. The law reads: (b) All fees and fines collected by the board shall be deposited as general revenues to support the activities set forth in this chapter until June 30, 2008. Beginning July 1, 2008, all fees and fines collected by the board shall be deposited into a restricted receipt account for the exclusive use of supporting programs established by this chapter. An audit may be necessary to assure that the funds earmarked for the board are used as the general law specifies. It may read a lot easier if the sections that were being used in the administrative section by the other disciplines instead of being sited were established at the beginning reflecting they were incorporated into the new section rather than keep referencing them over and over.