

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Health

DIVISION: N/A

RULE IDENTIFIER: 216-RICR-50-05-4

RULE TITLE: Licensing of Aquatic Venues

REASON FOR RULEMAKING: This rule is being amended to permit licensees or applicants to hire a private engineer, at the applicant's or licensee's own expense, to approve designs for construction of new aquatic facilities and venues, substantial alterations to existing aquatic facilities and aquatic venues, non-substantial alterations to existing aquatic facilities, and in-kind replacements; and would permit a private engineer to conduct conformance inspections and attest to the Department that an aquatic venue has been designed and constructed properly.

ANY FINDINGS REQUIRED BY LAW AS A PREEQUISITE TO THE EFFECTIVENESS OF THE RULE: N/A

TESTIMONY AND COMMENTS:

Public comment was received that any current or previously submitted projects should be finalized by the State. The proposed rule will allow applicants who currently or previously submitted projects prior to its promulgation to choose to either allow the Department to finish the review or begin the process with an independent professional engineer.

Public comment was received regarding safety concerns. The commenter notes that previous applications submitted to the Department have included multiple errors, and feared future applications would be similarly erroneous. The commenter also expresses concerns that allowing the aquatic venues to self-regulate could increase the risk of unsafe conditions at these venues. First, it is the responsibility of private engineers to do their due diligence in the design and construction of plans, and the engineers that the Department employs have the same credentials as independent private engineers. Moreover, the errors that the commenter indicates would be corrected by Department engineers under the existing rule will still be rectified under the proposed rule – they will simply be corrected by private engineers. While there is always a possibility for human error, regardless of employment setting, there is no ostensible difference between the expertise of private engineers and Department-employed engineers, nor the professional duties that they owe to their clients. Furthermore, the Department only has jurisdiction over public aquatic venues; private aquatic venues are already successfully

designed and built by private engineering firms. Therefore, the Department does not believe the proposed rule will increase safety concerns.

Public comment was received regarding concerns on worker liability. The comment states that errors made by private project engineers will now be the responsibility of Department employees. The Department disagrees that this rule will increase worker liability as a practical matter. Under common law principles of tort and sovereign immunity and Rhode Island law, a state worker performing a governmental function whose conduct is not reckless, willful, or wanton, acting within the scope of his or her authority, will not be held liable for performing that function.

Public comment was received regarding the broader impact of deregulation. The comment states that by shifting the responsibility of approving designs and construction to private engineers, it will compromise the Department's ability to hire qualified staff. The Department has struggled for numerous years to hire and maintain qualified staff for this program. Currently, the Department does not have any qualified staff to review and design aquatic venues, leaving current applicants in a state of indefinite limbo. While the Department is working to address staffing shortages, the proposed rule provides an avenue for applicants to proceed with their plans, should they choose to do so.

CHANGES TO THE TEXT OF THE RULE:

No changes were made to the text of the rule.

REGULATORY ANALYSIS:

In development of this rule, consideration was given to:

- 1) Alternative approaches;
- 2) Overlap or duplication with other statutory and regulatory provisions; and
- 3) Significant economic impact on small business

No alternative approach, duplication or overlap was identified based on available information. RIDOH has determined that the benefits of the rule justify its costs.