

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: RHODE ISLAND DEPARTMENT OF TRANSPORTATION

DIVISION: *N/A*

RULE IDENTIFIER: 290-RICR-20-00-1

REGULATION TITLE: REGULATIONS REGARDING THE USE OF HIGHWAYS,
ROADS, FREEWAYS, BRIDGES AND STRUCTURES

RULEMAKING ACTION: *Direct Final*

Direct Final: If no formal objection is received on or before **June 29, 2018**, Rhode Island Department of Transportation will file the **repeal** without opportunity for public comment.

TYPE OF FILING: *Repeal*

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date: May 30, 2018

End of comment period: June 29, 2018

SUMMARY OF PROPOSED RULE: This is a repeal and the content of this regulation has been formally adopted into the DOT's License Agreements. The requirements for this type of regulation is governed by State and Federal law and reviewed by the State Properties Committee. A separate regulation is unnecessary.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **June 29, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

KATHLEEN CORBISHLEY, ESQ.
SENIOR LEGAL COUNSEL

RIDOT
2 CAPITOL HILL
Email Address:

Kathleen.corbishley@dot.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address:

Rhode Island Department of Transportation
2 Capitol Hill
Providence, RI 02903

FOR FUTHER INFORMATION CONTACT:

Kathleen Corbishley, Esq., Senior Legal Counsel
RIDOT, 2 Capitol Hill
Providence, RI 02903
401-222-6510 ext. 4585
kathleen.corbishley@dot.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

Benefits by providing clarity regarding requirements to license property from DOT which has now been incorporated into the formal license agreement. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: *State Statute*

Regulatory Findings:

In the development of the proposed **repeal** 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 upon available information.

The Proposed Repeal:

Rhode Island Department of Transportation proposes to repeal **290-RICR-20-00-1** as follows:

(Attach Full Proposed Regulation with Mark-Ups in RICR format)

~~290-RICR-20-00-1~~

~~290 - DEPARTMENT OF TRANSPORTATION~~

~~CHAPTER 20 - USE OF HIGHWAYS, ROADS, FREEWAYS, BRIDGES AND STRUCTURES~~

~~SUBCHAPTER 00 N/A~~

~~PART 1.0 Purpose, Scope and Authority~~

~~1.1 Purpose~~

~~The purpose of these regulations is to carry out the statutory requirements contained in R.I. Gen. Laws § 37-5-~~

~~1.1.1 Scope~~

~~These regulations govern the use of highways, roads, freeways, bridges, and structures.~~

~~1.1.2 Authority~~

~~—The rules and regulations herein contained are promulgated pursuant to R.I. Gen. Laws § 37-5-2~~

~~1.2 Policy~~

~~It is hereby declared to be the official policy of the Licensor that all licenses entered into by the Licensor allowing the use of state property under the jurisdiction of the Licensor shall be governed by these Regulations and that they shall be included in such licenses by reference.~~

~~1.3 Definitions~~

- ~~1. "Licensee" means the person, firm, corporation, partnership, proprietorship or entity to whom the license is issued.~~
- ~~2. "Licensor" means the Rhode Island Department of Transportation. 3.0~~
- ~~3. "Premises" means includes all property owned by or under the jurisdiction of the Licensor.~~

~~1.4 Regulations Regarding the Use of RIDOT Property~~

~~1.4.1 Use of Premises~~

~~In reference to the uses specified in the license document, the following shall also apply:~~

~~Except as hereinabove set forth, no rights or privileges are granted to the Licensee by the Licensor, and the language of this license is not to be read so as to infer or assume any additional rights or privileges on the Licensee's part.~~

~~Any use of the Premises by the Licensee deemed by the Licensor incompatible with the provisions herein contained shall constitute a material breach of this license and the Licensor shall thereupon immediately revoke this license.~~

~~1.4.2 Repairs and Maintenance~~

~~A. The Licensee has inspected and accepts the Premises in their present condition and agrees that no representation or warranties with regard to condition, fitness for use or zoning of the Premises have been made that are not specifically expressed herein; and further agrees upon the expiration or other termination of this license, to peaceably quit and deliver possession of the Premises to the Licensor in like good order, repair and safe condition, reasonable wear and tear expected.~~

~~During the hours of the Licensee's activities and operation upon the Premises, the Licensee agrees to put and keep said Premises in good order, repair and safe condition including, but not limited to, sidewalks, driveways, and any structures erected by the Licensee thereupon. This obligation of the Licensee shall likewise apply to any damage or disrepair to the Premises, including repairs thereto, which may occur or persist after the hours of the Licensee's activities or operations but which shall have occurred as a direct result of said activities and operations.~~

~~B. The Licensee agrees to maintain the Premises at its sole cost and expense, including any subsequent alteration, addition, structures or improvements erected upon or made by the Licensee thereto, including, but in no way to, the removal of sand, trash, rubbish, snow, ice, broken glass, debris, litter and other unlawful obstructions which may accumulate thereupon.~~

~~C. The Licensee agrees to secure the premises and safeguard the physical integrity of the Premises and the Licensor's property thereupon, and to thereupon, and to safeguard said premises from unlawful entry, trespass and other acts which may actually or potentially cause the disruption of the enjoyment of the Premises by the public.~~

~~D. The Licensee shall obtain all licenses and permits required by reason of any maintenance, repairs, construction or use of the Premises as herein provided.~~

~~1.4.3 Insurance and Indemnity~~

~~A. The Licensee shall at all times carry in force public general liability insurance with responsible insurance underwriters, licensed in the State of Rhode Island, insuring the Licensee and the Licensor against all legal liability for injuries to persons (including wrongful death), personal and bodily injury and damages to property, caused by the Licensee's use and occupancy of the Premises, or otherwise caused by the Licensee's activities and operations and maintenance activities, on said Premises, with liability limits of not less than two million dollars (\$2,000,000.00) for any one person, and not less than two million dollars (\$2,000,000.00) for any accident involving injury (including wrongful death) to more than one person, and not less than two million dollars (\$2,000,000.00) for property damage and personal injury and bodily injury resulting from any one accident. Likewise the Licensee shall at all times carry in force Workmen's Compensation and Employer's Liability Insurance as required by law and covering its operations hereunder. Furthermore, the Licensee shall arrange for the Licensor to be named as a co-insured under the foregoing policy or policies.~~

~~Evidence of these policies of insurance must be submitted by the Licensee to the Licensor prior to the date of actual occupancy of the Premises by the Licensee. The Licensee shall, if requested by the Licensor, and within ten (10) days of such request, submit the actual policies of insurance to the Licensor. The Licensee shall also submit to the Licensor renewal certificates on any expiring insurance policy required hereunder by the date of expiration thereof. Additionally, each such policy shall contain a valid provision or endorsement that the policy may not be canceled, revoked, changed or modified without the Licensee giving at least ten (10) days' written advance notice thereof to the Licensor.~~

~~B. In addition, to the extent that the Licensor is not held harmless by the provision of policies of public liability insurance carried by the Licensee as hereinabove provided, the Licensee hereby agrees and covenants to defend, indemnify, and hold forever harmless the Licensor from and against all claims, causes of action, suits, losses, damages, liabilities and expenses including, but in no way limited to, the cost of suit and attorney's fees arising out of or in any way related to the Licensee's use, occupancy, and maintenance of the Premises and its operations at the Premises and/or the Licensee's failure to perform any or all of the covenants of this license under circumstances except when caused by the Licensor's sole negligence or by the joint negligence of the Licensor and any person other than the Licensee, and the coverage of this Section 4.3 shall include~~

~~_____ with out limitation thereto, damage to property, personal injuries, and bodily injuries to persons, including those resulting in death. The Licensee shall give the Licensor prompt and timely notice of any claims made or suit instituted against the Licensee which in any way would result in indemnification hereunder. The Licensor shall have the right to compromise or participate in the defense of the same to the extent of its own interests hereunder.~~

1.4.4 Utilities

~~The Licensee, at its sole cost and expense, shall arrange for and obtain necessary heat, water, electricity, sewage, storm drainage, and other utility services required for its use. In the event it is impossible or impracticable to secure any of such services other than through facilities owned by the Licensor, the Licensee shall install at its expense necessary connections, supply lines, and (where permitted by law) meters to measure the Licensee consumption of such services and shall pay to the Licensor upon demand, as additional rent, any costs incurred by the Licensor for any such installation and, further, shall pay for such services, upon demand, as additional rent, at reasonable rates as determined by the Licensor. The Licensor shall not be liable for any temporary suspension of any such services.~~

1.4.5 Personal Property

~~The Licensee shall not bring any fixtures, furnishing, machinery, or equipment upon the Premises without first obtaining the written consent of the Licensor, which consent will not be unreasonably withheld. The Licensee shall have the right to remove such personal property from the Premises any time prior to the said termination of this license. If the Licensee fails to remove the same prior to the said termination, such personal property that remains upon the Premises shall become the property of the Licensor free and clear of all claims of the Licensee, it's assigns, or creditors.~~

1.4.6 Hazardous Use

~~The Licensee agrees that the Premises shall not be used for storage of flammable, explosive or hazardous material or waste.~~

1.3.4.7 Hazardous Waste Indemnification

~~The Licensee will indemnify, save harmless and defend the Licensor from any claim or claims arising from the discovery, uncovering, finding, transportation, storage and disposal of any oil, hazardous material, hazardous waste or hazardous substances, as those terms are defined by any applicable law, rule or regulation, including without limitation, the Rhode Island Hazardous Waste Management Act, R.I.G.en. Laws § 23-19.1-1 et seq., the Rhode Island Hazardous Substances Act,~~

~~R.I. Gen. Laws § 23-24-1 et seq., the Rhode Island Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., on, beneath, above and under the Premises attributable to Licensee subsequent to the date of this agreement arising under R.I. Gen. Laws § 23-19-1 through §23-19-27, inclusive, as amended or otherwise.~~

~~1.4.8 Advertising~~

~~No advertising shall be placed upon the Premises except to advertise the Licensee's own business. All such advertising must have the prior written consent of the Licensor.~~

~~1.4.9 Liens and Charges~~

- ~~A. The Licensee, within sixty (60) days after completion of any construction, alteration, repair or improvement in or upon the Premises, shall furnish to the Licensor a certified statement that all charges for labor and materials furnished have been paid, together with releases of liens.~~
- ~~B. The creation or imposition of any lien or charge upon the Premises through acts or omissions of the Licensee, its agents, contractors or subcontractors shall be deemed a default under the provisions of this agreement.~~
- ~~C. In the event any such lien or charge shall not be paid or bonded by the Licensee within fifteen (15) days after the lien or charge accrues, the Licensor shall have the right to pay such lien or charge if it so wishes and the Licensee shall repay the cost to the Licensor as additional rent hereunder, with interest at twelve (12) percent per annum from the date of payment by the Licensor, promptly upon rendition of bill therefore. Nothing in this paragraph or in any other paragraph of this agreement shall be construed as authority to the Licensee to create any lien on the Licensor's interest in the Premises.~~

~~1.4.10 Notices~~

~~Notices given under the terms of this agreement shall be deemed sufficiently served if such notice is mailed by certified mail, return receipt requested, or is so delivered personally. If in the case of the Licensee, such notice is mailed or delivered to the Licensee at the Licensee's address set forth on the first page hereof. If, in the case of the Licensor, such notice is mailed or delivered to the Licensor at the Licensor's office at:~~

~~Department of Transportation~~

~~Property & ROW~~

~~Room 317 State Office Building~~

~~Two Capitol Hill~~

~~Providence, Rhode Island 02903~~

~~_____ or at such other place as the Licensor may from time to time designate in writing to the Licensee.~~

~~1.4.11 Responsibility of the Licensee to its Employees~~

~~The Licensee, in the performance of any and all work by the Licensee under the terms of this agreement or otherwise, upon or adjacent to the Premises, will furnish all labor and supervisory forces of every kind and the Licensee shall employ, pay from the Licensee's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons shall be and remain the sole employees of the Licensee and subject to the Licensee's exclusive supervision, direction and control.~~

~~1.4.12 Fee~~

- ~~A. _____ The parties agree that given the benefits and the burdens assumed hereunder a license fee in the amount specified in the license to which these rules and regulations are attached is considered by them appropriate and reasonable.~~
- ~~B. _____ All payments to the Licensor by the Licensee made in accordance with this license shall be in the form of personal check, money order or cashier's check or certified corporate check made payable to the "General Treasurer, State of Rhode Island" and delivered or mailed to the office of the Assistant Director for Property & Right of Way, Rhode Island Department of Transportation, Room 317, Two Capitol Hill, Providence, Rhode Island 02903 or such other address as the Licensor may specify by written notice to the Licensee. In the event that checks drawn on accounts of the Licensee are returned to the Licensor unpaid by the bank for insufficient funds or are otherwise dishonored for any reason, the Licensor may by notice to the Licensee require that all future payments made by the Licensee be certified or be made by money order or cashier's check. In no event shall any sum be tendered in cash by the Licensee.~~

1.4.13 Nondiscrimination Clause

~~In connection with the performance of work under this license and the use and occupation of the Premises, the Licensee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin or sex. The Licensee further agrees to covenant, in a form to be specified by the Licensor, that it will comply with the nondiscrimination requirements of the Code of Federal Regulations Title 39, Part 21, Appendix C (b) (3), effectuation of Title VI of the Civil Rights Act of 1964.~~

1.4.14 Access to Premises by Licensor

~~The Licensee hereby agrees and covenants that the Licensor, and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to enter upon the Premises for any of, but not limited to, the following reasons or purposes:~~

- ~~A. To inspect the Premises at reasonable intervals during hours of the Licensee's use and occupation thereof (or at any time in case of emergency) to determine whether the Licensee has complied and is complying with the terms and conditions of this license; or~~
- ~~B. To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the Premises, and to construct, maintain, repair or relocate such facilities in the future, provided, however, that said work shall in no event unduly interfere with the operations of the Licensee.~~
- ~~C. In the event of an emergency, which determination shall be at the sole determination of the Licensor, to take such action on the Premises as may be required for the protection of persons and/or property utilizing or upon the Premises or otherwise to execute the terms and conditions of this license.~~

1.4.15 Rules & Regulations

~~The Licensee agrees to observe and obey all rules and regulations promulgated from time to time by the Licensor for order and safeguard of the Premises.~~

1.4.16 Revocation

~~This license is revocable at will by either the Licensor or Licensee or both.~~

~~1.4.17 Assigning, Underletting~~

~~The Licensee shall not assign or transfer this agreement in whole or in part, or sublet the Premises or any part thereof, without the prior written consent of the Licensor; and the Licensee shall not mortgage or otherwise encumber or permit to be encumbered the term or any continued term hereof, or any part thereof, or any structures now and hereafter placed on the Premises, without the prior written consent of the Licensor.~~

~~1.14.18 Severability~~

~~If any provision of these Rules and Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of rules and regulations which can be given effect, and to this end the provisions or these rules and regulations are declared to be severable.~~

~~1.14.19 Effective Date~~

~~These Rules and Regulations shall become effective twenty (20) days after filing with the Office of the Secretary of State.~~

CERTIFICATION

~~I hereby certify that the within Rules & Regulations, relative to R.I. Gen. Laws § 37-5 have been adopted by the Department of Transportation and that this is a true copy of said Rules and Regulations.~~

DATE: _____

~~William D. Ankner, Ph.D.~~

~~DIRECTOR~~