

# MAINE STATE LEGISLATURE

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Paul R. LePage  
Governor

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
35 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0035

Anne L. Head  
Commissioner

## MEMORANDUM

To: Members of the Joint Standing Committee on Labor, Commerce, Research and Economic Development

From: Anne L. Head, Department of Professional and Financial Regulation

Subject: **Maine Sunrise Review Process Overview**

Date: February 4, 2015

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In preparation for committee discussions of legislative proposals that establish new or expanded regulatory or licensing programs, please find a brief overview of the Sunrise Review Process. In addition, please find copies of the three statutory provisions in Title 5 and 32 that outline the evaluation process.

I would be happy to answer questions at the Committee's convenience about the process.

cc: Natalie Haynes, Office of Policy and Legal Analysis  
Diane Steward, Committee Clerk

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## Maine Sunrise Review Process (5 MRS §12015)

Maine law requires a thorough evaluation whenever a joint standing committee considers proposed legislation "to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated...".

### Purpose of State Regulation of Professions and Occupations

The sole valid reason for a state to regulate a profession or occupation through licensing is to protect the state's residents whose health and safety is clearly jeopardized in the absence of regulation. If harm to the public cannot be clearly demonstrated, state licensing is not warranted.

### Purpose of Sunrise Review

In the early 1990's, many legislative proposals to establish new licensing programs were submitted to the Maine Legislature. As a result of the significant time and resources needed to evaluate these proposals, the Legislature determined that it needed to standardize the evaluation process. The Sunrise Review Process was adopted by the Maine Legislature in 1995 to provide a mechanism for gathering and analyzing pertinent information needed to make an informed decision about whether to regulate a particular group of individuals or entities.

### Evaluation of Proposals to establish new licensing programs

Maine law requires that proponents of new state regulation provide information in thirteen categories. These categories are set forth in 32 MRS §60-J as follows:

1. Data on Group to be regulated
2. Specialized skill required to practice the profession
3. Demonstrated harm to the public without regulation
4. Voluntary and Past efforts of profession to protect the public (self-regulation)
5. Economic Cost/Benefit Analysis - extent to which regulation will increase cost of goods or services to the public
6. Service Availability—whether regulation would increase or decrease availability of service to the public

7. Existing laws and rules—why existing legal remedies are not sufficient to address potential harm to the public
8. Other less burdensome methods of regulation
9. Other states' regulation
10. Previous efforts to implement regulation of the profession or occupation
11. Mandated benefits
12. Minimum competence—whether the proposed requirements for regulation exceed minimal competence
13. Financial Analysis—method proposed to finance proposed regulation

### Mechanism for Sunrise Review

The Committee has three options when the Sunrise Review provisions are triggered by a legislative proposal:

- Hold a public hearing to accept information required by 32 MRS § 60-J and allow testimony for and against the proposal;
- Request DPFR to conduct an independent assessment of the need for regulation and report back to the Committee with a recommendation by a specific date; or
- Request DPFR to form a technical committee to assess the applicant's information and report back to the Committee within 6 months of establishment of the technical committee.

**Maine Revised Statutes**  
**Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES**  
**Chapter 379: BOARDS, COMMISSIONS, COMMITTEES AND SIMILAR**  
**ORGANIZATIONS**

**§12015. NEW BOARDS**

Any boards established on or after July 25, 1984 shall conform to the following provisions. [1997, c. 2, §16 (COR) .]

**1. Membership; terms; vacancies.** Each board may have no fewer than 3 members. Boards established after September 1, 2000 to regulate professions or occupations may have no more than 9 members, including at least 2 public members. Law establishing the board must provide for appointments, terms of office, qualifications and removal of its members. In the event of the death, resignation or removal of any member, the vacancy for that member's unexpired term must be filled in the same manner as that member's original appointment.

[ 1999, c. 687, Pt. B, §2 (AMD) .]

**2. Sunset.**

[ 1999, c. 668, §49 (RP) .]

**3. Sunrise review required.** Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation" means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by Title 32, section 60-J. Following this informal review, the committee shall:

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation; [1995, c. 686, §1 (RPR) .]

B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or [1995, c. 686, §1 (RPR) .]

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II and report its findings to the commissioner within 6 months of establishment of the committee. [1995, c. 686, §1 (RPR) .]

D. [1995, c. 686, §1 (RP) .]

E. [1995, c. 686, §1 (RP) .]

F. [1995, c. 686, §1 (RP) .]

G. [1995, c. 686, §1 (RP) .]

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation.

[ 1995, c. 686, §1 (RPR) .]

SECTION HISTORY

1983, c. 814, (NEW). 1985, c. 748, §13 (AMD). 1995, c. 686, §1 (AMD).  
RR 1997, c. 2, §16 (COR). 1999, c. 668, §49 (AMD). 1999, c. 687, §B2  
(AMD).

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**Maine Revised Statutes**  
**Title 32: PROFESSIONS AND OCCUPATIONS**  
**Chapter 1-A: GENERAL PROVISIONS**

**§60-J. EVALUATION CRITERIA**

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are: [1995, c. 686, §2 (NEW) .]

**1. Data on group.** A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

[ 1995, c. 686, §2 (NEW) .]

**2. Specialized skill.** Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

[ 1995, c. 686, §2 (NEW) .]

**3. Public health; safety; welfare.** The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

[ 1995, c. 686, §2 (NEW) .]

**4. Voluntary and past regulatory efforts.** A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

[ 1995, c. 686, §2 (NEW) .]

**5. Cost; benefit.** The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

[ 1995, c. 686, §2 (NEW) .]

**6. Service availability of regulation.** The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

[ 1995, c. 686, §2 (NEW) .]

**7. Existing laws and regulations.** The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners;

[ 1995, c. 686, §2 (NEW) .]

**8. Method of regulation.** Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate;

[ 1995, c. 686, §2 (NEW) .]

**9. Other states.** A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis;

[ 1995, c. 686, §2 (NEW) .]

**10. Previous efforts.** The details of any previous efforts in this State to implement regulation of the profession or occupation;

[ 1995, c. 686, §2 (NEW) .]

**11. Mandated benefits.** Whether the profession or occupation plans to apply for mandated benefits;

[ 1995, c. 686, §2 (NEW) .]

**12. Minimal competence.** Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and

[ 1995, c. 686, §2 (NEW) .]

**13. Financial analysis.** The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

[ 1995, c. 686, §2 (NEW) .]

#### SECTION HISTORY

1995, c. 686, §2 (NEW) .

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**Maine Revised Statutes**  
**Title 32: PROFESSIONS AND OCCUPATIONS**  
**Chapter 1-A: GENERAL PROVISIONS**

**§60-K. COMMISSIONER'S INDEPENDENT ASSESSMENT**

**1. Fees.** Any applicant group whose regulatory proposal has been directed to the commissioner for independent assessment shall pay an administrative fee determined by the commissioner, which may not exceed \$500. The commissioner may waive the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

A. The applicant group is an agency of the State; or [1995, c. 686, §2 (NEW) .]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group. [1995, c. 686, §2 (NEW) .]

[ 1995, c. 686, §2 (NEW) .]

**2. Criteria.** In conducting the independent assessment, the commissioner shall apply the evaluation criteria established in section 60-J to all of the answers and information submitted to the commissioner or otherwise collected by the commissioner pursuant to section 60-J.

[ 1995, c. 686, §2 (NEW) .]

**3. Recommendations.** The commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the evaluation, that includes any legislation required to implement the commissioner's recommendation. The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner finds that final answers to the evaluation criteria are sufficient to support some form of regulation, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest.

[ 1995, c. 686, §2 (NEW) .]

**SECTION HISTORY**

1995, c. 686, §2 (NEW) .

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**Maine Revised Statutes**  
**Title 32: PROFESSIONS AND OCCUPATIONS**  
**Chapter 1-A: GENERAL PROVISIONS**

**§60-L. TECHNICAL COMMITTEE; FEES; MEMBERSHIP; DUTIES;  
COMMISSIONER'S RECOMMENDATION**

**1. Fees.** Any applicant group whose regulatory proposal has been directed to the commissioner for review by a technical committee shall pay a fee determined by the commissioner as required to administer the technical committee, which fee may not exceed \$1,000. The administrative fee is not refundable, but the commissioner may waive all or part of the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

- A. The applicant group is an agency of the State; or [1995, c. 686, §2 (NEW) .]
- B. Payment of the application fee would impose unreasonable hardship on members of the applicant group. [1995, c. 686, §2 (NEW) .]

[ 1995, c. 686, §2 (NEW) .]

**2. Technical committee membership.** The commissioner shall appoint a technical committee consisting of 7 members to examine and investigate each proposal.

- A. Two members must be from the profession or occupation being proposed for regulation or expansion of regulation. [1995, c. 686, §2 (NEW) .]
- B. Two members must be from professions or occupations with a scope of practice that overlaps that of the profession or occupation being proposed for regulation or expansion of regulation. If there is more than one overlapping profession or occupation, representatives of the 2 with the greatest number of practitioners must be appointed. [1995, c. 686, §2 (NEW) .]
- C. One member must be the commissioner or the commissioner's designee. [1995, c. 686, §2 (NEW) .]
- D. Two members must be public members. These persons and their spouses, parents or children may not be or ever have been members of, and may not have or ever have had a material financial interest in, the profession or occupation being proposed for regulation or expansion of regulation or another profession or occupation with a scope of practice that may overlap that of the profession or occupation being proposed for regulation. [1995, c. 686, §2 (NEW) .]

The professional and public members serve without compensation. The chair of the committee must be the commissioner, the commissioner's designee or a public member. The commissioner shall ensure that the total composition of the committee is fair and equitable.

[ 1995, c. 686, §2 (NEW) .]

**3. Meetings.** As soon as possible after appointment, a technical committee shall meet and review the proposal assigned to it. Each committee shall investigate the proposed regulation and, on its own motion, may solicit public input. Notice of all meetings must be printed in the legislative calendar at an appropriate time preceding the meeting.

[ 1995, c. 686, §2 (NEW) .]

**4. Procedure for review.** Applicant groups are responsible for furnishing evidence upon which a technical committee makes its findings. The technical committee may also utilize information received through public input or through its own research or investigation. The committee shall make a report of its

findings and file the report with the commissioner. The committee shall evaluate the application presented to it based on the information provided as required by section 60-J. If the committee finds that additional information is required to assist in developing its recommendations, it may require that the applicant group provide this information or may otherwise solicit information for this purpose. If the committee finds that final answers to the evaluation criteria are sufficient to support regulation of a profession or occupation not currently regulated, the committee must also recommend the least restrictive method of regulation to be implemented, consistent with the public interest. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

[ 1995, c. 686, §2 (NEW) .]

**5. Commissioner report.** After receiving and considering reports from the technical committee, the commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the review, that includes any legislation required to implement the commissioner's recommendation. The final report must include copies of the committee report, but the commissioner is not bound by the findings and recommendations of the report. In compiling the report, the commissioner shall apply the criteria established in section 60-J and may consult with the technical committee. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest. The final report must be submitted to the joint standing committee of the Legislature having jurisdiction over occupational and professional regulation matters no later than 9 months after the proposal is submitted to the technical committee and must be made available to all other members of the Legislature upon request.

The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner recommends that a proposal of an applicant group be approved, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group.

[ 1995, c. 686, §2 (NEW) .]

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1995, c. 686, §2 (NEW) .

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