

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 993

H.P. 694

House of Representatives, March 8, 1991

Received by the Clerk of the House on March 6, 1991. Referred to the Committee on Business Legislation and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative LUTHER of Mexico.

Cosponsored by Representative BELL of Caribou and Representative CATHCART of Orono.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Regulate Building Contractors.**

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Be it enacted by the People of the State of Maine as follows:

2  
4 Sec. 1. 3 MRSA §927, sub-§1, ¶B, as amended by PL 1989, c.  
857, §9, is further amended to read:

6 B. Independent agencies:

8 (1) Board of Building Contractors.

10 Sec. 2. 5 MRSA §12004-A, sub-§20-A is enacted to read:

12 20-A. Board of \$35/Day 32 MRSA §14005  
14 Building Contractors

16 Sec. 3. 10 MRSA §8001, as repealed and replaced by PL 1989,  
c. 806, §2 and c. 878, Pt. D. §6, is repealed and the following  
18 enacted in its place:

20 §8001. Department; organization

22 There is created and established the Department of  
24 Professional and Financial Regulation, in this chapter referred  
26 to as the "department," to regulate financial institutions,  
28 insurance companies, commercial sports and grantors of consumer  
30 credit and to license and regulate professions and occupations.  
32 The department is composed of the following bureaus, boards and  
34 commissions:

30 1. Bureau of Banking. Banking, Bureau of;

32 2. Bureau of Consumer Credit Protection. Consumer Credit  
34 Protection, Bureau of;

34 3. Bureau of Insurance. Insurance, Bureau of;

36 4. Maine Athletic Commission. Athletic Commission, Maine;

38 5. Maine State Pilotage Commission. Pilotage Commission,  
40 Maine State;

42 6. Real Estate Commission. Real Estate Commission;

44 7. Arborist Examining Board. Arborist Examining Board;

46 8. Board of Licensing of Auctioneers. Auctioneers, Board  
48 of Licensing of;

48 9. State Board of Barbers. Barbers, State Board of;

50 10. Board of Commercial Driver Education. Commercial  
52 Driver Education, Board of;

- 2        11. Board of Licensing of Dietetic Practice. Dietetic  
Practice, Board of Licensing of;
- 4        12. Electricians' Examining Board. Electricians' Examining  
Board;
- 6
- 8        13. State Board of Licensure for Professional Foresters.  
Foresters, State Board of Licensure for Professional;
- 10       14. State Board of Funeral Service. Funeral Service, State  
Board of;
- 12
- 14       15. State Board of Certification for Geologists and Soil  
Scientists. Geologists and Soil Scientists, State Board of  
Certification for;
- 16
- 18       16. Board of Hearing Aid Dealers and Fitters. Hearing Aid  
Dealers and Fitters, Board of;
- 20       17. Manufactured Housing Board. Manufactured Housing Board;
- 22       18. Nursing Home Administrators Licensing Board. Nursing  
Home Administrators Licensing Board;
- 24
- 26       19. Board of Occupational Therapy Practice. Occupational  
Therapy Practice, Board of;
- 28       20. Oil and Solid Fuel Board. Oil and Solid Fuel Board;
- 30       21. Board of Examiners in Physical Therapy. Physical  
Therapy, Board of Examiners in;
- 32
- 34       22. Plumbers' Examining Board. Plumbers' Examining Board;
- 36       23. State Board of Examiners of Psychologists.  
Psychologists, State Board of Examiners of;
- 38       24. Radiologic Technology Board of Examiners. Radiologic  
Technology Board of Examiners;
- 40
- 42       25. Board of Respiratory Care Practitioners. Respiratory  
Care Practitioners, Board of;
- 44       26. State Board of Social Worker Licensure. Social Worker  
Licensure, State Board of;
- 46
- 48       27. Board of Examiners on Speech Pathology and Audiology.  
Speech Pathology and Audiology, Board of Examiners on;
- 50       28. State Board of Registration of Substance Abuse  
Counselors. Substance Abuse Counselors, State Board of  
Registration of;
- 52



2           3. Commissioner. "Commissioner" means the Commissioner of  
Professional and Financial Regulation.

4           4. Construct. "Construct" means to erect, reconstruct,  
demolish, alter, convert, repair, renovate, restore, remodel,  
6           move or equip buildings.

8           5. Building contractor. "Building contractor" means a  
person who, independently or through others, offers, indicates an  
10           ability, submits a bid or undertakes to construct, as prime  
contractor or any tier of subcontractor, a building, other than  
12           the person's own home, including excavation, unless the work  
involved is regulated by other sections of state law.

14           §14002. Registration required

16           Effective October 1, 1992, a person, unless specifically  
18           exempted by this chapter, may not be a building contractor unless  
registered in accordance with this chapter.

20           §14003. Violation

22           Any person who violates this chapter is guilty of a Class E  
24           crime. The State may bring an action in Superior Court to enjoin  
26           any person from violating this chapter, regardless of whether  
proceedings have been or may be instituted in the Administrative  
28           Court or whether criminal proceedings have been or may be  
instituted.

30           Evidence of the securing of any building or construction  
32           permit from a governmental agency, the employment of any person  
on a building project, the offering of any bid to act as  
34           contractor or advertising as a building contractor constitutes  
prima facie evidence of engaging in the business or acting in the  
36           capacity of a building contractor.

38           §14004. Civil actions

40           A contract for the performance of any act for which  
42           registration is required by this chapter is not enforceable by  
the contractor unless the contractor was properly registered at  
44           the time the work was performed.

46           §14005. Board of Building Contractors; establishment;  
compensation

48           1. Establishment. The Department of Professional and  
Financial Regulation, Board of Building Contractors, as  
50           established by Title 5, section 12004-A, subsection 20-A shall  
carry out the purposes of this chapter.

52

2       2. Members. The board consists of 5 members appointed by  
3 the Governor. Each member must be a citizen of the United States  
4 and a resident of the State. Members must be selected in a  
5 manner that provides geographic representation of various parts  
6 of the State. The qualifications of board members are as follows.

7       A. One member must be a person whose principal business is  
8 the construction of homes.

10       B. One member must be a specialty contractor involved in  
11 construction who is not required to be licensed under other  
12 laws of this State.

14       C. One member must be a person whose principal business is  
15 the construction of commercial or industrial buildings.

16       D. One member must be a real estate developer who contracts  
17 for the construction of buildings but does not construct  
18 them.

20       E. One member must be a member of the public who has no  
21 involvement with construction and whose parents, spouse and  
22 children have no such involvement.

24       3. Timetable. The Governor shall make initial appointments  
25 by October 15, 1991. The commissioner shall call the first  
26 meeting of the board by November 10, 1991 and shall act as chair  
27 until a chair is selected. The board shall select a chair,  
28 vice-chair and secretary at the end of its first meeting. These  
29 officers must be selected annually.

32       4. Terms of office. Of the first board members, the  
33 Governor shall appoint one for a term of one year, one for a term  
34 of 2 years and 3 for terms of 3 years. Their successors must be  
35 appointed for terms of 3 years each, except that any person  
36 chosen to fill a vacancy must be appointed only for the unexpired  
37 term of the board member to be succeeded. Upon the expiration of  
38 the term of office, a board member shall continue to serve until  
39 a successor has been appointed and qualified. The Governor shall  
40 nominate a new member within 30 days of the occurrence of a  
41 vacancy. A person may not be appointed for more than 2 full  
42 consecutive terms. Upon expiration of a member's first term, the  
43 board shall recommend to the Governor whether the member should  
44 be reappointed.

46       5. Removal. The Governor may remove any member of the  
47 board for good cause, which includes malfeasance and neglect of  
48 duty. A member who is subject to removal must be granted a  
49 public hearing if the member requests.

50       6. Conflict of interest. A board member may not  
51 participate in any matter before the board in which the board

2 member has a pecuniary interest or personal bias or if any other  
3 conflict of interest is established.

4 7. Compensation. Members of the board are entitled to  
5 compensation as provided in Title 5, chapter 379.

6 8. Meetings; quorum. The board shall hold at least 2  
7 regular meetings each calendar year. Additional meetings must be  
8 held upon the call of the chair or the secretary or upon written  
9 request of 2 board members. Three members of the board  
10 constitute a quorum.

11 §14006. Board of Building Contractors; powers; duties

12 The board has the following duties and powers in addition to  
13 all other powers and duties set forth in this chapter.

14 1. Administration and enforcement. The board shall  
15 administer and enforce this chapter.

16 2. Rules. The board shall adopt rules necessary for, and  
17 consistent with, the administration of this chapter. These rules  
18 must be adopted in accordance with the Maine Administrative  
19 Procedure Act, Title 5, chapter 375.

20 3. Eligibility for registration. The board shall determine  
21 if it wishes to grant limited registration to applicants under  
22 section 14007, subsection 2 or vary the required bond amount  
23 under section 14007, subsection 3.

24 4. Complaints and violations. The board shall investigate  
25 or cause to be investigated a complaint made on its own motion or  
26 on written complaint filed with the board and all cases of  
27 noncompliance with or violation of this chapter or any rules  
28 adopted by the board. The board shall establish procedures to  
29 permit and facilitate the filing of written complaints by  
30 consumers and shall ensure that the public is aware of the right  
31 to file complaints.

32 5. Records. The board shall keep those records and minutes  
33 necessary to its functions.

34 6. Contracts. The board may enter into contracts to carry  
35 out its responsibilities under this chapter.

36 7. Hearings. The board shall conduct hearings to assist in  
37 investigating complaints and to determine if grounds exist for  
38 refusing to renew a registration. The board may not refuse to  
39 renew a registration unless the person refused is offered the  
40 opportunity for an adjudicatory hearing. These hearings must be  
41 conducted in conformity with the Maine Administrative Procedure  
42 Act, Title 5, chapter 375, subchapter IV.



2           8. Code of ethics and bill of rights. The board shall  
4           develop and adopt a code of ethics for building contractors and a  
            bill of rights for consumers. These must be made available at no  
            cost to registered contractors.

6  
8           9. Register. The board shall make available to consumers  
10           at the cost of printing, handling and mailing a listing of all  
12           persons registered with the board and containing information  
14           provided by the contractor at time of registration. The board  
            shall determine what information from the contractor's financial  
            statement may be released to the public. This register may be  
            made available in editions that cover the State by geographic  
            area. This register must be revised at least biennially. The  
            board shall publicize widely the availability of this register.

16  
18           10. Budget. The board shall submit to the commissioner in  
20           the manner provided in Title 5, section 1665, a budget sufficient  
22           to carry out this chapter. The commissioner shall transmit this  
            original budget, together with any revisions, to the Bureau of  
            the Budget. The commissioner shall inform the board in writing  
            of the reasons for any revision to the board's budget.

24           11. Fees. Within the limits set by law, the board shall  
26           set fees for registration and reregistration that are sufficient,  
28           but no more than sufficient, to implement the provisions of the  
            law and of any rules that the board may pass. The board shall  
            report to the commissioner if it determines that fee limits set  
            by statute are insufficient.

30  
32           12. Report. No later than August 1st of each year, the  
34           board shall submit to the commissioner a report of its operations  
36           and financial position for the preceding fiscal year ending June  
38           30th, together with any comments and recommendations that the  
            board determines necessary. The report must include comments  
            regarding the quality and quantity of employee assistance  
            provided by the department and the Department of the Attorney  
            General.

40           13. Education. The board shall produce and distribute  
42           written material to educate the consumer and the building  
44           contractor. This material must include a basic business  
46           practices guide for contractors. For consumers it must include a  
48           description of the registration program and its significance,  
            advice on obtaining references and the importance of doing so and  
            instructions regarding complaint procedures. These materials  
            must be provided at no cost to registered contractors and in  
            reasonable quantities necessary for distribution as required in  
            this chapter.

50           §14007. Registration procedures and requirements  
52

2 1. Information required. To apply for registration under  
3 this chapter, a building contractor must provide, on forms  
4 provided by the board, the following information plus any  
5 additional information that the board requires:

6 A. The number of years of professional experience of the  
7 firm and of each principal;

8  
9 B. Five letters of recommendation from customers or  
10 previous employers;

11 C. The number, dollar value and type of projects completed  
12 in the last 3 years;

13 D. A credit report and financial statement;

14  
15 E. The amount and type of liability and property damage,  
16 insurance carried, claims against this insurance in the last  
17 3 years and names of carriers in the last 3 years;

18  
19 F. A report of violations of municipal building ordinances  
20 in the last 3 years;

21 G. Proof of bonding as required in this section;

22  
23 H. A description of any law suits brought against the firm  
24 in the last 3 years and their disposition;

25 I. A description of any business-related education and  
26 course work; and

27 J. A list of trade association memberships.

28  
29 The applicant shall attest to the accuracy of the information  
30 provided. Any intentional falsification of the information  
31 provided is a violation of this chapter.

32  
33 2. Experience and reference requirements. The board may  
34 require that any firm that does not provide 5 references or does  
35 not, itself, have at least 4 years' experience as a building  
36 contractor or have a principal with at least 4 years' experience  
37 as a building contractor may begin work on only one project with  
38 an estimated cost of over \$5,000 at a time and may not begin work  
39 on a 2nd such project until the first project is 80%  
40 satisfactorily completed.

41  
42 3. Bond required. To assure the faithful performance of  
43 its obligations to its customers, every building contractor,  
44 prior to being registered, shall file with the board a surety  
45 bond in the amount of \$5,000, unless the board directs a  
46 different amount as indicated in this subsection. The board may  
47 require a bond in any amount between \$1,000 and \$15,000 for an  
48

2 individual applicant based on the applicant's financial and  
3 professional responsibility and the size of the applicant's  
4 business. The bond must be for the benefit of and subject to  
5 action by any person sustaining actionable injury due to the  
6 failure of the building contractor to perform faithfully its  
7 obligations.

8 The bond must be one issued by an insurer duly authorized to  
9 transact surety insurance in this State. No bond may be canceled  
10 or subject to cancellation unless at least 30 days' advance  
11 notice is given to the board. The bond must be maintained  
12 unimpaired during the applicant's period of registration. A  
13 negotiable security bond, property bond, savings account  
14 assignment, irreversible letter of credit or cash may be  
15 substituted for the surety bond.

16  
17 4. Educational materials. Before providing a customer with  
18 an estimate, building contractors shall provide the customer with  
19 a contractor code of ethics, consumer bill of rights,  
20 instructions on dealing with contractors and procedures for  
21 reporting complaints. The State shall provide sufficient copies  
22 of these materials to the contractor at no charge.

23  
24 5. Term of registration. Initial registration expires  
25 after one year. Renewal registration expires biennially. The  
26 commissioner shall determine the date of expiration most  
27 compatible with the workload of the Department of Professional  
28 and Financial Regulation. An applicant seeking registration must  
29 update all information provided in the original application on  
30 forms provided by the board. Notice of expiration must be mailed  
31 by the board to the registrant's last known address at least 30  
32 days in advance of the expiration of the registration.

33  
34 6. Fees. The board shall establish application fees in  
35 amounts that are necessary to implement and administer the  
36 registration program, to provide the education materials  
37 specified in this chapter and to produce the listing of  
38 registrants. Fees may not exceed these requirements, nor may  
39 they exceed \$125 a year.

40 §14008. Disciplinary action

41  
42  
43 1. Grounds. The board may refuse reregistration or revoke  
44 or suspend a registration pursuant to Title 5, section 10004 or  
45 may take other action pursuant to Title 10, section 8003,  
46 subsection 5. These actions may be based on any of the following  
47 grounds:

48  
49 A. Practicing fraud or deceit in obtaining a license under  
50 this chapter;

- 2           B. Engaging in conduct that evidences a lack of ability to  
4           discharge the duty owed the customer or engaging in conduct  
6           that evidences a lack of knowledge or ability to apply  
8           principles or skills to carry out the practice of  
10           construction;
- 12           C. Engaging in unprofessional conduct, which means a  
14           violation of any code of ethics adopted by the board or  
16           demonstrated negligence or misconduct;
- 18           D. Failing or refusing, without good cause, to exercise  
20           reasonable diligence in construction;
- 22           E. Abandoning a contract without legal cause;
- 24           F. Willfully or deliberately disregarding and violating the  
26           applicable building codes or ordinances of the State or its  
28           subdivisions;
- 30           G. Failing to provide consumer education materials as  
32           required by this chapter;
- 34           H. Having had a license, certification or registration  
36           revoked or suspended in any other state in this or a related  
38           field, unless the period of revocation or suspension has  
40           been completed; or
- 42           I. Violation of any provisions of this chapter or rules of  
44           the board.

46           2. Procedure. Except as provided in Title 5, section  
48           10004, reregistration may not be denied or registration revoked  
50           or suspended for the reasons set forth in subsection 1, without  
52           prior written notice and opportunity for a hearing. The burden  
              of proof is on the board in any proceeding to deny reregistration  
              or revoke or suspend registration. Reregistration may not be  
              denied or registration revoked or suspended under this section  
              except by majority vote of the board.

3. Complaints. Any person may file a complaint with the  
              board seeking disciplinary action against a person registered by  
              the board. Complaints must be in writing in a form prescribed by  
              rule by the board. If the board determines that a complaint  
              alleges facts that, if true, would require nonrenewal of  
              registration or other disciplinary action, the board shall  
              conduct a hearing pursuant to the Maine Administrative Procedure  
              Act, Title 5, chapter 375. Whenever the board establishes that a  
              complaint does not state facts that warrant a hearing, the  
              complaint may be dismissed. Persons making complaints must be  
              advised in writing of each formal decision made by the board  
              regarding that complaint.

2/ Any individual whose reregistration has been denied, or whose  
4 registration has been suspended or revoked may apply to the board  
6 for reinstatement one year after the date of the board's original  
8 action.

6 **§14009. Nonresident registration**

8 Each applicant for registration under this chapter who is  
10 not a resident of this State shall submit with the application an  
12 irrevocable consent that service of process on the applicant may  
14 be made by delivery of the process to the commissioner if, in an  
16 action against the applicant in a court of this State arising out  
18 of the applicant's activities as a building contractor in this  
20 State, the plaintiff can not, in the exercise of due diligence,  
22 effect personal service upon the applicant.

18 **§14010. Registration numbers**

20 The board shall assign successful applicants a registration  
22 number. The registered contractor shall use this number in all  
24 advertising, promotional literature, correspondence and receipts  
26 for client payment. Advertising or promotion in any form by an  
28 unregistered contractor is prohibited.

26 **§14011. Employees**

28 The commissioner shall appoint, subject to the Civil Service  
30 Law and with the advice of the board, any employees that may be  
32 necessary to carry out this chapter. Any person so employed must  
34 be in the Department of Professional and Financial Regulation and  
36 under the administrative and supervisory direction of the  
38 commissioner.

34 **STATEMENT OF FACT**

36 This bill requires that persons who construct, remodel or  
38 repair commercial or residential buildings as contractors or  
40 subcontractors must be registered with the State. Registration  
42 requires that the applicant provide information regarding related  
44 education and experience and provide a credit report, financial  
46 statement and 5 references. If the firm or its principals do not  
48 have 4 years of experience or can not provide the required  
50 references, the board may require that the firm complete 80% of  
52 any project over \$5,000 before beginning the next such project.  
Bonding in an amount of \$5,000, or as determined by the board, is  
required. Several alternatives to bonding are offered.

50 Initial registration is for one year. Subsequent  
52 reregistration is for 2 years. Registration fees are to be set  
by the board but are not to exceed \$125 a year. The board may  
refuse reregistration or suspend or revoke registration based on

2 a number of grounds, including incompetence, violation of a  
3 board-developed code of ethics, failure to exercise diligence,  
4 negligence, misconduct and violation of building codes and  
5 ordinances.

6 This bill establishes the Board of Building Contractors to  
7 oversee contractor regulation. The board is to have its first  
8 meeting by November 10, 1991 and registration is required by  
9 October 1, 1992. The board is to make available educational  
10 materials for contractors and for consumers, including a bill of  
11 rights, procedures for dealing with contractors and a listing of  
12 registered contractors, including appropriate information from  
13 their registration forms.

14 In accordance with the Maine Revised Statutes, Title 5,  
15 section 12015, any joint standing committee recommending passage  
16 of this bill is required to submit to the Legislature a written  
17 report to support the recommendation that building contractors be  
18 subject to state regulation.