

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

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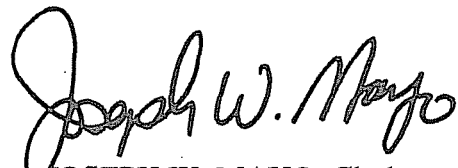
H.P. 984

House of Representatives, April 22, 1993

**An Act to Establish a Registration System for General Contractors.**

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Received by the Clerk of the House on April 20, 1993. Referred to the Committee on Business Legislation and 1200 ordered printed pursuant to Joint Rule 14.

  
JOSEPH W. MAYO, Clerk

Presented by Representative VIGUE of Winslow.

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

2  
3 Sec. 1. 3 MRSA §927, sub-§1, ¶B, as amended by PL 1991, c.  
4 376, §4, is further amended to read:

6 B. Independent agencies:

8 (1) Maine Emergency Medical Services; and

10 (2) State Liquor Commission; and

12 (3) Board of Building Contractors.

14 Sec. 2. 5 MRSA §12004-A, sub-§7-A is enacted to read:

16 7-A. Board of \$35/Day 32 MRSA §14005  
18 Building Contractors

20 Sec. 3. 10 MRSA §8001, sub-§§35 and 36, as repealed and  
replaced by PL 1991, c. 548, Pt. B, §1, are amended to read:

22 35. Board of Counseling Professionals Licensure.  
24 Counseling Professionals Licensure, Board of; and

26 36. Board of Real Estate Appraisers. Real Estate  
Appraisers, Board of; and

28 Sec. 4. 10 MRSA §8001, sub-§37 is enacted to read:

30 37. Board of Building Contractors. Building Contractors,  
32 Board of.

34 Sec. 5. 32 MRSA c. 124 is enacted to read:

36 CHAPTER 124

38 BUILDING CONTRACTORS

40 §14001. Definitions

42 As used in this chapter, unless the context otherwise  
44 indicates, the following terms have the following meanings.

46 1. Board. "Board" means the Board of Building Contractors.

48 2. Building. "Building" means a combination of materials,  
49 whether portable or fixed, that comprises a structure affording  
50 facilities or shelter for any use or occupancy, including  
attachments to the building such as signs, marquees and

2 canopies. "Building" does not mean manufactured housing or  
3 mobile homes certified pursuant to the manufactured housing laws  
4 of the State.

6 3. Commissioner. "Commissioner" means the Commissioner of  
7 Professional and Financial Regulation.

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

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

18 **§14002. Registration required**

20 Effective October 1, 1994, a person, unless specifically  
21 exempted by this chapter, may not be a building contractor unless  
22 registered in accordance with this chapter.

24 **§14003. Violation**

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

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

40 **§14004. Civil actions**

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

48 **§14005. Board of Building Contractors; establishment;**  
49 **compensation**

1           1. Establishment. The Department of Professional and  
2 Financial Regulation, Board of Building Contractors as  
3 established by Title 5, section 12004-A, subsection 7-A shall  
4 carry out the purposes of this chapter.

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

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

14           B. One member must be a specialty contractor who is  
15 involved in construction and not required to be licensed  
16 under other laws of this State.

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

22           D. One member must be a real estate developer who contracts  
23 for the construction of buildings but does not construct  
24 them.

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

30           3. Timetable. The Governor shall make initial appointments  
31 by October 15, 1993. The commissioner shall call the first  
32 meeting of the board by November 10, 1993 and shall act as chair  
33 until a chair is selected. The board shall select a chair,  
34 vice-chair and secretary at the end of its first meeting. These  
35 officers must be selected annually.

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

50

2       5. Removal. The Governor may remove a member of the board  
4       for good cause, which includes malfeasance and neglect of duty.  
      A member who is subject to removal must be granted a public  
      hearing upon request.

6       6. Conflict of interest. A board member may not  
8       participate in matters before the board in which the board member  
      has a pecuniary interest or personal bias or if there is any  
      other conflict of interest.

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

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

20       **§14006. Board of Building Contractors; powers; duties**

22       The board has the following duties and powers in addition to  
24       all other powers and duties under this chapter.

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

28       2. Rules. The board shall adopt rules necessary for and  
30       consistent with the administration of this chapter. These rules  
      must be adopted in accordance with the Maine Administrative  
32       Procedure Act.

34       3. Eligibility for registration. The board shall determine  
      whether it wishes to grant limited registration to applicants  
36       under section 14007, subsection 2 or to vary the required bond  
      amount under section 14007, subsection 3.

38       4. Complaints and violations. The board shall investigate  
40       or cause to be investigated a complaint made on its own motion or  
      on written complaint filed with the board and all cases of  
42       noncompliance with or violation of this chapter or the rules  
      adopted by the board. The board shall establish procedures to  
44       permit and facilitate the filing of written complaints by  
      consumers and shall ensure that the public is aware of the right  
46       to file complaints.

48       5. Records. The board shall keep necessary records and  
      minutes.

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

4           7. Hearings. The board shall conduct hearings to assist in  
investigating complaints and to determine whether grounds exist  
6           for refusing to renew a registration. The board may not refuse  
to renew a registration unless the person refused is offered the  
8           opportunity for an adjudicatory hearing. These hearings must be  
conducted in conformity with Title 5, chapter 375, subchapter IV.

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

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

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

32           11. Fees. Within the limits set by law, the board shall  
34           set fees for registration and reregistration that are sufficient,  
but no more than sufficient, to implement the provisions of law  
36           and of the rules passed by the board. The board shall report to  
the commissioner if it determines that set fee limits are  
38           insufficient.

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

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

12           §14007. Registration procedures and requirements

13           1. Information required. To apply for registration under  
14 this chapter, a building contractor must provide on forms  
15 provided by the board the following information and any  
16 additional information the board requires:

17                   A. The number of years of professional experience of the  
18 firm and of each principal;

19                   B. Five letters of recommendation from customers or  
20 previous employers;

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

23                   D. A credit report and financial statement;

24                   E. The amount and type of liability and property damage  
25 insurance carried, claims against this insurance in the last  
26 3 years and names of carriers in the last 3 years;

27                   F. A report of violations of municipal building ordinances  
28 in the last 3 years;

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

30                   H. A description of the lawsuits brought against the firm  
31 in the last 3 years and their disposition;

32                   I. A description of the business-related education and  
33 course work of each principal; and

34                   J. A list of trade association memberships.

35           The applicant shall attest to the accuracy of the information  
36 provided. Intentional falsification of the information provided  
37 is a violation of this chapter.

38



2           2. Experience and reference requirements. The board may  
4           require that a firm that does not provide 5 references, does not  
6           itself have at least 4 years' experience as a building contractor  
8           or does not have a principal with at least 4 years' experience as  
          a building contractor begin work on only one project with an  
          estimated cost of over \$5,000 at a time and satisfactorily  
          complete 80% of the first project before work on a 2nd project is  
          begun.

10           3. Bond required. To ensure the faithful performance of  
12           its obligations to its customers, every building contractor,  
14           prior to being registered, shall file with the board a surety  
16           bond in the amount of \$5,000, unless the board directs a  
18           different amount as indicated in this subsection. The board may  
20           require a bond in an amount between \$1,000 and \$15,000 for an  
22           individual applicant based on the applicant's financial and  
          professional responsibility and the size of the applicant's  
          business. The bond must be for the benefit of and subject to  
          action by a person sustaining actionable injury due to the  
          failure of the building contractor to perform faithfully its  
          obligations.

24           The bond must be issued by an insurer duly authorized to transact  
26           surety insurance in the State. A bond may not be cancelled or  
28           subject to cancellation unless at least 30 days' advance notice  
30           is given to the board. The bond must be maintained unimpaired  
          during the applicant's period of registration. A negotiable  
          security bond, property bond, savings account assignment,  
          irreversible letter of credit or cash may be substituted for the  
          surety bond.

32           4. Educational materials. Before providing a customer with  
34           an estimate, a building contractor shall provide the customer  
36           with a contractor code of ethics, consumer bill of rights,  
38           instructions on dealing with contractors and procedures for  
          reporting complaints. The State shall provide sufficient copies  
          of these materials to the contractor at no charge.

40           5. Term of registration. Initial registration expires  
42           after one year. Renewal registration expires biennially. The  
44           commissioner shall determine the date of expiration most  
46           compatible with the workload of the Department of Professional  
48           and Financial Regulation. An applicant seeking registration must  
          update all information provided in the original application on  
          forms provided by the board. The board shall mail notice of  
          expiration to the registrant's last known address at least 30  
          days in advance of the expiration of the registration.

50           6. Fees. The board shall establish application fees in  
          amounts that are necessary to implement and administer the

2 registration program, to provide the education materials  
3 specified in this chapter and to produce the listing of  
4 registrants. Fees may not exceed these requirements, nor may  
5 they exceed \$125 per year.

6 **§14008. Disciplinary action**

8 1. Grounds. The board may refuse reregistration or revoke  
9 or suspend a registration pursuant to Title 5, section 10004 or  
10 may take other action pursuant to Title 10, section 8003,  
11 subsection 5. These actions may be based on the following  
12 grounds:

14 A. Practicing fraud or deceit in obtaining a license under  
15 this chapter;

16 B. Engaging in conduct that shows a lack of ability to  
17 render a service owed the customer or a lack of knowledge or  
18 ability to apply principles or skills of construction;

20 C. Engaging in unprofessional conduct by violating the code  
21 of ethics adopted by the board or showing negligence or  
22 misconduct;

24 D. Failing or refusing without good cause to exercise  
25 reasonable diligence in construction;

28 E. Abandoning a contract without legal cause;

30 F. Willfully or deliberately disregarding and violating the  
31 applicable building codes or ordinances of the State or its  
32 subdivisions;

34 G. Failing to provide consumer education materials as  
35 required by this chapter;

36 H. Having had a license, certification or registration  
37 revoked or suspended in another state in construction or a  
38 related field, unless the period of revocation or suspension  
39 has been completed; or

42 I. Violating the provisions of this chapter or rules of the  
43 board.

44 2. Procedure. Except as provided in Title 5, section  
45 10004, reregistration may not be denied or registration revoked  
46 or suspended for the reasons in subsection 1 without prior  
47 written notice and opportunity for a hearing. The burden of  
48 proof shall be on the board.

2 proof is on the board in a proceeding to deny reregistration or  
4 revoke or suspend registration. Reregistration may not be denied  
6 or registration revoked or suspended under this section except by  
8 majority vote of the board.

6 3. Complaints. A person may file a complaint with the board  
8 seeking disciplinary action against a person registered by the  
10 board. Complaints must be in writing in a form prescribed by  
12 rule by the board. If the board determines that a complaint  
14 alleges facts that, if true, would require nonrenewal of  
16 registration or other disciplinary action, the board shall  
18 conduct a hearing pursuant to the Maine Administrative Procedure  
20 Act. When the board establishes that a complaint does not state  
22 facts that warrant a hearing, the complaint may be dismissed.  
24 Persons making complaints must be advised in writing of each  
26 formal decision made by the board regarding that complaint.

18 An individual whose reregistration has been denied or whose  
20 registration has been suspended or revoked may apply to the board  
22 for reinstatement one year after the date of the board's original  
24 action.

#### 24 §14009. Nonresident registration

24 An applicant for registration under this chapter who is not  
26 a resident of the State shall submit with the application an  
28 irrevocable consent that service of process on the applicant may  
30 be made by delivery of the process to the commissioner if, in an  
32 action against the applicant in a court of the State arising out  
34 of the applicant's activities as a building contractor in the  
36 State, the plaintiff can not, in the exercise of due diligence,  
38 effect personal service upon the applicant.

#### 34 §14010. Registration numbers

36 The board shall assign successful applicants a registration  
38 number. The registered contractor shall use this number in all  
40 advertising, promotional literature, correspondence and receipts  
42 for client payment. Advertising or promotion in any form by an  
44 unregistered contractor is prohibited.

#### 42 §14011. Employees

44 The commissioner shall appoint, subject to the Civil Service  
46 Law and with the advice of the board, employees that may be  
48 necessary to carry out this chapter. A person so employed must  
be in the Department of Professional and Financial Regulation and  
under the administrative and supervisory direction of the  
commissioner.

2

## STATEMENT OF FACT

4

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

16

18 Initial registration is for one year. Subsequent  
20 reregistration is for 2 years. Registration fees are to be set  
22 by the board but are not to exceed \$125 per year. The board may  
24 refuse reregistration or suspend or revoke registration based on  
a number of grounds, including incompetence, violation of a  
board-developed code of ethics, negligence, misconduct, failure  
to exercise diligence and violation of building codes and  
ordinances.

26

28 This bill establishes the Board of Building Contractors to  
30 oversee contractor regulation. The board is to have its first  
32 meeting by November 10, 1993 and registration is required by  
34 October 1, 1994. The board is to make available educational  
materials for contractors and for consumers, including a bill of  
rights, procedures for dealing with contractors and a listing of  
registered contractors, including appropriate information from  
their registration forms.

34

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