

MAINE STATE LEGISLATURE

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L.D. 480

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DATE: 5/30/95

(Filing No. H- 323)

MINORITY
BUSINESS AND ECONOMIC DEVELOPMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 360, L.D. 480, Bill, "An Act to Require Contractor Registration"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 32 MRSA c. 129 is enacted to read:

CHAPTER 129

CONTRACTOR REGISTRATION

§14551. Definitions

As used in the chapter, unless the context otherwise indicates, the following terms have the following meaning.

1. Building. "Building" means any combination of materials, whether portable or fixed, that comprises a structure affording facilities or shelter for any use or occupancy, including attachments to the building such as signs, marquees and canopies. "Building" does not mean manufactured housing or mobile homes certified pursuant to the manufactured housing laws of the State.

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

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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, move or equip buildings.

8 5. Department. "Department" means the Department of Professional and Financial Regulation, Division of Licensing and Enforcement.

12 **§14552. Registration required**

14 Effective January 1, 1996, a person, unless specifically exempted by this chapter, may not act as a building contractor or advertise or promote as a building contractor unless registered in accordance with this chapter.

18 **§14553. Violation**

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

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

34 **§14554. Civil actions**

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

42 **§14555. Registration numbers**

44 The department shall assign a registration number to successful applicants. The registered building contractor shall use this number in all advertising, promotional literature, correspondence and receipts for client payment.

48 **§14556. Establishment of register**

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2 The commissioner shall establish and maintain within the
3 department a register of all building contractors doing business
4 in the State. The register is a matter of public record
5 available for public view in the offices of the department or on
6 request at a fee sufficient to cover the cost of providing the
7 information requested.

8 **§14557. Registration requirements**

10 1. Forms; information required. The commissioner shall
11 adopt forms for building contractor registration that require, at
12 a minimum, the following information:

14 A. Name, address, telephone number and any other
15 communication access numbers;

16 B. A statement detailing the building contractor's
17 experience in the trade;

18 C. Proof of workers' compensation insurance when required
19 by the laws of this State; and

20 D. Proof of liability insurance.

21 The applicant shall attest to the accuracy of the information
22 provided. Any intentional falsification of the information
23 provided is a violation of this chapter.

24 2. Fees. Each person registering under this section shall
25 pay an annual registration or renewal fee established by the
26 department by rule at a level sufficient to cover the costs of
27 administering this chapter.

28 **§14558. Information provided to applicants**

29 When a building contractor requests a registration form, the
30 department shall provide the building contractor with an
31 information packet that includes clear information that sets out
32 all requirements under state law with which the building
33 contractor must comply, including licensing requirements, tax
34 liabilities, insurance coverage, labor laws, consumer and
35 contract requirements and professional codes of ethics or conduct.

36 **§14559. Educational materials**

37 Before entering into a contract with a customer, a building
38 contractor shall provide the customer with guidelines for dealing
39 with building contractors, procedures for reporting complaints
40 and the building contractor's registration number. The State
41 shall provide sufficient copies of these materials to the
42 building contractor at no charge.

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2 **§14560. Renewals; updates**

4 Building contractors must renew the registration annually,
6 at which time the building contractors must be provided with
8 applicable updates or amendments to the information provided
10 under section 14558.

10 **§14561. Disciplinary action**

12 1. Grounds. The commissioner may refuse reregistration or
14 revoke or suspend a registration pursuant to Title 5, section
16 10004 or may take other action pursuant to Title 10, section
18 8003, subsection 5. These actions may be based on any of the
20 following grounds:

22 A. Practicing fraud or deceit in obtaining registration
24 under this chapter;

26 B. Engaging in conduct that evidences a lack of ability to
28 discharge the duty owed the customer or engaging in conduct
30 that evidences a lack of knowledge or ability to apply
32 principles or skills to carry out the practice of
34 construction;

36 C. Engaging in unprofessional conduct, which means
38 demonstrated negligence or misconduct;

40 D. Failing or refusing, without good cause, to exercise
42 reasonable diligence in construction;

44 E. Abandoning a contract without legal cause;

46 F. Willfully or deliberately disregarding and violating the
48 applicable building codes or ordinances of the State or its
subdivisions;

G. Failing to provide to a consumer the consumer education
materials and contractor registration number as required by
this chapter;

H. Having had a license, certification or registration
revoked or suspended in any other state in this or a related
field, unless the period of revocation or suspension has
been completed; or

I. Violating any provisions of this chapter or rules of the
department.

2 2. Procedure. Except as provided in Title 5, section
10004, reregistration may not be denied or registration revoked
4 or suspended for the reasons set forth in subsection 1 without
prior written notice and opportunity for a hearing. The burden
6 of proof is on the department in any proceeding to deny
reregistration or revoke or suspend registration.

8 3. Complaints. Any person may file a complaint with the
department seeking disciplinary action against a person
10 registered. If department determines that a complaint alleges
facts that, if true, would require nonrenewal of registration or
12 other disciplinary action, the department shall conduct a hearing
pursuant to the Maine Administrative Procedure Act. Whenever the
14 department establishes that a complaint does not state facts that
warrant a hearing, the complaint may be dismissed. A person
16 making a complaint must be advised in writing of the action taken
by the department regarding that complaint.

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

24 **Sec. 2. Working capital advance.** The State Controller is
authorized to advance to the Department of Professional and
26 Financial Regulation up to \$135,744 from the General Fund
Unappropriated Surplus in fiscal year 1995-96 for the
28 registration of building contractors. These funds will be used
to provide the working capital advance necessary to fund the
30 costs of registering contractors until adequate dedicated
revenues have been received. Funds advanced for this purpose
32 must be returned to the General Fund Unappropriated Surplus no
later than June 30, 1996.

34 **Sec. 3. Allocation.** The following funds are allocated from
36 Other Special Revenue funds to carry out the purposes of this Act.

	1995-96	1996-97
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Division of Licensing and Enforcement		
Positions - Other Count	(1.0)	(1.0)
Personal Services	\$29,719	\$40,978
All Other	82,025	90,500
Capital Expenditures	24,000	

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TOTAL \$135,744 \$131,478

Allocates funds for the registration of contractors.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

1995-96 1996-97

APPROPRIATIONS/ALLOCATIONS

Other Funds \$135,744 \$131,478

REVENUES

Other Funds \$136,000 \$132,000

The Department of Professional and Financial Regulation will require allocations of new dedicated revenue totaling \$135,744 in fiscal year 1995-96 and \$131,478 in fiscal year 1996-97 for the initial start-up and ongoing costs of establishing and maintaining a register of building contractors.

The registration of building contractors will increase dedicated revenue to the Department of Professional and Financial Regulation by \$136,000 and \$132,000 in fiscal years 1995-96 and 1996-97, respectively, from the registration fees. Due to the timing of the receipt of the dedicated revenue in fiscal year 1995-96, the department will require a General Fund working capital advance for the initial start-up costs.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.22 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

COMMITTEE AMENDMENT

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STATEMENT OF FACT

This is the minority report of the Joint Standing Committee on Business and Economic Development. The vote on the majority report is "ought not to pass."

The original bill requires that a wide range of contractors be registered. This amendment makes the following changes.

1. It eliminates the provision that requires registration by a number of professions that are currently regulated by other provisions of state law and requires registration only of those contractors who charge a fee for their work.

2. It adds a provision that specifically indicates that it is a violation of the law to perform contracting work without being registered.

3. It provides grounds for refusing registration or reregistration.

4. The amendment also adds a fiscal note to the bill.