

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1044

H.P. 770

House of Representatives, March 28, 1995

An Act to License Home Contractors and Builders.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TYLER of Windham.
Cosponsored by Representatives: AHEARNE of Madawaska, CHIZMAR of Lisbon,
KNEELAND of Easton, MORRISON of Bangor, POVICH of Ellsworth, TUTTLE of
Sanford, VIGUE of Winslow, Senator: FERGUSON of Oxford.

2 not mean manufactured housing or mobile homes certified pursuant
3 to the manufactured housing laws of the State.

4 **3. Building contractor.** "Building contractor" means a
5 person who independently, or through others, offers, submits a
6 bid or undertakes to construct, as prime contractor, a building
7 other than the person's own home.

8
9
10 **4. Commissioner.** "Commissioner" means the Commissioner of
11 Professional and Financial Regulation.

12 **5. Construct.** "Construct" means to erect, reconstruct,
13 demolish, alter, convert, repair, renovate, restore, remodel or
14 equip buildings.

15 **6. Department.** "Department" means the Department of
16 Professional and Financial Regulation.

17
18 **§14002. License required**

19
20 Effective January 1, 1997, a person, unless specifically
21 exempted by this chapter, may not engage in the business or act
22 in the capacity of a building contractor unless licensed in
23 accordance with this chapter.

24
25 **§14003. Violation**

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

33
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
41 **§14004. Civil actions**

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

47
48 **§14005. Board of Building Contractors; establishment;**
49 **compensation**

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

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

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

16 B. One member must be a person whose principal business is
the construction of commercial or industrial buildings.

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

22 D. Two members must be members of the public who have no
24 involvement with construction and whose parents, spouses or
children have no such involvement.

26 3. Timetable. The Governor shall make initial appointments
28 by December 15, 1995. The commissioner shall call the first
meeting of the board by January 30, 1996 and shall act as chair
30 until a chair is selected. The board shall select a chair,
vice-chair and secretary at the end of its first meeting. These
32 officers must be selected annually.

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

48 5. Removal. The Governor may remove a member of the board
for good cause, which includes malfeasance and neglect of duty.

2 A member who is subject to removal must be granted a public
3 hearing upon request.

4 6. Conflict of interest. A board member may not
5 participate in matters before the board in which the board member
6 has a pecuniary interest, personal bias or any other conflict of
7 interest.

8
9 7. Compensation. Members of the board are entitled to
10 compensation as provided in Title 5, chapter 379.

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

16
17 **§14006. Powers; duties**

18
19 The board has the following duties and powers in addition to
20 all other powers and duties under this chapter.

21
22 1. Administration and enforcement. The board shall
23 administer and enforce this chapter.

24
25 2. Rules. The board shall adopt rules necessary for and
26 consistent with the administration of this chapter. These rules
27 must be adopted in accordance with the Maine Administrative
28 Procedure Act.

29
30 3. Complaints and violations. The board shall investigate
31 or cause to be investigated a complaint made on its own motion or
32 a written complaint filed with the board and any case of
33 noncompliance with or violation of this chapter or the rules
34 adopted by the board. The board shall establish procedures to
35 permit and facilitate the filing of written complaints by
36 consumers and shall ensure that the public is aware of the right
37 to file complaints.

38
39 4. Records. The board shall keep records and minutes as
40 determined necessary by the board.

41
42 5. Contracts. The board may enter into contracts to carry
43 out its responsibilities under this chapter.

44
45 6. Hearings. The board shall conduct hearings to assist in
46 investigating complaints and to determine whether grounds exist
47 for refusing to renew a license. The board may not refuse to
48 renew a license unless the person who is refused the license is
49 offered the opportunity for an adjudicatory hearing. These
50 rules shall not apply to the board of directors of the Maine

2 hearings must be conducted in conformity with Title 5, chapter
3 375, subchapter IV.

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

8
9 8. Register. The board shall make available to consumers
10 at the cost of printing, handling and mailing a register of all
11 contractors licensed with the board that contains information
12 provided by the contractors at the time of licensing. The board
13 shall determine what information from a contractor's financial
14 statement may be released to the public. This register may be
15 made available in editions that cover the State by geographic
16 area. The register must be revised at least biennially. The
17 board shall publicize widely the availability of the register.

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

25
26 10. Fees. Within the limits set by law, the board shall
27 set fees for licensing and renewals that are sufficient, but no
28 more than sufficient, to implement the provisions of law and of
29 the rules passed by the board.

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

38
39 12. Education. The board shall produce and distribute
40 written material to educate the consumer and the building
41 contractor. This material must include a basic business
42 practices guide for contractors. For consumers, it must include
43 a description of the licensing program and its significance,
44 advice on obtaining references and the importance of doing so and
45 instructions regarding complaint procedures. These materials
46 must be provided at no cost to licensed contractors. The board
47 shall adopt rules to provide for the distribution of materials as
48 required by this subsection.

49 **§14007. Issuance of licenses**

2 1. Application; qualifications. The board shall issue a
4 license to any person who provides information as the board may
6 require on forms provided by the board and who meets the
qualifications as determined by the board to be sufficient for
the following.

8 A. A Class C license includes, but is not limited to, the
10 application of siding, the replacement of windows and
12 reroofing. The applicant must show proof of at least a
14 \$50,000 liability insurance policy. The board may issue a
Class C license upon payment of a fee as adopted by the
board, not to exceed \$50.

16 B. An applicant for a Class B license must have experience
18 under the supervision of a Class A builder for a least 4
years. A licensee under this paragraph may not obtain
20 building permits. The board may issue a Class B license
upon payment of a fee as adopted by the board.

22 C. An applicant for a Class A license must be a general
24 contractor with at least 4 years' experience as a Class B
builder or 2 years of construction education from an
26 accredited institution or any combination of experience and
education as the board may approve. An applicant for a
28 Class A license must successfully pass a license examination
covering general building knowledge developed and
30 administered by the board. The board may issue a Class A
license upon payment of a fee adopted by the board and upon
proof of at least a \$300,000 liability insurance policy.

32 2. License; renewals. A license is valid for 2 years. The
34 commissioner shall determine the date of expiration most
compatible with the workload of the department. A licensee
36 seeking a renewal of a license shall update all information
provided in the original application on forms provided by the
38 board. The board shall mail notice of expiration to the
licensee's last known address at least 30 days in advance of the
expiration of the license.

40 3. Fees. The board shall establish application fees in
42 amounts that are necessary to implement and administer the
licensing program, to provide the education materials specified
44 in this chapter and to produce the register of licensees. Fees
may not exceed these requirements, nor may they exceed \$125 per
46 year.

48 §14008. Disciplinary action

2 1. Grounds. The board may refuse to renew, revoke or
suspend a license pursuant to Title 5, section 10004 or may take
4 other actions pursuant to Title 10, section 8003, subsection 5.
These actions may be based on the following grounds:

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

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

12 C. Engaging in unprofessional conduct by violating the code
14 of ethics adopted by the board or showing negligence or
misconduct;

16 D. Failing or refusing without good cause to exercise
18 reasonable diligence in construction;

20 E. Abandoning a contract without legal cause;

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

26 G. Having had a license, certification or registration in
28 construction or a related field revoked or suspended in
another state, unless the period of revocation or suspension
30 has been completed; or

32 H. Violating the provisions of this chapter or rules of the
board.

34 2. Procedure. Except as provided in Title 5, section
10004, a renewal of a license may not be denied or a license
36 revoked or suspended for the reasons in subsection 1 without
prior written notice and opportunity for a hearing. The burden
38 of proof is on the board in a proceeding to deny a renewal of a
license or revoke or suspend a license. A renewal of a license
40 may not be denied or a license revoked or suspended under this
section except by majority vote of the board.

42 3. Complaints. A person may file a complaint with the board
44 seeking disciplinary action against a person licensed by the
board. Complaints must be in writing in a form prescribed by
46 rule by the board. If the board determines that a complaint
alleges facts that, if true, would require nonrenewal of a
48 license or other disciplinary action, the board shall conduct a
hearing pursuant to the Maine Administrative Procedure Act. When
50 the board establishes that a complaint does not state facts that

2 warrant a hearing, the complaint may be dismissed. A person
3 making a complaint must be advised in writing of each formal
4 decision made by the board regarding that complaint.

5 An individual whose renewal of a license has been denied or whose
6 license has been suspended or revoked may apply to the board for
7 reinstatement one year after the date of the board's original
8 action.

10 **§14009. Nonresident license**

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

20 **§14010. License numbers**

22 The board shall assign a license number to a successful
23 applicant for a license. The licensed contractor shall use this
24 number in all advertising, promotional literature, correspondence
25 and receipts for client payment. Advertising or promotion in any
26 form by an unlicensed contractor is prohibited.

28 **§14011. Employees**

30 The commissioner shall appoint, subject to the Civil Service
31 Law and with the advice of the board, employees as are necessary
32 to carry out this chapter. A person so employed is in the
33 department and under the administrative and supervisory direction
34 of the commissioner.

36 **Sec. 6. Grandfathered building contractors.** A person who has
37 been engaged as a general contractor for at least 3 years and who
38 submits 5 letters of recommendation by either consumers or
39 financial institutions and shows proof of a \$300,000 liability
40 insurance policy is grandfathered for the purpose of licensure
41 under the Maine Revised Statutes, Title 32, section 14007 and
42 upon payment of the fee adopted by the board must be issued a
43 Class A license.
44

46 **STATEMENT OF FACT**

48 This bill establishes the Board of Building Contractors to
49 oversee the licensing of building contractors. The board shall
50

2 make available educational materials for contractors and
consumers, including a bill of rights, procedures for dealing
4 with contractors and a listing of licensed contractors that
includes appropriate information from the contractors'
application forms.

6
8 In accordance with the Maine Revised Statutes, Title 5,
section 12015, any joint standing committee recommending passage
10 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.