

MAINE STATE LEGISLATURE

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M
R & S.

L.D. 1767

DATE: 3/28/96

(Filing No. H- 877)

BUSINESS AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1287, L.D. 1767, Bill, "An Act to Revise the Sunrise Review Process for Occupational and Professional Regulation"

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'Sec. 1. 5 MRSA §12015, sub-§3, as enacted by PL 1985, c. 748, §13, is repealed and the following enacted in its place:

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:

COMMITTEE AMENDMENT

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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;

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

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.

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.

Sec. 2. 32 MRSA c. 1-A, sub-c. II is enacted to read:

SUBCHAPTER II

SUNRISE REVIEW PROCEDURES

§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:

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;

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;

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;

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;

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;

6. **Service availability of regulation.** The extent to which regulation or expansion of regulation of the profession or

2 occupation would increase or decrease the availability of
 2 services to the public;

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

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

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

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

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

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

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

38 **§60-K. Commissioner's independent assessment**

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

48 A. The applicant group is an agency of the State; or
 50

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2 B. Payment of the application fee would impose unreasonable
hardship on members of the applicant group.

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

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

22 §60-L. Technical committee; fees; membership; duties;
24 commissioner's recommendation

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

36 A. The applicant group is an agency of the State; or

38 B. Payment of the application fee would impose unreasonable
40 hardship on members of the applicant group.

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

46 A. Two members must be from the profession or occupation
being proposed for regulation or expansion of regulation.

48 B. Two members must be from professions or occupations with
a scope of practice that overlaps that of the profession or
50 occupation being proposed for regulation or expansion of
regulation. If there is more than one overlapping

2 profession or occupation, representatives of the 2 with the
3 greatest number of practitioners must be appointed.

4 C. One member must be the commissioner or the
5 commissioner's designee.

6 D. Two members must be public members. These persons and
7 their spouses, parents or children may not be or ever have
8 been members of, and may not have or ever have had a
9 material financial interest in, the profession or occupation
10 being proposed for regulation or expansion of regulation or
11 another profession or occupation with a scope of practice
12 that may overlap that of the profession or occupation being
13 proposed for regulation.

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

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

25 4. Procedure for review. Applicant groups are responsible
26 for furnishing evidence upon which a technical committee makes
27 its findings. The technical committee may also utilize
28 information received through public input or through its own
29 research or investigation. The committee shall make a report of
30 its findings and file the report with the commissioner. The
31 committee shall evaluate the application presented to it based on
32 the information provided as required by section 60-J. If the
33 committee finds that additional information is required to assist
34 in developing its recommendations, it may require that the
35 applicant group provide this information or may otherwise solicit
36 information for this purpose. If the committee finds that final
37 answers to the evaluation criteria are sufficient to support
38 regulation of a profession or occupation not currently regulated,
39 the committee must also recommend the least restrictive method of
40 regulation to be implemented, consistent with the public
41 interest. Whether it recommends approval or denial of an
42 application, the committee may make additional recommendations
43 regarding solutions to problems identified during the review.

44 5. Commissioner report. After receiving and considering
45 reports from the technical committee, the commissioner shall
46 report to the legislature the results of the review.

2 prepare a final report, for the joint standing committee of the
 4 Legislature that requested the review, that includes any
 6 legislation required to implement the commissioner's
 8 recommendation. The final report must include copies of the
 10 committee report, but the commissioner is not bound by the
 12 findings and recommendations of the report. In compiling the
 14 report, the commissioner shall apply the criteria established in
 16 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.

18 The commissioner may recommend that no legislative action be
 20 taken on a proposal. If the commissioner recommends that a
 22 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.

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

1996-97

28 **PROFESSIONAL AND FINANCIAL REGULATION,**
 30 **DEPARTMENT OF**

32 **Administrative Services Division**

34 All Other \$1,500

36 Allocates funds for the costs of conducting
 38 the sunrise review process for proposed
 professional regulatory boards.'

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

44 **FISCAL NOTE**

1996-97

48 **APPROPRIATIONS/ALLOCATIONS**

50 Other Funds \$1,500

REVENUES

2

Other Funds

\$1,500

4

6 If a legislative committee opts to hold a public hearing to
 8 address criteria related to licensing boards during an interim
 10 between sessions, additional General Fund appropriations to the
 12 Legislature may be required. While the number of public hearings
 14 can not be determined, each hearing would cost approximately
 16 \$2,000, exclusive of staffing requirements.

12

14 The Department of Professional and Financial Regulation will
 16 require additional Other Special Revenue allocations of \$1,500
 18 annually beginning in fiscal year 1996-97 for the costs of
 20 implementing a new sunrise review process for occupational and
 22 professional regulation.

18

20 Fees from applications for preauthorization review will
 22 increase dedicated revenue collections. The estimated increase
 24 of dedicated revenue to the Department of Professional and
 26 Financial Regulation is \$1,500 annually beginning in fiscal year
 1996-97.'

24

STATEMENT OF FACT

26

28 The bill requires that a group wishing to be regulated
 30 submit an application containing the answers to criteria similar
 32 to those currently in the Maine Revised Statutes, Title 5,
 34 section 12015, subsection 3 to the Commissioner of Professional
 and Financial Regulation, who is required to assemble a technical
 committee to evaluate the applicant's answers. The commissioner
 is to attach the department's evaluation and forward this
 material to the appropriate legislative committee.

36

38 This amendment follows the current law except that applicant
 40 groups are required to answer the criteria and except that it
 42 allows the committee of reference to request the commissioner or
 44 a technical committee to initially evaluate whether or not the
 applicant's answers are sufficient to justify regulation. The
 commissioner is then to prepare a report including any necessary
 implementing legislation. The commissioner may recommend that no
 legislative action be taken on a proposal.

44

46 This amendment also adds an allocation section and fiscal
 note to the bill.