

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1737

H.P. 1277

House of Representatives, March 22, 2001

An Act to Amend the Forester Licensing Law.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative RICHARDSON of Brunswick.
Cosponsored by Senator SHOREY of Washington and
Representative HATCH of Skowhegan.

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

2
3 **Sec. 1. 5 MRSA §12004-A, sub-§17**, as amended by PL 1999, c.
4 687, Pt. B, §1, is further amended to read:

6 **17. State Board** \$35/Day 32 MRSA @5004
7 of Licensure ~~for Profes-~~ §5505
8 sional of Foresters

10 **Sec. 2. 12 MRSA §8868, sub-§3**. as enacted by PL 1989, c. 555,
11 §10, is amended to read:

12 **3. Professional forester.** "Professional forester" means a
14 person licensed pursuant to Title 32, chapter 75 76.

16 **Sec. 3. 32 MRSA c. 75**, as amended is repealed.

18 **Sec. 4. 32 MRSA c. 76** is enacted to read:

20 CHAPTER 76

22 FORESTER LICENSING

24 SUBCHAPTER 1

26 GENERAL PROVISIONS

28 §5501. Definitions

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

32 1. Board. "Board" means the Board of Licensure of
34 Foresters.

36 2. Department. "Department" means the Department of
37 Professional and Financial Regulation.

38 3. Forester. "Forester" means a person licensed under this
40 chapter to practice forestry.

42 4. Forestry. "Forestry" means services relating to
43 forestry requiring the application of forestry principles and
44 techniques. The services include, but are not limited to,
45 investigations, consultations, timber inventory, development of
46 forest management plans, responsible supervision of forest
47 management, forest utilization, appraisal of severed or unsevered
48 timber, forest economics or other forestry activities as carried
49 out in connection with any public or private lands. "Forestry"
50 does not include services for the physical implementation of

2 cutting, hauling, handling or processing of forest products or
3 for the physical implementation of timber stand improvements or
4 other silvicultural activities or measuring or scaling activities
5 performed by persons licensed under Title 10, section 2365-A.

6 5. Intern forester. "Intern forester" means a person
7 licensed under this chapter to practice forestry under the
8 sponsorship of a forester.

10 6. Person. "Person" means an individual.

12 7. Sponsor. "Sponsor" means a forester who is responsible
13 for overseeing the activities of an intern forester.

14 8. Supervisor. "Supervisor" means a forester who is
15 responsible for the activities of an unlicensed person providing
16 services under the direction of the forester.

18 **§5502. License required**

20 Except as provided in section 5503, it is unlawful for a
21 person to practice forestry or advertise or offer to practice
22 forestry without a license issued under this chapter.

24 **§5503. Exemptions to licensing**

26 A license is not required for forestry activities conducted
27 by:

30 1. Forestry instructional and educational institutions. A
31 forestry instructional and educational institution approved by
32 the Commissioner of Education pursuant to the laws of the State
33 or a program of education at an institution licensed or approved
34 by the State to grant a bachelor's or higher degree;

36 2. Federal Government employee. Federal Government
37 employees conducting forestry practices within the scope of their
38 employment;

40 3. Person registered and practicing forestry. A person
41 registered and practicing forestry under the supervision of a
42 forester as set forth by section 5515, subsection 9; or

44 4. Owner. An owner managing or otherwise conducting
45 forestry practices on that owner's land.

46 **§5504. Penalties; injunction**

48 1. Unlicensed practice. A person who violates section 5502
49 is subject to the provisions of Title 10, section 8003-C.

2 1. Education. The board may adopt rules to be applied in
determining whether educational programs meet the license
4 qualifications under this chapter.

6 2. License qualifications. The board may adopt rules
relating to the qualifications of an applicant for a license
8 authorized under this chapter that ensure that an applicant is
sufficiently trustworthy and competent to practice forestry.

10 3. Standards of practice. The board may adopt rules
consistent with the standards set forth in this chapter governing
12 the practice of forestry in order to establish standards of
practice that serve the public interest.

14 4. Other. The board may adopt and enforce other rules
16 that are necessary for the performance of its duties under this
chapter.

18 **§5507. Fees**

20 The Director of the Office of Licensing and Registration,
22 pursuant to Title 10, section 8003, subsection 2-A, paragraph D,
may establish by rule fees for purposes authorized under this
24 chapter in amounts that are reasonable and necessary for their
respective purposes, except that the fee for a purpose may not
26 exceed \$100 annually. Rules adopted pursuant to this section are
routine technical rules as define in Title 5, chapter 375,
28 subchapter II-A.

30 **§5508. Duties and powers**

32 The board has the following duties and powers, in addition
to those otherwise set forth in this chapter.

34 1. Consent agreements. The board may execute a consent
36 agreement that resolves a complaint or investigation without
further proceedings pursuant to Title 10, section 8003,
38 subsection 5, paragraph B.

40 2. Denial of license. The board may not refuse to issue or
renew a license for a reason other than the failure to pay a
42 required fee unless the applicant has been afforded an
opportunity for an adjudicatory hearing consistent with the
44 board's rules.

46 3. Hearings. The board shall conduct hearings in
conformity with Title 5, chapter 375, subchapter IV to the extent
48 applicable. The board after hearing may impose disciplinary
sanctions pursuant to Title 10, section 8003, subsection 5,

2 paragraph A-1. In addition, the board, pursuant to Title 5,
3 section 10004, may revoke or suspend a license.

4 4. Investigation. The board shall investigate or cause to
5 be investigated all complaints made to it and all cases of
6 noncompliance with or violation of this chapter.

7 5. License qualification. The board shall evaluate the
8 qualifications for licensure under this chapter.

10 **§5509. Grounds for disciplinary action**

11 1. Grounds. After a hearing pursuant to section 5508,
12 subsection 3, the board has the authority to impose disciplinary
13 sanctions at any time when a licensee is found guilty of one of
14 more of the following:

15 A. Subject to Title 5, chapter 341, a Class A, B or C crime
16 or any other crime that bears directly on the practice of
17 forestry;

18 B. An act or conduct that constitutes deceit, misconduct,
19 misrepresentation, fraud, incompetence or gross negligence
20 in the practice of forestry;

21 C. Procuring or attempting to procure a license under this
22 chapter by knowingly making a false statement, submitting
23 false information or making a material misrepresentation in
24 an application filed with the board;

25 D. Aiding or abetting a person in conduct that constitutes
26 a violation of this chapter;

27 E. Violating a rule adopted by the board or a provision of
28 this chapter; and

29 F. An act or conduct that constitutes or demonstrates
30 unprofessional practice.

31 **SUBCHAPTER III**

32 **LICENSING QUALIFICATIONS**

33 **§5510. General qualifications**

34 1. Application. The applicant shall submit a properly
35 completed application on forms furnished by the board, together
36 with the prescribed fee.

2 2. Criminal history information. Subject to Title 5,
chapter 341, the applicant shall provide criminal history record
information.

4
6 **§5511. License limited to persons**

8 A license issued under this subchapter may only be issued to
a person, and licensure must be determined based on individual
and personal qualifications. A firm, company, partnership,
10 limited liability company or corporation may not be licensed
under this chapter.

12
14 **§5512. Changes**

16 The licensee shall report any change of address or name or
other material change in the conditions or qualifications set
forth in the original application no later than 30 days after the
18 change. Upon proper notice, the board's records must be changed
and a new license issued for the unexpired term of the current
20 license, if appropriate.

22 **§5513. Denial of license**

24 A license may be denied to an applicant:

26 1. Complete application. Who fails to submit a completed
application within 30 days after being notified of the materials
28 needed to complete the application;

30 2. Proof that applicant is trustworthy. Who fails to
provide satisfactory proof that the applicant is trustworthy and
32 competent to conduct forestry practices in a manner that
safeguards the interests of the public;

34 3. Suspension or revocation of license. Who has had a
36 professional or occupational license suspended or revoked for
disciplinary reasons or an application rejected for reasons
38 relating to untrustworthiness within 3 years prior to the date of
application;

40 4. Conviction of crime. Subject to Title 5, chapter 341,
42 who has been convicted of a Class A, B or C crime or a crime that
bears on the practice of forestry; or

44 5. Meeting requirements of subchapter. Who fails to meet
46 the professional qualifications for licensure as provided in this
subchapter.

48
50 **§5514. Intern forester**

2 1. Scope of practice. An intern forester license entitles
the holder to perform forestry practices under the sponsorship of
4 a forester.

6 2. Professional qualification. Each applicant for an
intern forester license shall submit evidence of an associate's
8 degree or a bachelor's degree from a school or college with a
curriculum in forestry or graduation from a postgraduate
10 curriculum in forestry leading to a degree higher than a
bachelor's degree in a school or college approved by the board.

12 3. Filing with board. The requirements for licensure as an
intern forester are as follows.

14 A. The internship may not commence until after the
16 applicant has met the education requirements of subsection 2.

18 B. Applicants shall apply to and be approved by the board
20 for internship prior to beginning their internship.

22 C. The applicant shall submit 3 references from persons not
related to the applicant demonstrating the applicant's good
24 character to work as an intern forester. One of the these
references must be from the individual who is proposed to
26 serve as the sponsor.

28 D. The sponsor shall also submit a plan for the work
experience to be provided to the intern forester during the
30 internship and an explanation of the sponsor's work plan
signed by the sponsor.

32 4. Continuing education required. As a prerequisite to
renewal of an intern forester license, the applicant must
34 complete continuing education as set forth by rules adopted by
the board.

36 5. Renewal. Licenses expire annually on December 31st or
38 on a date the commissioner determines. The board shall issue a
renewal license, subject to the limitations set forth in
40 subsection 6, upon receipt of the written request for renewal,
the annual fee and evidence of satisfactory completion of
42 continuing education as set forth in subsection 4. Licenses may
be renewed up to 90 days after the date of expiration upon
44 payment of a late fee in addition to the renewal fee. A person
who submits an application for renewal more than 90 days after
46 the license has expired is subject to all requirements governing
new applicants under this chapter.

48 6. Limited license term. Intern forester licenses may only
50 be renewed for 5 annual terms. If after the 5th annual renewal

2 term the intern forester has not qualified for licensure as a
3 forester, the intern forester may reapply to recommence the
4 internship process, but may not receive any credit towards
5 completion of the new internship for work performed during the
6 prior internship.

7 7. Endorsement of documents. Plans, maps and reports
8 issued by the intern forester must be endorsed with the intern
9 forester's name and license number during the life of the intern
10 forester's license. By endorsing a document the intern forester
11 is representing that the document, has been reviewed by the
12 sponsor.

14 **§5515. Forester**

16 1. Scope of practice. A forester license entitles the
17 holder to engage in the practice of forestry.

18 2. Professional qualification. The applicant must
19 demonstrate compliance with the professional qualifications as
20 set forth in section 5514, subsection 2.

21 3. Internship. An applicant for a forester license shall
22 complete an internship as follows.

23 A. An applicant with an associate's degree shall
24 demonstrate 48 months of forestry experience as an intern
25 forester satisfactory to the board. Applicants must
26 complete the 48 months within 6 calendar years prior to
27 application.

28 B. An applicant with a bachelor's degree or higher shall
29 demonstrate 24 months of forestry experience as an intern
30 forester satisfactory to the board. Applicants must
31 complete the 24 months within 6 calendar years prior to
32 application.

33 4. Recommendation. The applicant shall submit references
34 from 3 foresters familiar with the applicant's forestry
35 practice. At least one of the references must be from the
36 sponsor, unless the sponsor is unavailable as a reference through
37 no fault of the applicant. An applicant exempted under
38 subsection 5 shall submit references from 3 forestry
39 professionals familiar with the applicant's forestry practice.

40 5. Exemption to internship; professional practice in
41 another jurisdiction. Notwithstanding subsection 3, the board
42 may waive the internship requirement, as set forth in subsection
43 3, for an applicant who has at least 24 months of lawful prior
44 professional forestry practice in another jurisdiction within the
45 state.

2 6-year period prior to application, as long as the practice is
3 determined by the board to be substantially equivalent to the
4 successful completion of forestry internship under subsection 3.

6 6. Examination. Each applicant for a forester license
7 shall submit an application and examination fee and successfully
8 pass an examination administered by the board designed to test an
9 individual's knowledge to engage in the practice of forestry.
10 Applicants shall meet all other qualifications for licensure
11 prior to taking the examination.

12 7. Continuing education required. As a prerequisite to
13 renewal of a forester license, applicants must complete
14 continuing education as set forth by rules adopted by the board.

16 8. Renewal. Licenses expire annually on December 31st or
17 on a date the commissioner determines. The board shall issue a
18 renewal license upon receipt of the written request for renewal,
19 the annual fee and evidence of satisfactory completion of
20 continuing education as set forth in subsection 7. Licenses may
21 be renewed up to 90 days after expiration upon payment of a late
22 fee in addition to the renewal fee. A person who submits an
23 application for renewal more than 90 days after the license
24 expiration date is subject to all requirements governing new
25 applicants under this chapter.

26 9. Endorsement of documents. Plans, maps and reports
27 issued by the forester must be endorsed with the forester's name
28 and license number during the life of the forester's license.

30 10. Sponsor; supervisor. A forester:

32 A. May act as a sponsor for an intern forester pursuant to
33 the requirements of section 5514 and rules adopted by the
34 board; and

36 B. Must register with the board to supervise the activities
37 of an unlicensed person pursuant to rules adopted by the
38 board.

40 §5516. Nonresidents; applicants licensed in another jurisdiction

42 1. Reciprocal agreements. The board may enter into
43 reciprocal agreements with other jurisdictions that have
44 substantially equivalent licensure laws and accord substantially
45 equal reciprocal rights to residents licensed in good standing in
46 this State.

2 2. Applicants licensed in another jurisdiction. An
3 applicant who is licensed under the laws of another jurisdiction
4 is governed by this subsection.

5 A. An applicant who is licensed under the laws of a
6 jurisdiction that has a reciprocal agreement with the board
7 may obtain a license upon the terms and conditions as agreed
8 upon through the reciprocal agreement.

9 B. An applicant who is licensed in good standing under the
10 laws of a jurisdiction that has not entered into a
11 reciprocal agreement with the board may qualify for
12 licensure by submitting evidence satisfactory to the board
13 that the applicant has met all of the qualifications for
14 licensure equivalent to those set forth by this subchapter
15 for that level of licensure, including, but not limited to,
16 passing the examination as required by section 5515,
17 subsection 6.

18 C. All nonresident license applicants shall submit with the
19 application an irrevocable consent that service of process
20 on the applicant for an action filed in a court of this
21 State arising out of the applicant's activities as a
22 forester in this State may be made by delivery of the
23 process to the Director of the Office of Licensing and
24 Registration if, in the exercise of due diligence, a
25 plaintiff can not effect personal service upon the applicant.

26 **Sec. 5. Maine Revised Statutes amended; revision clause.** Wherever
27 in the Maine Revised Statutes the words "State Board of Licensure
28 for Professional Foresters" appear or reference is made to those
29 words, they are amended to read and mean "Board of Licensure of
30 Foresters" and the Revisor of Statutes shall implement this
31 revision when updating, publishing or republishing the statutes.

32 **Sec. 6. Transition provisions.**

33 1. The Board of Licensure of Foresters is the successor in
34 every way to the powers, duties and functions of the former State
35 Board of Licensure for Professional Foresters.

36 2. All existing rules and procedures in effect, in
37 operation or adopted in or by the State Board of Licensure for
38 Professional Foresters or any of its administrative units or
39 officers are hereby declared in effect and continue in effect
40 until rescinded, revised or amended by the proper authority.

2 3. All existing contracts, agreements and compacts
currently in effect in the State Board of Licensure for
Professional Foresters continue in effect.

4
6 4. Any positions authorized and allocated subject to the
personnel laws to the former State Board of Licensure for
Professional Foresters are transferred to the Board of Licensure
8 of Foresters and may continue to be authorized.

10 5. All records, property and equipment previously belonging
to or allocated for the use of the former State Board of
12 Licensure for Professional Foresters become, on the effective
date of this Act, part of the property of the Board of Licensure
14 of Foresters.

16 6. All existing forms, licenses, letterheads and similar
items bearing the name of or referring to the State Board of
18 Licensure for Professional Foresters may be utilized by the Board
of Licensure of Foresters until existing supplies of those items
20 are exhausted.

22 **Sec. 7. Change license status.** On the effective date of this
Act the Board of Licensure of Professional Foresters shall change
24 its records pertaining to licenses in effect at that time to
reflect the changes in license status of licenses affected by the
26 provisions of this Act and shall issue the appropriate licenses
to implement the following:

28 1. **Forester.** Every person holding an active licensed
30 professional forester license must be issued a forester license
at the time the licensee next is issued a license.

32 2. **Intern forester.** Every person registered as an intern
34 must be issued an intern forester license at the time the
registrant next is issued a license.

36 3. **Register intent to apply.** An applicant for a forester
38 license shall register the applicant's intent to meet the
education provisions of the former Maine Revised Statutes, Title
40 32, chapter 75 by filing an application with the Board of
Licensure of Foresters on or before April 30, 2002 that
42 demonstrates the applicant's then-existing status towards meeting
the education, or the substituted experience, licensure
44 requirements under former Title 32, section 5012, subsection 1.
Pursuant to rules adopted by the board, the applicant shall also
46 demonstrate to the board on or before April 30, 2008 that the
applicant has met all of the requirements of the former Title 32,
48 chapter 75 by that date. With the exception of the education
requirements, the applicant shall satisfy all of the licensure
50 requirements of Title 32, chapter 76 in applying for a forester

license. Rules adopted pursuant to this section are routine
2 technical rules as defined in Title 5, chapter 375, subchapter
II-A.

4

6

SUMMARY

8

This bill changes the current methods to qualify for
licensure as a forester or intern forester and clarifies the
10 definition of certain terms, Board of Licensure of Foresters
authority and standards of practice. In addition, the proposed
12 changes define the scope of practice for foresters and intern
foresters. The bill includes a transition provision for license
14 applicants who are in the process of applying for a license under
the provisions of the Maine Revised Statutes, Title 32, chapter
16 75.