

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1306

H.P. 903

House of Representatives, March 15, 2005

An Act To License Home Building and Improvement Contractors

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative JACKSON of Fort Kent.

Cosponsored by Representatives: DUPLESSIE of Westbrook, PILON of Saco, SAVIELLO of Wilton, Senator COWGER of Kennebec and Representatives: BRAUTIGAM of Falmouth, FARRINGTON of Gorham, HOGAN of Old Orchard Beach, McCORMICK of West Gardiner, PATRICK of Rumford, SMITH of Monmouth.

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

4 **Sec. 1. 5 MRSA §12004-A, sub-§20-A** is enacted to read:

6 20-A. Maine Home Public Members 32 MRSA §15343
7 Contractor Licensing Legislative
8 Board Per Diem
9 Other Members
10 No Compensation
11 Authorized

12 **Sec. 2. 32 MRSA c. 135** is enacted to read:

14 **CHAPTER 135**

16 **MAINE HOME CONTRACTOR LICENSING ACT**

18 **§15341. Short title**

20 This chapter may be known and cited as "the Maine Home
21 Contractor Licensing Act."

22 **§15342. Definitions**

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

28 1. Applicant. "Applicant" means a person who applies for a
29 license under this chapter.

30 2. Board. "Board" means the Maine Home Contractor
31 Licensing Board as set out in this chapter.

34 3. Chimney. "Chimney" means a structure designed to lift
35 fumes from the firebox up and out of a dwelling. "Chimney"
36 includes the firebox, chimney back, cap, flue, post and pot.

38 4. Commissioner. "Commissioner" means the Commissioner of
39 Professional and Financial Regulation.

40 5. Contract. "Contract" means an agreement between an
41 owner and a home contractor to build a dwelling or perform any
42 home improvements on a dwelling.

44 6. Department. "Department" means the Department of
45 Professional and Financial Regulation.

48 7. Dwelling. "Dwelling" means any building that is
49 owner-occupied or constructed for sale to an owner-occupant and
50 contains at least one and no more than 2 dwelling units.

2 8. Dwelling unit. "Dwelling unit" means a single unit
3 providing complete independent living facilities for one or more
4 persons, including permanent provisions for living, sleeping,
5 eating, cooking and sanitation.

6 9. Employee. "Employee" has the same meaning as provided
7 in Title 26, section 591, subsection 1.

8 10. Framing. "Framing" means the erection of the frame,
9 flooring system, interior walls, backing, trusses, rafters,
10 beams, stairs and soffits of a dwelling and all work related to
11 the construction of the structure of the dwelling above the
12 foundation.

13 11. Home contractor. "Home contractor" means a person who
14 enters into a contract, offers to enter into a contract or
15 submits a bid to enter into a contract with an owner to:

16 A. Build a dwelling; or

17 B. Perform any home improvement to a dwelling.

18 12. Home contractor services. "Home contractor services"
19 means those services, including home improvement, performed by a
20 home contractor licensed under this chapter.

21 13. Home improvement. "Home improvement" means:

22 A. The construction, replacement, installation or
23 improvement of additions of livable space, garages,
24 carports, porches or decks, if they are used in conjunction
25 with a dwelling; and

26 B. Framing, roofing and the removal, repair, replacement or
27 installation of siding, insulation, windows or chimneys.

28 "Home improvement" does not include redecorating or other
29 cosmetic work.

30 14. Insulation. "Insulation" means any material high in
31 resistance to heat transmission that, when placed in the walls,
32 ceiling or floors of a structure, is used for the purpose of
33 reducing the rate of heat flow.

34 15. Licensee. "Licensee" means a person who is issued a
35 license to do business in this State under this chapter.

36 16. Owner. "Owner" means any owner, lessee or person who
37 orders, contracts for or purchases home contractor services or
38

2 person entitled to enforce the performance of the work of a home
3 contractor.

4 17. Person. "Person" means any natural person,
5 corporation, partnership or other business entity.

6 18. Roofing. "Roofing" means the installation of materials
7 that form a weathertight surface on the roof of a dwelling,
8 including but not limited to wood, cement, asbestos, clay tile
9 and composition shingles, metal roofing, single-ply and built-up
10 roofing materials and all associated flashings and gravel stops.

11 19. Siding. "Siding" means the finished exterior covering
12 of the outside walls of a frame dwelling.

13 20. Window. "Window" includes a window sash, window frame
14 and windowpane.

15 **§15343. Board; organization**

16 The Maine Home Contractor Licensing Board, as established in
17 Title 5, section 12004-A, subsection 20-A, administers the
18 provisions of this chapter to protect the public with respect to
19 the practice of home contracting. All members must be appointed
20 and the board shall first convene no later than September 1, 2006.

21 1. Board membership. The board consists of 9 members,
22 appointed by the Governor, as follows:

23 A. Two public members;

24 B. Four home contractors having at least 5 years of
25 experience as a home contractor, appointed by the Governor.
26 After the expiration of the initial term of these members,
27 the members must be licensed home contractors;

28 C. One municipal code enforcement officer;

29 D. One engineer or architect, licensed under this Title,
30 with experience in the design or construction of dwellings,
31 who serves as an ex officio nonvoting member; and

32 E. One representative of the fire service in this State,
33 who serves as an ex officio nonvoting member.

34 2. Terms; removal. The term of office of each member is 4
35 years, except as provided in this subsection, and members are
36 eligible for reappointment. If there is a vacancy for any cause,
37 the Governor shall make an appointment immediately effective for
38 the unexpired term. Members may be removed by the Governor for
39

2 cause. In order to provide staggered expiration dates of terms,
3 the duration of initial terms is as follows:

4 A. The fire service representative for 2 years;

6 B. One public member for 3 years;

8 C. One public member for 4 years;

10 D. One home contractor for 2 years;

12 E. One home contractor for 3 years;

14 F. One home contractor for 4 years;

16 G. One home contractor for 5 years;

18 H. The municipal code enforcement officer for 4 years; and

20 I. The engineer or architect for 2 years.

22 3. Meetings; quorum. The board shall meet at least once a
23 year and at such other times as the board determines necessary. A
24 majority of the members of the board constitutes a quorum for the
25 transaction of business under this chapter.

26 4. Election of officers. The board shall annually elect a
27 chair and other officers as the board determines necessary.

30 **§15344. Rules**

32 The board shall establish guidelines and rules by which this
33 chapter is administered. Except as otherwise indicated, rules
34 adopted pursuant to this chapter are routine technical rules as
35 defined in Title 5, chapter 375, subchapter 2-A. The board shall
36 adopt rules:

38 1. License qualifications. Relating to the qualifications
39 of an applicant for a license authorized under this chapter, as
40 provided in section 15347, subsection 4;

42 2. Standards of practice. To establish standards of
43 practice consistent with the standards set forth in this chapter
44 and the Maine Model Residential Building Code adopted in this
45 chapter governing the practice of home construction or home
46 improvement;

48 3. Continuing education. Concerning requirements for
49 continuing education to be completed by an applicant as a
50 prerequisite to renewal of a home contractor's license; and

2 4. Renewal. Concerning license renewal. Licenses expire
3 annually on December 31st or on a date the commissioner
4 determines. The board shall issue a renewal license upon receipt
5 of the written request for renewal, the annual fee and evidence
6 of satisfactory completion of the continuing education
7 requirement pursuant to subsection 3. Licenses may be renewed up
8 to 90 days after expiration upon payment of a late fee in
9 addition to the renewal fee. A person who submits an application
10 for renewal more than 90 days after the license expiration date
11 is subject to all requirements governing new applicants under
12 this chapter.

14 **§15345. Fees**

16 The Director of the Office of Licensing and Registration
17 within the department, pursuant to Title 10, section 8003,
18 subsection 2-A, paragraph D, may establish by rule fees for
19 purposes authorized under this chapter in amounts that are
20 reasonable and necessary for their respective purposes, except
21 that a fee may not exceed the following:

22 1. General home contractor license. For a general home
23 contractor license under section 15347, \$350 annually;

24 2. Specialty license. For a specialty license under
25 section 15347, \$150 annually; and

26 3. Registration under section 15335. For registration
27 pursuant to section 15356, \$100 annually.

28 Fees may used by the director only for the purposes of this
29 chapter.

30 **§15346. Duties; powers**

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

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

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

2 3. Hearings. The board shall conduct hearings in
3 accordance with Title 5, chapter 375, subchapter 4 to the extent
4 applicable. The board, after hearing, may impose disciplinary
5 sanctions pursuant to Title 10, section 8003, subsection 5,
6 paragraph A-1. In addition, the board may revoke or suspend a
7 license pursuant to Title 5, section 10004.

8 4. Investigation. The board may investigate or cause to be
9 investigated any complaint made to the board and any case of
10 noncompliance with or violation of this chapter.

11 5. License qualification. The board shall evaluate a
12 person's qualifications for licensure under this chapter.

13 **§15347. Licensing; application**

14
15 1. License required. A person who acts as a home
16 contractor as defined in this chapter must be licensed under this
17 section. The board may grant the following licenses:

18 A. General home contractor; and

19 B. Licenses specific to trades listed in section 15342,
20 subsection 13, paragraph B.

21 2. Applications. Applications for licenses under this
22 chapter must be submitted to the board on forms prescribed and
23 furnished by the board and must contain the information and be
24 accompanied by the attachments required by rule of the board,
25 together with the prescribed fee.

26 3. Criminal history information. Pursuant to Title 5,
27 chapter 341, the applicant shall provide criminal history record
28 information.

29 4. Requirements for licensure as general home contractor.
30 A person is qualified for a general home contractor license if
31 the person:

32 A. Has:

33 (1) Completed a combination of 4 years of relevant
34 experience and education, as determined by the board,
35 within one year after the date the licensing provisions
36 under this chapter become effective pursuant to section
37 15356;

38 (2) Acknowledged, on a form provided by the board, an
39 awareness of the board's adoption of a building code
40 under section 15355;

2 (3) Demonstrated, in a manner determined by the board,
3 a familiarity with Title 10, chapter 219-A; and

4 (4) Completed any other requirements the board
5 determines are necessary for licensure; or

8 B. Has:

10 (1) Completed a combination of 2 years of relevant
11 experience and education, as determined by the board,
12 within one year after the date the licensing provisions
13 of this chapter become effective pursuant to section
14 15356;

16 (2) Passed a general home contractor examination
17 approved and adopted by the board that includes a test
18 of proficiency in the building code under section 15355;

20 (3) Demonstrated, in a manner determined by the board,
21 a familiarity with Title 10, chapter 219-A; and

22 (4) Completed any other requirements the board
23 determines are necessary for licensure.

26 5. Requirements for licensure in specialty. A person is
27 qualified for a specialty license, including a license to remove,
28 repair, replace and install framing, roofing, siding, insulation,
29 windows or chimneys, as appropriate, if the person:

30 A. Has:

32 (1) Completed a combination of 2 years of relevant
33 experience and education in the specialty, as
34 determined by the board, within one year after the date
35 the licensing provisions of this chapter become
36 effective pursuant to section 15356;

38 (2) Acknowledged, on a form provided by the board, an
39 awareness of the State's adoption of a building code
40 under section 15355;

42 (3) Demonstrated, in a manner determined by the board,
43 a familiarity with Title 10, chapter 219-A; and

44 (4) Completed any other requirements the board
45 determines are necessary for licensure; or

48 B. Has:

50

2 (1) Completed a combination of one year of relevant
4 experience and education in the specialty, as
6 determined by the board, within one year after the date
8 the licensing provisions of this chapter become
10 effective pursuant to section 15356;

12 (2) Passed an examination in the specialty approved
14 and adopted by the board that includes a test of
16 proficiency in those sections of the building code
18 under section 15355 that relate to the specialty;

20 (3) Demonstrated, in a manner determined by the board,
22 a familiarity with Title 10, chapter 219-A; and

24 (4) Completed any other requirements the board
26 determines are necessary for licensure.

28 **§15348. Exemptions to licensing**

30 A license is not required under this chapter for a person
32 who:

34 1. Home contractor. Acts as a home contractor but who does
36 not receive \$3,000 or more from any one owner in a calendar year;

38 2. Labor; services. Performs labor or services for a
40 licensed home contractor;

42 3. Trade; profession. Holds a license for a trade or
44 profession and is acting within the scope of the trade or
46 profession for which the person is licensed;

48 4. Representative. Is an authorized representative of the
50 United States Government, the State or any incorporated
52 municipality, county or other political subdivision of this State
54 who is acting within the scope of that representative's
56 authorization;

58 5. Ownership interest. Performs work on a dwelling in
60 which that person has an ownership interest or is a lessee
62 performing work on the lessee's leased property;

64 6. Certified applied technology program. Is a student
66 enrolled in a certified applied technology program in which the
68 student works under the direct supervision of a licensed home
70 contractor;

72 7. Public utility. Is a public utility operating under the
74 laws and rules of the Public Utilities Commission in

2 construction, maintenance or development work incidental to the
public utility's business; or

4 8. Manufactured housing. Is licensed by the Manufactured
Housing Board and performs home construction services in
6 connection with the construction or installation of manufactured
8 housing.

10 **§15349. License limitation**

12 A license issued under this chapter may be issued to a
person or a business entity. If the applicant is a corporation,
14 partnership, limited liability company or other business entity,
the entity must designate at least one qualifying natural person
16 who is a partner, member, officer, manager or employee and who
meets the professional qualifications required of licensees under
18 this chapter. In the event the designated natural person no
longer holds the qualifying relationship with the entity due to
20 death or separation, the entity must designate another natural
person within 6 months from the date of death or separation and
22 qualify that person as soon as is practical.

24 An entity may conduct business under a trade name if its
license is issued under the trade name. The board may refuse to
26 issue a license under a specific trade name if the name is
considered to be misleading, deceptive or will likely result in
28 confusion with other existing businesses.

30 **§15350. Changes in circumstances**

32 A licensee under this chapter shall report a change of
address or name or other material change in the condition or
34 qualifications set forth in the original license application no
later than 30 days after the change. Upon proper notice, the
36 board's records must be changed and a new license issued for the
unexpired term of the current license if appropriate.

38 **§15351. Denial of license**

40 The board may deny a license if an applicant:

42 1. Fails to submit completed application. Fails to submit
a completed application within 30 days after being notified of
44 the materials needed to complete the application;

46 2. Fails to satisfy qualifications or standards. Fails to
meet license qualifications or to satisfy standards of practice
48 as adopted by the board pursuant to section 15344, subsections 1
and 2;

50

2 3. Suspension or revocation of license. Has had a
3 professional or occupational license suspended or revoked for
4 disciplinary reasons or an application rejected for reasons
5 relating to untrustworthiness within 3 years prior to the date of
6 application; or

7 4. Conviction of crime. Is subject to disqualification
8 based on the applicant's criminal history record information
9 pursuant to Title 5, chapter 341.

10 **§15352. Financial disclosures**

11 An applicant for licensure under this chapter must file with
12 the board the following information:

13 1. Nature of business. A complete statement of the general
14 nature of the applicant's contracting business or the applicant's
15 duties;

16 2. Unsatisfied judgments. Any final judgment owed to a
17 consumer, based on a finding of fraud or breach of express or
18 implied warranty of good workmanship, that remains unsatisfied 90
19 days after entry of judgment by a court of competent
20 jurisdiction; and

21 3. Bankruptcy. Any pending petition in bankruptcy or
22 discharge in bankruptcy within 7 years from the date of
23 application.

24 **§15353. Penalties; injunction**

25 Violations of licensing requirements under this chapter are
26 governed by the provisions of Title 10, section 8003-C.

27 **§15354. Grounds for disciplinary action**

28 After a hearing pursuant to section 15346, subsection 3, the
29 board may refuse to issue or renew any license or impose
30 disciplinary sanctions pursuant to Title 10, section 8003 if the
31 licensee is found to have committed one or more of the following:

32 1. Criminal record. Subject to Title 5, chapter 341, any
33 conviction of a crime described in Title 5, section 5301,
34 subsection 2;

35 2. Fraud or incompetence. An act or conduct that
36 constitutes fraud or incompetence in acting as a home contractor;

37 3. False statement. Procuring or attempting to procure a
38 license under this chapter by knowingly making a false statement,
39

2 submitting false information or making a material
misrepresentation in an application filed with the board;

4 4. Aiding and abetting. Aiding and abetting a person in
conduct that constitutes a violation of this chapter; and

6
8 5. Rule or law violation. Violating a rule adopted by the
board or a provision of this chapter.

10 **§15355. Building code**

12 1. Code designated; amendments; final adoption. On January
1, 2006, the board shall begin considering amendments to the 2003
14 edition of the International Residential Code for adoption. On
July 15, 2006, the board shall adopt the 2003 edition of the
16 International Residential Code with all amendments the board has
determined to be in the best interests of the State, which may be
18 known thereafter as "the Maine Model Residential Building Code."
Other codes and standards referenced within the 2003 edition of
20 the International Residential Code may not be automatically
adopted by the board by reference as part of the Maine Model
22 Residential Building Code. The board may amend the Maine Model
Residential Building Code annually thereafter, including by
24 incorporation of a later version of the International Residential
Code upon finding that the amendments are in the best interests
26 of the State.

28 2. Preemption. The energy efficiency standards adopted
pursuant to Title 10, section 1415-C, the fire safety codes and
30 standards adopted pursuant to Title 25, sections 2452 and 2465,
the electrical code adopted pursuant to section 1153-A, the oil
32 and solid fuel equipment standards adopted pursuant to Title 32,
section 2313, the plumbing code adopted pursuant to section
34 3403-B, the propane and natural gas equipment standards adopted
pursuant to section 14805, the boiler and pressure vessel
36 standards adopted pursuant to section 15104 and the elevator
standards adopted pursuant to section 15228 preempt the chapters
38 of the Maine Model Residential Building Code that cover the same
aspects of dwelling construction or improvement.

40 A residential building code adopted by a town, city or
42 municipality prior to the date on which this chapter is enacted
is not preempted by this section.

44
46 3. Limitation on code adoption. A town, city or
municipality may not adopt a residential building code after the
48 date on which this chapter becomes effective other than the Maine
Model Residential Building Code or the 2003 edition of the
50 International Residential Code plus any local amendments that a
town, city or municipality has made to the code.

2 **4. Notification of code adoption.** A town, city or
3 municipality shall notify the board, on a form provided by the
4 board, of its adoption of the Maine Model Residential Building
5 Code or the 2003 edition of the International Residential Code
6 plus any local amendments that a town, city or municipality has
7 made to the code within 30 days of its adoption.

8
9 **§15356. Licensing effective; prior registration**

10 **1. Licensing effective.** The provisions of this chapter
11 requiring licensure become effective one year after the
12 registration date, which is the first day of January of the year
13 following the year in which:

14
15 **A.** The total number of the following towns, cities and
16 municipalities that have adopted the 2003 edition of the
17 International Residential Code or the Maine Model
18 Residential Building Code reaches 56: Acton; Alfred;
19 Arundel; Ashland; Auburn; Augusta; Bar Harbor; Bath;
20 Belfast; Biddeford; Brewer; Bridgeton; Brunswick; Buxton;
21 Calais; Cape Elizabeth; Caribou; Carrabassett Valley;
22 Cumberland; Dayton; Dedham; Durham; Eastport; Falmouth;
23 Farmington; Fort Fairfield; Freeport; Gardiner; Gorham;
24 Gray; Hallowell; Hampden; Herman; Holden; Hollis; Houlton;
25 Kennebunk; Kennebunkport; Lebanon; Lewiston; Limington;
26 Lisbon; Long Island; Lovell; Lyman; Manchester; Mechanic
27 Falls; Newfield; Newport; North Yarmouth; Ogunquit; Old
28 Orchard Beach; Old Town; Orono; Otisfield; Paris; Poland;
29 Portland; Presque Isle; Rangeley; Raymond; Richmond;
30 Rockland; Rumford; Saco; Sanford; Scarborough; Shapleigh;
31 South Berwick; South Portland; Standish; Thomaston; Topsham;
32 Trenton; Turner; Veazie; Waterboro; Waterville; Wells;
33 Westbrook; Windham; Winslow; and Yarmouth; and

34
35 **B.** The total population, as determined by the 2000 Federal
36 Decennial Census, of the towns, cities and municipalities
37 listed in paragraph A that have adopted the 2003 edition of
38 the International Residential Code or the Maine Model
39 Residential Building Code is no less than 75% of the total
40 population, as determined by the 2000 Federal Decennial
41 Census, of the towns, cities and municipalities listed in
42 paragraph A.

43
44 **2. Fee.** The fee for registration pursuant to this section
45 is \$150 annually.

46
47 **3. Prior registration.** Upon the effective date of this
48 chapter, the Commissioner is authorized to develop a program of
49 registration for persons who wish to practice as home

2 contractors, in a manner that the commissioner shall determine.
3 Beginning on the registration date as determined in accordance
4 with subsection 1, the commissioner shall begin registering these
5 persons and collecting a registration fee in accordance with
6 section 15345. Beginning one year after the registration date, a
7 person may not practice as a home contractor unless that person
8 has applied to be registered pursuant to this chapter.

9
10 Violations of registration requirements under this section are
11 governed by the provisions of Title 10, section 8003-C. This
12 subsection is repealed upon the provisions of this chapter
13 requiring licensure becoming effective pursuant to subsection 1
14 of this section.

16 SUMMARY

18 This bill creates the Maine Home Contractor Licensing Act.
19 The bill contains the following provisions: requirements for
20 licensure of general contractors and persons who perform framing,
21 roofing, siding, insulating, window work or chimney work, if the
22 work concerns residential dwellings; certain specific exemptions
23 from licensure; required qualifications for general and specialty
24 licenses; requirements for criminal and financial disclosures;
25 creation and authority of the Maine Home Contractor Licensing
26 Board; fees for licensing; adoption of a model building code; and
27 a mechanism for phasing in a registration program, followed by a
28 licensing program, upon adoption of the model building code by 56
of a list of 83 specified municipalities.