

MAINE STATE LEGISLATURE

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Date: 3/22/10

Minority

BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 215, L.D. 272, Bill, "An Act To License Home Building and Improvement Contractors"

Amend the bill by striking out the title and substituting the following:

'An Act To License Residential Builders and Register Specialty Contractors'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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

20-A.

Maine Residential Builders and
Specialty Contractors Board

Public Members
Legislative Per Diem
Other Members No
Compensation
Authorized

32 MRSA §19011

Sec. 2. 10 MRSA §8001, sub-§38, ¶MM, as amended by PL 2009, c. 344, Pt. B, §4 and affected by Pt. E, §2, is further amended to read:

MM. Board of Speech-language Pathology, Audiology and Hearing Aid Dealing and Fitting; and

Sec. 3. 10 MRSA §8001, sub-§38, ¶NN, as enacted by PL 2009, c. 344, Pt. B, §5 and affected by Pt. E, §2, is amended to read:

NN. Maine Fuel Board; and

Sec. 4. 10 MRSA §8001, sub-§38, ¶OO is enacted to read:

OO. Maine Residential Builders and Specialty Contractors Board.

Sec. 5. 32 MRSA c. 141 is enacted to read:

COMMITTEE AMENDMENT

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CHAPTER 141

MAINE RESIDENTIAL BUILDERS AND SPECIALTY CONTRACTORS ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§19001. Short title

This chapter may be known and cited as "the Maine Residential Builders and Specialty Contractors Act."

§19002. Definitions

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

1. Applicant. "Applicant" means a person who applies for a license or registration under this chapter.

2. Board. "Board" means the Maine Residential Builders and Specialty Contractors Board as set out in this chapter.

3. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

4. Department. "Department" means the Department of Professional and Financial Regulation.

5. Dwelling. "Dwelling" means a single building that is owner-occupied or constructed for sale to an owner-occupant, that is not over 3 stories in height and that contains at least one but not more than 3 dwelling units.

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

7. Residential builder. "Residential builder" means a person who constructs, supervises or offers to construct or supervise the construction, repair or improvement of a dwelling when the cost of the construction, repair or improvement exceeds \$3,000. A person who engages or offers to engage in construction, repair or improvement costing more than \$3,000 in this State is considered to be a residential builder.

8. Residential specialty contractor. "Residential specialty contractor" means an independent contractor who is not a licensed residential builder and who contracts with a licensed residential builder or individual property owner to do construction work, repair or improvement the cost of which exceeds \$1,000 that requires special skills and involves the use of a specialized construction trade or craft. "Residential specialty contractor" includes a vinyl and aluminum siding installer, insulation installer, roofer, floor covering installer, mason, foundation installer, drywall installer, carpenter and window installer and other specialists as the board includes by rule.

SUBCHAPTER 2

**MAINE RESIDENTIAL BUILDERS AND SPECIALTY CONTRACTORS
BOARD**

§19011. Membership; appointment; organization

The Maine Residential Builders and Specialty Contractors Board, as established by Title 5, section 12004-A, subsection 20-A, shall administer the provisions of this chapter to protect the public with respect to the practice of residential construction and repair. Appointments of members must comply with the provisions of Title 10, section 8009.

1. Membership. The board consists of 9 members, appointed by the Governor:

A. Two public members;

B. Four residential builders, each having at least 5 years of experience as a residential builder. After the expiration of the initial term of members under this paragraph, the members must be residential builders licensed under this chapter;

C. One municipal code enforcement officer;

D. One engineer or architect, licensed under this Title, with experience in the design or construction of dwellings, who serves as a nonvoting member; and

E. One firefighter, who serves as a nonvoting member.

2. Terms; removal. The term of office of each member is 4 years. Members may be removed by the Governor for cause.

3. Meetings; quorum. The board shall meet at least once a year to conduct its business and elect its chair and at such other times as the board determines necessary. A majority of the members of the board constitutes a quorum for the transaction of business under this chapter.

§19012. Powers

1. Rules. The board shall adopt rules to administer this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must include, but are not limited to, license qualifications, standards of practice, standards of workmanship, continuing education and misconduct.

2. Licenses. The board shall evaluate the qualifications of and approve the examination to be taken by applicants.

3. Disciplinary sanctions. The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A.

SUBCHAPTER 3

LICENSE AND REGISTRATION

§19021. Residential builder

1. Residential builder; license required. A residential builder must be licensed by the board for a period established by the board by rule. A licensee must pay an annual

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1 fee established by the Director of the Office of Licensing and Registration within the
2 department pursuant to section 19026 that is based upon the department's costs in
3 carrying out the provisions of this chapter. Nothing in this chapter prohibits a person who
4 is licensed to practice in this State under any other law from engaging in the practice for
5 which that person is licensed.

6 **2. Application; licensing requirements.** An applicant for a residential builder's
7 license under this subchapter shall file with the board a written application on a form
8 prescribed by the board. The application must be accompanied by the payment of all
9 applicable fees required pursuant to subsection 1. A prerequisite for taking the
10 examination for a residential builder's license is a minimum of 2 years of relevant
11 experience under the supervision of a professional who is engaged in residential building
12 construction or other education or experience or a combination of these as may be
13 approved by the board. The board, through rulemaking, shall require the applicant to take
14 either a written or oral form of examination, whichever the applicant prefers, as a
15 prerequisite for licensure. The board, in reviewing an applicant, may consider the
16 applicant's experience, ability, character, financial condition, equipment and workers'
17 compensation insurance and other pertinent information the board may require. The
18 board shall issue a residential builder's license if the board finds that the applicant is
19 qualified to engage in residential building in this State and the applicant submits proof of
20 financial responsibility acceptable to the board.

21 **3. Examination.** An applicant who fails the examination for licensure under
22 subsection 2 must be given the opportunity to be reexamined after payment of an
23 additional examination fee. If the applicant fails the examination 3 times, the applicant is
24 not eligible for reexamination for 12 months. A record must be made and preserved by
25 the board of each examination of an applicant and the findings of the board pertaining to
26 the examination. A certified copy of the record must be furnished to an applicant
27 requesting the record upon the payment of a fee to the board that reasonably reflects the
28 cost of furnishing the record to the applicant.

29 **§19022. Residential specialty contractor**

30 **1. Residential specialty contractor; registration required.** A residential specialty
31 contractor must be registered by the board in a classification established pursuant to
32 subsection 3 for a period established by the board by rule. A registrant must pay an
33 annual fee established by the department based upon the department's costs in carrying
34 out the provisions of this chapter. Nothing in this chapter prohibits a person who is
35 licensed to practice in this State under any other law from engaging in the practice for
36 which that person is licensed.

37 **2. Application; registration requirements.** The board shall issue a residential
38 specialty contractor registration certificate for the classification established pursuant to
39 subsection 3 for which the applicant is qualified, if the board finds that the applicant is
40 qualified to engage in that classification of residential specialty contracting in the State.
41 A residential specialty contractor must be qualified and experienced in the particular
42 classification in which the applicant intends to, and does, engage. The board, by rule,
43 may require the applicant to take either a written or oral form of examination, whichever
44 the applicant prefers, in specific areas of classification.

1 **3. Registration; classification of specialty contractors.** The board by rule shall
2 establish classifications for registration of residential specialty contractors in a manner
3 consistent with established usage and procedure in the construction business. The board
4 may limit the field and scope of the operations of a residential specialty contractor to
5 those in which the applicant is to be registered. A residential specialty contractor
6 registration certificate issued by the board may not be for more than 3 of the
7 classifications recognized by the board. A residential specialty contractor registered or
8 wishing to be registered for more than 3 classifications must be examined and licensed as
9 a residential builder pursuant to section 19021.

10 **§19023. Renewal; continuing education**

11 The board shall annually renew a residential builder's license upon the applicant's
12 submission to the board of the completed renewal application, proof of financial
13 responsibility acceptable to the board and payment of all applicable fees. If a license has
14 been in inactive status for more than 3 years, the applicant is subject to the requirements
15 of original licensure. As a condition of license renewal, the board may require by rule a
16 licensee to satisfactorily complete continuing education through a program approved by
17 the board, as long as the continuing education requirements are readily accessible to the
18 licensee and do not represent an undue burden on the licensee.

19 **§19024. Exemptions**

20 A license or registration under this chapter is not required for a person who:

21 **1. Residential builder.** Otherwise acts as a residential builder but does not perform
22 construction, repair or improvement costing more than \$3,000 for any one owner of a
23 dwelling in a calendar year;

24 **2. Labor; services.** Performs labor or services for a licensed residential builder
25 under this chapter;

26 **3. Trade; profession.** Holds a license for a trade or profession and is acting within
27 the scope of the trade or profession for which the person is licensed;

28 **4. Representative.** Is an authorized representative of the United States Government,
29 the State or any incorporated municipality, county or other political subdivision of this
30 State who is acting within the scope of that representative's authorization;

31 **5. Ownership interest; family member; lessee.** Performs work on a dwelling in
32 which that person has an ownership interest or that is owned by a family member of that
33 person or who is a lessee performing work on the lessee's leased property;

34 **6. Certified applied technology program.** Is a student enrolled in a certified
35 applied technology program in which the student works under the direct supervision of a
36 residential builder licensed under this chapter;

37 **7. Public utility.** Is a public utility operating under the laws of the State and rules of
38 the Public Utilities Commission in construction, maintenance or development work
39 incidental to the public utility's business;

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1 **8. Manufactured housing.** Is licensed by the Manufactured Housing Board under
2 Title 10, chapter 951 and performs home construction services in connection with the
3 construction or installation of manufactured housing; or

4 **9. Other professions.** Is licensed in this State under any other provision of law and
5 engages in the practice for which the person is licensed.

6 **§19025. Violations**

7 A violation of the licensing requirements under this chapter is governed by the
8 provisions of Title 10, section 8003-C.

9 **§19026. Fees**

10 The Director of the Office of Licensing and Registration within the department,
11 pursuant to Title 10, section 8003, subsection 2-A, paragraph D, may establish by rule
12 fees for purposes authorized under this chapter in amounts that are reasonable and
13 necessary for their respective purposes, except that the fee for any one purpose may not
14 exceed \$350. Rules adopted pursuant to this section are routine technical rules as defined
15 in Title 5, chapter 375, subchapter 2-A.

16 **§19027. Effective date**

17 This subchapter takes effect January 1, 2013.

18 **Sec. 6. Maine Residential Builders and Specialty Contractors Board**
19 **initial meeting; staggered terms.** Initial members of the Maine Residential Builders
20 and Specialty Contractors Board created pursuant to the Maine Revised Statutes, Title 32,
21 section 19011 must be appointed no later than May 1, 2011. The board shall convene its
22 first meeting no later than July 15, 2011. Notwithstanding Title 32, section 19011,
23 subsection 2, initial terms of the members of the board are as follows:

- 24 1. For the firefighter representative, 2 years;
25 2. For one public member, one year;
26 3. For one public member, 2 years;
27 4. For 2 residential builders, 3 years;
28 5. For 2 residential builders, 4 years;
29 6. For the municipal code enforcement officer, 2 years; and
30 7. For the engineer or architect, 2 years.

31 **Sec. 7. Transfer 2011.** Notwithstanding any other provision of law, the State
32 Controller shall transfer \$837,732 from the unappropriated surplus of the General Fund to
33 the Office of Licensing and Registration Other Special Revenue Funds account within the
34 Department of Professional and Financial Regulation no later than July 1, 2011 to support
35 the establishment and start-up costs of the Maine Residential Builders and Specialty
36 Contractors Board.

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124th MAINE LEGISLATURE

LD 272

LR 191(02)

An Act To License Home Building and Improvement Contractors

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Business, Research and Economic Development

Fiscal Note Required: Yes

Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Net Cost (Savings)				
General Fund	\$0	\$0	\$837,732	\$368,587
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$0	\$631,997	\$948,620
Revenue				
Other Special Revenue Funds	\$0	\$0	\$0	\$2,100,000
Transfers				
General Fund	\$0	\$0	(\$837,732)	(\$368,587)
Other Special Revenue Funds	\$0	\$0	\$837,732	\$368,587

Correctional and Judicial Impact Statements

Increases the number of civil suits.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

This bill establishes the Maine Residential Builders and Specialty Contractors Board within the Department of Professional and Financial Regulation's Office of Licensing and Registration. The Office of Licensing and Registration will require Other Special Revenue Funds allocations totaling \$531,324 in fiscal year 2011-12 and \$873,886 in fiscal year 2012-13 for the costs associated with per diem and other expenses of board members, contracting costs and upgrading of the licensing system. Also included in the Other Special Revenue Funds allocations is funding for 2 Office Specialist I positions, one Director position and one Office Associate II position effective July 1, 2011 and 2 Inspector positions, one Senior Inspector position and one Paralegal position effective January 1, 2013 and related all other expenses.

CA(H-760) to 1d272

The Administrative Services program within the Department of Professional and Financial Regulation will require Other Special Revenue Funds allocations of \$56,408 in fiscal year 2011-12 and \$30,891 in fiscal year 2012-13 for the general operating costs necessary to support both the board and the staff. An additional \$250,000 in costs are anticipated for Office of Licensing and Registration administrative support as well as Commissioner's Office support, service center support, attorney general services, rulemaking and insurance. Because sufficient dedicated funds will not be available to support the operation of the board from July 1, 2011 through January 1, 2013, this bill includes language that requires the State controller to transfer \$837,732 and \$368,587 from the unappropriated surplus of the General Fund to the Office of Licensing and Registration no later than July 1, 2011 and July 1, 2012, respectively.

This bill provides for the establishment of fees for contractor licenses, renewal licenses and specialty licenses and caps the amount that can be collected for any one purpose at \$350. This fiscal estimate assumes that receipt of registration fees will begin in January 2013. An economic impact analysis prepared by Planning Decisions, Inc. of South Portland, Maine in November 2003 estimates that approximately 12,000 home improvement contractors could be licensed. Given the exemptions from the licensure requirements provided in this bill, this fiscal estimate assumes the licensing of 6,000 contractors beginning in January 2013 at \$350 per license resulting in \$2,100,000 in dedicated revenues to the board in fiscal year 2012-13. Actual revenues will be higher or lower depending on the actual number of applicants. A General Fund appropriation may be required if sufficient revenues are not received to support the continued operation of the board beginning in fiscal year 2012-13.

The Department of the Attorney General will require Other Special Revenue Funds allocations of \$44,265 in fiscal year 2011-12 and \$43,843 in fiscal year 2012-13 for one part-time Assistant Attorney General position to provide legal services for the Maine Residential Builders and Specialty Contractors Board.