

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1128

H.P. 840

House of Representatives, March 15, 2011

### **An Act To Modify the Requirements for Municipal Code Enforcement Officer Training**

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative MOULTON of York.  
Cosponsored by Representative: CROCKETT of Bethel.

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

2 **Sec. 1. 5 MRSA §3305, sub-§1, ¶M**, as amended by PL 2009, c. 213, Pt. M, §1,  
3 is repealed.

4 **Sec. 2. 10 MRSA §9722, sub-§1**, as enacted by PL 2007, c. 699, §6, is amended  
5 to read:

6 **1. Establishment.** The Technical Building Codes and Standards Board, established  
7 in Title 5, section 12004-G, subsection 5-A and located within the Department of Public  
8 Safety, is established to adopt, amend and maintain the Maine Uniform Building and  
9 Energy Code, to resolve conflicts between the Maine Uniform Building and Energy Code  
10 and the fire and life safety codes in Title 25, sections 2452 and 2465 and in conjunction  
11 with the Maine Community College System, to provide for training for municipal  
12 building officials, local code enforcement officers and 3rd-party inspectors.

13 **Sec. 3. 10 MRSA §9723, sub-§2**, as enacted by PL 2007, c. 699, §6, is amended  
14 to read:

15 **2. Training program standards; implementation.** The committee shall direct the  
16 training coordinator of the Bureau of Building Codes and Standards, established in Title  
17 25, section 2372, to develop a training program for municipal building officials, local  
18 code enforcement officers and 3rd-party inspectors. ~~The Executive Department, State~~  
19 ~~Planning Office, pursuant~~ Pursuant to Title 30-A, section 4451, subsection 3-A, the  
20 Maine Community College System shall implement the training program and the  
21 Department of Professional and Financial Regulation shall implement the certification  
22 program established under this chapter.

23 **Sec. 4. 20-A MRSA §12704, sub-§6**, as enacted by PL 1985, c. 695, §11, is  
24 amended to read:

25 **6. Special training and education.** ~~Provide~~ Providing, directly or through  
26 contractual or other arrangements, remedial and special training and education programs  
27 for disadvantaged and handicapped persons, designed to enable them to make maximum  
28 use of their aptitudes and abilities and achieve meaningful employment and economic  
29 self-sufficiency; ~~and~~

30 **Sec. 5. 20-A MRSA §12704, sub-§7**, as enacted by PL 1985, c. 695, §11 and  
31 amended by PL 1997, c. 530, Pt. A, §34 and PL 2003, c. 689, Pt. B, §6, is further  
32 amended to read:

33 **7. Temporary Assistance for Needy Families Program.** In cooperation with the  
34 Department of Health and Human Services, Division of Welfare Employment, ~~provide~~  
35 providing, directly or through contractual or other arrangements, preparatory, educational  
36 and training programs for recipients of Temporary Assistance for Needy Families,  
37 designed to enable them to achieve meaningful employment and economic self-  
38 sufficiency; and

39 **Sec. 6. 20-A MRSA §12704, sub-§8** is enacted to read:

1           **8. Municipal building officials, local code enforcement officers and 3rd-party**  
2 **inspectors.** Pursuant to Title 30-A, section 4451, subsection 3-A, administering a  
3 program of training for municipal building officials, local code enforcement officers and  
4 3rd-party inspectors.

5           **Sec. 7. 25 MRSA §2374**, as amended by PL 2009, c. 213, Pt. M, §3, is further  
6 amended to read:

7           **§2374. Uniform Building Codes and Standards Fund**

8           The Uniform Building Codes and Standards Fund, referred to in this section as "the  
9 fund," is established within the Department of Public Safety to fund the activities of the  
10 bureau under this chapter and the activities of the board under Title 10, chapter 1103 and  
11 ~~the Executive Department, State Planning Office~~ Maine Community College System and  
12 the Department of Professional and Financial Regulation under Title 30-A, section 4451,  
13 subsection 3-A. Revenue for this fund is provided by the surcharge established by  
14 section 2450-A. The Department of Public Safety, the Maine Community College  
15 System and the ~~Executive Department, State Planning Office~~ Department of Professional  
16 and Financial Regulation shall together determine an amount to be transferred annually  
17 from the fund for training and certification under Title 30-A, section 4451, subsection  
18 3-A to the Maine Code Enforcement Training and Certification Fund established in Title  
19 30-A, section 4451, subsection 3-B. Any balance of the fund may not lapse, but must be  
20 carried forward as a continuing account to be expended for the same purpose in the  
21 following fiscal year.

22           **Sec. 8. 25 MRSA §2450-A**, as enacted by PL 2007, c. 699, §13, is amended to  
23 read:

24           **§2450-A. Surcharge on plan review fee for Uniform Building Codes and Standards**  
25 **Fund**

26           In addition to the fees established in section 2450, a surcharge of 4¢ per square foot  
27 of occupied space must be levied on the existing fee schedule for new construction,  
28 reconstruction, repairs, renovations or new use for the sole purpose of funding the  
29 activities of the Technical Building Codes and Standards Board with respect to the Maine  
30 Uniform Building and Energy Code, established pursuant to ~~the~~ Title 10, chapter 1103,  
31 the activities of the Bureau of Building Codes and Standards under chapter 314 and the  
32 activities of the ~~Executive Department, State Planning Office~~ Maine Community College  
33 System and the Department of Professional and Financial Regulation under Title 30-A,  
34 section 4451, subsection 3-A, except that the fee for review of a plan for the renovation of  
35 a public school, including the fee established under section 2450, may not exceed \$450.  
36 Revenue collected from this surcharge must be deposited into the Uniform Building  
37 Codes and Standards Fund established by section 2374.

38           **Sec. 9. 30-A MRSA §4215, sub-§4**, as amended by PL 2009, c. 213, Pt. M, §4, is  
39 further amended to read:

40           **4. Fees.** The plumbing inspector shall issue any permit under this section upon  
41 receipt and approval of a completed application form as prescribed by the commissioner

1 and payment by the applicant of the fee established by the municipality. The fee must be  
2 at least the minimum amount determined by rule of the department. One-quarter of the  
3 amount of the minimum fee must be paid through the department to the Treasurer of State  
4 to be maintained as a permanent fund and used by the department to implement its  
5 subsurface wastewater disposal rules, to administer the receipt and collation of completed  
6 permits and to issue plumbing permit labels to the municipality and by the ~~State Planning~~  
7 ~~Office~~ Maine Community College System and the Department of Professional and  
8 Financial Regulation for training and certification of local plumbing inspectors. The  
9 department ~~and~~ ~~the State Planning Office~~ Maine Community College System and the  
10 Department of Professional and Financial Regulation shall together determine an amount  
11 to be transferred annually by the Treasurer of State for training and certification of local  
12 plumbing inspectors to the Maine Code Enforcement Training and Certification Fund  
13 established in section 4451, subsection 3-B. The remainder of the fee must be paid to the  
14 treasurer of the municipality.

15 **Sec. 10. 30-A MRSA §4221, sub-§2**, as amended by PL 1997, c. 683, Pt. B, §15  
16 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

17 **2. Certification requirements.** A person may not hold the office of plumbing  
18 inspector unless currently certified as qualified by the ~~State Planning Office~~ Department  
19 of Professional and Financial Regulation pursuant to section 4451. Certification is  
20 effective for a period of 5 years unless sooner revoked or suspended by the District Court  
21 as provided for in section 4451.

22 **Sec. 11. 30-A MRSA §4301, sub-§5-C** is enacted to read:

23 **5-C. Department.** "Department" means the Department of Professional and  
24 Financial Regulation.

25 **Sec. 12. 30-A MRSA §4451**, as amended by PL 2009, c. 213, Pt. M, §§5 to 9 and  
26 c. 261, Pt. A, §14, is further amended to read:

27 **§4451. Training and certification for code enforcement officers**

28 **1. Certification required; exceptions.** A municipality may not employ any  
29 individual to perform the duties of a code enforcement officer who is not certified by the  
30 ~~office~~ department, except that:

31 A. An individual other than an individual appointed as a plumbing inspector has 12  
32 months after beginning employment to be trained and certified as provided in this  
33 section;

34 B. Whether or not any extension is available under paragraph A, the ~~office~~  
35 department may waive this requirement for up to one year if the certification  
36 requirements cannot be met without imposing a hardship on the municipality  
37 employing the individual;

38 C. An individual may be temporarily authorized in writing by the Department of  
39 Health and Human Services, Division of Health Engineering to be employed as a  
40 plumbing inspector for a period not to exceed 12 months; and

1 D. An individual whose certification has expired or is about to expire may be  
2 temporarily authorized in writing by the ~~office~~ department to extend that individual's  
3 certification for a period not to exceed 12 months in cases where the necessary  
4 training or examination is suspended under subsection 3-B, paragraph E.

5 **2. Penalty.** Any municipality that violates this section commits a civil violation for  
6 which a forfeiture of not more than \$100 may be adjudged. Each day in violation  
7 constitutes a separate offense.

8 **2-A. Code enforcement officer; definition and duties.** As used in this subchapter,  
9 "code enforcement officer" means a person certified under this section and employed by a  
10 municipality to enforce all applicable laws and ordinances in the following areas:

- 11 A. Shoreland zoning under Title 38, chapter 3, subchapter ~~I~~ 1, article 2-B;
- 12 B. Comprehensive planning and land use under Part 2, Subpart ~~VI-A~~ 6-A;
- 13 C. Internal plumbing under chapter 185, subchapter ~~III~~ 3;
- 14 D. Subsurface wastewater disposal under chapter 185, subchapter ~~III~~ 3; and
- 15 E. Building standards under chapter 141; chapter 185, subchapter 1; beginning June  
16 1, 2010, Title 10, chapter 1103; and Title 25, chapters 313 and 331.

17 **3. Training and certification of code enforcement officers.** In cooperation with  
18 code enforcement officer professional associations, the ~~Maine Community College~~  
19 ~~System~~ department, the Department of Environmental Protection, the Department of  
20 Health and Human Services and the Department of Public Safety, except as otherwise  
21 provided in paragraph H, the ~~office~~ Maine Community College System shall establish a  
22 continuing education program for individuals engaged in code enforcement. This  
23 program must provide basic training in the technical and legal aspects of code  
24 enforcement necessary for certification. The basic training program must include training  
25 to provide familiarity with the laws and ordinances related to the structure and practice of  
26 the municipal code enforcement office, municipal planning board and appeals board  
27 procedures, application review and permitting procedures, inspection procedures and  
28 enforcement techniques.

29 H. If funding is not available to support the training and certification program  
30 authorized under this subsection, the ~~office~~ Maine Community College System shall  
31 discontinue training and the department shall discontinue certification activities  
32 related to laws and ordinances referenced in subsection 2-A, paragraphs A and B and  
33 shall adopt by routine technical rules under Title 5, chapter 375, subchapter 2-A a  
34 program to register code enforcement officers that meet training and education  
35 qualifications. The ~~office~~ department shall publish the list of persons registered for  
36 code enforcement who have submitted evidence of required qualifications. Persons  
37 registered under this paragraph must meet the requirements for training and  
38 certification under this subchapter. The ~~office~~ Maine Community College System  
39 and the department shall consult with the Department of Health and Human Services  
40 for the purposes of carrying out training and certification activities related to laws and  
41 ordinances referenced in subsection 2-A, paragraphs C and D. Within one month of  
42 discontinuation of training and certification under this paragraph, the ~~office~~ Maine

1            Community College System and the department shall report to the joint standing  
2 committee of the Legislature having jurisdiction over appropriations and financial  
3 affairs and the joint standing committee of the Legislature having jurisdiction over  
4 state and local government matters a recommendation for funding the training and  
5 certification program or for further changes in program requirements.

6            **3-A. Training and certification of inspectors in the Maine Uniform Building and**  
7 **Energy Code.** In accordance with the training and certification requirements developed  
8 pursuant to Title 10, section 9723, the ~~office~~ Maine Community College System shall  
9 provide the training necessary to certify municipal building officials, local code  
10 enforcement officers and 3rd-party inspectors and the department shall certify the  
11 municipal building officials, local code enforcement officers and 3rd-party inspectors.

12            **3-B. Maine Code Enforcement Training and Certification Fund.** The Maine  
13 Code Enforcement Training and Certification Fund, referred to in this section as "the  
14 fund," is established as a nonlapsing fund to support training and certification programs  
15 administered by the ~~office~~ Maine Community College System and the department for  
16 code enforcement officers, local plumbing inspectors, municipal building officials and  
17 3rd-party inspectors in accordance with this subchapter.

18            A. Beginning July 1, 2009, and each year thereafter on July 1st, the funds identified  
19 in section 4215, subsection 4 for training and certifying local plumbing inspectors  
20 must be transferred to the fund.

21            B. Beginning July 1, 2009, and each year thereafter on July 1st, the funds identified  
22 in Title 25, section 2374 for training and certifying municipal building officials, local  
23 code enforcement officers and 3rd-party inspectors must be transferred to the fund.

24            C. The ~~office~~ Maine Community College System and the department shall place in  
25 the fund any money ~~it receives~~ the Maine Community College System and the  
26 department receive from grants to support the requirements of this subchapter.

27            D. Funds related to code enforcement training and certification may be expended  
28 only in accordance with allocations approved by the Legislature and solely for the  
29 administration of this subchapter. Any balance remaining in the fund at the end of  
30 any fiscal year may not lapse but must be carried forward to the next fiscal year.

31            E. If the fund does not contain sufficient money to support the costs of the training  
32 and certification provided for in this subchapter, the ~~office~~ Maine Community  
33 College System and the department may suspend all or reduce the level of training  
34 and certification activities.

35            **4. Examination.** The ~~office~~ department shall conduct at least one examination each  
36 year to examine candidates for certification at a time and place designated by it. The  
37 ~~office~~ department may conduct additional examinations to carry out the purposes of this  
38 subchapter.

39            **5. Certification standards.** The ~~office~~ department shall adopt routine technical  
40 rules under Title 5, chapter 375, subchapter 2-A to establish the qualifications, conditions  
41 and licensing standards and procedures for the certification and recertification of  
42 individuals as code enforcement officers. A code enforcement officer need only be

1 certified in the areas of actual job responsibilities. The rules established under this  
2 subsection must identify standards for each of the areas of training under subsection 2-A,  
3 in addition to general standards that apply to all code enforcement officers.

4 **6. Certification; terms; revocation.** The ~~office~~ department shall certify individuals  
5 as to their competency to successfully enforce ordinances and other land use regulations  
6 and permits granted under those ordinances and regulations and shall issue certificates  
7 attesting to the competency of those individuals to act as code enforcement officers.  
8 Certificates are valid for 6 years unless revoked by the District Court. An examination is  
9 not required for recertification of code enforcement officers. The ~~office~~ department shall  
10 recertify a code enforcement officer if the code enforcement officer successfully  
11 completes at least 12 hours of approved training in each area of job responsibility during  
12 the 6-year certification period.

13 A. The District Court may revoke the certificate of a code enforcement officer, in  
14 accordance with Title 4, chapter 5, when it finds that:

- 15 (1) The code enforcement officer has practiced fraud or deception;  
16 (2) Reasonable care, judgment or the application of a duly trained and  
17 knowledgeable code enforcement officer's ability was not used in the  
18 performance of the duties of the office; or  
19 (3) The code enforcement officer is incompetent or unable to perform properly  
20 the duties of the office.

21 B. Code enforcement officers whose certificates are invalidated under this subsection  
22 may be issued new certificates provided that they are newly certified as provided in  
23 this section.

24 **7. Other professions unaffected.** This subchapter may not be construed to affect or  
25 prevent the practice of any other profession.

26 **Sec. 13. 30-A MRSA §4453, first ¶**, as enacted by PL 1997, c. 296, §9, is  
27 amended to read:

28 The ~~office~~ department shall establish certification standards and a program to certify  
29 familiarity with court procedures for the following individuals:

30 **Sec. 14. Transition provisions.** The following provisions govern the transition  
31 of the training of municipal building officials, local code enforcement officers and  
32 3rd-party inspectors from the Executive Department, State Planning Office to the Maine  
33 Community College System.

34 1. The Maine Community College System is the successor in holding the powers,  
35 duties and functions of the training of municipal building officials, local code  
36 enforcement officers and 3rd-party inspectors formerly held by the Executive  
37 Department, State Planning Office.

38 2. All existing rules, regulations and procedures concerning the training of municipal  
39 building officials, local code enforcement officers and 3rd-party inspectors in effect, in



1 operation or adopted in or by the Executive Department, State Planning Office or any of  
2 its administrative units or officers are hereby declared in effect and continue in effect  
3 until rescinded, revised or amended by the proper authority.

4 3. All existing contracts, agreements and compacts concerning the training of  
5 municipal building officials, local code enforcement officers and 3rd-party inspectors  
6 currently in effect in the Executive Department, State Planning Office continue in effect.

7 4. Any positions authorized and allocated concerning the training of municipal  
8 building officials, local code enforcement officers and 3rd-party inspectors subject to the  
9 personnel laws to the Executive Department, State Planning Office are transferred to the  
10 Maine Community College System and may continue to be authorized.

11 5. All records, property and equipment previously involved in the training of  
12 municipal building officials, local code enforcement officers and 3rd-party inspectors  
13 belonging to or allocated for the use of the Executive Department, State Planning Office  
14 become, on the effective date of this Act, part of the property of the Maine Community  
15 College System.

16 **Sec. 15. Transition provisions.** The following provisions govern the transition  
17 of the certification of municipal building officials, local code enforcement officers and  
18 3rd-party inspectors from the Executive Department, State Planning Office to the  
19 Department of Professional and Financial Regulation.

20 1. The Department of Professional and Financial Regulation is the successor in  
21 holding the powers, duties and functions of municipal building officials, local code  
22 enforcement officers and 3rd-party inspectors certification formerly held by the Executive  
23 Department, State Planning Office.

24 2. All existing rules, regulations and procedures concerning certification for  
25 municipal building officials, local code enforcement officers and 3rd-party inspectors in  
26 effect, in operation or adopted in or by the Executive Department, State Planning Office  
27 or any of its administrative units or officers are hereby declared in effect and continue in  
28 effect until rescinded, revised or amended by the proper authority.

29 3. All existing contracts, agreements and compacts concerning certification for  
30 municipal building officials, local code enforcement officers and 3rd-party inspectors  
31 currently in effect in the Executive Department, State Planning Office continue in effect.

32 4. Any positions authorized and allocated concerning certification for municipal  
33 building officials, local code enforcement officers and 3rd-party inspectors subject to the  
34 personnel laws to the Executive Department, State Planning Office are transferred to the  
35 Department of Professional and Financial Regulation and may continue to be authorized.

36 5. All records, property and equipment previously involved in certification for  
37 municipal building officials, local code enforcement officers and 3rd-party inspectors  
38 belonging to or allocated for the use of the Executive Department, State Planning Office  
39 become, on the effective date of this Act, part of the property of the Department of  
40 Professional and Financial Regulation.

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## **SUMMARY**

This bill transfers the responsibility to train municipal code enforcement officers from the Executive Department, State Planning Office to the Maine Community College System and transfers the responsibility to certify municipal code enforcement officers from the State Planning Office to the Department of Professional and Financial Regulation.