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DEPARTMENT OF

Professional & Financial Regulation

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Report of the Commissioner

Department of Professional and Financial Regulation

Submitted to the

**Joint Standing Committee on
Business, Research and Economic Development**

Pursuant to Resolve 2009, Ch. 73

**Directing the Department of Professional and Financial
Regulation to Conduct a Sunrise Review Regarding the
Proposal to License Wetland Scientists**

February 15, 2010

Sunrise Review: Licensing of Wetland Scientists

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Sunrise Review: Licensing of Wetland Scientists

Sunrise Review: Overview

Under Maine law (Title 5, section 12015, subsection 3), a process is prescribed for evaluating proposals that would establish a licensing board or otherwise regulate an unregulated occupation or profession. The same process is required when proposals are put forward to substantially expand regulation of an occupation or profession already regulated by the State.

The process, known as “Sunrise Review”, requires the committee of jurisdiction to take one of three steps in order to obtain relevant information about the proposal to create or expand a regulatory program. The Committee could:

- A. Hold a public hearing to specifically address the Sunrise Review evaluation criteria contained in Title 32, section 60-J;
- B. Request the Commissioner of PFR to perform an “independent assessment” of responses to the evaluation criteria from the group proposing regulation or expansion of regulation, as well as from opponents and other interested parties; or
- C. Request the Commissioner of PFR to create a technical committee to assess responses to the evaluation criteria from the parties referenced above.

In the case of options B and C, the Commissioner must report findings to the Committee within a set period of time. The Committee reviews the report, along with any additional material it wishes to consider, before making a determination about the proposal. The Committee may move forward with legislation to license the occupation/profession or decline to do so.

If the Committee determines that licensing is warranted, legislation is drafted and approved at the Committee level. As stipulated in Title 5, “*Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation.*”

Sunrise review is a tool for state policymakers to systematically assess proposals to establish new regulatory requirements for a previously unregulated profession or to expand the scope of practice of a regulated profession. ***The purpose of the review is to analyze whether the proposed state regulation through licensing is necessary to protect the health, safety and welfare of the public.***

A sunrise review also seeks to identify the potential impact of the proposed regulation on the availability and cost of services to consumers. The rationale underlying the requirement for sunrise review is that the State of Maine should only impose regulation when necessary to ensure public health and safety, and then, impose only the minimum

level of regulation to ensure public health and safety. State regulation through licensing should not be used for economic purposes or to create unnecessary barriers of entry to a professional that could limit access to services or increase their cost.

Charge from the Legislature

Proposed legislation to license wetland scientists was introduced during the First Regular Session of the 124th Maine Legislature. LD 1240, *Resolve, To License Wetland Scientists*, was sponsored by Representative Jane Eberle and referred to the Joint Standing Committee on Business, Research and Economic Development.

As originally introduced, the bill would have directed the Department of Professional and Financial Regulation to develop a licensing protocol for wetland scientists in collaboration with the Department of Environmental Protection and the Maine Association of Wetland Scientists and to report to the Joint Standing Committee on Business, Research and Economic Development by December 2, 2009. The joint standing committee would have been authorized to introduce legislation related to this report to the Second Regular Session of the 124th Legislature.

The Committee held a public hearing for LD 1240 on April 14, 2009. DPFR Commissioner Anne Head testified neither for nor against the legislation. She indicated that it would trigger Maine's Sunrise Review statute contained in Title 32, Chapter 1-A.

The Committee convened a work session on April 30, 2009 and voted to amend the Resolve to require the Commissioner of DPFR to conduct an independent assessment of the proposal to license wetland scientists. The Maine House of Representatives approved the Resolve on May 20, 2009. The State Senate passed it on May 21, 2009. It was signed as Resolve 2009, Chapter 73, by Governor John E. Baldacci on May 28, 2009.

Resolve, Directing the Commissioner of Professional and Financial Regulation To Conduct a Sunrise Review Regarding a Proposal To License Wetland Scientists

Sec. 1. Commissioner of Professional and Financial Regulation to conduct a sunrise review regarding a proposal to license wetland scientists. Resolved: That the Commissioner of Professional and Financial Regulation shall conduct an independent assessment pursuant to the sunrise review requirements in the Maine Revised Statutes, Title 32, chapter 1-A, subchapter 2 of a proposal submitted to the commissioner to license wetland scientists; and be it further

Sec. 2. Reporting date established. Resolved: That no later than February 15, 2010 the Commissioner of Professional and Financial Regulation shall submit a report with any necessary proposed legislation regarding the independent assessment under section 1 to the Joint Standing Committee on Business, Research and Economic Development. That committee is authorized to submit legislation on the subject matter of the report to the Second Regular Session of the 124th Legislature.

Evaluation Criteria

Pursuant to Title 5, section 12015, subsection 3, the Legislative Resolve required the Commissioner of PFR to conduct an independent assessment of responses to evaluation criteria set forth in the statute. The proponents of regulation who initiate the proposal are required to provide their responses and related information to the committee of jurisdiction when the proposal is submitted. It is customary for the Commissioner to request, accept and consider responses to the evaluation criteria from opponents of the regulation, as well as from other interested parties.

Title 32, section 60-J establishes thirteen criteria, which must be addressed by the “applicant group” proposing regulation. Opponents and other interested parties must address the same criteria, although responses to all criteria are not required.

Criteria 1: Data on Group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

Criteria 2: Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

Criteria 3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

Criteria 4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

Criteria 5: Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

Criteria 6: Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

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

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

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

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

Criteria 11: Mandated benefits. (not applicable)

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

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

The Process

Following enactment of Resolve 2009, Chapter 73, a survey instrument was prepared based on these criteria. The survey was distributed June 12, 2009 to an interested parties list. The list included individuals and representatives of organizations who testified at the public hearing on April 14, 2009. Commissioner Head encouraged those receiving the survey instrument to share a copy with other individuals who might have relevant information.

Completed surveys were submitted by the following four individuals. If the respondent provided input on behalf of an organization, it is indicated next to the person's name.

Dale Knapp, Wetland Scientist, Maine Association of Wetland Scientists

Michael Lychwala, Wetland Biologist

Gil Paquette, Wetland Scientist

Colen Peters, Wetland Scientist

The completed surveys noted above were posted on the Department's website under 'Legislative Reports' (www.maine.gov/pfr/legislative/index.htm), which can be accessed from the site's homepage.

Evaluation of Responses to Sunrise Criteria

The **proponent** of licensure for Wetland Scientists is Dale Knapp. He is the president of Stantec in Topsham. According to its website (www.stantec.com), Stantec "provides professional consulting services in planning, engineering, architecture, interior design, landscape architecture, surveying, environmental sciences, project management, and project economics for infrastructure and facilities projects." Mr. Knapp is also president of the Maine Association of Wetland Scientists. His survey indicates that it is being submitted on behalf of the Association.

Opponents of licensure for Wetland Scientists are Michael Lychwala, Gil Paquette and Colen Peters. All are employed by TRC Companies, Inc. in South Portland. According to its website (www.trcsolutions.com), TRC is "an engineering, consulting, and construction management firm that provides integrated services to the environmental, energy, infrastructure, and real estate markets." Mr. Lychwala and Mr. Paquette indicate that they are current or former members of the Maine Association of Wetland Scientists.

Responses to the thirteen specific Sunrise Review criteria are summarized below.

Criteria 1: Data on Group

The proponent of licensure, Dale Knapp on behalf of the Maine Association of Wetland Scientists, estimates that 200 individuals would seek licensure initially, with others doing so as they enter the profession. According to the survey response, many of these individuals are members of one or more of the following four organizations: the Maine Association of Wetland Scientists, the Maine Association of Professional Soil Scientists, the Maine Association of Site Evaluators, and the Maine Society of Land Surveyors.

Two opponents did not address this survey item. The third, Colen Peters, estimated that 100 individuals would be subject to regulation. He concurs that the groups which represent many of the potential licensees are the Maine Association of Wetland Scientists, the Maine Association of Professional Soil Scientists, the Maine Association of Site Evaluators, and the Maine Society of Land Surveyors.

Department Analysis: Although the estimated number varies, between 100 and 200 individuals would be required to become licensed wetland scientists.

Criteria 2: Specialized skill

The proponent believes the general public has the ability to identify “obvious types of wetland communities, such as open water swamps,” but lacks the knowledge and skill needed to locate the boundary of a wetland. Dale Knapp for the Maine Association of Wetland Scientists states:

“Wetlands are complex interconnected systems that do not necessarily terminate where cattails and open water end. Currently, there is no minimum qualification in the state of Maine required to delineate wetlands. To that end, anyone in the general public can legally map wetland boundaries and could promote their services for wetland delineation. Wetland science requires a specialized skill set in terms of both education and experience. The practice of wetland delineation requires a great deal of technical knowledge...”

The 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual provides the “basis and criteria” for identifying wetlands. It outlines three factors that must be present for an area to be considered a wetland – wetland hydrology, wetland soil, and wetland vegetation. The proponent argues that the general public does not have the knowledge or skills to make this determination.

The opponents agree that wetland scientists have specialized education and skills, but contend the public has enough basic knowledge to make some determinations and the ability to hire trained professionals to assist them. Michael Lychwala believes certain situations call for the expertise of a wetland scientist, but that the “basic principals” can be understood by the general public and that land owners should determine when professional assistance is necessary. Gil Paquette says “the public can and already does select qualified individuals to perform this work...” Colen Peters adds that the need for specialized skill is “addressed during municipal, DEP, and Corps of Engineers permitting processes for bigger (as well as smaller) impact projects.”

Department Analysis: Both proponents and opponents agree that wetland scientists possess specialized skill. Whether the skills are of such a specialized nature that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met is a question about which the proponent and opponents clearly disagree. Department staff members are not aware of any inquiries from land owners or other members of the public seeking to know whether wetland scientists are regulated by DPFR or requesting guidance in selecting one.

Criteria 3: Public health; safety; welfare

The proponent contends that the lack of state licensing for wetland scientists threatens public welfare through health, environmental and fiscal impacts. At the same time, however, no specific examples of harm were provided. The reasons cited for not having examples of harm include an exemption from notifying the Maine Department of Environmental Protection for small projects, and municipal governments that do not require a wetland delineation when issuing a local permit.

Opponents say they are unaware of examples of harm and indicate a belief that current government involvement in wetland projects is appropriate and adequate to protect the public. Opponents cite current oversight responsibilities on the part of the Maine Department of Environmental Protection, the U.S. Army Corps of Engineers, local Planning Boards, and local Code Enforcement Officers.

Department Analysis: Based on the information provided by survey respondents, and independent research conducted by Department staff, a threat to public health, safety and welfare cannot be confirmed.

The question of whether licensing is needed to protect the public is *central* to the Sunrise Review process. Proponents provided no specific examples of harm resulting from the unlicensed practice of wetland scientists. Without specific evidence of problems having been caused by the absence of state licensure of wetland scientists, the Sunrise Review's public health and safety threshold is not met.

Criteria 4: Voluntary and past regulatory efforts

The proponent provided a detailed overview of how the Maine Association of Wetland Scientists (MAWS) has evolved, and how the organization has established voluntary procedures to establish minimal standards and encourage professionalism. The proponent indicates that MAWS was established in 1990 to "allow a diverse array of wetland professionals to act in the best interest of Maine's wetland resources, to foster consistency in wetland service providers, and to further the protection of the public." The organization has sought to foster "quality control" among wetland scientists.

MAWS adopted a Code of Ethics in 1992. Among other objectives, it calls on regular and affiliate members of the Association to "increase their knowledge and skills to advance the practice of wetland science" and to "promote competence in the field of wetland science by supporting high standards of education, and performance, and represent those standards to the public." The proponent indicates that the Code of Ethics has been invoked to deal with individuals who have violated its provisions. The proponent notes, however, that the Code does not apply to non-members of MAWS, and lacks the backing of Maine law.

In addition to the Code of Ethics, MAWS established a nine-point Standard of Professional Conduct. It encourages competent and ethical practices, and begins by stating that members should:

“Act with the authority of professional judgment based on sound scientific data, and avoid actions or omissions that may compromise scientific validity or accuracy. They shall respect the competence, judgment, and authority of the professional community. They shall adhere to current wetland laws and regulations and endeavor to communicate those laws to clients and the public.”

In 1996, MAWS approved a resolution aimed at outlining minimum qualifications for the practice of wetland science, which would be determined through either certification by the U.S. Army Corps of Engineers Wetland Delineator Certification Program, or a combination of education, experience and thorough understanding of the 1987 Corps of Engineers Wetland Delineation Field Indicators for Identifying Hydric Soils in New England. According to the proponent’s survey response, the Wetland Delineator Certification Program was never offered in Maine and was discontinued by the U.S. Army Corps of Engineers in 1997.

MAWS conducted a survey in 2005 to obtain its membership’s view about the establishment of a certification or licensing program in Maine. It has been reported that 67 percent of respondents indicated a need for such a regulatory program; 17 percent said there wasn’t a need; the remaining respondents were not sure whether a program was needed. In 2007, a MAWS subcommittee studied the possibility of establishing an “in-house” certification program. The resulting “white paper” examined similar organizations that utilize a certification process of this kind. The white paper was presented to MAWS members, who voted against pursuing in-house certification during the organization’s annual meeting in March of 2007.

Opponents reiterate that past and ongoing oversight by local, state and federal agencies is adequate. Colen Peters indicates that when he was President of MAWS in 1995 the question of whether wetland scientists in Maine should be required to obtain “certification” was evaluated. He reports that the review, conducted with input from the Department of Environmental Protection and the Board of Geologists and Soil Scientists, led to a conclusion that the need for certification “was deemed to be unjustified.” Mr. Peters also indicates that the U.S. Army Corps of Engineers likewise concluded that the need for regulation of this type did not exist.

Additionally, Mr. Peters emphasizes that MAWS studied and rejected the idea of credentialing of wetland scientists in 2007. Mr. Peters also notes that the Society of Wetland Scientists Professional Certification Program provides another means of self-regulation and adds another measure of protection for the public.

Department Analysis: There is agreement that the Maine Association of Wetland Scientists has a substantial track record of voluntary efforts to provide oversight of wetland scientists. The organization has taken several steps to encourage professionalism, ethical behavior and best practices. Other voluntary self-regulatory procedures appear to exist within the wetland science professional community.

Criteria 5: Cost; benefit

The proponent contends that licensure will decrease direct and indirect costs to the public through the delivery of more accurate information and services. In its survey response, MAWS states that “there is evidence of substandard wetlands work occurring at present in Maine. The costs to property owners of bearing the time and expense of hiring a second (or in some cases, a third) ‘wetland scientist’ are substantial.”

The opponents claim that licensing would reduce the number of wetland scientists working in Maine and therefore increase costs for the public.

Department Analysis: State regulation of any occupation or profession through licensing and enforcement comes at a cost to those subject to license requirements and at a cost to consumers of the services provided by the regulated individuals. Neither proponents nor opponents submitted specific information on this survey item.

Criteria 6: Service availability of regulation

The proponent believes licensure would not decrease services to the public. MAWS indicates that access to services might increase through the creation of a publicly accessible licensing database within the Department of Professional and Financial Regulation.

Opponents believe licensure will reduce the availability of services to the public. They believe a licensing program will decrease the number of sole practitioners and therefore impact consumers, particularly those who seek services for smaller projects.

Department Analysis: Generally, imposing state license requirements on a previously unregulated group decreases the availability of services initially. Over time, as individuals become licensed, availability increases.

Criteria 7: Existing laws and regulations

The proponent believes existing laws and regulations are inadequate to appropriately protect the public, the environment and Maine's economy. In order for the existing framework to provide adequate protection, MAWS says:

“our current regulatory authority with jurisdiction over these resources (MDEP) would have to assume oversight for all wetlands related activities in the state. This would require MDEP regulatory staff to review virtually every property for purchase, sale, or proposed development.”

The proponent explains its view of how Maine laws and regulations presently fail the public by stating that:

“The existing legal remedy for the handling of unauthorized wetland impacts requires first that someone identify that a violation has occurred. This person would notify the MDEP, who would then assign the appropriate personnel to review the details of the case. If after review of the details it is determined the alteration of fill was in violation of the applicable regulations, and ‘after the fact’ permit application may be required and/or the landowner may be required to restore (remove the fill, reestablish hydrology and hydric soils and replant hydrophytic vegetation) and/or pay compensation for the lost wetland functions and values. This can be a very expensive and time consuming process that is typically the responsibility of the current landowner.”

Opponents emphasize that existing laws and regulations are adequate, and established processes work well. They believe ample protections are provided through Maine's Natural Resources Protection Act in Title 38, as well as through the oversight of municipalities, the Maine Department of Environmental Protection, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency.

Department Analysis: A regulatory framework for the oversight and protection of wetlands exists within Maine law. Local, state and federal authorities play a role within the present system. No examples or specific details were provided to confirm that current laws and regulations fail to protect the public.

Criteria 8: Method of regulation

As indicated in the original version of LD 1240, the proponent calls for the Department of Professional and Financial Regulation, in collaboration with the Department of Environmental Protection and the Maine Association of Wetland Scientists, to develop a protocol to license wetland scientists, including creating a board to oversee the licensing of wetland scientists, criteria for wetland scientist licensing and the duties and obligations of licensed wetland scientists.

Opponents reiterate that regulation beyond that which currently exists is unnecessary.

Department Analysis: It would be premature to evaluate specific regulatory mechanisms given that harm to the public without regulation has not been substantiated.

Criteria 9: Other states

The proponent indicates that wetland programs are regulated in most states by local, state and federal agencies. The proponent states that four (4) states “actively regulate and oversee wetland scientists.” The states cited are Virginia, New Hampshire, Minnesota and Wisconsin which has established a pilot program. The type of regulation and the source of funding for these regulatory programs vary. MAWS suggests that response to these regulatory efforts has been positive. According to the proponent, legislation is being pursued in Oregon and Washington to establish some type of “certification” process.

Additionally, local pilot certification programs were implemented during the 1980s by the U.S. Army Corps of Engineers in Seattle (Washington), Jacksonville (Florida) and Baltimore (Maryland). These certification programs were never expanded nationally and were discontinued in the 1990s.

Opponents either did not respond to this survey item, or noted the existence of a regulatory program for wetland scientists in New Hampshire. Colen Peters writes that he has heard “mixed reviews” about the effectiveness of the program in New Hampshire.

Department Analysis: Although many states have established regulatory programs designed to authorize state departments to monitor and protect wetland areas, including Maine, very few states regulate the activities of individual working in this field. Maine’s Department of Environmental Protection and Land Use Regulatory Commission implement separate regulatory programs designed to provide protection of Maine’s wetlands in the public interest.

Staff research reveals that New Hampshire has a mandatory certification process that does not require an undergraduate education or degree. Virginia and Minnesota each have a voluntary certification program. Wisconsin uses a voluntary classification-- “professional assurance”--to refer to individuals with a bachelor’s level degree and does not require an exam.

Criteria 10: Previous efforts

Neither the proponent nor opponents are aware of prior efforts to create a licensing program as proposed in the original version of LD 1240. The Department is likewise unaware of prior legislative efforts to regulate wetland scientists.

Criteria 11: Mandated benefits (not applicable)

Criteria 12: Minimal competence

The proponent explains that minimal competence in the field of wetland science is based on the 1987 Corps of Engineers Wetland Delineation manual in combination with extensive field experience, continuing education, and an understanding of evolving state and federal laws and regulations. The proponent believes the licensing program required in LD 1240 would be consistent with these standards for competence, and provide assurance to the public that licensed wetland scientists in Maine have met minimal requirements.

Two opponents did not respond to this survey item. Colen Peters essentially agrees with the proponent regarding the basis for evaluating minimal competence. Mr. Peters, however, believes currently available educational and training opportunities are adequate to help wetland scientists enhance their knowledge and skills. He also says current laws and regulations, including the Maine Natural Resources Protection Act, provide appropriate oversight and he suggests that land owners have the ability to make determinations about certain wetland projects and the hiring of competent professionals.

Criteria 13: Financial analysis

The proponent estimates that 200 individuals would seek licensure soon after the establishment of a licensing program for wetland scientists in Maine. In its survey response, MAWS proposes a license and renewal fee of \$140, with one-time exam cost of \$225. The proponent recommends using the existing administrative structure of the Board of Certification for Soil Scientists and Geologists in order to limit costs.

Department Analysis: State professional and occupational license programs in Maine must by law be financially self-supporting through license fees and all regulatory costs of the program must be borne by licensees.

Conclusions and Recommendations

The Department of Professional and Financial Regulation was charged by the Legislature to conduct an “independent assessment” of responses to evaluation criteria from the group proposing regulation, as well as from opponents and other interested parties. The assessment process must focus exclusively on the criteria outlined in Maine law.

A licensing program should not be established to confer status or recognition on a profession or occupation. Licensing should also not be used to exclude practitioners or for economic purposes.

Both the proponent and opponents of licensure in this case indicate that wetland scientists possess specialized knowledge and skills. They also agree that wetland projects in Maine are overseen and currently regulated by the DEP and LURC. The question is whether the public is able to select qualified wetland scientists in the absence of licensure of wetland scientists, and whether state licensing is required to safeguard the public.

As noted earlier, the third criterion addresses the key Sunrise Review issue of public health and safety. Is the public welfare jeopardized by the absence of a state licensing

program for wetland scientists? That is the central point of the sunrise review process. In this case, the proponent—Dale Knapp on behalf of the Maine Association of Wetland Scientists (MAWS)--provided only general statements about the potential for harm that can be caused by inadequately trained wetland scientists. No specific examples of health and safety problems were provided.

As a matter of public policy, a state should only impose licensing requirements as an exercise of its constitutional police power when the state has solid evidence that the safety of the public at large is in jeopardy and the state must act to protect its citizens from harm. Based on the information received, the Department concludes that proponents have not substantiated that the public health, welfare and safety is being threatened or harmed without a state licensing program for the 100-200 potential licensees. Without a strong showing of public harm, the burden and expense of state licensure cannot be justified.

This conclusion is based on the following factors:

- The Maine Association of Wetland Scientists has adopted a standard of conduct for its members designed to ensure that high standards of performance are maintained.
- The Department of Environmental Protection and the Land Use Regulatory Commission have existing statutory authority to oversee and protect Maine wetlands;
- There is no credible evidence that the public health, safety and welfare of Maine citizens is at risk without state licensure of wetland scientists.

For these reasons, the Department recommends that the Committee not pursue LD 1240.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, Directing the Commissioner of Professional and Financial Regulation To Conduct a Sunrise Review Regarding a Proposal To License Wetland Scientists

Sec. 1 Commissioner of Professional and Financial Regulation to conduct a sunrise review regarding a proposal to license wetland scientists. Resolved: That the Commissioner of Professional and Financial Regulation shall conduct an independent assessment pursuant to the sunrise review requirements in the Maine Revised Statutes, Title 32, chapter 1-A, subchapter 2 of a proposal submitted to the commissioner to license wetland scientists; and be it further

Sec. 2 Reporting date established. Resolved: That no later than February 15, 2010 the Commissioner of Professional and Financial Regulation shall submit a report with any necessary proposed legislation regarding the independent assessment under section 1 to the Joint Standing Committee on Business, Research and Economic Development. That committee is authorized to submit legislation on the subject matter of the report to the Second Regular Session of the 124th Legislature.

5 §12015. NEW BOARDS

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Any boards established on or after July 25, 1984 shall conform to the following provisions. [1997, c. 2, §16 (COR).]

1. Membership; terms; vacancies. Each board may have no fewer than 3 members. Boards established after September 1, 2000 to regulate professions or occupations may have no more than 9 members, including at least 2 public members. Law establishing the board must provide for appointments, terms of office, qualifications and removal of its members. In the event of the death, resignation or removal of any member, the vacancy for that member's unexpired term must be filled in the same manner as that member's original appointment.

[1999, c. 687, Pt. B, §2 (AMD) .]

2. Sunset.

[1999, c. 668, §49 (RP) .]

3. Sunrise review required. Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation" means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by Title 32, section 60-J. Following this informal review, the committee shall:

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation; [1995, c. 686, §1 (RPR) .]

B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or [1995, c. 686, §1 (RPR) .]

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II and report its findings to the commissioner within 6 months of establishment of the committee. [1995, c. 686, §1 (RPR) .]

D. [1995, c. 686, §1 (RP) .]

E. [1995, c. 686, §1 (RP) .]

F. [1995, c. 686, §1 (RP) .]

G. [1995, c. 686, §1 (RP) .]

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation.

[1995, c. 686, §1 (RPR) .]

SECTION HISTORY

1983, c. 814, (NEW). 1985, c. 748, §13 (AMD). 1995, c. 686, §1 (AMD). RR 1997, c. 2, §16 (COR). 1999, c. 668, §49 (AMD). 1999, c. 687, §B2 (AMD).

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32 §60-J. EVALUATION CRITERIA

32 §60-J. EVALUATION CRITERIA

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are: [1995, c. 686, §2 (NEW).]

1. Data on group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

[1995, c. 686, §2 (NEW) .]

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

[1995, c. 686, §2 (NEW) .]

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

[1995, c. 686, §2 (NEW) .]

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

[1995, c. 686, §2 (NEW) .]

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

[1995, c. 686, §2 (NEW) .]

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

SECTION HISTORY

1995, c. 686, §2 (NEW).

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32 §60-K. COMMISSIONER'S INDEPENDENT ASSESSMENT

32 §60-K. COMMISSIONER'S INDEPENDENT ASSESSMENT

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

A. The applicant group is an agency of the State; or [1995, c. 686, §2 (NEW).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group. [1995, c. 686, §2 (NEW).]

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

SECTION HISTORY

1995, c. 686, §2 (NEW).

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**32 §60-L. TECHNICAL COMMITTEE; FEES; MEMBERSHIP; DUTIES;
COMMISSIONER'S RECOMMENDATION**

**32 §60-L. TECHNICAL COMMITTEE; FEES; MEMBERSHIP; DUTIES;
COMMISSIONER'S RECOMMENDATION**

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

A. The applicant group is an agency of the State; or [1995, c. 686, §2 (NEW).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group. [1995, c. 686, §2 (NEW).]

[1995, c. 686, §2 (NEW) .]

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

A. Two members must be from the profession or occupation being proposed for regulation or expansion of regulation. [1995, c. 686, §2 (NEW).]

B. Two members must be from professions or occupations with a scope of practice that overlaps that of the profession or occupation being proposed for regulation or expansion of regulation. If there is more than one overlapping profession or occupation, representatives of the 2 with the greatest number of practitioners must be appointed. [1995, c. 686, §2 (NEW).]

C. One member must be the commissioner or the commissioner's designee. [1995, c. 686, §2 (NEW).]

D. Two members must be public members. These persons and their spouses, parents or children may not be or ever have been members of, and may not have or ever have had a material financial interest in, the profession or occupation being proposed for regulation or expansion of regulation or another profession or occupation with a scope of practice that may overlap that of the profession or occupation being proposed for regulation. [1995, c. 686, §2 (NEW).]

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

[1995, c. 686, §2 (NEW) .]

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

[1995, c. 686, §2 (NEW) .]

4. Procedure for review. Applicant groups are responsible for furnishing evidence upon which a technical committee makes its findings. The technical committee may also utilize information received through public input or through its own research or investigation. The committee shall make a report of its findings and file the report with the commissioner. The committee shall evaluate the application presented to it based on the information provided as required by section 60-J. If the committee finds that additional information is required to assist in developing its recommendations, it may require that the applicant group

provide this information or may otherwise solicit information for this purpose. If the committee finds that final answers to the evaluation criteria are sufficient to support regulation of a profession or occupation not currently regulated, the committee must also recommend the least restrictive method of regulation to be implemented, consistent with the public interest. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

[1995, c. 686, §2 (NEW) .]

5. Commissioner report. After receiving and considering reports from the technical committee, the commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the review, that includes any legislation required to implement the commissioner's recommendation. The final report must include copies of the committee report, but the commissioner is not bound by the findings and recommendations of the report. In compiling the report, the commissioner shall apply the criteria established in section 60-J and may consult with the technical committee. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest. The final report must be submitted to the joint standing committee of the Legislature having jurisdiction over occupational and professional regulation matters no later than 9 months after the proposal is submitted to the technical committee and must be made available to all other members of the Legislature upon request. The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner recommends that a proposal of an applicant group be approved, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group.

[1995, c. 686, §2 (NEW) .]

SECTION HISTORY

1995, c. 686, §2 (NEW) .

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DEPARTMENT OF

**Professional &
Financial Regulation**

STATE OF MAINE

- OFFICE OF SECURITIES
- BUREAU OF INSURANCE
- CONSUMER CREDIT PROTECTION
- BUREAU OF FINANCIAL INSTITUTIONS
- OFFICE OF LICENSING AND REGISTRATION

Request for Information from Interested Parties:

Sunrise Review for LD 1240

*“Resolve, Directing the Commissioner of Professional
and Financial Regulation To Conduct a Sunrise Review
Regarding a Proposal To License Wetland Scientists”*

**Department of Professional and Financial Regulation
Office of the Commissioner
June 12, 2009**

Sunrise Review Survey: Regulation of Wetland Scientists

Please return the completed survey to the Commissioner's Office by July 20, 2009. You may respond to any or all questions. The survey should be e-mailed to Doug Dunbar, Assistant to the Commissioner. The address is doug.dunbar@maine.gov. An electronic version of the survey is available by contacting the Commissioner's Office at (207) 624-8511.

Completed by: (name, title)

On behalf of:

Mailing address:

E-mail address:

Date: _____, 2009

General Information

- 1. Group or organization you represent:**

- 2. Position on proposed legislation.** Does this group or organization support or oppose state regulation of wetland scientists?

Evaluation Criteria (32 M.R.S.A. § 60-J)

- 1. Data on group proposed for regulation.** Please provide a description of the professional or occupational group proposed for regulation, including:
 - (a) The number of individuals or business entities that you believe would be subject to regulation;
 - (b) The names and addresses of associations, organizations and other groups representing potential licensees; and
 - (c) An estimate of the number of potential licensees in each group.

- 2. Specialized skill.** Please describe whether the work of wetland scientists requires such a specialized skill that the public is not qualified to select a

competent individual without assurances that minimum qualifications have been met.

3. Threat to public health, safety, or welfare. Please describe:

- (a) The nature and extent of potential harm to the public, if wetland scientists continue to be unregulated by the State; and
- (b) The extent to which there is a threat to the public's health, safety or welfare without state regulation (*Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against wetland scientists in this State within the past 5 years*).

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by wetland scientists to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

5. Costs and benefits of regulation. Please describe the extent to which regulation of wetland scientists will increase the cost of services provided by wetland scientists and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

6. Service availability under regulation. Please describe the extent to which regulation of wetland scientists would increase or decrease the availability of services to the public.

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from continued non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

- 8. Method of regulation.** Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

- 9. Other states.** Please provide a list of other states that regulate wetland scientists, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on wetland scientists in terms of a before-and-after analysis.

- 10. Previous efforts to regulate.** Please provide the details of any previous efforts in this State to implement regulation of wetland scientists.

- 11. Minimal competence.** Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

- 12. Financial analysis.** Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by potential licensees through dedicated revenue mechanisms.

- 13. Mandated benefits.** Please describe whether the profession or occupation plans to apply for mandated benefits.