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**Report of the Department of Professional and Financial
Regulation**

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

On

**Private & Special Law 2005, Chapter 18
(LD 1306)**

*“An Act to Authorize the Department of Professional and Financial
Regulation to Develop a Model for Registration of Home Building and
Improvement Contractors”*

February 1, 2006

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Governor

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A. Report

I. Introduction

Licensing of building contractors has been the subject of legislative proposals for the past five sessions of the Maine Legislature. During the first regular session of the 122nd Legislature, LD 1306, “*An Act to License Building Contractors*,” again brought the issue of contractor licensure to the forefront. LD 1306 provided for a full-blown licensing program for building contractors. The Legislature’s consideration on this legislation resulted in the passage of a Private and Special Law, Chapter 18, in which it directed the Department of Professional and Financial Regulation to develop a model registration program for residential building contractors for consideration by the Business, Research and Economic Development Committee during the Second Regular Session. This report sets forth the product of the Department’s work pursuant to P&S, Chapter 18.

II. Charge from the Legislature

Section 1 of Chapter 18 directed the Department to work in conjunction with the Attorney General, representatives of the home building and improvement industry and other stakeholders who had participated in similar efforts in past years. That section also outlined specific subject areas to be addressed by the Department including 1) the development of a model contract to be used by consumers and builders; 2) an appropriate set of threshold requirements that would trigger registration requirements; 3) a process whereby consumer complaints against builders would be received and made available to other consumers; and 4) recommendations about appropriate fees. Finally, the legislation required the Department to submit a report of its findings, conclusions and draft legislation on or before February 1, 2006.

III. Process

A model registration program (“Draft Model”) was developed by Department staff based on three basic considerations. It had to be **affordable, electronic and feasible with limited staff**. With these considerations in mind, the Department structured the draft model with the following features:

- an **electronic registration and complaint process** that would require residential construction contractors to register on-line. The on-line process would require the submission of basic business information about each registering contractor that could be accessed by the public. Consumers would have the ability to submit an electronic complaint against a contractor, and after review by Department staff, the complaint would be transmitted to the registered contractor who would have the option of responding to the consumer.

- significant proposed **amendments to the Home Construction Contract statute** to provide additional remedies to consumers whose residential building contracts have been breached. Further, penalties and sanctions for violations of the Home Construction Contract Act were strengthened to provide for stronger enforcement of existing law requiring contracts for home construction to be in writing.
- **model contract and change order contract** that registered contractors would be required to use whenever they entered into a contract with a consumer for the building, altering or repairing of a residence over a certain contract value.

The Draft Model was shared with key members of the Attorney General's staff and was the subject of discussion and further revision. The product of this joint meeting between the staff of the Department of Professional and Financial Regulation and the Attorney General's Office was then distributed electronically to the stakeholder group used by the Attorney General's staff in its work on other draft legislation on this general topic.

On December 8, 2005, a public meeting was held at the Department's offices in Gardiner. The purpose of the meeting was to accept public comments on the Draft Model described above. The Department continued to accept written comments on the initial proposal until December 22, 2005. Comments were received from Senator Scott Cowger, Representative Donald Pilon, Mid-Coast Builders Alliance, American Insurance Association, Property Casualty Insurers Association, Maine Association of Insurance Companies, Home Builders and Remodelers Association, and Associated Constructors of Maine and Retail Lumber Dealers of Maine. A summary of written and oral comments on the Draft Model is set forth below and copies of written comments received are attached to the report in Appendix C-2.

Summary of Comments Received: There was general objection to the proposed changes in the Home Construction Contract Act. Commenters asserted that the Department and the Attorney General's Office were not authorized by P&S, C. 18 to propose any change to the Home Construction Contract statute; that the proposed changes would expand consumer remedies; would significantly increase the cost of doing business; and would make the registration into a consumer remedial statute.

With respect to the electronic registration and complaint component, commenters asserted that the definition of "residential construction contractor" was too broad, the threshold registration trigger of \$3,000 in construction contractors annually was too low in today's construction world; and that the electronic format for the program was unfair to contractors who are not computer literate. In addition, the commenters objected generally to the information required to be submitted by registrants about their businesses including information about bankruptcy, liability and workers compensation insurance and criminal history.

With respect to the model contract component, commenters generally objected to requiring the model contract to be used to the exclusion of any other form of contract.

The commenters' preference was to be able to use any written contract that contains the contract elements required by the Home Construction Contract Act.

Subsequent to the comment deadline, the Department and the Attorney General's Office reviewed and discussed all oral and written comments and redrafted the Draft Model for presentation to the Business, Research and Economic Development Committee in light of comments received.

IV. Components of the Proposed Model Registration Program

The components of the proposed model are as follows:

A. Registrants

The proposed model registration program that is the subject of this report would require "residential construction contractors" to register with the Office of Licensing and Registration within the Department of Professional and Financial Regulation. This group of individuals and companies would include any person who undertakes, offers to undertake, submits a bid, or for compensation, with or without the intent to sell a residential structure, arranges to build, alter or repair a residential structure. Also required to register would be any person who purchases or owns property and builds or arranges for the building of one or more residential structures, for compensation.

B. Definitions

A "residential structure" would include any dwelling with 3 or fewer living units, including garages. Buildings used for commercial or business purposes are not residential structures. The phrase "build, alter or repair" would include roofing work and window replacement work.

C. Exemptions from Registration

Individuals licensed in other fields of the construction industry would be exempt from the registration requirements of this program including plumbers, electricians, professional engineers, architects, oil and solid fuel technicians, propane and natural gas technicians, and manufacturers and dealers of manufactured housing. In addition, persons who qualify as residential construction contractors but who enter into contracts that do not exceed \$10,000 in the aggregate annually would be exempt from registration.

D. Program Requirements

The program requirements are straightforward. Residential construction contractors would be required to register, and to use a written contract that includes the contract provisions specified in §1487 of the Home Construction Contract statute. (See, 10 MRSA, Chapter 219-A.)

E. Penalties

Failure to meet the program requirements would result in the following sanctions. Failure to register before acting as a residential construction contractor would be a Class D crime and a violation of the Maine Unfair Trade Practices Act. Failure to use the required written contract would be a violation for which a civil penalty of no less than \$1000 and no more than \$10,000 could be imposed and a violation of the Unfair Trade Practices Act. Engaging in regulated activity after registration expiration would be a Class D crime and a violation of the Unfair Trade Practices Act. Submission of false information in the registration or renewal process would be a Class D crime and a violation of the Unfair Trade Practices Act.

F. Format

The registration process would be available in electronic format only. Initial applications for registration and renewal applications would be offered in on-line format only. The registration would be a fixed date renewal, annual program beginning on January 31. Similarly, the complaint process would be available to consumers in an on-line electronic format.

G. Fees

Initial application and registration fees would be set at \$100 to cover the initial start up costs of the program that would be repaid within the first year of operation, and the costs of the first year of operation. After the first year, fees would be adjusted accordingly to meet program costs. Any other financial approach would require a working capital allocation. Anticipated program costs would include the salary and benefits of one clerical position and one attorney position and related costs of developing technology to support the electronic registration system, among other costs.

In an effort to discourage frivolous complaints or filings of praise for a contractor, a fee of \$10 will be imposed for each complaint or other information filing made with the Department.

V. Considerations and Conclusions

The Department and the Attorney General's Office believe that the model reflected in the draft legislation that accompanies the Report meets the directive of the Legislature in P&S 2005, Chapter 18. The model requires registration of a defined group of individuals and entities that engage in residential construction. The program is designed to provide state oversight at the lowest cost possible with equal focus on oversight of residential construction contractors and consumers' need to access relevant financial and business

information about registered contractors. It provides a public complaint process that does not require investigative staff but facilitates communication between consumers and contractors without enlarging state government.

This proposed model is feasible, affordable and makes efficient use of available technology. Unlike regulatory programs, it directs consumer focus to finding a reputable residential contractor by using information provided by contractors and consumers rather than on discipline of dishonest contractors. It does not preclude enforcement action by the Attorney General’s Office, but seeks to complement those enforcement resources

Finally, the Department and the Attorney General’s Office believes the legislative directive in Chapter 18 has been met with assistance and input from interested stakeholders by holding a public forum to accept comments and suggestions, many of which have been incorporated into the model and draft legislation.

B. Draft Legislation

“An Act to Require Registration by Residential Construction Contractors”

Sec. 1. Title.

This chapter may be known and cited as the “Residential Construction Contractor Registration Act.”

Sec. 2. Definitions

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

1. Registrant. “Registrant” means a person who applies for and obtains registration under this chapter.
2. Residential construction contractor. “Residential construction contractor” means a person who:
 - (A) undertakes, offers to undertake, or submits a bid to build, alter or repair a residential structure;
 - (B) for compensation, and with or without the intent to sell a residential structure, arranges to build, alter or repair a residential structure; or
 - (C) purchases or owns property and, for compensation, builds or arranges for the building of one or more residential structures on that property.“Build, alter or repair” includes roofing work and window replacement.

3. Person. “Person” means any natural person, corporation, partnership or other business entity.

4. Residential structure. “Residential structure” means a dwelling with 3 or fewer living units and garages, if any. Buildings used for commercial or business purposes are not subject to this chapter.

5. Department. “Department” means the Department of Professional and Financial Regulation.

Sec. 3. Scope

This chapter applies only to residential construction contractors who enter into residential construction contracts totaling more than \$10,000 in the aggregate in a calendar year. For purposes of this chapter, “residential construction contracts” do not include contracts with subcontractors or suppliers of materials or services.

Sec. 4. Exemptions

The following persons are exempt from this chapter:

1. Engineers and architects. Professional engineers and architects licensed under Title 32, Chapters 19 and 3-A, respectively.

2. Oil and solid fuel technicians; propane and natural gas technicians. Oil and solid fuel technicians and propane and natural gas technicians licensed under Title 32, Chapters 33 and 130, respectively.

3. Manufactured housing licensees. Manufacturers and dealers of manufactured housing licensed Title 9, Chapter 591.

4. Plumbers and electricians. Plumbers and electricians licensed under Title 32, Chapters 17 and 49, respectively.

Sec. 4. Registration required

A person must register with the department in the manner described in this chapter before acting as a residential construction contractor. No person may act as a residential construction contractor in the absence of a current, valid registration.

Sec. 5 Registration process

1. Electronic format. The entire registration process shall be conducted electronically via the internet. This includes but is not limited to application, renewal and

payment by the registrant; all correspondence and notices relating to registration; and issuance of registration.

2. Application. The department shall prescribe the form of electronic applications. The applicant must supply the following information and must certify that all information provided is true, accurate and complete:

- A. Name, physical address, postal address and telephone number of the applicant;
- B. If the applicant is an individual, the applicant's social security number and date of birth;
- C. If the applicant is an entity other than an individual, the applicant's employer identification number and the name of the individual authorized to file the application on behalf of the applicant;
- D. The applicant's electronic mail address;
- E. The uniform resource locator of any business-related world wide web site maintained by or for the benefit of the applicant;
- F. Information for the 10 year period immediately preceding application relating to any criminal convictions, guilty pleas or no contest pleas of the applicant or any officer, director or general partner of the applicant, including convictions, guilty pleas or no contest pleas in a military court;
- G. Information for the 10 year period immediately preceding application relating to any criminal convictions, guilty pleas or no contest pleas of the applicant or any officer, director or general partner of the applicant relating to fraud, false statement or omission, wrongful taking of property, bribery, perjury or conspiracy to commit any of these crimes, including any such convictions, guilty pleas or no contest pleas in a military court;
- H. Information for the 10 year period immediately preceding application relating to any bankruptcy petitions filed by or against the applicant, any business with which the applicant was associated, or any officer, director or general partner of the applicant;
- I. Information relating to any currently outstanding judgments or liens against the applicant, any business with which the applicant was associated, or any officer, director or general partner of the applicant;
- J. Information relating to any customer complaints, arbitration proceedings, judicial proceedings disciplinary proceedings, or license nonrenewal proceedings that are currently pending or which have been

brought in the last 10 years against the applicant, any business with which the applicant was associated, or any officer, director or general partner of the applicant;

K. A description of the business structure of the applicant;

L. If the applicant is a corporation or limited liability company, the date and state of incorporation and the name, physical address, postal address and telephone number of individuals with the authority to bind the organization;

M. If the applicant is a partnership or limited liability partnership, the state where the partnership agreement is filed.

N. The number of persons employed by the applicant;

O. Information relating to workers' compensation insurance purchased by the applicant; and

P. Information relating to employees leased by the applicant.

3. Public posting of applications. The department shall post completed applications on a publicly accessible world wide web site.

4. Criminal history record check. The department shall request a criminal history record check pursuant to Title 25, section 1541, subsection 6 upon receipt of an application from any individual applicant who has not previously registered under this chapter. The department may, in its discretion, request a criminal history record check upon receipt of a subsequent application or with respect to an applicant other than an individual or an officer, director or general partner of any such applicant. The cost of a criminal history record check requested pursuant to this subsection shall be paid by the applicant.

5. Registration term; renewal. All registrations issued pursuant to this chapter expire on January 31 of each year. A registrant may apply for renewal of the registration by providing the information described in subsection 2.

Sec. 6. Change of electronic mail address; communication via electronic mail

A registrant shall immediately notify the department of any change of electronic mail address.

Sec. 7. Written Contract and Change Order

Residential construction contractors must use a written contract and change order that contains contract provisions specified in 10 MRSA §1487 when they enter into residential construction contracts.

Sec. 8. Complaints

1. Electronic complaint process. The Department shall establish and maintain a mechanism for the electronic filing, processing and public posting of complaints against residential construction contractors via the internet as described in this section.

2. Complaint and response. The complaint shall be forwarded to the registrant via electronic mail with a request that the registrant electronically submit a response within 30 days of the date of mailing.

3. Public posting of complaint and response. Upon expiration of the 30 day response period, the Department shall post the complaint on a publicly accessible world wide web site along with the registrant's response or, if no response was timely submitted, a notation to that effect. The Department, in its sole discretion, may remove extraneous or scandalous matter or inappropriate language, and may paraphrase complaints.

4. Finality of posting. Notwithstanding Title 5, Sections 10003 and 10005, posting of a complaint and response by the department pursuant to this section is not subject to the requirements of Title 5, Chapter 375, Subchapters IV and VI, and no hearing by the Department or in District Court is required.

Sec. 9. Penalties

1. Failure to register. A person who acts as a residential construction contractor subject to this chapter without registering as a residential construction contractor pursuant to this chapter is guilty of a Class D crime. Failure to register is a violation of the Unfair Trade Practices Act, Title 5, Chapter 10.

2. Expired registration. A residential construction contractor subject to this chapter who engages in any activity under this chapter without a current, valid registration is guilty of a Class D crime. Unregistered practice subsequent to initial registration is a violation of the Unfair Trade Practices Act, Title 5, Chapter 10.

3. Failure to use written contract. A residential construction contractor subject to this chapter who fails to use a written contract and change order that contains the specific contract provisions of 10 MRSA §1487 is subject to a civil penalty of no less than \$1000 and no more than \$10,000 per occurrence. Failure to use a written contract and change order is a violation of the Unfair Trade Practices Act, Title 5, Chapter 10.

4. False information. A person who submits false information to the Department in the course of applying for or renewing a registration pursuant to this chapter is guilty of a Class D crime. Submission of false information in the registration process is a violation of the Unfair Trade Practices Act, Title 5, Chapter 10.

Sec. 10. Fees

1. Registration and renewal fee. A registration fee of \$100 shall be paid in an electronic format acceptable to the Department upon application. A separate registration fee must be paid for each annual registration period.

2. Complaint or other information filing fee. A fee of \$10 shall be paid in an electronic format acceptable to the Department for each complaint or other information filing regarding a residential construction contractor made with the Department.

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C. Appendices

1. Private and Special Law 2005, chapter 18
2. Written Comments received in response to Initial Draft Model Program