



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. 74

**Directing the Department of Professional and Financial
Regulation to Conduct a Sunrise Review Regarding the
Proposal to License Certain Mechanical Trades**

February 15, 2010

Sunrise Review: Licensing of Certain Mechanical Trades

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Sunrise Review: Licensing of Certain Mechanical Trades

Sunrise Review: Overview

Under Maine law (Title 5, section 12015, subsection 3), a process is prescribed for evaluating proposals that would establish regulation of a previously unregulated profession or expand an existing regulatory program.

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

A sunrise review also seeks to identify the potential impact of 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 impose regulation only when it is necessary to protect the public, and then, only the minimum level of regulation necessary to ensure public health and safety should be imposed. Regulation should not be used by

the State for economic purposes or to create unnecessary barriers of entry into a profession that could limit access to services or increase their cost.

Charge from the Legislature

Legislation to license certain mechanical trades through the Office of Licensing and Registration within the Department of Professional and Financial Regulation (DPFR) was introduced during the First Regular Session of the 124th Maine Legislature. LD 1241, *An Act to Require Licensing for Certain Mechanical Trades*, was sponsored by Representative Thomas Wright and referred to the Joint Standing Committee on Business, Research and Economic Development.

As originally introduced, the bill would have required licensure of persons who perform sheet metal work, refrigeration and air conditioning system installation and repair, pipefitting and fire protection sprinkler system installation and repair in all settings. It would have grandfathered persons who had completed state-approved apprentice programs or been compensated for a minimum of 2,000 hours of sheet metal work, refrigeration and air conditioning system installation and repair, pipefitting or fire protection sprinkler system installation, repair and testing.

The Committee held a public hearing for LD 1241 on April 14, 2009. Department of Professional and Financial Regulation Commissioner Anne Head testified neither for nor against LD 1241. She indicated that the legislation 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 legislation by creating a Resolve to require the Commissioner of DPFR to conduct an independent assessment of the proposal to license certain mechanical trades. 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 74, by Governor John E. Baldacci on May 28, 2009.

Resolve, Directing the Department of Professional and Financial Regulation To Conduct a Sunrise Review Regarding the Proposal To License Certain Mechanical Trades

Sec. 1. Department of Professional and Financial Regulation to conduct a sunrise review regarding the proposal to license certain mechanical trades. 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 the proposal to license certain mechanical trades; 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 legislation following 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 DPFR to conduct an independent assessment of the need for new regulation by evaluating responses to criteria set forth in the statute. It is customary for the Commissioner to request, accept and consider responses to the evaluation criteria from proponents and opponents of the proposed 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 are asked to 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 74, a survey instrument was prepared based on these criteria. The survey was distributed on 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. The Department 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 seven individuals, on behalf of the organization or company indicated next to the person's name.

Michael Barden, Maine Pulp and Paper Association, Augusta, ME

Ken Brousseau, KINETICS, Scarborough, ME

John Dean, Maine Office of State Fire Marshal, Augusta, ME

Hugh Kelleher, Plumbing Heating Cooling Contractors Assn. of Greater Boston, Danvers, MA.

John Napolitano, United Association Local 716 Plumbers and Pipefitters, Augusta, ME

Kathleen Newman, Associated Builders and Contractors of Maine, Augusta, ME

Dana Stewart, Dean & Allyn, Inc., Gray, ME

Additionally, information was received in the form of a letter from Timothy Travers of Whitman, Massachusetts on behalf of the *National Fire Sprinkler Association*.

The completed surveys and letter 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

Proponents of state licensure for individuals who work as pipefitters, sprinkler fitters, sheet metal workers, refrigeration and air conditioning systems installers and repairers are: *United Association Local 716 Plumbers and Pipefitters, KINETICS* (mechanical contractor), and the *Plumbing Heating Cooling Contractors Association of Greater Boston*.

Dean & Allyn, Inc. which describes itself as a "fire protection contractor" supports the licensing of fire protection sprinkler fitters and contractors. The company's survey did not address the other occupations in the original bill.

The *National Fire Sprinkler Association* wrote to express support for the licensing of fire protection sprinkler contractors only. The Association, however, is opposed to the licensing of individual fire protection sprinkler fitters---believing that oversight and responsibility should be focused on contractors.

Opponents of licensure for individuals who work as pipefitters, sprinkler fitters, sheet metal workers, refrigeration and air conditioning systems installers and repairers are: the *Maine Pulp and Paper Association* and the *Associated Builders and Contractors of Maine*.

The *Maine Office of State Fire Marshal* within the Department of Public Safety commented only on proposed licensure of fire protection sprinkler fitters and contractors. The Office opposes licensure for individual sprinkler fitters and already licenses and regulates fire protection system contractors.

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

Criteria 1: Data on Group

Proponents of licensure did not provide specific numbers or estimates to indicate the overall size of the potential licensee pool. KINETICS mentioned 20 individuals performing sheet metal work, and 20 pipefitters. Presumably, these figures reflect KINETICS' current workforce, and not the overall pool of potential licensees.

Opponents provided only general information describing the group that would be subject to licensure. The Maine Pulp and Paper Association responded that "*Maine's pulp and paper mills employ hundreds of workers that perform work that could be captured under LD 1241.*" No specific information was provided.

The Office of State Fire Marshal reported that there are currently 135 licensed fire sprinkler contractors in Maine, most of which are business entities, although a few are individuals. The Office estimates that 400 persons are employed as sprinkler fitters by these contractors.

Department Analysis: With the exception of the State Fire Marshal's data on the fire sprinkler contractors already licensed by DPS/SFMO and sprinkler fitters employed by licensed contractors, the proponents have not submitted information on the size of the potential licensee pool.¹

Criteria 2: Specialized skill

Proponents indicate in general terms that the individuals who work as pipefitters, sprinkler fitters, sheet metal workers, refrigeration and air conditioning systems installers and repairers require specialized skills and training but specific information on the nature of the specialized skills and necessary training was not submitted. The Plumbing Heating Cooling Contractors Association of Greater Boston asserts that a lack of skill in performing sheet metal work can result in duct work that supports "mold, bacteria and other contaminants." The Association also indicates that specialized skills are needed by those working on heating, ventilation and air conditioning systems to prevent "gas explosions" and other dangers, as well as "excess costs to consumers." With regard to fire sprinkler installations, the Association states that the need for specialized training "should be self-evident."

Opponents contend that the individuals performing the activities listed in the original bill do not require such a specialized skill that the public is not qualified to select a competent

¹ The 2008 Maine Occupational Employment and Wage Estimates issued by the Maine Bureau of Labor Standards indicate that approximately 5190 individuals work in classifications that include pipefitters, plumbers, sheet metal workers, and HVAC and refrigeration technicians. This figure presumably includes plumbers licensed by the Plumbers' Examining Board and electricians licensed by the Electricians' Examining Board. See Appendix C.

practitioner without assurances that minimum qualifications have been met. Opponents also contend that the skills and qualifications of many individuals proposed for licensure are already subject to state licensure requirements through existing licensing programs, including licensure of electricians, plumbers, oil and solid fuel technicians, propane and natural gas technicians and boiler and pressure vessel operators and inspectors. The Maine Pulp and Paper Association's response commented that "*Sheet metal work is a routine and customary practice in all pulp and paper mills.*"

The Office of State Fire Marshal indicates that work performed by fire protection sprinkler fitters does not require specialized skills. The Office says fire sprinkler contractors do require specialized skills, but assert that the current licensing program administered by the Fire Marshal's Office ensures an adequate skill level and appropriate protection of the public. Similarly, the National Fire Sprinkler Association does not support licensure for fitters and believes the responsibility for adequate training and development of skills rests with the contractors.

Department Analysis: There is agreement among proponents and some opponents that specialized skills are required of fire sprinkler contractors to ensure public safety. The Department of Public Safety's existing licensing program for fire sprinkler contractors adequately provides for public safety through adoption of national safety codes that govern the installation of sprinkler fittings and close supervision of installations by licensed companies.

With regard to the specialized skills required of the other proposed license categories, the responders provided minimal information. In the absence of useful information, it appears that the skills required of individuals who work as pipefitters, sheet metal workers, refrigeration and air conditioning system installers and repairers are developed through employer sponsored training programs, as well as state-approved apprenticeship programs.

Criteria 3: Public health; safety; welfare

Proponents speak in general terms about the potential for public harm posed by the absence of licensing for pipefitters, sheet metal workers, refrigeration and air conditioning system installers. The Plumbing Heating Cooling Contractors Association of Greater Boston makes reference to one case on Cape Cod in which "*a young girl was killed because a heating system was inadequately vented.*" No specific examples of harm occurring in Maine were provided by proponents.

Opponents either believe that public health and safety are not jeopardized by the absence of licensing and/or they indicate that current license requirements already imposed on many of the individuals who perform the work contemplated by LD 1241 are adequate to protect the public. The Associated Builders and Contractors of Maine, for example, states that:

“workers in these trades are already licensed by one or more of the following licensing authorities: Plumber’s Examining Board, Electricians Examining Board, Oil and Solid Fuel Board, Propane and Natural Gas Board and Boilers and Press Vessels Board.” The organization adds that *“limited electricians’s licenses are required for the following practice areas: water pumps, outdoor signs (including sign lighting), gasoline dispensing, traffic signals (including outdoor lighting of traffic signals), house wiring, refrigeration, low energy electronics (including fire alarms), and cranes.”*

Department Analysis:

The question of whether state licensing is necessary to protect the public is *central* to the Sunrise Review process. Proponents did not provide specific examples of harm resulting from the absence of specific licensing programs for these four types of mechanical work.

Without specific evidence of harm to the public in the absence of regulation of certain mechanical trades, the Sunrise Review’s public health and safety threshold is not met.

Criteria 4: Voluntary and past regulatory efforts

Proponents either did not respond to this survey item or indicated that most of their employees undergo employer-sponsored educational and training programs or state-approved apprenticeship programs. KINETICS, a mechanical contractor, states:

“Most of our sheet metal & piping employees go through an established apprenticeship program that is regulated by the state of Maine and provided by SMW LU 17 (sheet metal) and UA LU 716 (piping). We continue to train our employees regularly, but all too often, this is still not enough to guarantee that every employee knows the proper methods or regulations that govern each trade.”

Opponents indicate that oversight related to some of the work performed by the mechanical trades listed in the original bill already exists. The Maine Pulp and Paper Association states that:

Regulations are currently in place that govern licensing for refrigeration/air conditioning repairs/installation work at industrial plants. Code requirements are in place for piping and fire protection sprinkler system installation/repairs that permit specified amount of work that can be performed by mill employees and requirements that repairs/installation of certain size be performed by licensed or certified providers. We are not aware of any studies or analysis that would justify licensing of sheet metal work at industrial plants.”

The Office of State Fire Marshal explains that the fire sprinkler industry worked with legislators to create and implement the Fire Sprinkler Law in 1990. The law regulates the fire sprinkler industry through a plan and permit review process and through the licensing of system designers, contractors and inspectors of fire protection sprinkler systems. The Office also indicates that:

“all large companies and many of the smaller companies have membership in nationally-recognized fire sprinkler associations. Many have academic credentials related to their field of work, and there are over a dozen licensed Professional Engineers among them. The licensed fire sprinkler contractors along with their fire sprinkler fitters have in general increased in professionalism under the present system, and it has been frequently stated that Maine is the best example in the nation on how to regulate the fire sprinkler industry. The present efforts have been successful in protecting the public.”

Department Analysis: A state licensing program currently exists within the Maine Department of Public Safety, Office of State Fire Marshal, to regulate fire protection sprinkler contractors installing systems in Maine. One mechanical services company, KINETICS, submitted a general statement that it uses state approved apprenticeship programs and its own training programs to train its employees.

Criteria 5: Cost; benefit

Proponents assert that any cost increases associated with licensing pipefitters, sheet metal workers, and refrigeration and air-conditioning technicians would be more than offset by better operating systems in homes, businesses and other facilities. For example, KINETICS says the cost of licensing would be small and outweighed by “cost savings that would be generated by better running systems, longer lasting systems, and the reduction of repairs.” However, no specific information was provided to validate this assertion.

Opponents claim that licensing would create added costs for business and consumers in Maine. The Office of State Fire Marshal states that licensing fire protection sprinkler fitters would result in “noticeable price increases in fire sprinkler systems.” The Maine Pulp and Paper Association indicates that “licensing for all the proposed trades covered under LD 1241 would add considerable cost to mill operations. These additional costs cannot be recouped through higher product prices and would put Maine mills at a competitive disadvantage.” The impact on consumers, in terms of the cost of regulation, was not quantified by opponents.

Department Analysis: State regulation of any occupation or profession through licensing comes at a cost to those subject to regulation, and at a cost to consumers of the services provided by the regulated group. In the absence of any credible information regarding

the size of the prospective licensee pool, the cost of a state license program and the impact of regulation on prices consumers would pay cannot be determined.

Criteria 6: Service availability of regulation

Proponents either did not address this survey item, or expressed uncertainty about the impact on service availability. The Plumbing Heating Cooling Contractors Association of Greater Boston stated:

“There could be some initial decline in the number of, say, plumbers in the state. But once it is clear what the licensing requirements are, the qualified people will demonstrate those qualifications, and carry on with their work.”

Opponents express concern that the number of service providers would decrease as a result of new licensure. With respect to the impact of state licensure requirements on Maine sprinkler fitters, the Office of Fire Marshal states:

“Many fire sprinkler contractors would not be able to bear the cost to license and train their fitters according to the mandates of this proposed legislation. They would no longer do fire sprinkler installations as a result, thereby creating unemployment and also a situation of not enough companies to provide competitive pricing. The fire sprinkler industry would move toward a monopoly of the work.”

Associated Builders and Contractors of Maine asserts that a decreased number of tradespersons is one of the desired results of some proponents. The organization cites testimony from the public hearing to suggest that limiting “the market of qualified individuals eligible to perform the work” and “recovering market share” are primary motivations for the legislation. The contention is that some proponents wish to keep out-of-state workers from taking jobs away from Maine tradespersons.

Department Analysis: Generally, imposing new state license requirements on a profession or occupation not previously regulated decreases the pool of qualified candidates for licensure, thus, decreasing the availability of services. Over time, as individuals become licensed, availability of services typically increases. It is unclear, however, whether this general principle would apply here given that a significant number of individuals who may be part of the potential licensee group are already subject to existing occupational licensing requirements. For example, individuals who work as pipefitters may already be licensed plumbers. Refrigeration technicians may be licensed electricians. The responses to the survey questions are silent on this issue.

Criteria 7: Existing laws and regulations

Proponents either did not address this survey item or, in the case of KINETICS, indicated that there are “not enough inspectors to adequately monitor every project” under current laws and regulations. The response did not specify which current laws and regulations are the subject of the assertion, nor did KINETICS identify the current law or laws that require inspection or monitoring of “every project.”

Opponents assert that current code requirements and licensing programs already apply to the work of pipefitters, sprinkler fitters, air conditioning and refrigeration system installers and repairers, and mechanical contractors, and thus, additional regulation is unnecessary.

Department Analysis: As previously noted, current Maine law requires the Department of Public Safety, Office of the State Fire Marshal, to license and oversee fire protection sprinkler contractors. Proponents do not specifically address the issue of whether pipefitters, sprinkler fitters, refrigeration and air conditioning system installers and repairers and mechanical contractors are already regulated by the state or through private certification programs, however, it is clear that the Maine Unfair Trade Practices Act would protect consumers of these services from unethical, misleading or unfair business practices.² Finally, responders provided no specific information to suggest that existing state laws and regulations are inadequate to protect the public.

Criteria 8: Method of regulation

Proponents support the proposal to establish an eleven member “Mechanical Trades Board” to carry out various duties including the issuance of licenses to practice as pipefitters, sheet metal workers, refrigeration technicians and contractors, fire protection sprinkler fitters and contractors, sheet metal workers and contractors, and mechanical contractors. Ten of the Board members would be appointed by the Governor. The eleventh Board member would be the State Fire Marshal or designee. Proponents, however, do not explain why state licensure with an associated licensing board is necessary as opposed to a less burdensome method such as private certification.

Opponents either did not address this survey item or asserted that licensing and regulation of any kind is unnecessary or inappropriate. The Office of State Fire Marshal reiterated that it already licenses fire protection sprinkler contractors within the Department of Public Safety.

Department Analysis: It would be premature to evaluate the specific regulatory mechanism included in the original bill. In the event that public harm was found to exist without the state regulation contemplated by the original bill, the sunrise statute requires the least burdensome method of regulation be considered.

² See, 5 MRSA sec. 205-A. (Maine Unfair Trade Practices Act) Appendix D.

It is worth noting that individuals who install or repair refrigeration equipment containing refrigerant or coolant are required to be certified by the US Environmental Protection Agency (EPA) under the Clean Air Act. No respondent submitted information indicating that EPA certification is an inadequate mechanism to ensure public protection from air pollution resulting from improperly handled coolant.

Criteria 9: Other states

Proponents indicate that regulation of license categories listed in the original bill exists in other states. United Association Local 716 Plumbers and Pipefitters provided a list of 14 states, including Maine, that regulate people employed in the fire protection sprinkler profession. The organization also provided a copy of the Oklahoma Mechanical Licensing Law, and the Alaska Mechanical Administrators statutes and regulations.

The Plumbing Heating Cooling Contractors Association of Greater Boston indicates that Massachusetts regulates mechanical trades, although the organization's survey focuses, in part, on the licensing of plumbers, who are already subject to licensure in Maine.

Opponents: The Office of State Fire Marshal provided anecdotal information from fire sprinkler contractors who work in Maine and elsewhere in the New England region indicating that licensing of sprinkler fitters in other states "did not noticeably improve the quality of work of fire sprinkler system installations." Fire sprinkler contractors have also told the Office of State Fire Marshal that the licensing of fitters elsewhere has been difficult to enforce and has created extra expense and "a bureaucratic nightmare (since there are typically many fitters for each major contractor)."

Department Analysis: The Department reviewed licensing laws and programs in several states, including those in New England. The evolution of licensing programs follows a different path in each state. The establishment of licensing programs for various occupations and professions may be the result of strong political and/or economic conditions in a state during a given time period. Few professions are regulated because of public demand for protection. Rather, professionals may view state licensure as a means of solidifying or enhancing their professional status within the state, particularly if state licensure requirements have the effect of limiting entry into the profession or occupation by reserving a particular scope of practice for that profession.

Variations in terminology used to refer to or describe a particular profession may also factor into whether a state is viewed as "regulating" a particular profession. Whereas one state may license "gas fitters," another state may license "natural gas technicians." It is possible that State A and B license individuals performing the same kind of work, but the terms describing the work are different. Similarly, State A may license refrigeration technicians and State B may license refrigeration technicians as a sub-category of licensed electricians. Other states have established a Heating, Ventilation, Air Conditioning and Refrigeration Board encompassing the named specialties. Some states license not only individuals engaged in a particular construction activity but also the

companies, or “contractors,” that employ licensees who are licensed to perform a particular activity.

A review of various state licensing laws reveals that there is no particular pattern or trend in how states license individuals and businesses for public protection purposes. Set forth below is a brief review of New England states that appear to license some of the categories outlined in the original bill but not necessarily at the state level.

Connecticut: The Connecticut **Department of Consumer Protection** has established separate licensing boards for 1) electrical work; 2) plumbing and piping work; 3) heating, piping, cooling and sheet metal work; 4) elevator installation, remain and maintenance, 5) fire protection sprinkler systems work; and 6) automotive glass work and flat glass work. The focus of these licensing categories is on the “contractor.” Contractors are business entities that employ licensed individuals to perform specific tasks. Licensing programs in this subject area use the apprentice, journeyman, master training concept used by labor organizations to provide on-the-job training for members in various construction areas. States like Connecticut license and regulate individuals as well as the businesses that employ them.

Massachusetts: The Massachusetts **Department of Public Safety** licenses pipefitters, refrigeration technicians and contractors, and fire protection sprinkler contractors. On the other hand, the Massachusetts **Office of Consumer Affairs & Business Regulation**, Division of Professional Licensure, licenses electricians, fire alarm system installers, plumbers and gas fitters, and in 2008, enacted a licensure program for sheet metal workers.

New Hampshire: The New Hampshire **Department of Fire Safety, Bureau of Building Safety and Construction** licenses electricians, fuel gas fitters and lightening rod installers and dealers and administers the voluntary certification of heating technicians. The gas fitters category includes licensure of liquid propane and natural gas installers. In addition, the **Bureau of Building Safety and Construction, Mechanical Safety Section** administers voluntary certification of Fire Protection Equipment Technicians which includes fire sprinkler technicians. It does not have a Heating, Ventilation, Air Conditioning and Refrigerator licensing board.

Rhode Island: The Rhode Island **Department of Labor and Training, Division of Professional Regulation** administers licensing programs for pipefitters, welders, refrigeration mechanics, heating and air conditioning mechanics, sheet metal and fire protection sprinkler fitters through its Mechanical Board.

Vermont: The Vermont **Department of Public Safety, Division of Fire Safety** licenses plumbers, oil and gas technicians, electricians, boiler operators, and certifies fire sprinkler system designers and installers. It does not have a Heating, Ventilation, Air Conditioning and Refrigerator licensing board.

Criteria 10: Previous efforts

The Office of State Fire Marshal reiterated that licensing of fire sprinkler contractors has existed in Maine since 1990. No other respondents addressed this survey item.

Department Analysis: LD 1278, containing language identical to LD 1241 was submitted to the 123rd Maine Legislature. LD 1278 was introduced and voted Ought Not to Pass.

Criteria 11: Mandated Benefits (not applicable)

Criteria 12: Minimal competence

Only the Office of State Fire Marshal addressed this survey item. The Office states that the 5 years of work in the field of fire protection systems, as would be required by LD 1241, is “excessive compared to the online course provided by the American Fire Sprinkler Association, and also the course provided by the National Fire Sprinkler Association.”

Department Analysis: none necessary

Criteria 13: Financial analysis

Only the Plumbing Heating Cooling Contractors Association of Greater Boston addressed this survey item. The organization commented that “the state can charge enough for the licenses to cover the expense of licensing and monitoring.”

Department Analysis: Without information on the size of the potential licensee pool, it is not possible to provide meaningful financial analysis. State professional and occupational licensing programs in Maine must, by law, be financially self-supporting through collection of license fees, and all regulatory costs must be borne by licensees.

Conclusions and Recommendations

The Department of Professional and Financial Regulation was charged by the 124th Legislature to conduct an “independent assessment” of responses to evaluation criteria from the group proposing state regulation in LD 1241, as well as from opponents of state regulation and other interested parties. The assessment process must focus exclusively on the criteria outlined in Maine law.

As a matter of public policy, a state should only impose licensing requirements as an exercise of state police power when the state has solid evidence that the safety of the

public is jeopardized and the state must act to protect citizens from harm. A state licensing program should not be established to confer status or recognition on a profession or occupation, nor should a state exercise its police power through licensing to exclude practitioners or for economic purposes. *The sole purpose of state licensing programs is to provide the public with protection against unsafe and unethical service providers.*

The original bill provides for new state regulation of individuals who provide “certain mechanical services.” As the term is used in LD 1241, “certain mechanical services” encompasses: 1) pipefitting; 2) sheet metal work; 3) installation, maintenance and repair of refrigeration and air conditioning systems; and 4) fire sprinkler fitting. The bill also provides for licensing of individuals and businesses that act as “mechanical contractors.”

For ease of analysis, the issue of whether Maine should impose licensure requirements on fire sprinkler fitters (individuals) as contemplated by LD 1241 is addressed separately from the other proposed license categories. Maine already requires fire sprinkler contractors to be licensed.

1. Proposed Regulation of Fire Sprinkler Fitters and Fire Sprinkler Installation Contractors

The Maine Department of Public Safety (DPS) has statutory authority to license and regulate fire sprinkler installation companies and contractors. Installation plans of licensed companies (contractors) are subject to review and approval by the technical staff of the Fire Marshal’s Office. Only companies licensed by the Department of Public Safety are authorized to install fire sprinkler systems in Maine. This regulatory program has been in place since 1990. See, 32 MRSA sec. 1371 et seq.

The current licensing program within DPS focuses on the licensing of companies that are in the business of installing fire sprinkler systems. By law, licensed fire sprinkler contractors must retain, either by employment or contract, at least one “certified responsible managing supervisor.” A certified responsible managing supervisor may also be a fire sprinkler system contractor. A Certified Responsible Managing Supervisor must be either:

- a) certified by the National Institute for the Certification in Engineering Technologies at Level III for fire protection automatic sprinkler systems layout; or
- b) licensed by the State as a professional engineer with 5 years experience in the field of fire protection, mechanical, piping, or related engineering fields.

Under this regulatory structure, individuals who may be employed by licensed contractors as “fitters” are adequately trained and supervised by the licensed contractor.

Recommendation:

The Department has received no information indicating that the current state licensing structure within the Department of Public Safety for fire sprinkler contractors is inadequate in any way. No information regarding potential public harm in the absence of additional regulation of contractors and new regulation of fire sprinkler fitters was submitted in response to the sunrise survey. The Department of Professional and Financial Regulation concludes that additional regulation of fire sprinkler companies and/or new state regulation of fire sprinkler fitters is not warranted.³ Therefore, the Department recommends that no action be taken with regard to new or expanded licensing requirements on either fire sprinkler fitters or fire sprinkler contractors.

2. Proposed regulation of pipefitters, sheet metal workers; installers and repair technicians for refrigeration and air conditioning systems; and mechanical contractors.

LD 1241 suggests that the State impose licensing requirements on individuals performing pipefitting, sheet metal work, installation, maintenance and repair of refrigeration and air conditioning systems and on mechanical contractors. Current Maine law, however, provides public protection in the areas of residential and commercial plumbing, oil and solid fuel heating installations and maintenance; propane and natural gas heating and cooling installations and maintenance; and electrical installations and maintenance through the operation of various state licensing programs. These activities and functions described above are regulated by the Plumbers' Examining Board, the Oil and Solid Fuel Board, the Propane and Natural Gas Board and the Electricians' Examining Board, respectively. In addition, the Boiler and Pressure Vessel Board licenses and regulates individuals who operate and repair high pressure boilers and pressure vessels.

HVAC and refrigeration companies that sell and install heating, ventilation, refrigeration and air conditioning systems use ductwork fabricated by companies that employ sheet metal workers. When a residential or commercial consumer purchases an air conditioning system, the consumer typically does not contact a sheet metal worker to fabricate ductwork for the system. Rather, the consumer purchases the system from the company that employs licensed plumbers and electricians to install the system. The HVAC company determines which suppliers of ductwork are reputable. The consumer relies on the HVAC company to stand behind the system if the system requires adjustment or repairs. Sheet metal workers are employed in manufacturing and mill operations and by companies that construct sheet metal components for use in residential and commercial settings. Manufacturing companies, industrial plants and mills are responsible for hiring and training individuals to perform sheet metal work, as well as pipefitting.

³ A sunrise review conducted by the Department on the subject of fire sprinkler and fire alarm contractor regulation resulted in a January 2007 report entitled: **Sunrise Review of LD 1508, An Act to Regulate Fire Alarm Contractors**. The Department's report on LD 1508 concluded that existing regulation within the Department of Public Safety was more than adequate to protect the public.

Manufacturers of refrigeration and air conditioning equipment used in residential, commercial or industrial settings employ a wide variety of individuals to build or fabricate their equipment, including licensed electricians and individuals with EPA-issued refrigeration technician certification.⁴

That said, some states have established HVACR licensing boards populated by individuals who have state licenses that permit them to do business as heating, cooling, ventilation, and refrigeration contractors. Massachusetts, Delaware and Alabama, for example, each have licensing boards that license and regulate the businesses of these contractors.

In Maine, the trend, with few exceptions, is to license individuals rather than businesses.

Recommendation:

The threshold question in any sunrise review study is whether the public welfare is jeopardized in the absence of state regulation of a particular occupation or profession or group of occupations. If the answer is yes, then this report would need to address all aspects of regulation that flow from the determination that the public should be protected from a particular group of individuals performing or offering a specific service or product.

The Department concludes that proponents have not made a case for state regulation. Proponents of regulation have provided only general statements about the potential for harm that might occur without regulation. No specific examples of health and safety problems in Maine were substantiated and none have been identified through Department research. Nor have proponents provided usable information about the estimated numbers of individuals and businesses that would be affected by new licensure requirements.

Based on the information submitted by proponents and opponents of LD 1241, the Department concludes that 1) public health and safety of Maine citizens is not jeopardized in the absence of a new licensing program for pipefitters, sheet metal workers, installers and repairers of refrigeration and air conditioning systems and mechanical contractors; and 2) that state action to impose licensing requirements is not warranted.

For the reasons state above, the Department recommends that the Committee not pursue LD 1241.

⁴ Section 608 of the Clean Air Act of 1990, as amended, codified at Title 42, Chapter 85 of the US Code Annotated, requires technicians who perform maintenance, service, repair, or dispose of equipment that could be reasonably expected to release refrigerants into the atmosphere to be certified by the Environmental Protection Agency. Technicians are required to pass an [EPA-approved test](#) given by an [EPA-approved certifying organization](#) to become certified under the mandatory program. Section 608 Technician Certification credentials do not expire.

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 Department of Professional and Financial Regulation To Conduct a Sunrise Review Regarding the Proposal To License Certain Mechanical Trades

Sec. 1 Department of Professional and Financial Regulation to conduct a sunrise review regarding the proposal to license certain mechanical trades. 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 the proposal to license certain mechanical trades; 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 legislation following 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

5 §12015. NEW BOARDS

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 1241

*“Resolve, Directing the Department of Professional and
Financial Regulation To Conduct a Sunrise Review
Regarding the Proposal To License Certain Mechanical
Trades”*

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

Sunrise Review Survey: Regulation of Certain Mechanical Trades

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 certain mechanical trades (*pipefitters, refrigeration technicians and contractors, fire protection sprinkler fitters and contractors, sheet metal workers and contractors, and mechanical contractors*)?

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 (if possible, please provide a breakdown or information specific to each trade);
- (b) The names and addresses of associations, organizations and other groups representing potential licensees (if possible, please provide information specific to each trade); and
- (c) An estimate of the number of potential licensees in each group.

2. Specialized skill. Please describe whether the work of these certain mechanical trades requires such a specialized skill that the public is not qualified to select a competent individual without assurances that minimum qualifications have been met (if possible, please address each trade separately).

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

- (a) The nature and extent of potential harm to the public, if any or all of these trades continue to be unregulated by the State (please be as specific as possible); 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 these trades--pipefitters, refrigeration technicians and contractors, fire protection sprinkler fitters and contractors, sheet metal workers and contractors, and mechanical contractors--in this State within the past 5 years*).

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by these trades 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 (if possible, please address each trade separately).

- 5. Costs and benefits of regulation.** Please describe the extent to which regulation of these trades will increase the cost of services provided by them 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 these trades 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 any or all of these trades, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on these trades 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 these trades.
- 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.

Maine Revised Statute Title 5, Chapter 10: UNFAIR TRADE PRACTICES
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5 §205-A. SHORT TITLE

This chapter will be known as and may be cited as the Maine Unfair Trade Practices Act. [1987, c. 307, §1 (NEW) .]

SECTION HISTORY
1987, c. 307, §1 (NEW) .

5 §206. DEFINITIONS

The following words, as used in this chapter, unless the context otherwise requires or a different meaning is specifically required, shall mean: [1969, c. 577, §1 (NEW) .]

1. Documentary material. "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording wherever situate.

[1969, c. 577, §1 (NEW) .]

2. Person. "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.

[1969, c. 577, §1 (NEW) .]

3. Trade and commerce. "Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

[1969, c. 577, §1 (NEW) .]

SECTION HISTORY
1969, c. 577, §1 (NEW) .

5 §207. UNLAWFUL ACTS AND CONDUCT

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful. [1969, c. 577, §1 (NEW) .]

1. Intent. It is the intent of the Legislature that in construing this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 45(a)(1) of the Federal Trade Commission Act (15 United States Code 45(a)(1)), as from time to time amended.

[2007, c. 466, Pt. A, §4 (AMD) .]

2. Rules and regulations. The Attorney General may make rules and regulations interpreting this section. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act) as from time to time amended. Evidence of a violation of a rule or regulation made by the Attorney General shall constitute prima facie evidence of an act or practice declared to be unlawful by this chapter in any action thereafter brought under this chapter.

[1973, c. 322, (AMD) .]

SECTION HISTORY

1969, c. 577, §1 (NEW). 1973, c. 322, (AMD). 2007, c. 466, Pt. A, §4 (AMD).

5 §208. EXCEPTIONS

Nothing in this chapter shall apply to: [1969, c. 577, §1 (NEW) .]

1. Regulatory boards. Transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the State or of the United States. This exception applies only if the defendant shows that:

A. Its business activities are subject to regulation by a state or federal agency; and [2007, c. 222, §1 (NEW) .]

B. The specific activity that would otherwise constitute a violation of this chapter is authorized, permitted or required by a state or federal agency or by applicable law, rule or regulation or other regulatory approval. [2007, c. 222, §1 (NEW) .]

[2007, c. 222, §1 (AMD) .]

2. Interstate commerce.

[1981, c. 569, (RP) .]

3. Complaints.

[1973, c. 323, §2 (RP) .]

SECTION HISTORY

1969, c. 577, §1 (NEW). 1973, c. 323, §§1,2 (AMD). 1981, c. 569, (AMD). 2007, c. 222, §1 (AMD).

5 §209. INJUNCTION; PROCEDURES

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. At least 10 days prior to commencement of any action under this section, the Attorney General shall notify the person of his intended action, and give the person an opportunity to confer with the Attorney General in person or by counsel or other representative as to the proposed action. Notice shall be given the person by mail, postage prepaid, sent to his usual place of business, or if he has no usual place of business, to his last known address. The Attorney General may proceed without notice as required by this section upon a showing of facts by affidavit of immediate irreparable harm to the consumers of the State. The action may be brought in the Superior Court of the county in which such person resides or has his principal place of business, or may be brought in the Superior Court of Kennebec County. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter. Any district attorney or law enforcement officer, receiving notice of any alleged violation of this chapter, shall immediately forward written notice of the same with any other information that he may have to the office of the Attorney General. Any person who violates the terms of an injunction issued under this section shall forfeit and pay to the State, to be applied in the carrying out of this chapter, a civil penalty of not more than \$10,000 for each violation. For the purposes of this section, the court issuing such injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of

the State may petition for recovery of such civil penalty. In any action under this section where a permanent injunction is issued, the court may order the person against whom the permanent injunction has been issued to pay to the State the costs of the investigation of that person by the Attorney General and the costs of the suit, which funds shall accrue to the General Fund. [1975, c. 199, (AMD) .]

In any action under this section where a permanent injunction is denied, the court may order the State to pay the costs of the defense of the prevailing party or parties and the costs of the suit upon a finding by the court that the action was frivolous. [1981, c. 339, (NEW) .]

In any action by the Attorney General brought against the defendant for violating the terms of an injunction issued under this section, the court may make such orders or judgments as may be necessary to restore to any persons who have suffered any ascertainable loss by reason of such conduct found to be in violation of an injunction, any money or property, real or personal, which may have been acquired by means of such conduct. Each intentional violation of section 207 in which the Attorney General establishes that the conduct giving rise to the violation is either unfair or deceptive is a violation for which a civil penalty of not more than \$10,000 shall be adjudged. The Attorney General may seek to recover civil penalties for violations of section 207 which are intentional and are unfair or deceptive. The Attorney General in seeking civil penalties has the burden of proving that the conduct was intentional and was unfair or deceptive notwithstanding any other statute which declares a violation of that statute an unfair trade practice. These penalties shall be applied in the carrying out of this chapter. [1989, c. 239, (AMD) .]

SECTION HISTORY

1969, c. 577, §1 (NEW). 1971, c. 229, (AMD). 1971, c. 338, §§1,2 (AMD). 1971, c. 622, §8 (AMD). 1973, c. 419, §§1,2 (AMD). 1973, c. 567, §20 (AMD). 1975, c. 199, (AMD). 1981, c. 339, (AMD). 1987, c. 307, §2 (AMD). 1989, c. 239, (AMD) .

5 §210. DISCONTINUANCE; COSTS

In any case where the Attorney General has authority to institute an action or proceeding under section 209, in lieu thereof he may accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be engaged or to have been engaged in such method, act or practice. Such assurance may include a stipulation for the voluntary payment by such person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance of discontinuance shall be in writing and be filed with the Superior Court of Kennebec County. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest. Evidence of a violation of such assurance shall constitute prima facie evidence of an act or practice declared to be unlawful by this chapter in any action thereafter brought under this chapter. [1973, c. 320, (AMD) .]

SECTION HISTORY

1969, c. 577, §1 (NEW). 1973, c. 320, (AMD) .

5 §211. EXAMINATION; NOTICE REQUIREMENTS

The Attorney General, whenever he believes any person to be or to have been in violation of this chapter, may examine or cause to be examined for that purpose, any books, records, papers and memoranda of whatever nature relevant to such alleged violation. The Attorney General may require the attendance of such person or of any other person having knowledge in the premises at any place in the county where such person resides or has a place of business or in Kennebec County if such person is a nonresident or has no place of business within the State, and may take testimony and require proof material for his information, and may administer oaths or take acknowledgement in respect of any book, record, paper or memorandum. The Attorney General shall serve notice of the time, place and cause of such examination or attendance at least 10 days prior to the date of such examination. [1969, c. 577, §1 (NEW) .]

1. Service. Service of any such notice may be made by:

A. Delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; [1969, c. 577, §1 (NEW) .]

B. Delivering a duly executed copy thereof to the principal place of business in this State of the person to be served; or [1969, c. 577, §1 (NEW) .]

C. Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this State or, if said person has no place of business in this State, to his principal office or place of business. [1969, c. 577, §1 (NEW) .]

[1969, c. 577, §1 (NEW) .]

2. Contents. Each such notice shall:

A. State the time and place for taking the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; [1969, c. 577, §1 (NEW) .]

B. State the statute and section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation; [1969, c. 577, §1 (NEW) .]

C. Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demand; [1969, c. 577, §1 (NEW) .]

D. Prescribe a return date within which the documentary material is to be produced; and [1969, c. 577, §1 (NEW) .]

E. Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying. [1969, c. 577, §1 (NEW) .]

[1969, c. 577, §1 (NEW) .]

3. Exceptions. No such notice shall:

A. Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or [1969, c. 577, §1 (NEW) .]

B. Require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of this State. [2001, c. 370, §1 (AMD) .]

[2001, c. 370, §1 (AMD) .]

4. Disclosure of documentary material. Documentary material demanded pursuant to this section must be produced for inspection, reproduction and copying during normal business hours at the principal office or place of business of the person served, in the county where that person resides or has a place of business, in Kennebec County if the person served is a nonresident or has no place of business within the State or at such other times and places as may be agreed upon by the person served and the Attorney General. Any book, record, paper, memorandum or other information produced by any person pursuant to this section, unless otherwise ordered by a court of this State for good cause shown, may not be disclosed to any person other than the authorized agent or representative of the Attorney General unless with the consent of the person producing the same, except that such material or information may be disclosed by the Attorney General in court pleadings or other papers filed in court.

[2001, c. 370, §2 (NEW) .]

5. Motion for additional time, to modify or set aside or grant protective order. At any time prior to the date specified in the notice or within 21 days after the notice has been served, whichever period is shorter, the court upon motion for good cause shown may extend that reporting date or modify or set aside that demand or grant a protective order in accordance with the standards set forth in the Maine Rules of

Civil Procedure, Rule 26(c). The motion may be filed in the Superior Court of the county in which the person served resides or has a usual place of business or in Kennebec County.

[2001, c. 370, §2 (NEW) .]

6. Information not to be used in criminal proceeding. A person is not excused from attending and testifying or from producing documentary material in compliance with this section on the ground or for the reason that the testimony or other information, documentary or otherwise, may tend to incriminate that person or subject that person to a penalty or forfeiture. Testimony and other information obtained under the authority of this section and information directly or indirectly derived from such testimony or other information may not be used against a natural person who has testified or produced information under oath in compliance with this section in any criminal case except a prosecution for perjury, giving a false statement or otherwise failing to comply with a notice served upon that person under this section.

[2001, c. 370, §2 (NEW) .]

7. Cost of court reporter. At the request of the person under investigation or that person's attorney, any testimony taken pursuant to a demand or notice under this section must be recorded on a recording device or taken before a court reporter authorized to serve as such under the laws of the State. Upon request of either party, all such testimony taken or recorded must be transcribed by an authorized court reporter, and in that case the original transcript of that testimony must be preserved by the Attorney General. The cost of the taking or recording and transcription must be paid by the State. In the event the Attorney General or some other party obtains judgment against the party whose testimony is taken for a violation of section 207, the cost of the court reporter or recording and transcription may be recovered by the State in such a judgment.

[2001, c. 370, §2 (NEW) .]

8. Authority not applicable in criminal proceedings. This section is not applicable to any criminal proceeding brought under the laws of this State.

[2001, c. 370, §2 (NEW) .]

SECTION HISTORY

1969, c. 577, §1 (NEW). 1973, c. 334, (AMD). 1973, c. 648, (AMD). 1975, c. 529, (AMD). 2001, c. 370, §§1-5 (AMD).

5 §212. PENALTIES

A person upon whom a notice is served pursuant to section 211 shall comply with the terms thereof unless otherwise provided by the order of a court of this State. Any person who fails to appear, or with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds or destroys, mutilates, alters or by any other means falsifies any documentary material in the possession, custody or control of any person subject of any such notice, or knowingly conceals any relevant information, shall be subject to a civil penalty of not more than \$5,000 payable to the State to be recovered in a civil action. [1977, c. 696, §35 (AMD) .]

Whenever any person fails to comply with any notice served upon him under section 211, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Superior Court of the county in which such person resides or has his principal place of business or of Kennebec County, if such person is a nonresident or has no principal place of business in this State, and serve upon such person or in the same manner as provided in section 211 a petition for an order of such court for the enforcement of this section. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof. [1969, c. 577, §1 (NEW) .]

SECTION HISTORY

1969, c. 577, §1 (NEW). 1977, c. 696, §35 (AMD).

5 §213. PRIVATE REMEDIES

1. Court action. Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 207 or by any rule or regulation issued under section 207, subsection 2 may bring an action either in the Superior Court or District Court for actual damages, restitution and for such other equitable relief, including an injunction, as the court determines to be necessary and proper. There is a right to trial by jury in any action brought in Superior Court under this section.

[1991, c. 536, §1 (AMD) .]

1-A. Settlement offer. At least 30 days prior to the filing of an action for damages, a written demand for relief, identifying the claimant and reasonably describing the unfair and deceptive act or practice relied upon and the injuries suffered, must be mailed or delivered to any prospective respondent at the respondent's last known address. A person receiving a demand for relief, or otherwise a party to any litigation arising from the claim that is the subject of the court action, may make a written tender of settlement or, if a court action has been filed, an offer of judgment. If the judgment obtained in court by a claimant is not more favorable than any rejected tender of settlement or offer of judgment, the claimant may not recover attorney's fees or costs incurred after the more favorable tender of settlement or offer of judgment.

The demand requirement of this subsection does not apply if the claim is asserted by way of counterclaim or cross claim.

[1991, c. 536, §2 (NEW); 1991, c. 536, §3 (AFF) .]

2. Fees and costs. If the court finds, in any action commenced under this section that there has been a violation of section 207, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action.

[1973, c. 251, (NEW) .]

3. Notices to Attorney General. Upon commencement of any action brought under subsection 1, the clerk of courts shall mail a copy of the complaint or other initial pleading to the Attorney General and upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

[1973, c. 251, (NEW) .]

4. Injunction as evidence. Any permanent injunction or order of the court issued under section 209 shall be prima facie evidence in an action brought under subsection 1 that the respondent used or employed an unfair or deceptive method, act or practice declared unlawful under section 207.

[1973, c. 251, (NEW) .]

SECTION HISTORY

1973, c. 251, (NEW). 1973, c. 788, §13 (AMD). 1979, c. 451, (AMD). 1983, c. 29, §2 (AMD). 1991, c. 536, §§1,2 (AMD). 1991, c. 536, §3 (AFF) .

5 §214. WAIVER; PUBLIC POLICY

Any waiver by a consumer of the provisions of this chapter is contrary to public policy and shall be unenforceable and void. [1973, c. 321, (NEW) .]

SECTION HISTORY

1973, c. 321, (NEW) .

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