



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 188

H.P. 165

House of Representatives, January 27, 2011

An Act To License Residential Builders and Register Specialty Contractors

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

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

HEATHER J.R. PRIEST
Clerk

Presented by Representative PILON of Saco.
Cosponsored by Senator JACKSON of Aroostook and
Representatives: BERRY of Bowdoinham, DRISCOLL of Westbrook, GILBERT of Jay,
HUNT of Buxton, MacDONALD of Boothbay, TUTTLE of Sanford.

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

2 **Sec. 1. 5 MRSA §12004-A, sub-§50** is enacted to read:

3 **50.**

4 <u>Maine Residential Builders and</u>	<u>Public Members</u>	<u>32 MRSA §19011</u>
5 <u>Specialty Contractors Board</u>	<u>Legislative Per Diem</u>	
6	<u>Other Members No</u>	
7	<u>Compensation</u>	
8	<u>Authorized</u>	

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

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

13 **Sec. 3. 10 MRSA §8001, sub-§38, ¶NN**, as enacted by PL 2009, c. 344, Pt. B,
14 §5 and affected by Pt. E, §2, is amended to read:

15 NN. Maine Fuel Board; and

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

17 OO. Maine Residential Builders and Specialty Contractors Board.

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

19 **CHAPTER 141**

20 **MAINE RESIDENTIAL BUILDERS AND SPECIALTY CONTRACTORS ACT**

21 **SUBCHAPTER 1**

22 **GENERAL PROVISIONS**

23 **§19001. Short title**

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

26 **§19002. Definitions**

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

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

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

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

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

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

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

10 §19012. Powers

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

16 2. Licensing and registration. The board shall evaluate the qualifications of and
17 approve the examination to be taken by applicants.

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

21 SUBCHAPTER 3

22 LICENSE AND REGISTRATION

23 §19021. Residential builder

24 1. Residential builder; license required. A residential builder must be licensed by
25 the board for a period established by the board by rule. A licensee must pay an annual
26 fee established by the Director of the Office of Licensing and Registration within the
27 department pursuant to section 19026 that is based upon the department's costs in
28 carrying out the provisions of this chapter. Nothing in this chapter prohibits a person who
29 is licensed to practice in this State under any other law from engaging in the practice for
30 which that person is licensed.

31 2. Application; licensing requirements. An applicant for a residential builder's
32 license under this subchapter shall file with the board a written application on a form
33 prescribed by the board. The application must be accompanied by the payment of all
34 applicable fees required pursuant to subsection 1. The board, through rulemaking, shall
35 require the applicant to take either a written or oral form of examination, whichever the
36 applicant prefers, as a prerequisite for licensure. A prerequisite for taking the
37 examination for a residential builder's license is a minimum of 2 years of relevant
38 experience under the supervision of a professional who is engaged in residential building
39 construction or other education or experience or a combination of these as may be

1 approved by the board. The board, in reviewing an applicant, may consider the
2 applicant's experience, ability, character, financial condition, equipment and workers'
3 compensation insurance and other pertinent information the board may require. The
4 board shall issue a residential builder's license if the board finds that the applicant is
5 qualified to engage in residential building in this State and the applicant submits proof of
6 financial responsibility acceptable to the board.

7 **3. Examination.** An applicant who fails the examination for licensure under
8 subsection 2 must be given the opportunity to be reexamined after payment of an
9 additional examination fee. If the applicant fails the examination 3 times, the applicant is
10 not eligible for reexamination for 12 months. A record must be made and preserved by
11 the board of each examination of an applicant and the findings of the board pertaining to
12 the examination. A certified copy of the record must be furnished to an applicant
13 requesting the record upon the payment of a fee to the board that reasonably reflects the
14 cost of furnishing the record to the applicant.

15 **§19022. Residential specialty contractor**

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

23 **2. Application; registration requirements.** The board shall issue a residential
24 specialty contractor registration certificate for the classification established pursuant to
25 subsection 3 for which the applicant is qualified, if the board finds that the applicant is
26 qualified to engage in that classification of residential specialty contracting in the State.
27 A residential specialty contractor must be qualified and experienced in the particular
28 classification in which the applicant intends to, and does, engage. The board, by rule,
29 may require the applicant to take either a written or oral form of examination, whichever
30 the applicant prefers, in specific areas of classification.

31 **3. Registration; classification of residential specialty contractors.** The board by
32 rule shall establish classifications for registration of residential specialty contractors
33 consistent with established usage and procedure in the construction business. The board
34 may limit the field and scope of the operations of a residential specialty contractor to
35 those in which the applicant is to be registered. A residential specialty contractor
36 registration certificate issued by the board may not be for more than 3 of the
37 classifications recognized by the board. A residential specialty contractor seeking
38 registration for more than 3 classifications must be examined and licensed as a residential
39 builder pursuant to section 19021.

40 **§19023. Renewal; continuing education**

41 The board shall renew a residential builder's license on its expiration upon the
42 applicant's submission to the board of the completed renewal application, proof of

1 financial responsibility acceptable to the board and payment of all applicable fees. If a
2 license has been in inactive status for more than 3 years, the applicant is subject to the
3 requirements of original licensure. As a condition of license renewal, the board may
4 require by rule a licensee to satisfactorily complete continuing education through a
5 program approved by the board, as long as the continuing education requirements are
6 readily accessible to the licensee and do not impose an undue burden on the licensee.

7 **§19024. Exemptions**

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

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

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

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

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

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

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

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

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

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

33 **§19025. Violations**

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

1 **§19026. Fees**

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

8 **§19027. Effective date**

9 This subchapter takes effect January 1, 2014.

10 **Sec. 6. Maine Residential Builders and Specialty Contractors Board**
11 **initial meeting; staggered terms.** Initial members of the Maine Residential Builders
12 and Specialty Contractors Board created pursuant to the Maine Revised Statutes, Title 32,
13 section 19011 must be appointed no later than May 1, 2012. The board shall convene its
14 first meeting no later than July 15, 2012. Notwithstanding Title 32, section 19011,
15 subsection 2, initial terms of the members of the board are as follows:

- 16 1. For the firefighter representative, 2 years;
- 17 2. For one public member, one year;
- 18 3. For one public member, 2 years;
- 19 4. For 2 residential builders, 3 years;
- 20 5. For 2 residential builders, 4 years;
- 21 6. For the municipal code enforcement officer, 2 years; and
- 22 7. For the engineer or architect, 2 years.

23 **Sec. 7. Transfer 2012.** Notwithstanding any other provision of law, the State
24 Controller shall transfer \$837,732 from the unappropriated surplus of the General Fund to
25 the Office of Licensing and Registration, Other Special Revenue Funds account within
26 the Department of Professional and Financial Regulation no later than July 1, 2012 to
27 support the establishment and start-up costs of the Maine Residential Builders and
28 Specialty Contractors Board created pursuant to the Maine Revised Statutes, Title 32,
29 section 19011.

30 **Sec. 8. Transfer 2013.** Notwithstanding any other provision of law, the State
31 Controller shall transfer \$368,587 from the unappropriated surplus of the General Fund to
32 the Office of Licensing and Registration, Other Special Revenue Funds account within
33 the Department of Professional and Financial Regulation no later than July 1, 2013 for
34 operating costs of the Maine Residential Builders and Specialty Contractors Board
35 created pursuant to the Maine Revised Statutes, Title 32, section 19011.

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SUMMARY

This bill creates the Maine Residential Builders and Specialty Contractors Act and establishes the Maine Residential Builders and Specialty Contractors Board within the Department of Professional and Financial Regulation, Office of Licensing and Registration. Beginning January 1, 2014, the board will authorize persons to practice residential building activities by issuing a license to residential builders and a registration certificate to residential specialty contractors. It establishes the requirements for licensure as a residential builder and for registration as a residential specialty contractor and includes certain specific exemptions from licensure and registration. The bill also provides for staggered initial appointments to the board and requires that all members be appointed to the board no later than May 1, 2012. The board is required to convene its first meeting no later than July 15, 2012.