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DEPARTMENT OF

Professional & Financial Regulation

STATE OF MAINE

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

Report of the Commissioner

Department of Professional and Financial Regulation

Submitted to the

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

***Pursuant to Resolve 2007, c. 219 as amended by
Public Law 2009, c. 261***

**Directing the Department of Professional and Financial
Regulation to Study Residential Contractor Licensing**

December 8, 2010

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

Report to the Joint Standing Committee on
Business, Research and Economic Development

Study of Residential Contractor Licensing pursuant to Resolve 2007, c. 219 as amended by Public Law 2009, c. 261

December 8, 2010

I. Introduction

The concept of licensing building contractors, and in particular residential building contractors, has been the subject of numerous discussions in the Legislature for the past decade. During the 121st Legislature, the Joint Standing Committee on Business, Research and Economic Development directed the Commissioner of Professional and Financial Regulation to conduct a Sunrise Review of LD 1551 “*An Act to License Home Building Contractors and Improvement Contractors.*” In his January 2004 sunrise report, Commissioner Robert Murray recommended against establishing a licensing program for building contractors. (Attached as Appendix A).

The Commissioner reasoned that any attempt to regulate building contractors must be preceded by the adoption of a mandatory statewide building code, which is essential to provide the building and construction trade with a set of minimum standards against which the work of construction trades could be measured. Further, the Commissioner concluded that the potential benefit of regulating home contractors through licensing did not justify the burden associated with home contractor licensing, in terms of both increased cost to the consumer public and the increased cost to the regulated community.

In the 122nd Legislature, Commissioner Christine Bruenn testified in opposition to LD 1306, a proposal that mirrored the prior bill, LD 1551. She said the issues considered by Commissioner Murray in concluding that the case had not been made to support a new licensing program were still relevant, and little had changed. She testified that although progress toward a mandatory statewide building code had been made, the process was not complete.

The 123rd Legislature considered LD 1038, a bill similar in most respects to LD 1551 and LD 1306. LD 1038 was set aside by the Committee in favor of enacting LD 2257, codified as PL 2007, c. 699, that established the Technical Codes and Standards Board charged with harmonizing the Maine Model Building Code with existing building codes. The idea underlying LD 2257 was to set aside plans to license residential contractors to make significant progress toward developing a mechanism for harmonizing various existing codes with the International Residential and Building Codes so that builders in Maine would start to learn and understand the standards with which they might

eventually be asked to comply. The Technical Codes and Standards Board within the Department of Public Safety began its work in November 2008.

A separate but related resolve enacted by the 123rd Legislature directed the Department of Professional and Financial Regulation to study the building and construction environment as the new board developed and finalized the building code and conflicts between existing codes and the building code were resolved. The report-back date for the Department's study was theoretically set far enough in the future for progress to be observed and analyzed as a benchmark before any new licensing proposals would be considered. This report is submitted pursuant to PL 2007 Resolve, c. 219 as amended by Public Law 2009 c. 261.

Resolved: *That the Department of Professional and Financial Regulation shall study the issue of residential contractor licensing. The department shall include in its study a review of the various building and energy codes in existence throughout the State. The department shall report its recommendations for residential contractor licensing to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters no later than December 1, 2010. The joint standing committee of the Legislature having jurisdiction over business, research and economic development matters may submit legislation regarding residential contractor licensing to the First Regular Session of the 125th Legislature.*¹

Most recently, the 124th Legislature considered LD 272, a licensing proposal sponsored by Representative Bruce MacDonald similar in many respects to LD 1038 but without references to the Maine Building Code. The original bill was the subject of many thoughtful committee discussions and significant substantive revisions to address concerns raised by committee members and interested parties. The revised bill carried with it the same issues of increased costs for both consumers and contractors present in prior proposals. The 124th Legislature adjourned without enactment of LD 272, but with the assurance from the Department of Public Safety that work on the state-wide building code would continue and adoption of a state-wide building code by the Technical Codes and Standards Board would occur in June 2010 as required by law.

II. Methods of Regulation

Regulation of an industry, profession or occupation may take different forms. Some professions are regulated through implementation of a certification program. "Certification" is a term that connotes training or an examination process administered usually by a private trade or professional association at either the state or national level. Obtaining certification status by the service provider is voluntary. The state has no

¹ The resolve makes reference to studying "residential" contractor licensing which has been the subject of significant discussion by the Business, Research and Economic Development Committee. This report focuses on residential contractor regulation as a subset of the broader concept of regulation of building contractors. The policy decisions that must be considered are equally applicable to regulation of building contractors generally as to regulation of residential contractors specifically.

enforcement or regulatory role. Certification is used to enhance the stature of those certified within the profession or occupation. Since certification is voluntary, it would not prohibit anyone from practicing that profession or occupation. As described, certification is not typically a state function, and therefore not overseen by a state agency nor involving any state expense.

In other circumstances, a profession or occupation may be regulated at the local or municipal level. Many states regulate occupations, particularly those related to construction or construction-related occupations, including building contractors, at the municipal level. Municipalities are well situated to issue permits, perform inspections and enforce ordinances passed by cities and towns for the safety of residents. Some municipalities in other states issue local licenses and enforce the requirements associated with obtaining that license.

“Licensure” is a designation used to describe the highest level of state regulation. Typically, the state grants licensure to an individual who has complied with a legislatively mandated set of minimum educational, experiential, and training and competency standards, and has paid the required licensing fee. Regulation through licensure encompasses the setting of eligibility standards, examination requirements, and a process to resolve consumer complaints. The complaint process typically involves investigation of complaints and a disciplinary process whereby the licensing authority imposes discipline in situations where the licensee has violated state law. Effective licensing programs that protect the public require the existence of a clear threat to human health or safety, and a mechanism for protecting the public from that defined threat. The foundations for a licensure program typically include adoption of minimum standards and a clearly defined statutory scope of practice. This level of state regulation carries with it the highest level of state expense. The total cost of the program becomes the basis for a statutory fee cap, and license fees established through the Administrative Procedures Act rulemaking process.

Licensing professions and occupations at the state level is typically reserved for professions and occupations that have the potential for the greatest harm to the public in the absence of state action. Because it requires state involvement, state level licensing is expensive and carries with it the heaviest burden, both financially and economically, for those individuals subject to its requirements. In Maine, state regulation of occupations and professions is generally reserved for those professions that involve public trust being placed in the hands of professionals in areas in which the lay person might not be able to distinguish between an ethical, competent practitioner and an unethical or incompetent practitioner.

III. Regulation of Residential Building Contractors

With respect to the status of residential building contractors, a number of incremental steps have already been taken to protect the public from potential harm.

Trade associations representing building contractors have formed effective voluntary certification programs in which contractors participate. In addition, state agencies offer voluntary certification programs, including a voluntary certification program administered by the Department of Environmental Protection to certify contractors on erosion control practices; and by the Department of Health and Human Services, Division of Environmental Health to certify septic system installers. Private organizations offer certification programs such as the program offered by the Maine Concrete Technicians Certification Board to certify individuals who test qualities of concrete; by building material manufacturers and suppliers to train contractors in the intended use of their products; and by the Midcoast Builders Alliance and the Maine Home Builders and Remodelers Association for members relating to building and structural issues. Also, Maine community colleges routinely offer building trade training.

The Attorney General's Office has reviewed and revised the consumer education information posted on its website and has updated its Consumer Law Guide to provide more effective guidance about how to identify an ethical and competent residential building contractor. The Attorney General's Office has also updated the standard contract required by the Home Construction Contract Act in Title 10 to more effectively protect the financial and property interests of consumers.

The Maine Municipal Association has provided information with respect to considerable efforts of municipalities to regulate construction practices of the residential contractors. It asserts that "More than 70 municipalities, encompassing over half of the state population, have adopted building codes governing the construction of residential property. Furthermore, most of these municipalities employ professional staff that inspects completed construction for compliance with the building code."²

Another effective form of state regulation of residential construction to protect the public interest is the adoption of a state-wide building code which resulted from the passage of a state law requiring the establishment of the Technical Codes and Standards Board within the Department of Public Safety (PL 2007, c. 699). In 2008, the Board embarked on a public process to adopt various residential and commercial building codes for the state as a whole and harmonize those with existing state-wide safety and installation codes in related construction areas. Throughout the process of adopting and harmonizing codes under the heading of the Maine Uniform Building and Energy Code ("MUBEC"), individuals and companies involved in the construction industry in Maine provided important input and have now become focused on how enforcement of the new codes will affect their business plans and improve the housing stock in Maine. The public harmonization and adoption process has drawn needed attention of municipal officials across the state that are working to determine training needs for municipal inspectors and building officials who will eventually be involved in local inspections of construction in their jurisdictions for compliance with the MUBEC.

² DPFRR Sunrise report on LD 1551, p. 14.

IV. Maine Uniform Building and Energy Code (MUBEC)

The Maine Uniform Building and Energy Code was formally adopted by the Technical Codes and Standards Board on June 1, 2010. Maine towns with a population of 2,000 and over now have the option of implementing MUBEC effective June 1, 2010 or, continuing to observe an existing locally adopted building code until December 1, 2010. However, effective December 1, 2010, all Maine towns and cities must apply and comply with the provisions of the Maine Uniform Building and Energy Code and its component standards.

As described by the Technical Codes and Standards Board, the MUBEC is comprised of the four international building codes: 1) International Residential Code (2009); 2) International Building Code (2009); 3) International Existing Building Code (2009); and 4) International Energy Conservation Code (2009).

The following standards are adopted as additional components of the Code:

A. The American Society of Heating, Refrigerating and Air-Conditioning Engineers, Standards (ASHRAE)

1) 62.1 - 2007 (Ventilation for Acceptable Indoor Air Quality); 2) 62.2 - 2007 (Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings); and 3) 90.1 - 2007 (Energy Standard for Buildings except Low-Rise Residential Buildings) editions without addenda.

B. E-1465-2006, Standard Practice for Radon Control Options for the Design and Construction of New Low- Rise Residential Buildings

The following existing installation and safety codes are also in effect:

National Electrical Code	NFPA ³ 70
National Fire Code	NFPA 1
Flammable Liquids Code	NFPA 30
Fuel Gas Code	NFPA 54
Life Safety Code	NFPA 101
Oil Burner Code	NFPA 31
Plumbing Code	Maine State Internal Plumbing Code
Floodplain Regulations	Local Municipal Regulation
Shoreland Zoning Regulations	
Sprinkler Codes	NFPA 13, 13D & 13R

The Technical Codes and Standards Board was granted authority in the 2008 law to review available building codes and adopt all or portions of those codes. Some codes were not adopted in their entirety as noted by the board in its adoption documents.

³ National Fire Protection Association

For the first time in state history, Maine has a state-wide mandatory building code. The final effective date of the code is December 1, 2010. Enforcement of the code will be phased in so the impact of having adopted a state-wide building code will not be known for several years. See, <http://www.maine.gov/dps/bbcs/>

V. Training Opportunities in MUBEC

An important component of preparing for adoption of a state-wide building code is the development of effective training modules for individuals who will inspect and evaluate building plans and construction quality. The Technical Codes and Standards Board within DPS has partnered with the State Planning Office to redesign the existing SPO training and certification program for code officials. Pursuant to the provisions of the MUBEC, local code enforcement and building officials are required to be appropriately trained and certified to carry out the mandate of the original law. The State Planning Office staff, in conjunction with Technical Board staff, adopted training rules during a public process that garnered comments from the code enforcement and construction communities with suggestions for making training material more effective.

The State Planning Office Code Enforcement Officer Training and Certification program schedule has been announced. The schedule of training workshops for code and building officials, as well as third-party inspectors, in the following standards has now been announced: residential building code, commercial building code, residential energy code, indoor residential ventilation code, and indoor commercial ventilation code.

Instructors have been presenting periodic workshops during November and December at community college locations across the state covering: 1) statutory requirements of the Maine Uniform Building and Energy Code; 2) code purposes and organization; 3) applicable state laws, review and permitting; 4) report procedure; 5) occupancy approval requirements; and 6) inspection and enforcement techniques. Anyone may register and pay to attend these workshops, however, code enforcement officials and building officials who are municipal employees may attend at no cost. (see www.maine.gov/spo/ceo/index.htm).

At the present time, specific MUBEC training for residential building contractors on the IRC (2009 version) has not been planned. Although the State Planning Office has notified building and construction-related groups and associations about the adoption and effective date of the Maine Uniform Building and Energy Code, SPO is not required to provide training to any groups other than code enforcement officials and individuals seeking to become certified as third-party inspectors.

VI. Policy Questions To Be Addressed

The Department of Professional and Financial Regulation's 2004 Sunrise Report on LD 1551 focused on three key foundational issues that would need to be addressed and resolved before a licensure program for building contractors should be considered. The first was the lack of a mandatory state-wide building code by which to measure quality of construction. As noted in prior sections of this report, the adoption of the Maine Uniform

Building and Energy Code and related standards is now an on-going process and will eventually determine what entities will be responsible for enforcing the provisions of the MUBEC.

- **Defining the Objective of State Licensure**

The Business, Research and Economic Development Committee has heard public testimony about the quality of residential construction as well as about the financial conduct and business practices of contractors. Should a state licensure program regulate the **quality of construction work** or the **business practices of building contractors**? Should a state licensure program encompass both objectives? How would a proposal address both objectives?

Measuring the quality of construction may be addressed by a mandatory state building code. However, a building code does not address ethical and honest business practices. Some states have combined contractor licensing programs with other components of a remedial program which requires disclosure of financial information as a condition of licensure and in some cases, to provide consumer remedies. These licensure models clearly increase costs associated with the program.

- Licensure of residential contractors that includes the imposition of financial requirements on residential contractors: Some states require a demonstration of financial stability and net worth as a condition of licensure.
- Licensure of residential contractors that includes a provision for a homeowner restitution fund: Some states have established a restitution account funded by an assessment on each licensed contractor.
- Licensure of residential contractors that includes a subcontractor recovery fund.

These and other combinations can be found in other states. As noted, the more complex the program, the more state expense is involved. However, until the basic policy objectives of a licensure program are established, the total costs of any program are speculative, at best.

- **Defining Scope of Practice**

The second key foundational issue that must be resolved is the “scope of practice” for any defined group of individuals that may be regulated. The statutory scope of practice provision is the hallmark of licensing statutes for all regulated professions and occupations. A profession or occupation’s “scope of practice” indicates to the public which services will require the service provider to have obtained a state license and, to the contrary, which services will not require a license.

The licensing proposals considered to date have failed to adequately define a specific scope of practice for residential home contractors. LD 1551 would have required

licensure of a “home contractor” which included any person who undertakes, offers to undertake or submits a bid to build a dwelling or perform any home improvement. However, the bill did not define which specific services performed by a home contractor are included in the “building” or “improving” of a dwelling.

Some proposals would have exempted a subcontractor providing window installation for a home contractor from licensure; however, the same subcontractor would have to obtain a license if he or she provided the same window installation service to a consumer directly. Thus, it would have been the relationship between a service provider and the consumer on a given day that would determine whether a license is required, rather than the actual service or conduct itself.

To date, the various licensing proposals have failed to define in specific terms the activity that would require a state license. Some proposals have focused on whether “home improvement” should be defined to include the “structural repair, renovation or rehabilitation of construction or an addition to a dwelling.” Is this definition limited to what is generally thought of as carpentry work? If so, what is the definition and scope of practice for a carpenter? The definition in other proposals also includes “the removal, repair, replacement or installation of roofing, siding, insulation, windows or chimneys.” Does this mean that a person working on a foundation is not required to be licensed? What about drywallers, floor covering installers or other specialty service providers? What specific range of services is included in each category? Does “roofing” include replacing both boards and shingles or just shingles?

Without a clear statutory scope of practice adopted by the Legislature, neither potential licensees nor the public will be able to determine under what circumstances a license would be required. Regulation of a profession is a policy determination to be made by the Legislature. More specifically, defining the actual conduct which will require a state license should be made by the Legislature.

- **Identifying Program Costs and Sources of Funding**

A third seminal issue that has not been resolved is the source of funding for any form of new regulation. The cost of regulating a profession is typically borne by the licensees in that profession through the payment of dedicated license fees. A typical licensing program will build into the established license fee the direct costs of examination development and administration, dedicated personnel and associated equipment, as well as overhead costs including rent, legal service, and technology and staff, depending on whether the program is located in a state agency or a private organization.

As noted previously, because prior licensing proposals have lacked specificity in defining what types of conduct would be regulated and under what specific circumstances, it is almost impossible to project either the number of potential licensees or the total cost of the regulatory program. Clearly, the important policy decisions about goals and objectives of licensing drive the costs associated with a regulatory program. Until those policy determinations are made, the costs cannot be determined. State licensing

programs are expensive to administer. Those costs would be imposed on licensees in the form of license fees and to the public in the form of increased construction costs.

- **Understanding the Consequences of Imposing New License Requirements**

Effective licensing statutes are the product of public policy discussions when a need to protect citizens from a certain group of businesses or individuals who offer professional services for compensation is clearly identified. Policy makers must balance the positive and negative consequences of imposing new license requirements on an industry whose financial stability impacts the state's financial and economic status.

When a licensing proposal is implemented and licensing requirements are imposed, many individuals and companies now doing business will not meet minimum standards and qualifications. Depending on how broadly the Committee views the necessary scope of licensure, many individuals who would not meet basic licensing standards will be prohibited from engaging in their current occupation. Is the existing economic climate in Maine strong enough to withstand the consequences of imposing new license requirements on individuals and businesses? In an economic climate in which some businesses are struggling under existing regulatory requirements in various areas, new regulatory programs must be evaluated in light of existing regulations affecting the same individuals and businesses. The mandatory nature of the Maine Uniform Building and Energy Code, standing alone, may be as much regulation as the economic and business environment can withstand.

VII. Recommendation

These are important policy considerations. The answers will determine the need for and breadth of any future licensing program. If every individual who performs any home improvement work with or without a contract is required to obtain a state license, the resulting program could include a group of more than 12,000 individuals.⁴ If a program that imposes new licensing requirements on 12,000 individuals and businesses is perceived as too broad, then what subcategory of that 12,000 would it be more appropriate to license to avoid perceived harm to the public?

To the extent that these issues remain unresolved, meaningful discussion by the Legislature of whether regulation in this area should occur, and if so, what specific regulatory options should be considered remains difficult. Answers to the key policy questions discussed above should inform the decisions of policy makers only after a decision is made by the Legislature that additional regulation of building contractors, beyond those measures already in place, is necessary to protect the public.

⁴ Appendix D, DPFR Sunrise Review Report, "Economic Impact Analysis of Proposed Home Contractor Regulation, pgs 8, 10, 18. Planning Decisions, Inc. was engaged by the Office of the Attorney General to provide an economic impact analysis of LD 1551. 1997 US Census Reports for Maine were used by Planning Decisions. 2002 US Census Reports for Maine provide updated statistics.

If the Committee determines that, as a policy matter, it desires to move toward development of a regulatory program for residential and/or commercial builders, the Department stands ready to assist in that effort with information and staff expertise, as needed. Any proposal to regulate in this area should clearly state the Committee's policy determinations and reflect the Committee's policy objectives.



**Report
Of the Commissioner of Professional and Financial Regulation**

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

Sunrise Review of L.D. 1551

“An Act to License Home Building and Home Contractors”

January 1, 2004

*John Elias Baldacci
Governor*

*Robert E. Murray, Jr.
Commissioner*

Section I. PREFACE

A. Factors that Complicate Sunrise Review of LD 1551

This report differs in many respects from the standard sunrise report that typically follows a legislative proposal that creates a new licensing program for a previously unregulated profession. LD 1551, "*An Act to License Home Building and Home Contractors,*" was introduced during the first regular session of the 121st session. The Business, Research and Economic Development Committee held a hearing on the bill in April, 2003 and subsequently voted to carry the bill over to the next Legislative Session. The Committee further directed the Department to conduct sunrise review on the bill pursuant to Title 5, Section 12015, and to submit a sunrise report to the Committee for its consideration by January 1, 2004.

At the same time the Committee voted to carry over LD 1551, it also voted to merge the concepts contained in LD 401 (adoption of a national plumbing code), LD 688 (adoption of a state rehabilitation code) and LD 1025 (creation of a state building code office) into LD 1025 and carry LD 1025 over to the Second Regular Session. It was the Committee's hope that the break between legislative sessions would provide groups and individuals interested in various aspects of these bills to develop consensus that would assist the Committee in identifying public support for a standardized building code and for a licensing program for building contractors.

Between April and September 2003 two separate working groups emerged. The first group identified itself as the "Building Code Working Group" and was comprised of local code enforcement officials, industry and code representatives, state officials, representatives of the insurance community and a variety of other interested parties and met on a periodic basis to discuss the pros and cons of various building codes that could be adopted and used in Maine. The findings of the Building Code Working Group are contained in a Report dated October 8, 2003. The report identifies the International Residential Building Code (IRC) as the building code preferred by many, but not all, participants. The report makes it clear, however, that the group did not address certain issues considered critical to the success and effectiveness of any adopted state building code. Critical issues that remain unresolved are 1) whether if adopted; the building code would be a mandatory or a voluntary; 2) whether the building code would be enforced at the local or state level; and 3) how any enforcement of an adopted code would be funded.

A second working group formed on an informal basis at the suggestion of the staff of the Attorney General's office and identified itself as the LD 1551 "Stakeholder Group." The objective of the group was to further debate and discuss the pros and cons of licensing residential building contractors and the merits of alternative approaches to regulation. The stakeholder group included residential builders, commercial builders, professional associations representing builders and contractors, representatives of insurance companies, lumber companies and municipalities and towns. Over the course of three months of periodic meetings, a number of revisions to the original bill were discussed;

however, it is apparent that consensus was not reached on many critical issues that form the foundation of an effective licensing program.

Having reviewed all available documentation from the Building Code Working Group and the LD 1551 Stakeholder Group, as well as the information received as a result of the Department's sunrise review process, it is the Department's view that meaningful sunrise review is more difficult than usual because three key foundational or seminal issues have not been resolved. Only after the three issues discussed below are resolved by the Legislature can the Department's sunrise review provide meaningful analysis and recommendations.

1. Established Statewide Building Code

In the context of developing a licensing requirement for any occupation or profession, one of the seminal issues to determine is the standard the licensing board must apply in measuring the licensees' level of competency. The threshold foundational issue critical to the question of licensing of home contractors is the absence of agreement or consensus on whether a state-wide building code should be adopted. In the Department's view, a state building code provides such a standard by which the public would be able to evaluate the conduct of potential licensees of a regulatory program. Without an adopted state building code that is understood by all parties who might be subject to licensing requirements, and which is enforced in a consistent manner, the state does not have the tools to advance its singular objective of protecting the public. The adoption of a statewide building code is also a pre-requisite to any consideration of a state licensing program. All professions and occupations that are regulated by the State rely on statutorily-defined scopes of practice and technical codes and standards to measure or evaluate the conduct of licensees.

The Department is aware that adoption of any state wide building code has been extensively debated for several years at the local level as well as by the Legislature. The questions of which code would be best for Maine and how the chosen code would be implemented and enforced continues to be a contentious issue on which complete consensus has not been reached. Although progress has been made, the conditional language and recommendations of the Building Code Working Group in its Final Report are evidence of the lack of full agreement on these issues.

Nonetheless, whether to adopt a statewide building code is a foundational issue that must be addressed and resolved. If left unresolved, disagreement surrounding code issues will become a barrier to meaningful consideration of any form of contractor regulation by the Legislature. The absence of a mandatory statewide building code implemented and enforced either at the local level or at the state level, we believe precludes consideration of licensure of home building contractors

2. Statutory Scope of Practice

The second key foundational issue that must be resolved is the “scope of practice” for any defined group of individuals that may be regulated. The statutory scope of practice provision is the hallmark of licensing statutes for all regulated professions and occupations. The scope of practice indicates to the public which services they seek will require the service provider to have obtained a state license and, to the contrary, which services will not require a license. The original version of LD 1551 would require licensure of a “home contractor” which includes any person who undertakes, offers to undertake or submits a bid to build a dwelling or perform any home improvement. However, the bill does not define which specific services performed by a home contractor are included in the “building” or “improving” of a dwelling.

Suggestions for amendments to LD 1551 made by the Stakeholder Group are equally unclear in terms of describing the actual conduct or activity that requires a license. For example, revised LD 1551 exempts a subcontractor providing window installation for a home contractor from licensure; however, the same subcontractor would have to obtain a license if he or she provided the same window installation service to a consumer directly. Thus, it is the relationship between a service provider and the consumer on a given day that determines whether a license is required, rather than the actual service or conduct itself.

In addition, the definition of “home improvement” includes the “structural repair, renovation or rehabilitation of construction or an addition to a dwelling.” Is this definition limited to what is generally thought of as carpentry type work? If so, what is the definition and scope of practice for a carpenter? The definition also includes “the removal, repair, replacement or installation of roofing, siding, insulation, windows or chimneys.” Does this mean that a person working on a foundation is not required to be licensed? What about drywallers, floor covering installers or other specialty service providers? What specific range of services is included in each category? Does “roofing” include replacing both boards and shingles or just shingles?

Without a clear statutory scope of practice adopted by the Legislature, neither potential licensees nor the public will be able to determine under what circumstances a license will be required. Currently, neither LD 1551 nor suggested changes to LD 1551 set forth in clear practical terms the specific conduct or activity that triggers licensing requirements. At the outset, regulation of a profession is the Legislature’s determination. More specifically, defining the actual conduct which will require such regulation, should not be delegated to a licensing board through the board’s rulemaking process.

3. Identified Funding Source

A third seminal issue that has not been resolved is the source of funding for any form of regulation. The cost of regulating a profession is typically borne by the licensees in that profession through the submission of dedicated license fees. In addition to licensing individual contractors, LD 1551 contemplates a required permitting and inspection process for each construction project but fails to identify a funding source other than “licensing fees” paid by “licensees.” A typical licensing program will build into the

license fee the direct costs of examination development and administration, dedicated personnel and associated equipment, as well as shared overhead costs including rent, legal service, and technology and shared staff. The permitting and inspection functions required by LD 1551 would not typically be included in the administrative cost of the licensing program. Those costs are not addressed in either the original bill or the revised bill.

As noted previously, the fact that the bill lacks specificity in defining what types of conduct would be regulated and under what specific circumstances makes it almost impossible to project both the number of potential licensees, and the total cost of the regulatory program. Comments of interested parties on this point are evidence of the lack of consensus on the objective of LD 1551. The Maine Municipal Association, for example, projects the costs of a regulatory program to be approximately \$3 million annually, based on the number of licensees it foresees. The Attorney General's consultant projects the cost of the program at \$8 million based on one required inspection for each of approximately 80,000 housing projects performed annually by an estimated 12,000 licensees. LD 1551 requires a series of three inspections per housing project which would put the actual cost of the program at \$24 million annually.

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Given the factors including the on-going simultaneous discussions of various informal working groups on different but interrelated topics, the likelihood of the introduction of amendments to LD 1551, and the lack of consensus on interpretation of provisions in either the original bill or a revised bill, the question of whether and how building contractors should be regulated has become a moving target. To the extent that these seminal issues remain unresolved, meaningful discussion by the Legislature of whether regulation in this area should occur, and if so, what specific regulatory options should be considered remains difficult. Nonetheless, even though normally not part of a typical sunrise review report, the following section attempts to outline the spectrum of options or potential regulatory approaches which the Legislature could consider with regard to the issue of home contractor regulation in general.

B. Regulatory Options

LD 1551 focuses exclusively on *licensing* of home building contractors to provide new remedies for consumers who have expressed frustration with the business practices and work product of the contractors with whom they have established business relationships. Licensing is only one of several regulatory options. These following options are organized in terms of degree of regulatory burden, from least burdensome to most extensive.

- **No change:** This option leaves in place current licensing programs for certain regulated trades including plumbing, electrical installation, the work of oil burner technicians, propane and natural gas technicians, architects, and engineers. Various related safety and installation codes have been adopted at both the state and at the

municipal level. However, building codes adopted at the municipal level cover approximately 52 percent of the state's population, and provide for permitting, inspection and enforcement at the local level.

- **Certification:** “Certification” is a regulatory term that connotes a training and/or an examination process typically administered by a private trade or professional association for the benefit of its members. Obtaining certification status by the service provider is voluntary. The state has no enforcement or regulatory role. Certification is used to enhance the competency and/or stature of those certified within the profession or occupation. A contractor certification program could require an agency to administer an examination that would cover both construction-related subject matter and basic business management and law and certify those who passed. Since certification would be voluntary, it would not prohibit anyone from practicing as a general contractor. The certification program might be most effective if combined with the adoption of a statewide building code, with the exam testing the applicants' knowledge of the code. As described, certification is not typically a state function; and therefore, if not overseen by a state agency, no state expense would be incurred.

- **Registration:** The regulatory term “registration” implies that certain essential information about an identified group of individuals and entities is gathered and compiled by the state so that the public has some way of contacting the registrant if necessary. Registration is marked by the payment of a registration fee by the registrant but does not carry with it a set of standards or qualifications that must be met by the registrant before the registration is issued. It is usually the lowest level of regulation implemented by a state. In this context contractors could be required to register as a pre-requisite to practicing in the state. Registration would be mandatory but could be limited to contractors or extended to include specialty trades. Registration could be instituted as a preliminary step in a phased-in licensure program, or it could constitute an end in itself. Because registration is a function of the state, all costs associated with the registration program would be passed on to the registrants in the form of registration fees that would cover the cost of the program. These costs would include the direct costs of the program, including dedicated personnel costs as well as shared overhead costs that would include the cost of rent, technology and legal service.

- **Licensure:** Licensure is a designation used to describe the highest level of state regulation. Typically, the state grants licensure to an individual who has complied with a legislatively mandated set of minimum educational, experiential, and training and competency standards, and has paid the required licensing fee. Regulation through licensure encompasses the setting of eligibility standards, examination requirements, and a complaint process to resolve consumer complaints. The complaint process typically involves investigation of complaints and a disciplinary process whereby the licensing authority imposes discipline in situations where the licensee has violated state law or board rule. Effective licensing programs that protect the public require a clear public threat and a mechanism for protecting the public from that defined threat. The foundations for a licensure program almost always include adoption of minimum standards and a clearly defined statutory scope of practice. This level of state regulation

carries with it the highest level of state expense. The total cost of the program becomes the basis for a statutory fee cap, and license fees established through the Administrative Procedures Act rulemaking process.

Within the category of “licensure,” several sub-options might be considered, again, from least burdensome to most complex:

- Licensure of roofers: Between 2000 and 2002, the Attorney General’s Office reported that 107 of 457 or 23% of construction-related consumer concerned roofing.
- Licensure of contractors combined with registration of roofers (See “Registration” description above)
- Licensure of residential contractors and specified specialty construction trades
- **Licensure Plus**: Some states have combined contractor licensing programs with other components of a remedial program which provide disclosure of financial information as a condition of licensure and in some cases, to provide consumer remedies. These licensure models clearly increase costs associated with the program.
 - Licensure of residential contractors that includes financial requirements imposed on residential contractors Some states require a demonstration of financial stability and net worth as a condition of licensure.
 - Licensure of residential contractors that includes provision for a homeowner restitution fund
 - Licensure of residential contractors that includes a subcontractor recovery fund.

These and other combinations can be found in other states. As noted, the more complex the program, the more state expense is involved. However, until the basic elements of the desired program are established, the total costs of any program are speculative, at best.

C. Department’s Responsibility pursuant to the Sunrise statute

Consideration of any particular option discussed above will not be useful unless and until the three seminal issues previously outlined are resolved. The Department, however, is obligated to present its analysis of the statutory evaluation criteria pursuant to the Committee’s directive to conduct an independent assessment of LD 1551 as presented. Despite the complicating factors surrounding the bill, and the lack of clarity as to the bill’s specific purpose, Section II of this report sets forth the more formal “sunrise review.”

Section II. Sunrise Report on LD 1551 “*An Act to License Home Building and Improvement Contractors*”

Introduction:

Under current Maine law, building contractors are not required to obtain a state license to conduct business in the state. LD 1551, “*An Act to License Home Building and Improvement Contractors*,” was considered by the Joint Standing Committee on Business, Research and Economic Development (“the Committee”) during the First Regular Session of the 121st Legislature. The proposed legislation as printed would require building contractors of residential structures to obtain a license from the State and would establish a licensing board within the Department of Professional and Financial Regulation to regulate residential building contractors. In addition, the bill provides for adoption by the board of the International Residential Code as Maine’s state-wide building code. The Committee held a public hearing on LD 1551 and subsequently voted to carry the bill over to the Second Regular Session of the 121st Legislative Session to allow “sunrise review” to take place.

As noted in Section I of this report, after the First Regular Session ended, an informal group of interested parties led by representatives of the Attorney General’s Office met periodically between June and September, 2003 to attempt to further debate and discuss the pros and cons of licensing residential building contractors and the merits of alternative approaches to regulation. The informal group of stakeholders included residential builders, commercial builders, professional associations representing builders and contractors, representatives of insurance companies, representatives of lumber companies and representatives of municipalities and towns. The Department is not aware of the existence of an official amended version of LD 1551. For this reason, and because the public at large is aware only of the existence of LD 1551 as originally presented, this assessment is confined to the provisions of the original bill.

A. Sunrise Review

Pursuant to 5 MRSA § 12015(3), “sunrise review” must be undertaken whenever proposed legislation would license or otherwise regulate an occupation or profession that is not currently regulated in order to determine whether such regulation is necessary to protect the health, safety, and welfare of the public.

The sunrise review process consists of applying the evaluation criteria established by statute, 32 MRSA § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated.

Under the law, the sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant's answers to the evaluation criteria and report those findings back to the committee; or
3. The Committee may request that the Commissioner establish a technical review committee to assess the applicant's answers and report its finding to the commissioner.

Copies of 5 MRSA § 12015(3) and a summary of the sunrise review process are included in Appendix A.

B. Charge from Committee

In a memorandum dated May 16, 2003, the Joint Standing Committee on Business, Research and Economic Development requested that the Commissioner of Professional and Financial Regulation conduct an independent assessment of LD 1551, "*An Act to License Home Building and Improvement Contractors*," in accordance with the state's sunrise review procedures and submit a report of findings to the Committee by January 1, 2004. A copy of the committee's request is attached as Appendix B.

C. Independent Assessment by Commissioner

The requirements for an independent assessment by the commissioner are set forth in 32 MRSA § 60-K. The commissioner is required to apply the specified evaluation criteria set forth in 32 MRSA § 60-J to responses and information submitted to, or collected by, the commissioner.¹ After conducting the independent assessment, the commissioner must submit a report to the committee setting forth recommendations, including any draft legislation necessary to implement the report's recommendations.

The commissioner's report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment as to whether answers to the evaluation criteria are sufficient to support some form of regulation. In addition, if there is sufficient justification for some form of regulation, the report must recommend an agency of state government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the recommendations must reflect the least

¹ In conjunction with its solicitation of written comments, the Department publicized and held a public meeting of interested parties at the Gardiner Annex on October 15, 2003 to allow participants to supplement their written submissions and provide new information. A list of participants at the public meeting is attached as Appendix C.

restrictive method of regulation consistent with the public interest. Copies of 32 MRSA §§ 60-J and 60-K are included in Appendix A.

D. Evaluation Criteria

As part of the independent assessment process, the commissioner must review the responses to the evaluation criteria submitted by the “applicant group” seeking licensure. In the absence of a typical applicant group, the Department has considered the input of all individuals and groups that submitted a written submission or participated orally at the October 15th public meeting.

The department’s analysis is structured utilizing the evaluation criteria set forth in 32 MRSA § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in the statute;
2. A summary of the responses submitted by interested parties ; and
3. The department’s independent assessment of the response to the evaluation criteria.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for 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.

Responses:

Information submitted by the Attorney General’s Office indicates that under the broadest interpretation of LD 1551, as many as 12,000 individuals and companies would be required to obtain a state license to offer construction and improvement services for dwellings.² LD 1551 defines “home contractor” to mean a person who “undertakes, offers to undertake or submits a bid to build a dwelling or perform any home improvement.” Alternatively, the Attorney General’s Office suggests that a more limited interpretation of the bill might produce a licensee pool of about 10,500. This figure would not include “do-it-yourselfers” and subcontractors who work for general contractors.

The trade or professional organizations represent some portion of the potential licensees include the following: Maine Homebuilders and Remodelers Association (120-150 members), Mid-Coast Builders Alliance (100 members in mid-coast region), and Associated Constructors of Maine.

² *Economic Impact Analysis of Proposed Home Contractor Regulation,*” issued by Planning Decisions, Inc., page 4. (Attached as Appendix D).

Department assessment:

As noted in the Introduction, subsequent to the Committee's decision to carry over LD 1551 to allow for sunrise review, the Attorney General's Office continued to organize meetings of parties that had expressed interest in participating in further discussions of the bill and its impact on the public, on the interested parties and on the business community. During these meetings, questions were raised and debated with regard to the meanings of the core definitions that under normal circumstances would provide the basis for estimating the size of the licensee pool.

In part because the bill does not define the actual conduct or "scope of practice" that would require licensure, the number of potential licensees that may be subject to regulation cannot be reasonably estimated. In the absence of clear statutory definitions of the specific conduct and activity that would delineate the potential regulated community, and to avoid unproductive speculation, the Department relies on information provided the Attorney General's Office on this criterion. Planning Decisions, Inc. is a consulting firm retained by the Attorney General's Office to provide a cost/benefit analysis for purposes of sunrise review. In its report, Planning Decisions indicates that "approximately 12,000 firms doing nearly \$1.8 billion in sales could fall under the purview of LD 1551."³ Any revisions in the bill's definition of "home contractor," "general contractor," or "home improvement or repair" would presumably increase or decrease that estimate.

It is also worth noting that the total membership of the various trade and professional associations participating in these discussions is less than 400 as compared to the 12,000 licensees who would be subject to licensure.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for 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.

Responses:

Individual consumers who submitted comments typically indicated that home builders and home improvement contractors need specialized skills. Generally, these consumers do not specify whether the skills needed are technical construction skills or financial and business skills or both.

Trade and professional groups generally assert that specialized skills are required in order to produce a structurally sound structure. Most commenters agreed that a competent builder needs knowledge and familiarity with the applicable building code and the ability

³ "Economic Impact Analysis of Proposed Home Contractor Regulation," issued by Planning Decisions, Inc., Table 3, **Indices of Construction Businesses Covered by LD 1551, 2001 values (est.)**, pg. 8, attached as Appendix D.

to comply with the provisions of that code. Some commenters stated that they consider the manufacturers' installation guidelines for their building materials are important.

Department assessment:

There is no doubt that "specialized skill" is required for at least some, if not all components of home construction. Despite this, the Department is not aware of any nationally accepted set of minimum qualifications or standards for home builders. Consumers generally attempt to educate and protect themselves from negative consequences by taking time to interview more than one builder, ask for names of several other clients who have contracted with the builder, and require the builder to supply information about his or her financial situation and past financial history. The consumer choosing a builder often has access to tangible work product of the builder and the testimony of prior clients as a guide. Whether consumers who have submitted comments actually performed this kind of personal research is not known. It should be noted that some consumers who responded to the Department's request for consumer input stated that they had done their homework and were pleased with the work of the builder they chose, but the second time they hired the same builder for another purpose, problems with the construction project developed and they became dissatisfied.

Evaluation Criterion #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.

Responses:

Most consumers provided information that they had experienced economic or financial harm; they paid a builder to perform a task but the builder failed to perform the work without returning their money, or performed the work in such a way that the consumer was caused to pay a second builder to complete the work to their satisfaction, thus increasing the cost of the project.

A smaller number of the consumers who responded indicated their opposition to a licensure program because of their belief that licensure would increase the cost of building and they saw no justification for any increase.

The Attorney General's representative submitted a listing of complaints received between 2000 and 2002 relating to home construction and improvement. Of the 447 complaints

received, 294 related to one or more of the building activities subject to licensure under LD 1551. About half of those related to “new construction” or “roofing.”

Department Assessment:

The issue raised by the proposed legislation, and this evaluation criteria in particular, is whether the public’s health, welfare and safety is jeopardized if residential builders and home improvement contractors are not regulated. The complaint information provided by the Attorney General’s office does not provide sufficient detail in terms of the specific facts and circumstances surrounding each complaint. Consistent indexing to provide complaint context would need to be developed and analyzed in order to draw any meaningful inferences relevant to this assessment.

Economic Harm: Consumer complaints of economic harm must be considered in the context of the residential building industry in Maine overall. The Department relies on information contained in Planning Decisions’ cost benefit report to put the threat to public safety or welfare in perspective. Table 5 of the report on page 12 indicates that the Attorney General’s Office assigned an adjusted total dollar value to the 100 complaints received in 2002 of approximately \$1.5 million. In comparison to the \$788 million spent on home improvement activity during the same period, the financial “damages” of \$1.5 million associated with these complaints represent approximately 2/10th of one percent of total expenditures. Obviously, the 100 complaints reported to the AG do not reflect the total number of complaints relating to home contracting work in Maine. Planning Decisions asserts that this relatively small percentage could be related to the reluctance of consumers to report problems.

Viewed from another perspective, the report estimates that there are approximately 80,000 housing projects in Maine each year. The 100 complaints submitted to the Attorney General in 2002 represent a problem rate of approximately 1/10th of one percent of total projects. Even assuming, as the report does, that not all consumers who could file a complaint actually did file a complaint; the likely rate of problems occurring with home contractor work in this state appears to be relatively low.

Physical Harm: Certain components of the building and construction industry that pose serious threats to public safety, including electrical installations and wiring, the installation of oil burning appliances and other heating equipment fueled by compressed gas, and the installation of boilers, pressure vessels, and elevators, have been identified as public safety issues and are already regulated by the State. Technicians who install and maintain these units are subject to the adopted state code in that particular trade or occupation including the National Electrical Code (NEC), various chapters of the safety and installation codes of the National Fire Protection Association (NFPA), and the American Society of Mechanical Engineers Installation and Safety Code for Elevators and Vertical Lifts (ASME) and boilers and pressure vessels.

With respect to construction of residential dwellings, towns and municipalities have jurisdiction over and responsibility for the construction process and the structural soundness of residential structures through operation of the local building permit and inspection process. The Maine Municipal Association provided information indicating that “approximately 73 communities having 53% of the state population have adopted building codes.” “Furthermore, most of these municipalities employ professional staff that inspects completed construction for compliance with the building code.”

The Department has received no information to demonstrate that regulation of residential construction currently in effect at the local or municipal level does not adequately protect the public from the risks of physical harm in those localities. It appears that at least for a significant portion of the state and state population, appropriate regulation is in place.

Evaluation Criterion #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.

Responses:

Some trade associations representing building contractors submitted information about voluntary certification programs in which contractors may participate, including a voluntary certification program administered by the Department of Environmental Protection to certify contractors on erosion control practices, by the Department of Human Services, Division of Health Engineering which administers a voluntary certification program for septic system installers, by the Maine Concrete Technicians Certification Board to certify individuals who test qualities of concrete, by building material manufacturers and suppliers to train contractors in the intended use of their products, and by the Midcoast Builders Alliance and the Maine Home Builders and Remodelers Association for members relating to building and structural issues. The Department is also aware that certain community colleges in Maine offer building trade training but has no specific information on those programs.

Maine Municipal Association provided information with respect to considerable efforts of municipalities to regulate construction practices of the residential contractors. It asserts that “More than 70 municipalities, encompassing over half of the state population, have adopted building codes governing the construction of residential property. Furthermore, most of these municipalities employ professional staff that inspects completed construction for compliance with the building code.”

Department Assessment:

The Department views voluntary state and private certification programs to be important ways of protecting the public. More important, however, is the enforcement of

construction practices of residential contractors by municipalities that have adopted building codes. That is a significant factor in providing public protection at the local level.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which 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.

Responses:

Some consumers asserted that the cost of regulation would be minimal when compared to the money that a licensing program would save consumers.

Representatives of the building and construction industry believe regulation will increase the cost of doing business given the costs associated with a state administered licensing program that includes examination, licensure and continuing education that LD 1551 would require of many of their members as well as the additional costs associated with bonding and insurance. They assert that when their members' business costs increase, the increase is passed on to consumers who will ultimately bear the additional cost.

Maine Municipal Association focused on one component of cost associated with LD 1551—the costs associated with the adoption and enforcement of a state-wide building code. It asserts that a conservative estimate of the cost of code adoption and enforcement would be \$3 million and questions whether the adoption and enforcement of such a code would reduce consumer complaints.

Planning Decisions concluded that the only feasible way of analyzing the cost and benefit of a regulatory program is to calculate the current cost to consumers of “shoddy or unacceptable home construction activity” which it estimates to be roughly \$24 million annually. If the proposed program resulted in the elimination of \$24 million in unacceptable construction activity, and the actual costs of administering the licensing program amounted to less than \$24 million, there would be a net benefit that would justify regulation.

Department Assessment:

Because of the many unknown factors associated with the concept of contractor licensing, including the number of licensees, the number of building projects and the number of inspections or enforcement actions that might be required, there is no easy way to predict at this time what the actual cost of a licensure and enforcement program might be. Of particular concern is the bill's building permit and inspection component. Planning Decisions states that census information indicates that there are roughly 80,000 residential projects in Maine each year. LD 1551 requires three inspections to be performed for each project at various stages of construction. Using the report's estimate

that one inspection per project would cost \$8 million, a total of \$24 million would be necessary to pay for the cost of 240,000 inspections each year.

MMA's program cost estimate, although clearly offered as a conservative estimate in the absence of solid information about residential housing projects, is based on the number of potential licensees. It assumes that each licensee would have one project and be inspected once.

Although certain costs of a licensing program can be ascertained by examining the history of other programs that include similar components, the bill's lack of detail and specificity with regard to the size of the regulated community, and the level of the regulating entity's involvement in the permitting and inspection program makes any set of estimates speculative, at best.

Another significant element of the cost of state regulation of the residential building industry is the level of cost passed along to the consumer as a result of anticipated increases in labor costs. Planning Decisions, Inc. notes that "there is a difference of approximately \$4.00 per hour between average hourly wages of licensed and unlicensed trades people." In the event that state regulation was established, that wage differential would likely be borne by consumers in the form of increased construction costs. That level of increased costs, estimated by Planning Decisions to be in the range of \$40 million annually⁴ would need to be part of the consideration in performing the "cost-benefit analysis."

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation of the profession or occupation would increase or decrease the availability of services to the public.

Responses:

Commenters, including some individual consumers thought that a new regulatory program for residential building contractors might weed out problem builders and considered that a benefit to the public. Other consumers thought that regulating residential builders would limit their choices and that problem builders would operate outside the state regulatory program. Small contractors stated their fear that they would be forced out of business financially because of increased costs associated with examination, licensure and continuing education, bonding and insurance.

Department Assessment:

In general, imposing licensing requirements where none exist typically results in a decrease in the number of service providers and in the availability of services. A decrease in the availability of services in the absence of compelling documented safety

⁴ "Economic Impact Analysis of Proposed Home Contractor Regulation," issued by Planning Decisions, Inc., pg. 5. (Appendix D).

issues and concerns or a clearly demonstrated countervailing benefit does not result in a benefit to the public. Moreover, it is unrealistic to presume that all unethical or unlicensed builders who do not obtain a license under the provisions of the bill would close their operations. Thus, even with licensing, there will still likely be some degree of poor contractor workmanship which will continue to occur.

Evaluation Criterion #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 non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

Some interested parties noted the existence of the Maine Home Construction Contract Law as being relevant to the Department's independent assessment. The Home Construction Contract statute offers consumers a civil remedy for violations of contract by the contractor. It requires that contracts for home construction or repair work in excess of \$3000 must be in writing and contain specific information including price, description of work, warranties and estimated completion date.

Department Assessment:

The Department agrees that the Home Construction Contract Act (10 MRSA ch. 219-A) provides consumers with the most effective civil remedy for breach of contract by a building contractor. Although Maine does not currently license home contractors, the Department notes the existence of a number of state laws set forth below that provide some degree of protection for the public in the home construction field.

- Home Construction Contract Act ,10 MRSA ch. 219-A
- Unfair Trade Practices Act, 5 MRSA ch. 10
- Mechanics Lien Law, 10 MRSA ch. 603
- Home Repair Fraud, 17-A MRSA ch. 37
- Registration of Transient Sellers (Door to Door Home Repair Services) 32 MRSA ch. 37
- Regulation of Construction and Improvements, 30-A MRSA ch.185
- Warranties for Sale and Installation of Solar Energy Equipment, 10 MRSA ch. 221
- Insulation Contractors, 10 MRSA ch.219
- Construction Contracts, 10 MRSA ch.201-A
- Oil and solid fuel technicians and installations, 32 MRSA ch.33
- Plumbers and plumbing installations, 32 MRSA ch. 49
- Electricians and electrical installations, 32 MRSA ch. 17
- Maine Manufactured Housing Installation and Warranty Law 10 MRSA ch. 9551
- Title 11, United State Bankruptcy Code

- Uniform Commercial Code/Contract Law, 11 MRSA

These statutory provisions and remedies are in addition to whatever civil remedies a consumer may attempt to obtain in the courts through a negligence or breach of contract claim.

Evaluation Criterion #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.

Responses:

The Attorney General's Office favors licensure over any other method of regulation because "mere registration, certification, license to use the title, or any other form of regulation would inadequately protect consumers." Licensure, it asserts, "provides the consumer with assurance of minimal competence and access to a licensing board that can hold a contractor accountable for incompetence."

Department Assessment:

As noted in the discussion of regulatory options in Section I of this report, distinctions between registration, certification and licensure were not the focus of the consumer input the Department received. The term "registration" implies that certain information about an identified group of individuals and entities is gathered and compiled by the state so that the public has some way of contacting the registrant if necessary. Registration is marked by the payment of a registration fee but does not carry with it a set of standards or qualifications that must be met before the registration is issued. It is the lowest level of regulation that can be implemented by a state.

Certification is a term that connotes training or an examination process administered usually by a private trade or professional association. Obtaining certification status by the service provider is voluntary. The state has no enforcement or regulatory role. Certification is used to enhance the stature of those certified within the profession or occupation.

Licensure is a designation used to describe the highest level of state regulation. The state grants licensure to an individual who has complied with a legislatively mandated set of minimum educational, experiential, and training and competency standards, and has paid the required licensing fee. Regulation through licensure encompasses the setting of eligibility standards, examination requirements, and a complaint process to resolve consumer complaints. The complaint process typically involves investigation of complaints and a disciplinary process whereby the licensing authority imposes discipline in situations where the licensee has violated state law or board rule.

Effective licensing programs that protect the public require a clear public threat and a mechanism for protecting the public from that defined threat. In most regulated professions the foundation for licensure is a set of nationally accepted minimum standards and a clearly defined scope of practice. LD 1551 lacks both of these critical components of an effective licensing law.

Evaluation Criterion #9: Other states. Please provide 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.

Responses:

None submitted on this criterion.

Department Assessment:

Licensing methodology for professions and occupations in other states is generally driven by the political climate in existence at the time a profession is first subject to regulation. Information obtained by the Department indicates that as many as 31 states have implemented some form of regulation of building construction, ranging from registration, certification, to complex licensing programs with tiers of regulation of residential, commercial and specialty license categories. Nineteen states do not license building contractors at the state level. (See Attached Appendix E) The majority of states that do license contractors provide for licensing of both residential and commercial contractors.⁵

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this state to implement regulation of the profession or occupation.

Responses: The Attorney General submitted an exhibit showing the history of legislative proposals to license building contractors.

Department Assessment:

The Department accepts the Attorney General's exhibit (Attached as Appendix F) as factual. None of the prior legislative attempts has resulted in enactment of laws which would regulate home building contractors.

Evaluation Criterion #11: Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

⁵ "Contractor's State Licensing Information Directory," printed by National Association of State Contractors Licensing Agencies, 2003 Edition.

Responses:

This criterion is not relevant to the subject matter.

Evaluation Criterion #12: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

None were submitted on this criterion.

Department Assessment:

LD 1551 does not specify minimum standards and qualifications to be eligible for licensure as a residential building contractor or home improvement contractor. The bill reserves for the proposed licensing board the authority to adopt rules establishing such license requirements.

The Department asserts that the formulation of licensing standards and qualifications is a function of the Legislature which should not be delegated to a licensing board. A board's role is to implement the standards adopted by the Legislature.

Evaluation Criterion #13: 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 current or proposed licensees through dedicated revenue mechanisms.

Responses: None submitted on this criterion.

Department assessment:

The proposal provides for a licensing program presumably funded through licensing fees paid by licensees. If the proposal includes permitting and inspection components, the overall cost of the program will be significantly higher. If it were determined that the permitting and inspection fees could not reasonably be borne by licensees, other dedicated funding sources to cover the cost of those components would have to be identified.

Licensing programs within the Department of Professional and Financial Regulation are dedicated revenue agencies and must be self-supporting through license fees paid by individual licensees. It is difficult to precisely determine the cost of establishing any new

licensing program. That task is made more difficult with respect to this proposal because of the unknown factors such as the number of potential licensees, the number of proposed sub-categories of licensure and lack of certainty with regard to the elements of permitting and inspections. For the purpose of this evaluation criterion, the Department has attempted to estimate the start-up costs and initial annual operating costs that would be associated with beginning a new contractor licensing program within the Office of Licensing and Registration. The assumptions used for this estimate do not include the cost of inspection and permitting enforcement functions. Any such requirements would impose significantly higher start-up and operating costs.

Total projected start-up costs including the cost of examination development, licensing system technology, personnel and related office equipment, and initial rulemaking total approximately \$1 million, of which about \$400,000 would be one-time costs. The projected on-going costs of this program would not be unlike the costs for other similar regulatory programs within the Office of Licensing and Registration. These costs would include those associated with personnel, board member per diem and travel, technology, investigation and enforcement, communications, equipment, rent, legal services, and general operating expenses totaling between \$620,000 and \$700,000 annually.

Typically, since no dedicated revenue is available to be used for this program, a general fund working capital allocation would be needed to defray program costs for the first two years covering start-up and operating expenses.

Section III. Recommendations of the Commissioner

State sunrise review law requires the commissioner to engage in a two-step evaluation process guided by 13 evaluation criteria. First, the commissioner must evaluate the information provided by the applicant group in support of its proposal to regulate or expand regulation of a profession. Second, the commissioner must recommend whether the committee should take action on a proposal. If the commissioner's recommendation supports regulation or expansion, the report must include any legislation required to implement that recommendation. The recommendation must reflect the least restrictive method of regulation consistent with the public interest.

The Department concludes that any attempt to regulate building contractors must be preceded by the adoption of a mandatory statewide building code. A mandatory statewide building code is essential to provide the building and construction trade with the minimum standard against which construction trades will be measured.

With respect to any profession or occupation that is being considered for regulation by the state, the proponents of regulation bear the burden of providing the public with a clear

description of the type of conduct that warrants state oversight. This becomes even more important when the suggested regulation involves numerous subcategories of persons engaged in related but different conduct. A clear explanation of the conduct of individuals and businesses proposed for regulation has not been presented in any version of LD 1551. Other professional licensing in Maine and contractor licensing laws in all other states with contractor licensing programs specifically identify the actual conduct that merits the creation of a state regulatory program. There is no question that the work of defining the specific conduct that is subject to regulation is difficult. But when weighed against the significant cost of such a program to the State and the impact on the public in terms of increased construction costs and on small businesses in the form of new license fees, the work of defining actual conduct that triggers state oversight is necessary.

In conclusion, the case has not been sufficiently made that the potential benefit of having licensed home contractors justifies the burden associated with home contractor licensing, in terms of both increased cost to the consumer public and the increased cost to the regulated community.

APPENDIX B

SENATE

LYNN BROMLEY, DISTRICT 30, CHAIR
CHRISTOPHER HALL, DISTRICT 16
KEVIN L. SHOREY, DISTRICT 4

JAMES ADOLF, LEGISLATIVE ANALYST
PATRICK NORTON, LEGISLATIVE ANALYST
JOHN MURPHY, COMMITTEE CLERK



STATE OF MAINE

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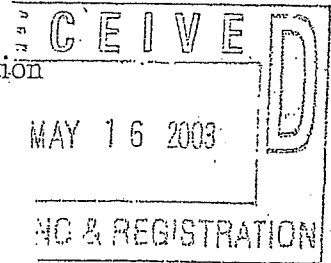
COMMITTEE ON BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

To: Robert E. Murray, Jr.
Commissioner, Department of Professional and Financial Regulation

From: Senator Lynn Bromley, Chair
Representative Nancy B. Sullivan, Chair
Joint Standing Committee on Business, Research and Economic
Development

Re: Sunrise Review of LD 1551

Date: May 16, 2003



Pursuant to 32 MRSA c. 686, the Joint Standing Committee on Business, Research and Economic Development requests that you perform "sunrise review" concerning LD 1551, "An Act to License Home Building and Improvement Contractors." Specifically, the Committee requests that you perform an independent assessment of the bill in accordance with 32 MRSA § 60-K, and that you report your findings to the Committee by January 1, 2004.

Thank you for your attention to this matter.

c. ✓ Anne L. Head, Director, Office of Licensing and Registration

APPENDIX C

Sunrise Review Public Meeting
L.D. 1551 *An Act to License Home Building
and Improvement Contractors*
October 15, 2003

ATTENDEES:

NAME	AFFILIATION
Dow, Chuck	Attorney's General Office
Harrington, Ken & Jean	consumers
Pilecki, Michael & Christine	consumers
Stevens, Everard	One Beacon Insurance Co.
Soltan, Charlie	Maine Association of Insurance Companies
Arata, Kelly	American Insurance Association National Association of Independent Insurers Mid-Coast Building Alliance
Pierson, David	Maine Homebuilders & Remodelers Association
Mathieu, Sandy	Home Builders Association of Maine
Ruffing, John & Marcia	consumers
Cowger, Rep. Scott	State legislator and L.D. 1551 sponsor
Clement, Janet	consumer
Lewis, Dabney	Town of Boothbay Harbor code enforcement officer
Koepke, David	contractor
Norris, Barry	Town of Union building inspector
Bastey, John	Maine Building Officers Association
Austin, Jeff	Maine Municipal Association

APPENDIX D

Project Report



**PLANNING
DECISIONS**

Research & Planning

Final Draft

**Economic Impact Analysis of Proposed Home
Contractor Regulation**

For: Maine Attorney General
State House Station 6
Augusta, Maine 04333

November 12, 2003

From: Planning Decisions, Inc.
22 Cottage Road, P.O. Box 2414
South Portland, ME 04116-2414

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I. Background, Approach and Summary of Findings

Background

The Maine Attorney General's Office has proposed legislation to regulate home contractors (LD 1551 Maine Home Contractor Licensing Act). One of the requirements of any proposed new licensing scheme is that those making the proposal submit information pertaining to specified "evaluation criteria" to the appropriate committee of the Legislature (32 M.R.S.A., Chapter 1-A, Section 60-J). One of these "evaluation criteria" is a cost/benefit analysis of the proposed regulation. It requires that those making the proposal submit information on "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." The purpose of this report is to present the findings of this cost/benefit analysis.

Approach

The approach taken in this study is to answer five questions:

1. What is the dollar value of home construction/renovation undertaken in Maine in recent years?
2. What percentage of this activity is fraudulent, shoddy or otherwise of a nature that the regulations proposed here are intended to eliminate?
3. What will be the costs of creating, implementing and enforcing the regulations proposed here, both to state and local governments in creating and implementing the regulations and to those regulated in meeting the standards specified in the regulations?
4. What percentage of the undesirable construction activity specified in item #2 will be eliminated by the proposed regulations? and
5. How does the benefit of the proposed regulation specified in item #4 compare to the cost specified in items #2 and #3?

Summary of Findings

Extrapolations from data obtained from the Bureau of the Census indicate:

- ✓ that construction activity in Maine in 2001 involved over 17,000 businesses making sales of nearly \$2.7 billion and that of these approximately 12,000 businesses doing approximately \$788 million in home construction/repair/renovation activity would likely fall under the regulations proposed in LD 1551;
- ✓ that the \$788 million investment in home construction and improvement made by Maine consumers involved nearly 80,000 projects, including the construction of nearly 6,000 new homes and the repair and improvement of an additional 73,000 homes.

Anecdotal evidence from the Maine Attorney General's Office and from surveys conducted by AARP indicates that shoddy and fraudulent home improvement activity is among the most frequently reported consumer complaints. However, no systematic study of the overall cost of this shoddy and/or fraudulent activity and of its percentage of total home construction and improvement activity has been undertaken either at the state or national level. The only systematic source of information on this topic is a survey conducted by the Maine State Housing Authority of users of its FixMe home improvement program. This survey found that respondents rated approximately 3% of home improvement activity as "unsatisfactory." Extrapolating these results to the state as a whole indicates "unacceptable" home improvement activity of approximately \$24 million.

The direct costs of implementing the home-contractor licensing program currently envisioned by LD 1551 will consist of four separate elements:

1. the cost to The Maine Home Contractor Licensing Board of establishing and administering the licensing examination;
2. the cost to the Board of maintaining license records and continuing education transcripts, of responding to complaints and enforcing any license violations;
3. the cost to the Board of conducting the home inspections necessary to enforce the building code accompanying this proposal; and
4. the cost to potential licensees of acquiring the knowledge and/or experience required to pass the licensing examination.

While the budgetary costs of such a program are likely to approach \$10 million, depending on the number of who seek licenses, the real cost of the program will be measured in the increased prices charged by licensed tradespeople to Maine homeowners.

Currently, there is a difference of approximately \$4.00 per hour between the average hourly wages of licensed and unlicensed tradespeople. Should regulation lead to this level of increase in the pay of currently unlicensed home construction contractors and tradespeople, the cost to Maine consumers could approach \$40 million. The actual cost will depend on the percentage of all affected firms that increase their prices and by what amount.

The net benefit/cost ratio of regulation will depend on the number of people seeking the license, the impact of the licensing requirement on their rate of pay and the effectiveness of the regulation in eliminating "unacceptable" home construction activity.

If the licensing program can reduce "unacceptable" activity by 60% while limiting the increase in costs to consumers in the form of higher pay for licensed contractors to approximately 7%, the program will break even. Increasing the effectiveness of the program by eliminating more than 60% of "unacceptable" activity would increase its benefit/cost ratio. Conversely, any decrease in benefit below 60% or increase in cost above 7% would result in a negative benefit/cost ratio.

The most important conclusion to be drawn from this analysis is not a simple benefit/cost ratio. Rather it is that policy makers developing the regulations proposed in LD 1551 should use the benefit/cost parameters presented here to explore various "What if..." scenarios to further refine proposed regulations.

II. The Value of Home Construction in Maine

The most detailed data on the magnitude of home construction and renovation activity in Maine comes from the 1997 Economic Census conducted by the U.S. Department of Commerce, Bureau of the Census. Table 1 shows these data.

Table 1
Indices of the Construction Industry, Maine, 1997

Description	All taxable firms		Employers		Non-employees	
	Establishments	Sales (\$1,000)	Establishments	Sales (\$1,000)	Establishments	Sales (\$1,000)
Construction	18,910	3,432,004	4,249	2,881,506	14,661	550,528
Building, developing, & general contracting	4,087	1,138,811	1,278	965,211	2,809	173,600
Land subdivision & land development	279	32,736	19	8,452	260	24,284
Residential building construction	3,364	627,147	970	488,335	2,394	138,812
Nonresidential building construction	443	478,929	288	468,425	155	10,504
Heavy construction	676	680,395	250	661,712	426	18,683
Highway, street, bridge, & tunnel	159	N	57	D	102	3,185
Other heavy construction	517	N	193	D	324	15,498
Special trade contractors	4,148	1,612,828	2,722	1,254,583	1,426	358,245
Plumbing, heating, & air-conditioning	1,438	319,653	552	277,376	886	42,277
Painting & wall covering contractors	1,521	68,307	186	43,355	1,335	24,952
Electrical contractors	1,211	248,579	391	223,144	820	25,435
Masonry, drywall, insulation, & tile	1,074	126,618	253	99,662	821	26,956
Carpentry & floor contractors	5,695	N	511	D	5,184	147,804
Roofing, siding, & sheet metal	383	105,779	67	94,280	316	11,499
Concrete contractors	333	74,876	188	69,160	145	5,716
Water well drilling contractors	71	N	48	D	23	1,824
Other special trade contractors	2,421	N	525	D	1,896	71,782

Source: U.S. Department of Commerce, Bureau of the Census 1997 Economic Census;
<http://www.census.gov/epcd/www/econ97.html>

In 1997 in Maine there were nearly 19,000 business establishments making just over \$3.4 billion in sales. Of these, only 4,249 or 22% were employers formally reporting payroll. Nearly 15,000 of the businesses were sole proprietors reporting no employees. While these businesses constituted 78% of the businesses, they accounted for only 16% of total construction sales.

Within the general category of Construction, the newly established North American Industrial Classification System (NAICS) has three sub-categories (highlighted in light gray in Table 1 above) and numerous more finely delineated sub-sub-categories. Not all of these businesses would be subject to the regulations proposed in LD 1551. Therefore the first step toward identifying the likely benefits of the proposal is to list the sectors to which it

would apply. Table 2 presents this list. It consists of Table 1 less land subdivision and development, non-residential construction, heavy construction and those specialty trades contractors explicitly excluded from LD 1551. Those specialty trade contractor categories that remain would not be *required* to be licensed under LD 1551, but individual contractors in these categories may *choose* to be licensed so as to be able to deal directly with homeowners. Table 2 represents a broad first estimate of those who may be covered by LD 1551. This total will be reduced later based on estimates of those contractors who will not seek to be licensed.

Table 2
Indices of Construction Businesses Covered by LD 1551, 1997 values

Description	All taxable firms		Employers		Nonemployers	
	Establishments	Sales (\$1,000)	Establishments	Sales (\$1,000)	Establishments	Sales (\$1,000)
Construction	10,516	1,210,619	1,801	888,548	8,715	325,071
Building, developing, & general contracting	3,364	627,147	970	488,335	2,394	138,812
— Land subdivision & land development	279	32,736	49	8,452	260	24,284
Residential building construction	3,364	627,147	970	488,335	2,394	138,812
— Nonresidential building construction	443	478,929	288	468,425	155	10,504
Heavy construction	676	680,395	250	661,712	426	18,683
— Highway, street, bridge, & tunnel	159	N	57	D	102	3,185
— Other heavy construction	517	N	193	D	324	15,498
Special trade contractors	7,152	586,472	831	400,213	6,321	186,259
— Plumbing, heating, & air conditioning	1,438	319,653	552	277,376	886	42,277
— Painting & wall covering contractors	1,524	68,307	186	43,355	1,335	24,952
— Electrical contractors	1,211	248,579	391	223,144	820	25,435
— Masonry, drywall, insulation, & tile	1,074	126,618	253	99,662	821	26,956
— Carpentry & floor contractors	5,695	354,075	511	206,271	5,184	147,804
— Roofing, siding, & sheet metal	383	105,779	67	94,280	316	11,499
— Concrete contractors	333	74,876	188	69,160	145	5,716
— Water well drilling contractors	74	N	48	D	23	1,824
— Other special trade contractors	2,424	N	525	D	1,896	71,782

Source: U.S. Department of Commerce, Bureau of the Census 1997 Economic Census. <http://www.census.gov/epcd/www/econ97.html> Figures in italics (sales for carpentry & floor contractor employers) were estimated by applying the average sales per establishment for all specialty contractors to the number of establishments whose sales were not disclosed and then forcing these first estimates to equal the difference between the sum of those sales figures that were reported and the total.

Table 2 indicates that over 10,000 businesses doing over \$1.2 billion in sales in 1997 would have been or might choose to be covered by LD 1551. Of these, approximately 1,800 (17%) were employers reporting covered employees and over 8,700 were sole proprietors.

The next step in estimating the benefits of LD 1551 is to project these figures forward using more current data. Table 3 presents these data.

Table 3
Indices of Construction Businesses Covered by LD 1551, 2001 values (est.)

Description	All taxable firms		Employers		Non-employers	
	Establishments	Sales (\$1,000)	Establishments	Sales (\$1,000)	Establishments	Sales (\$1,000)
Total	12,071	1,792,411	2,128	292,480	9,943	1,499,931
Residential building construction	4,454	1,054,757	1,216	829,265	3,238	225,492
Masonry, drywall, insulation, & tile	1,290	187,260	287	142,138	1,003	45,122
Carpentry & floor contractors	5,790	384,713	490	178,189	5,300	206,524
Roofing, siding, & sheet metal	536	165,681	135	142,888	401	22,793

Source: U.S. Department of Commerce, Bureau of the Census 1997 Economic Census, County Business Patterns, 2001, Maine, Construction and Non-Employment Data, 2000.

<http://www.census.gov/epcd/www/econ97.html>

*Number of establishments is as reported in County Business Patterns, 2001. Sales are estimated by applying the sales to payroll ratio taken from the 1997 census figures to the 2001 payroll figures.

**The most recent published data for non-employers is for 2000. Data for 2001 are estimated by applying the average annual growth rates from 1997 to 2000 for each sector to the 2000 data.

Table 3 provides the best estimate possible from official sources of the value of home improvement related construction activity in Maine. It indicates that approximately 12,000 firms doing nearly \$1.8 billion in sales could fall under the purview of LD 1551.

While all of the firms listed here *could*, by the nature of the work they do, fall under the regulations proposed in LD 1551, not all of their sales would. First, to the extent that specialty contractors bill a general contractor who in turn bills the homeowner, counting both sales would constitute double counting. In such instances, only the general contractor would be required to hold a license under LD 1551, and only his/her sales would be counted toward the state total. Only those specialty contractors dealing directly with homeowners would have to be licensed under LD 1551, and only their sales would be counted in the state total of home construction sales.

In addition, much of the work of specialty contractors is done for commercial and government customers and thus is not home improvement activity as defined in LD 1551. For both of these reasons, the sales listed in Table 3, while as accurate a picture of the individual businesses as can be derived, do not accurately reflect the value of home improvement actually completed. To

estimate this figure, it is again necessary to extrapolate from U.S. Census figures.

The Census report Characteristics of New Housing estimates the value of new, single family, owner occupied homes (excluding the cost of land) constructed in 1997 at \$165 billion. A separate Census report, Expenditure for Residential Improvement and Repair estimates the value of improvements and repairs done to single family, owner occupied homes at \$94 billion.¹ Adding these figures indicates that new construction and repair and improvement of single family homes in the U.S. as a whole in 1997 amounted to \$258 billion. This accounts for 44% of the total national construction sales reported by the industries listed in Tables 1 and 2 above.

Applying this percentage to the estimated Maine total construction sales of \$2,682,415,000 yields an estimated level of home construction and improvement in Maine in 2001 of approximately \$1,180,000,000. Table 4 below estimates the division of this total between new construction and improvement/renovation.

Table 4

Estimated Volume of Home Construction Activity, Maine, 2001

Row	Item	Value
1	New Const. & Repair/Improvement (\$1,000)	\$1,180,000
2	Total Housing Units, July 1, 2001	659,221
3	Estimated One and Two Unit Dwellings	496,267
4	New Housing Units (July 2000 to July 2001)	5,812
5	Percent One and Two Units	80.0%
6	Number One and Two Units	4,650
7	Avg. Construction Cost per Unit	\$175,000
8	Total Cost of New One and Two Units (\$1,000)	\$813,680
9	Total Cost of Repair and Improvement (\$1,000)	\$366,320
10	Est. Avg. Cost of Repair/Improvement (\$1,000)	\$5,000
11	Est. Number of Repair/Improvement Proj's	73,264
12	As % of All One and Two Unit Dwellings	14.8%

Sources: U.S. Census Bureau Housing Units Estimates
<http://eire.census.gov/popest/data/household/HU-EST2002-01.php> and other sources listed in footnote 1.

¹ U.S. Bureau of the Census Characteristics of New Housing, 1997, Current Construction Reports C25/97-A and Expenditures for Residential Improvements and Repairs
<http://www.census.gov/const/www/c50index.html>

Row one starts with the total estimated single family, owner occupied new residential construction and repair/improvement total. Rows 2 through 6 present estimates of total housing units and one/two unit dwellings, both total number of units and new units constructed over the 2000/01 period. Row 7 presents an estimated construction cost for a new unit. Multiplying this figure by the 4,650 new units yields a total new construction value of \$813,680,000 presented in row 8. Subtracting this amount from the total in row 1, yields an estimated improvement/repair total of \$366,320,000. Assuming an average of \$5,000 per improvement/repair project indicates that a total of 73,264 were undertaken in Maine in 2001; the equivalent to about one in seven single family one or two dwelling units.

To summarize, the home construction industry in Maine:

- ✓ Includes over 17,000 businesses making sales of nearly \$2.7 billion;
- ✓ Encompasses home construction and improvement investments of approximately \$1.2 billion; and
- ✓ Involves nearly 80,000 projects, including the construction of nearly 6,000 new homes and the repair and improvement of an additional 73,000 homes.²
- ✓ Approximately 12,000 of these businesses, making home construction and repair sales of approximately \$788 million could fall under the purview of LD 1551.³

² Some contractors have said that "official" data don't account for all construction activity, especially all of the shoddy and fraudulent activity, because they do not measure the "under the table" transactions that are not reported but that undoubtedly occur in the home construction business. This is undoubtedly true, but any estimate of such activity would be pure speculation.

³ This assumes that the national average of 44% of construction sales are home construction/repair.

III. The Cost of Unacceptable Home Construction in Maine

The purpose of LD 1551 is to establish a licensing procedure to “ensure that an applicant is sufficiently competent to practice” home improvement. (§15344. Rules, 1. License qualifications).

Home improvement, in turn, is defined to mean (§15342. Definitions, 11. Home Improvement)

“A. The construction, replacement, installation or improvement of additions of livable space, garages, carports, porches or decks, if they are used in conjunction with a dwelling; or

B. The removal, repair, replacement or installation of framing, roofing, siding, insulation, windows or chimneys.

Home improvement does not include redecorating or other cosmetic work.”

The next step in determining the benefits of LD 1551 is to calculate the cost of shoddy, fraudulent or otherwise unacceptable home construction activity in Maine. The question this section of the report seeks to answer is, “What percentage of the estimated \$788 million sales of the home construction/renovation businesses that could be regulated by LD 1551 is, as a matter of public policy, unacceptable and should, through the regulations proposed in this bill, be eliminated?”

There is no definitive source of data on shoddy or unacceptable home improvement work. The Attorney General’s office gathers data from those homeowners who are sufficiently dissatisfied with a contractor to file a complaint. Table 5 lists a summary of these responses relating to activities that would be covered by LD 1551.⁴

⁴ See Appendix for a listing of all complaints.

Table 5
Home Construction Complaints Filed with Maine Attorney General

Item	2002	2001	2000
number of complaints	100	136	69
number with dollar value	76	91	43
total dollar value	\$1,301,378	\$735,859	\$527,986
average value	\$17,123	\$8,086	\$12,279
median value	\$3,500	\$1,600	\$890
adjusted total dollar value	\$1,421,378	\$807,859	\$550,236

Source: Maine Attorney General's Office; adjusted total value is the total using median value for all those complaints that listed no value.

The complaints ranged from contractors who never showed up as promised to leaks to defective or inferior work to incomplete or unsatisfactory work. In 2002, 100 such complaints were lodged, down from 136 in 2001. Of the 100 complaints filed, 76 listed a dollar value, most commonly the value of the contracted work but in some cases the cost of the alleged damage. The total value of this disputed work was over \$1.3 million. Using the median value of \$3,500 per complaint as a proxy value for those complaints that did not include a cost yields an estimated total value of disputed work at over \$1.4 million, up from approximately \$0.8 million in 2001 and \$0.5 million in 2000.

If the \$1.5 million identified by the Attorney General's Office constituted *all* of the "unacceptable" home improvement activity in Maine, it would be a very small portion of the State's estimated total home improvement activity of \$788 million, approximately two tenths of one percent.

Using the figure of 100 complaints as a representative average for the three year period yields a similarly small percentage of "problem" activity. A total of 100 complaints from an estimated 80,000 projects indicates a "problem" rate of approximately one tenth of one percent.

For a number of reasons, however, these data are certainly an underestimate of the actual "unacceptable" home improvement activity in Maine. First, the call to the Attorney General's Office is a toll call for anyone outside the Augusta area. Second, because of the limited number of mediators available, the line for registering complaints is open only three hours per day. Thus, the complaints received come only from the most determined of victims.

Other experiences in the area of consumer protection further support the conclusion that complaints received in the Attorney General's Office are but a

small percentage of the actual problem. In one example, the Attorney General's Office received 100 complaints about a telemarketing scam. Calling the Better Business Bureau, the Office discovered that there had been 400 complaints lodged with that agency.

In another instance, the Attorney General's Office investigated a fraudulent sweepstakes scam. While no complaints had been made to their Office, the completed investigation revealed that 3,200 Maine residents had been victimized.

In short, the actual incidence of "unacceptable" home improvement activity is certainly far greater than the extremely small percentages represented by complaints lodged with the Attorney General's Office.

Another source of information on the level of unacceptable home improvement activity in Maine is from a survey conducted by the Maine State Housing Authority (MSHA). MSHA, through its FIX-ME program, provided funds to Community Action Programs (CAP's) to help low and moderate income families undertake home improvements. In the summer and early fall of 1997, MSHA surveyed 120 families from a list of 1,000 projects. One of the survey questions asked respondents to rate the overall quality of the work done to their homes. Results showed that 77% gave contractors a rating of 5—very satisfied—and 3% gave a rating of 1—not satisfied.⁵

While such a survey cannot be treated as representative of the state as a whole, it does represent the best such information available. Because the MSHA avoids any appearance of favoring any particular builder, program recipients were free to choose any contractor they could get. To the extent that this sample, being from the universe of low-income homeowners, would be less able to afford the "best" contractors, this complaint rate may be high. On the other hand, as consumers who may be grateful for receiving a favored loan, this sample may have been less likely to complain than the population at large. In short, there is no *a priori* reason to treat this sample as an under or as an over-estimate of the actual rate of "unacceptable" home construction activity in Maine.

Applying this satisfaction rate to the \$788 million home improvement activity that could be covered by LD 1551 yields a total of \$24 million in "unsatisfactory" home improvements performed in Maine each year. A three

⁵ Maine State Housing Authority, Planning and Government Affairs What Our Customers Think About the FIX ME Program, April, 1998, p. 11.

percent problem rate would also mean that there were 2,400 incidences of "unacceptable" home improvements throughout an average year over the recent past. Multiplying this number by the average cost of complaints lodged with the Attorney General's Office in 2002 indicates a value of nearly \$41 million in "unsatisfactory" home improvement in Maine. Multiplying by the median value of \$3,500 per complaint yields a total figure of approximately \$8.4 million.

Clearly using complaints to the Attorney General's Office as a proxy for total "unacceptable" home improvements in Maine would result in an undercount. Not everyone hurt by shoddy home improvement files a complaint. Since conducting an independent survey of home improvement experience is beyond the scope of this report, the MSHA survey represents the best estimate for the purposes of cost benefit analysis. But the total cost of "unacceptable" home improvement activity remains difficult to specify, probably falling between \$10 million and \$40 million in recent years.

IV. The Cost of Home Contractor Regulation in Maine

As noted above, the purpose of LD1551 is to “ensure that an applicant is sufficiently competent to practice” home improvement. The cost of the bill will depend on what the state proposes to do to determine and enforce “sufficiently competent.” As these regulations are not yet specified, the best way to estimate costs is to look to other regulatory programs. The most appropriate comparisons for home improvement are the regulations surrounding the licensing of plumbers and electricians.

In general, there are two types of professional regulation. The first sets and enforces standards for *practitioners* in a field. The second sets and enforces standards for the *work product* of practitioners. In the first instance, an expert panel defines the knowledge deemed necessary to allow someone to practice in the field and establishes the testing procedure by which an applicant can demonstrate possession of that knowledge. The Electricians’ Examining Board, for example, defines the required knowledge and skills and approves the test by which applicants may become licensed electricians.

In the second instance, the expert panel, or some other body, defines work standards and approves projects regardless of the license status of the person doing the work. In the example of electricians, the State or a Town enacts an electrical code and sends inspectors to evaluate all electrical work. If the work meets the code, it is approved; if it does not, it must be redone. In short, for electricians, plumbers and oil burner technicians, regulation means that practitioners must be licensed *and* work must meet a code.

LD1551 envisions a similar regulatory structure for home improvement contractors. It calls for the creation of The Maine Home Contractor Licensing Board (§15343) *and* adoption of the International Residential Code (§15355). The Board is charged with establishing and enforcing licensing standards including:

- ✓ requirements for passage of an examination approved and adopted by the board, which must include a test of proficiency in the International Residential Code;
- ✓ requirements for completed hours of trade experience or comparable educational training, or a combination of trade experience and educational training;

- ✓ requirements for demonstration of familiarity with the Home Construction Contracts Act (MRSA Title 10, chapter 219-A); and
- ✓ requirements for continuing education to be completed by an applicant as a prerequisite to renewal of a home contractor's license.

In addition, the Board "shall ensure that dwellings are constructed and improved in accordance with the [International Residential] building code" (§15355, # 4).

Therefore the cost of the regulation proposed here will consist of four separate elements:

5. the cost to The Maine Home Contractor Licensing Board of establishing and administering the licensing examination;
6. the cost to the Board of maintaining license records and continuing education transcripts; of responding to complaints and enforcing any license violations;
7. the cost to the Board of conducting the home inspections necessary to enforce the building code; and
8. the cost to the applicant of acquiring the knowledge and/or experience required to pass the licensing examination.

The first cost consists primarily of the time a licensing board must spend evaluating the tests it might require. Many states require home contractor licenses, and many companies offer tests designed to measure "sufficient competence." In fact, the National Association of Home Contractors' Licensing Agencies (NASCLA) is currently in the process of preparing a national competency exam in hopes of establishing a common educational base and easing multi-state licensing.⁶

Once it is established, the first job of The Maine Home Contractor Licensing Board will be to decide what standards it wishes to establish, whether it wishes to contract with a testing company to administer an established test and whether it wishes to add a Maine-specific portion to that test. The one-time cost of evaluating existing tests and testing companies and developing a Maine-specific test could vary widely. As this would be the first task of a newly

⁶ See <http://www.nascla.org/ncccep/index.htm>

established Board, it is likely to run between \$75,000 and \$100,000. Once the test is selected, it would be most efficient to contract it out to a testing company as is now done with the electrical and plumbing tests. The fee for administration and grading would depend on the complexity of the test, and the total cost would depend on the number of people taking the test.

If each of the 12,000 establishments listed in Table 3 above (p. 8) sent one applicant and the cost per applicant was \$100, the total cost of testing would be \$1.2 million. This would be reduced to the extent that the Board allowed some to qualify on the basis of years of demonstrated experience and to the extent that some home contractors chose not to obtain a license and to work only for a licensed contractor. Whatever the ultimate number of applicants seeking to take the test, this cost would certainly be paid by the applicant and passed on to consumers as an increased cost of doing business.

The ongoing cost of a licensing program is the maintenance of records. This is likely to include contact information for licensees, test scores and continuing education activities as well as complaints and any other information maintained on licensees. These costs will require program staff and will be included in the enforcement costs discussed below.

Enforcement costs vary with the number of licensees covered and the degree of monitoring provided. Table 6 illustrates some of these costs as they exist in Maine today.

Table 6
Indices of Building Trade Regulation in Maine

Trade	Electricians	Plumbers	Oil & Solid Fuel Technicians
number of licensees	10,156	4,256	4,700
state regulatory staff	5	9	3
state budget (FY 2003)	\$736,317	\$819,932*	\$452,739
permits issued	3,000	40,000 plumbing and 10,000 septic	
Notes	Permits are only for municipalities without electrical inspectors.	Permits are issued by local plumbing inspectors.	

Sources: phone conversations with Anne Head, Director, Office of Licensing and Registration, Maine Department of Professional and Financial Regulation and Russell Martin, Program Director, Wastewater & Plumbing Control Program, Bureau of Health Engineering, Department of Human Services, August, September and November 2003.

*Includes cost of two positions in the Department of Professional and Financial Regulation and an estimate of the share of cost of the Bureau of Health Engineering:

In the case of Electricians, the state licensing boards oversee the examinations, maintain licensing records and provide field inspectors to approve work in localities without their own codes and to respond to complaints. In the case of plumbers, regulation is divided between the Department of Professional and Financial Regulation which oversees the examination and maintains two field inspectors and the Bureau of Health Engineering which maintains copies of all plumbing and subsurface waste water permits issued statewide, licenses site evaluators for subsurface waste water disposal systems and conducts site inspections to assist site evaluators, local officials, and property owners.

Based on the experiences of these agencies and their current budgets, it is reasonable to assume that the cost of each field inspector, including salary and benefits, transportation, cell phone, clerical support, information management equipment and office supplies will be approximately \$125,000. Based on current staffing levels, it seems reasonable to assume one field inspector for every 1,000 licensees. Based on what program directors feel is a staffing level more suitable for providing adequate coverage, one field inspector for every 300 to 400 licensees is called for.

Assuming that LD1551 will require licensing 12,000 home improvement contractors who undertake approximately 80,000 projects annually implies a need for between 12 and 34 field inspectors and a budget expenditure of between \$1.5 million and \$4.5 million. On a per project basis, this amounts to a cost of between \$20 and \$60. To the extent that fewer than 12,000 home contractors seek licenses, these costs will be reduced.

The third cost to be incurred by the Board is that of enforcing the proposed new statewide building code. LD 1551 says that "the board may contract with municipalities or with qualified private building inspectors to enforce the building code established in this section" (§15355, # 5) and that "the board may not shift the costs associated with enforcing the building code to municipalities" (§15355, # 4). LD 1551 says that "as soon as possible after each inspection of a dwelling, the board shall provide a written notice of approval of the portion of the construction as completed or shall specify any deficiency or failure to comply with the applicable code" (§15355, # 5B).⁷ The Board will, therefore, incur costs for conducting inspections, maintaining inspection records, mailing notices and managing appeals. Assuming 80,000 projects, assuming half require

⁷ LD 1551 calls for inspections that "provide, at a minimum, for the inspection of the foundation, frame and completed structure." (§15355 5,A,3)

two visits and that each visit requires two hours including time for travel, notification write-up and administrative overhead at a cost of \$50 per hour yields a total cost of \$12 million.

The final cost of regulation is that born by the applicant in acquiring the experience, knowledge and skills required to pass the licensing exam. Clearly, this cost will depend on the difficulty of the test, but conversations with several home improvement contractors indicate that "sufficient competence" should be the equivalent of a two-year apprentice program with a master builder.

One way of attempting to measure this cost would be to compare such an "apprenticeship program" to a standard two-year college degree and multiply the cost of such an education by the estimated number of applicants for the home-builder license. Such an attempt, however, would involve such difficulties as estimating the number of likely applicants and evaluating the cost of their time in learning compared to the value of their work contribution to the sales of the company offering the apprenticeship.

In the end, the cost of all these components of a licensing program will be passed on to the home improvement consumer in the form of higher prices and or reduced supply of contractors. A better way of estimating the total cost of the licensing program, therefore, is to estimate its cost in the market. Ultimately, the cost of home improvement regulation depends on the answers to two questions:

1. How many unlicensed tradespeople will seek licenses? and
2. How much more will they charge for their services as a result of their licensing expenses and the limitations on supply of home contractors that licensing produces?

Table 7 offers some instructive first impressions.

Table 7
Indices of Hourly Wage by Construction Trade, 2001

SOC	Occupational Title	Entry Level	Average	Median	Experienced
470000	All Construction Occupations	\$9.63	\$14.44	\$15.60	\$16.85
472111	Electricians	\$13.46	\$17.74	\$17.36	\$19.89
472152	Plumbers, Pipefitters Steamfitters	\$13.07	\$16.71	\$16.65	\$18.54
	average of licensed	\$13.27	\$17.23	\$17.01	\$19.27
472081	Drywall and Ceiling Tile Installers	\$9.58	\$14.09	\$14.58	\$16.34
472130	Insulation Workers	\$9.47	\$14.01	\$15.10	\$16.28
472031	Carpenters	\$9.51	\$13.56	\$12.66	\$15.58
472051	Cement Masons, Concrete Finishers	\$10.65	\$12.83	\$12.75	\$13.92
472181	Roofers	\$9.31	\$11.73	\$11.10	\$12.93
	average of unlicensed	\$9.70	\$13.24	\$13.74	\$15.01
	avg licensed - avg unlicensed	\$3.56	\$3.98	\$3.77	\$4.21

Source: Maine Department of Labor 2001 Annual Covered Employment and Wages (ES-202)

For all construction occupations, the average hourly wage in 2001 was \$14.44; for the licensed trades (plumbers and electricians) it was \$17.23 and for a selection of unlicensed trades most closely associated with home improvement it was \$13.24. The difference between the licensed and unlicensed trades amounted to approximately \$4.00 per hour, a difference of approximately 30%. This difference was slightly less for entry-level positions and slightly more for experienced tradespeople. The likely result of home contractor licensing is that a similar, though perhaps not as great, differential would develop between licensed home contractors and unlicensed construction workers.

Table 3 in Section 2 above lists 2,128 businesses in the various home construction trades that had employees and another 9,943 sole proprietors. If all of the covered businesses sought to have at least one person be a licensed home contractor and half of the sole proprietors sought licenses, the total number of licensees would exceed 7,000.

According to Bureau of the Census employment data, the average size of a covered establishment in the construction industry in Maine in 2001 was 6 employees.⁸ Paying one of six employees 25% more represents a 4% increase for the entire crew. A 4% increase for the total payroll reported by the 2,100 covered employers amounts to approximately \$10 million.

⁸ Bureau of the Census County Business Patterns

<http://censtats.census.gov/cgi-bin/cbpnaic/cbpdet.pl>

Assuming that earnings amount to the same share of sales for the 9,900 sole proprietors likely to be covered by LD 1551 as covered wages do for the 2,100 employers implies a payroll equivalent for home improvement sole proprietors of approximately \$100 million. Assuming one half of these proprietors gave themselves a 25% pay increase, results in an additional \$12.5 million in cost to the home improvement customer.

Finally, it is important to acknowledge two likely indirect and opposite effects of home contractor licensing. First, restricting the supply of "legal" home contractors in the face of growing demand will result in more "illegal" or "under-the-table" activity. Partly as a result of the survey noted above, the Maine State Housing Authority has initiated a pre-qualification requirement for a revised version of its FIX ME home improvement loan program.⁹ To date only 60 contractors have been qualified, and MSHA is actively seeking more. Officials administering this program feel that there is "a huge need for qualified home improvement contractors."¹⁰ The strong market for new housing and high-end renovation in regions where property values have been booming have led many qualified contractors away from repair and into new construction activity. The combination of these market conditions in the housing market and the declining condition of manufacturing means that requiring licensed contractors for occupancy permits statewide will have the effect of driving more home improvement activity "underground."

The second, and opposite, effect of these changes is the pressure to increase the supply of qualified home improvement contractors. MSHA is currently working with the state's Community College System to develop a Home Repair Center to offer intensive, on-site training in home improvement for the unemployed and those seeking career changes. Including progress toward a formal license and its promise of higher earnings will only enhance such efforts to attract competent, responsible people to the field of home improvement contracting.

To summarize:

- ✓ the one time cost of establishing a home contractor licensing test is likely to be about \$100,000. Assuming that 7,000 home contractors seek licenses, that one half are allowed to substitute experience for

⁹ Requirements are minimal, including demonstration of commercial liability, workers compensation and vehicle insurance as well as presentation of a work history.

¹⁰ Phone conversation with Peter Wintle of MSHA 11/12/03.

taking the test and that the administrative cost of the test is \$100 per applicant, the initial cost of testing would be \$350,000. Annual costs in future years would be greatly reduced as only new entrants to the field would seek licensing.

- ✓ the ongoing cost of maintaining licensee records and providing field inspectors to spot check on compliance and complaints is likely to be about \$1.75 million. This is based on the assumption that there will be approximately 7,000 licensees, that there should be a field inspector for every 500 licensees and that the annual cost of a field inspector is approximately \$125,000.
- ✓ the ongoing cost of code enforcement is likely to be about \$12 million. This is based on the assumption that there will be approximately 120,000 visits at two hours per visit including time for travel, notification write-up and administrative overhead at a cost of \$50 per hour.
- ✓ the total cost of home contractor licensing is best estimated by calculating its likely effects on the wages of home contractor workers and thus on the cost to home improvement consumers. Assuming that one worker from each of the approximately 2,100 covered employers in the home contracting business seeks licensing and that one half of the approximately 10,000 sole proprietors in the home contracting business seek licensing and that possession of a license leads over time to a 25% increase in wages for licensees implies a total cost to Maine home improvement customers of approximately \$23 million.
- ✓ In the short run, home contractor licensing will have the effect of reducing the supply of contractors and thus both driving up the cost of licensed work and increasing the occurrence of unlicensed, "under-the-table" work; in the long run, however, the combination of formal licensing, higher earnings and more widely available training programs will offset the short run costs by increasing the supply of qualified contractors.

V. Summary: The Benefit-Cost Comparison

The benefits of home contractor regulation are twofold: first a reduction or elimination of shoddy or unacceptable home construction activity; and second an overall increase in the quality of all home construction activity due to the increased competence of home contractors. As the latter element would be virtually impossible to measure, estimates of the benefits focus on the former. As noted in section III above, there is little hard evidence of the extent of "unacceptable" home improvement activity, either in Maine or in the nation as a whole. One survey conducted by the Maine State Housing Authority indicates that 3% of home repair activities were rated as "unsatisfactory." Applying this rate to that portion of Maine's estimated total 2001 home improvement expenditures that would be covered by LD 1551, \$788 million, indicates a total of \$24 million "unacceptable" home improvement activity in Maine.

To the extent that this "unacceptable" activity represents cost to Maine consumers and that home contractor licensing eliminates this cost, then the benefit of such regulation can be estimated as \$24 million. To the extent that actual losses exceed the expenditures on "unacceptable" construction activity, the benefits would be even greater. If, to take the extreme case, "making right" the \$24 million of "unacceptable" construction required tearing it all out and replacing it, the full cost of "unacceptable" activity would be at least \$48 million. Thus, the benefit of eliminating this "unacceptable" activity would be \$48 million.

As noted in section IV above, the costs of regulation include the costs of testing, the costs of enforcement and the costs of acquiring skills. In a practical sense, however, these costs will ultimately be reflected in the costs licensed home contractors will charge to Maine consumers. Based on the existing wage differential between licensed and unlicensed construction tradespeople and assumptions about the number of home contractors likely to seek licensing, the cost of regulation is estimated to be approximately \$23 million.

The simple conclusion of this analysis is thus that, if regulation eliminates all "unacceptable" activity and the assumptions about the effects on licensing hold true, the direct benefits (\$24 million of avoided "unacceptable" activity) will just exceed the costs (\$23 million of higher prices for construction activity). To the extent that indirect costs—tear out and replacement costs—are avoided, the benefits exceed the costs by a greater margin. To the extent that regulation, by effectively diminishing the supply of "legal" contractors,

increases “under-the-table” home improvement activity and to the extent that such activity is more likely to have “unacceptable” results, the costs may, in fact, exceed the benefits.

However, such a simple conclusion is not the most important result of this analysis. The most important result, rather, is the framework it creates for analyzing the assumptions about costs and benefits. This framework allows policy makers to conduct a sensitivity analysis to see how the benefit/cost ratio reacts to changing the underlying assumptions. It allows them to ask “What if?” questions and examine the results of changing assumptions and conditions.

The key elements of this framework for estimating benefits are the percentage of home construction activity in Maine that is “unacceptable,” the ratio of total costs (true damages and the cost to remedy them) to “unacceptable” activity and the percentage of “unacceptable” activity that regulation will eliminate. Table 8 illustrates these elements with two examples.

Table 8
Elements of the Benefits of Home Construction Regulation

Benefits	high estimate	low estimate
home construction sales covered by LD 1551 (\$ million)	\$788	\$788
% unacceptable	4%	2%
ratio of total cost to "unacceptable" activity	2.0	1.0
% of "unacceptable" activity regulation will eliminate	100%	50%
gross benefit of regulation (\$ million)	\$63	\$8

If the actual amount of “unacceptable” home construction activity in Maine each year is 4% and the actual damage suffered is twice the amount spent on “unacceptable” activity and regulation eliminates 100% of the “unacceptable” activity, the gross benefits to the State will be \$63 million. To the extent that the values of the determining parameters are smaller, the gross benefits will be less.

The key elements of this framework for estimating costs are the number of

home construction businesses that will seek licenses, the increase in wages they will charge for licensed workers and the percent increase these higher wages will mean for their sales. Table 9 illustrates these parameters.

Table 9
Elements of the Costs of Home Construction Regulation

Costs	Covered Employers		Sole Proprietors		Total	
	high estimate	low estimate	high estimate	low estimate	high estimate	low estimate
establishments	2,100	2,100	10,000	10,000	12,100	12,100
payroll (\$ million)	\$250	\$250	\$100	\$100	\$350	\$350
% of establishments seeking licenses	100%	75%	100%	25%	n.a.	n.a.
# of licensees	2,100	1,575	10,000	2,500	12,100	4,075
% increase in wages for licensees	30%	15%	30%	10%	n.a.	n.a.
% increase in costs	5%	2%	30%	10%	n.a.	n.a.
gross cost of regulation (\$ million)	\$13	\$4	\$30	\$3	\$43	\$6

If all of the establishments currently involved in that portion of the home construction business in Maine that would be covered by LD 1551 seek licenses and increase the pay of licenses contractors by the 30% differential that now exists between licensed and non-licensed contractors, the cost of regulation would approach \$43 million. To the extent that fewer contractors seek to become licensed and the pay differential does not approach 30%, the costs will be less.

The central point to be made here is that policy makers can use this framework to assist in making their decisions about the nature and goals of the regulation.

If, for example, regulators decide as a point of departure:

- ✓ that 3% of home contracting activity in Maine is “unacceptable;”
- ✓ that the full cost of this activity is 20% greater than the amount paid for the construction;
- ✓ that 100% of covered employers and 50% of sole proprietors will seek licenses;
- ✓ that the costs of regulation will increase the prices of covered employers by 4% and those of sole proprietors by 15%,

then the cost of regulation will be \$18 million and regulation will have to eliminate at least 63% of the “unacceptable” activity to generate \$18 million in benefits and thus justify itself.¹¹

In short, the best use of this analysis is for those involved in developing the specific regulations to be included in LD 1551 to bring their best judgement to bear in evaluating the likely level of “unacceptable” home construction and repair activity and the likely impact of proposed regulations in reducing it. Combining these judgements, they can decide what level of regulation is justified.

¹¹ The Home Construction Regulation Model accompanying this report provides a means for exploring the outcomes of alternative assumptions regarding these key parameters.

Appendix: Home Construction Complaints Lodged with the Maine Attorney General's Office

2002

Location	Description of Work	Description of Complaint	Cost
Sagadahoc	new construction	inferior	\$300,000
Cumberland	new construction	incomplete/unsatisfactory	\$175,000
Sagadahoc	new construction	inferior	\$175,000
Androscoggin	new construction	incomplete/unsatisfactory	\$158,532
Penobscot	move house	no show	\$39,000
York	new construction	no show	\$30,000
Kennebec	new construction	incomplete/unsatisfactory	\$29,600
Cumberland	new construction	incomplete/unsatisfactory	\$25,000
Kennebec	new construction	incomplete/unsatisfactory	\$21,000
Cumberland	construction repairs	incomplete/unsatisfactory	\$19,932
Penobscot	roofing	incomplete/unsatisfactory	\$18,220
Somerset	new construction	incomplete/unsatisfactory	\$18,000
York	roof, siding, window	incomplete/unsatisfactory	\$14,000
Piscataquis	new construction	incomplete/unsatisfactory	\$13,000
Kennebec	new construction	inferior	\$12,000
Cumberland	roofing	incomplete/unsatisfactory	\$11,378
Cumberland	siding	no show	\$9,800
Cumberland	flooring	improper billing	\$9,439
Cumberland	new construction	defect/inferior	\$8,927
Androscoggin	roofing	incomplete/unsatisfactory	\$8,700
Kennebec	roofing	no show	\$8,450
Cumberland	new construction	inferior	\$8,135
Hancock	new construction	no show	\$8,000
Cumberland	roofing	no show	\$7,873
Kennebec	roofing	incomplete/unsatisfactory	\$7,600
Cumberland	new construction	no show	\$7,500
Kennebec	roofing	no show	\$7,500
York	roofing	incomplete/unsatisfactory	\$7,200
Cumberland	windows	overcharged	\$6,600
York	siding	no show/inferior	\$6,500
York	construction repairs	incomplete/unsatisfactory	\$6,500
Cumberland	roofing	leaks	\$6,089
Somerset	siding	inferior	\$5,500
York	roofing	incomplete/unsatisfactory	\$5,500
York	siding	no show	\$5,270

Androscoggin	renovation	incomplete/unsatisfactory	\$5,000
Cumberland	roofing	leaks	\$5,000
Kennebec	roofing	incomplete/unsatisfactory	\$5,000
Somerset	construction repairs	incomplete/unsatisfactory	\$5,000
Androscoggin	roofing	incomplete/unsatisfactory	\$4,800
Penobscot	roofing	inferior	\$4,651
York	roofing	loose/flapping	\$4,500
Cumberland	roofing	no show	\$4,000
Penobscot	roofing	leaks	\$4,000
Penobscot	renovation	incomplete/unsatisfactory	\$4,000
Cumberland	roofing	no show/inferior	\$3,950
Penobscot	new construction	incomplete/unsatisfactory	\$3,800
York	roofing	leaks	\$3,594
Cumberland	new construction	incomplete/unsatisfactory	\$3,500
Knox	roofing	incomplete/unsatisfactory	\$3,499
Penobscot	windows	no show	\$3,314
Cumberland	windows	inferior	\$3,242
Oxford	roofing	leaks	\$3,200
Aroostook	windows	icing/drafts	\$3,020
Cumberland	roofing	no show	\$2,850
York	roofing/painting	incomplete/unsatisfactory	\$2,600
Androscoggin	roofing		\$2,400
Kennebec	roofing	leaks	\$2,088
Cumberland	renovation	incomplete/unsatisfactory	\$1,750
York	renovation	poor workmanship	\$1,500
Androscoggin	roofing	no show	\$1,050
Cumberland	construction repairs	inferior	\$1,000
York	new construction	inferior	\$900
York	new construction	incomplete/unsatisfactory	\$900
York	new construction	incomplete/unsatisfactory	\$875
Kennebec	porch	no show	\$850
Oxford	construction repairs	no show	\$800
York	roofing	no show	\$800
Cumberland	masonry	incomplete/unsatisfactory	\$625
Cumberland	renovation	incomplete/unsatisfactory	\$600
Cumberland	new construction	failure to allow to cancel	\$500
Cumberland	new construction	no show	\$400
Cumberland	roofing	leaks	\$375
Cumberland	roofing	leaks	\$300
York	roofing	defect/inferior	\$300
Cumberland	roofing	defect/inferior	\$100

Androscoggin	roofing	leaks	\$0
Androscoggin	new construction	incomplete/unsatisfactory	\$0
Androscoggin	windows	defect/inferior	\$0
Cumberland	new construction	incomplete/unsatisfactory	\$0
Cumberland	new construction	inferior	\$0
Cumberland	siding	inferior	\$0
Cumberland	new construction	incomplete/unsatisfactory	\$0
Cumberland	siding	inferior	\$0
Cumberland	siding	inferior	\$0
Cumberland	windows	defect/inferior	\$0
Cumberland	construction repairs	incomplete/unsatisfactory	\$0
Cumberland	paving	inferior	\$0
Cumberland	construction repairs	no show	\$0
Kennebec	siding	defect/inferior	\$0
Kennebec	roofing	no show	\$0
Knox	new construction	incomplete/unsatisfactory	\$0
Knox	new construction	incomplete/unsatisfactory	\$0
Penobscot	new construction	incomplete/unsatisfactory	\$0
Penobscot	renovation	inferior	\$0
Penobscot	roofing	leaking	\$0
Washington	paving	inferior	\$0
Washington	new construction	incomplete/unsatisfactory	\$0
York	new construction	leaks, structure	\$0
York	roofing	incomplete/unsatisfactory	\$0
Total			\$1,301,378
Adjusted Total (total if those without cost had median cost)			\$1,421,378

2001

Location	Description of Work	Description of Complaint Cost	
Androscoggin	new construction	incomplete/unsatisfactory	\$85,250
Cumberland	roofing	defect/inferior	\$75,607
Hancock	new construction	incomplete/unsatisfactory	\$40,000
Cumberland	new construction	incomplete/unsatisfactory	\$34,000
Lincoln	new construction	no show	\$27,000
Cumberland	new construction	failure to perform adequately	\$25,000
Androscoggin	new construction	incomplete/unsatisfactory	\$23,000
Kennebec	construction repair	incomplete/unsatisfactory	\$22,570
Hancock	new construction	incomplete/unsatisfactory	\$20,000
Kennebec	new construction	inferior	\$20,000
Kennebec	new construction	incomplete/unsatisfactory	\$20,000
Knox	windows	defect/inferior	\$18,191
Cumberland	construction repair	incomplete/unsatisfactory	\$16,590
Cumberland	new construction	failure to provide refund	\$16,200
Waldo	construction repair	leaks	\$15,000
Kennebec	new construction	incomplete/unsatisfactory	\$14,614
Sagadahoc	siding	incomplete/unsatisfactory	\$10,400
York	new construction	incomplete/unsatisfactory	\$10,131
Kennebec	new construction	incomplete/unsatisfactory	\$10,000
Penobscot	construction repair	incomplete/unsatisfactory	\$9,000
York	renovation	incomplete/unsatisfactory	\$8,632
Androscoggin	roofing	incomplete/unsatisfactory	\$8,600
Kennebec	roofing	defect/inferior	\$8,600
Hancock	new construction	overcharged	\$8,500
Penobscot	new construction	incomplete/unsatisfactory	\$8,500
Cumberland	new construction	incomplete/unsatisfactory	\$8,400
Kennebec	roofing	defect/inferior	\$8,200
Kennebec	roofing	defect/inferior	\$8,000
Oxford	new construction	incomplete/unsatisfactory	\$8,000
Androscoggin	roofing	no show	\$7,850
Lincoln	siding	incomplete/unsatisfactory	\$5,600
York	roofing	no show	\$5,600
Kennebec	paving	overcharged	\$5,180
Hancock	new construction	incomplete/unsatisfactory	\$5,000
Kennebec	roofing	no show	\$5,000
Knox	siding	defect/inferior	\$4,909
Penobscot	roofing	incomplete/unsatisfactory	\$4,586
Hancock	siding	incomplete/unsatisfactory	\$4,379

Cumberland	siding	no show	\$4,300
Kennebec	roofing	defect/inferior	\$4,200
Hancock	roofing	defect/inferior	\$4,150
Cumberland	roofing	incomplete/unsatisfactory	\$3,900
York	roofing	leaks	\$3,640
Penobscot	roofing	incomplete/unsatisfactory	\$3,600
York	roofing	no show	\$3,500
York	roofing	defect/inferior	\$3,480
York	roofing	incomplete/unsatisfactory	\$3,300
Androscoggin	roofing	defect/leak	\$2,884
Cumberland	roofing	leaks	\$2,850
Knox	new construction	overcharged	\$2,848
Penobscot	roofing	incomplete/unsatisfactory	\$2,700
Penobscot	roofing	defect/inferior	\$2,580
Kennebec	siding	defect/inferior	\$2,568
Androscoggin	roofing	no show	\$2,500
Androscoggin	new construction	no show	\$2,500
Androscoggin	roofing	leaks	\$2,450
York	roofing	no show	\$2,260
Kennebec	roofing	defect/inferior	\$2,200
Kennebec	roofing	defect/inferior	\$2,050
Androscoggin	roofing	no show	\$2,000
Cumberland	windows	no show	\$2,000
Lincoln	roofing	no show	\$2,000
Androscoggin	roofing	incomplete/unsatisfactory	\$1,975
Cumberland	new construction	incomplete/unsatisfactory	\$1,810
Kennebec	roofing	no show	\$1,800
Androscoggin	roofing	no show	\$1,600
Cumberland	new construction	inferior	\$1,600
Kennebec	roofing	no show	\$1,600
Kennebec	siding	defect/inferior	\$1,595
Penobscot	siding	defect/inferior	\$1,523
Oxford	roofing	no show	\$1,500
Cumberland	new construction	incomplete/unsatisfactory	\$1,344
Lincoln	roofing	no show	\$1,300
Oxford	roofing	defect/inferior	\$1,300
Kennebec	new construction	no show	\$1,200
Kennebec	flooring	inferior	\$1,161
York	new construction	incomplete/unsatisfactory	\$1,125
Hancock	new construction	no show	\$1,000
Penobscot	roofing	defect/inferior	\$1,000

Lincoln	construction repair	incomplete/unsatisfactory	\$800
York	roofing	defect/inferior	\$800
Sagadahoc	windows	no show	\$525
Knox	new construction	overcharged	\$500
Oxford	construction repair	incomplete/unsatisfactory	\$500
Penobscot	new construction	incomplete/unsatisfactory	\$500
Kennebec	construction repair	inferior	\$350
Cumberland	new construction	no show	\$260
Cumberland	new construction	incomplete/unsatisfactory	\$200
Knox	roofing	defect/inferior	\$200
Penobscot	new construction	defect/inferior	\$143
Cumberland	new construction	incomplete/unsatisfactory	\$100
Androscoggin	roofing	leaks	\$0
Androscoggin	windows	defect/inferior	\$0
Androscoggin	new construction	inferior	\$0
Androscoggin	roofing	failure to perform adequately	\$0
Aroostook	construction repair	inferior	\$0
Cumberland	siding	warranty	\$0
Cumberland	new construction	incomplete/unsatisfactory	\$0
Cumberland	roofing	leaks	\$0
Cumberland	paving	cracks	\$0
Cumberland	roofing	leaks	\$0
Cumberland	roofing	leaks	\$0
Cumberland	new construction	incomplete/unsatisfactory	\$0
Cumberland	new construction	inferior	\$0
Cumberland	new construction	overcharged	\$0
Franklin	siding	defect/inferior	\$0
Franklin	new construction	incomplete/unsatisfactory	\$0
Franklin	roofing	incomplete/unsatisfactory	\$0
Hancock	new construction	incomplete/unsatisfactory	\$0
Kennebec	roofing	inferior	\$0
Kennebec	construction repair	incomplete/unsatisfactory	\$0
Kennebec	roofing	leaks	\$0
Kennebec	paving	incomplete/unsatisfactory	\$0
Kennebec	paving	incomplete/unsatisfactory	\$0
Kennebec	new construction	incomplete/unsatisfactory	\$0
Kennebec	paving	cracks	\$0
Kennebec	new construction	incomplete/unsatisfactory	\$0
Kennebec	siding	inferior	\$0
Kennebec	siding	defect/inferior	\$0
Kennebec	roofing	incomplete/unsatisfactory	\$0

Knox	new construction	incomplete/unsatisfactory	\$0
Lincoln	roofing	inferior	\$0
Oxford	roofing	no show	\$0
Penobscot	roofing	leaks	\$0
Penobscot	new construction	no show	\$0
Sagadahoc	new construction	incomplete/unsatisfactory	\$0
Sagadahoc	construction repair	incomplete/unsatisfactory	\$0
Sagadahoc	roofing	leaks	\$0
Sagadahoc	new construction	incomplete/unsatisfactory	\$0
Sagadahoc	new construction	incomplete/unsatisfactory	\$0
Somerset	roofing	leaks	\$0
Waldo	construction repair	incomplete/unsatisfactory	\$0
Washington	construction repair	incomplete/unsatisfactory	\$0
Washington	construction repair	incomplete/unsatisfactory	\$0
York	roofing	leaks	\$0
York	new construction	incomplete/unsatisfactory	\$0
Total			\$735,859
Adjusted Total			\$807,859

2000

Location	Description of Work	Description of Complaint	Cost
York	new construction	incomplete/unsatisfactory	\$205,000
Lincoln	new construction	incomplete/unsatisfactory	\$146,000
Piscataquis	new construction	incomplete/unsatisfactory	\$34,000
Kennebec	renovation	incomplete/unsatisfactory	\$25,365
Somerset	new construction	incomplete/unsatisfactory	\$15,892
York	construction repair	incomplete/unsatisfactory	\$9,500
Cumberland	roofing	inferior	\$8,000
Penobscot	windows	defect/inferior	\$7,400
Penobscot	construction repair	incomplete/unsatisfactory	\$5,800
Cumberland	new construction	no show	\$5,500
Hancock	renovation	incomplete/unsatisfactory	\$5,000
Kennebec	roofing	leaks	\$5,000
Penobscot	renovation	incomplete/unsatisfactory	\$5,000
Penobscot	new construction	incomplete/unsatisfactory	\$5,000
Cumberland	roofing	failure to provide refund	\$4,400
York	roofing	leaks	\$3,800
Kennebec	new construction	overcharged	\$3,509
Cumberland	roofing	leaks	\$3,500
Somerset	roofing	leaks	\$3,360
York	windows	defect/inferior	\$3,109
Androscoggin	roofing	no show	\$2,800
Penobscot	foundation	incomplete/unsatisfactory	\$2,000
York	construction repair	incomplete/unsatisfactory	\$2,000
Knox	new construction	incomplete/unsatisfactory	\$1,700
Penobscot	new construction	inferior	\$1,600
Androscoggin	new construction	incomplete/unsatisfactory	\$1,365
Cumberland	construction repair	inferior	\$1,300
Androscoggin	roofing	no show	\$1,200
York	roofing	inferior	\$1,200
York	new construction	failure to provide refund	\$1,100
Penobscot	new construction	incomplete/unsatisfactory	\$1,066
Cumberland	renovation	incomplete/unsatisfactory	\$950
Cumberland	new construction	incomplete/unsatisfactory	\$925
Cumberland	roofing	no show	\$892
Lincoln	siding	defect/inferior	\$888
York	roofing	leaks	\$750
Kennebec	roofing	leaks	\$725
York	construction repair	inferior	\$426

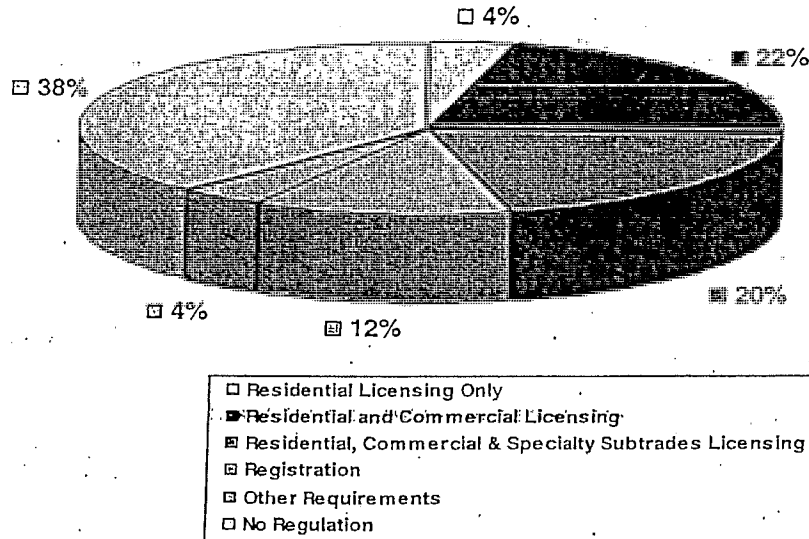
Cumberland	roofing	no show	\$330
Cumberland	siding	no show	\$250
Hancock	construction repair	incomplete/unsatisfactory	\$178
Sagadahoc	roofing	leaks	\$144
Penobscot	roofing	overcharged	\$62
Androscoggin	windows	failure to allow to cancel	\$0
Androscoggin	windows	incomplete/unsatisfactory	\$0
Cumberland	new construction	defect/inferior	\$0
Cumberland	roofing	leaks	\$0
Cumberland	roofing	inferior	\$0
Cumberland	roofing	leaks	\$0
Cumberland	windows	inferior	\$0
Cumberland	new construction	incomplete/unsatisfactory	\$0
Cumberland	new construction	no show	\$0
Kennebec	new construction	incomplete/unsatisfactory	\$0
Knox	windows	defect/inferior	\$0
Lincoln	new construction	incomplete/unsatisfactory	\$0
Lincoln	roofing	leaks	\$0
Oxford	roofing	inferior	\$0
Penobscot	windows	no show	\$0
Somerset	roofing	leaks	\$0
Somerset	new construction	inferior	\$0
Somerset	siding	no show	\$0
Somerset	new construction	incomplete/unsatisfactory	\$0
Waldo	new construction	incomplete/unsatisfactory	\$0
York	siding	harassment	\$0
York	roofing	failure to honor contract	\$0
York	construction repair	overcharged	\$0
York	windows	defect/inferior	\$0
York	construction repair	inferior	\$0
York	construction repair	incomplete/unsatisfactory	\$0
Total			\$527,986
Adjusted Total			\$550,236



APPENDIX E

State Regulation of Building Trades

(Percent of states by type of regulation; 50 states = 100 percent)



Residential, Commercial & Specialty Trade Licenses	Residential & Commercial Licenses w/ dollar minimums	Residential & Commercial Licenses	Residential Licenses	Registration	Other	No Licenses
Alaska	Alabama (\$10K/\$50K)	Delaware	Maryland	Connecticut	Illinois (roofers cert.)	Colorado
Arizona	Louisiana (\$50,000)	Florida	Minnesota (and roofers)	Montana (over \$2,500)	Wisconsin (financial responsibility certificate)	Georgia
Arkansas	Mississippi (\$50K/\$100K)	Massachusetts		New Jersey (residential)		Idaho
California	S. Carolina (\$5,000)			N. Dakota (over \$2,000)		Indiana
Hawaii	Tennessee (\$25,000)			Rhode Island (and roofers)		Iowa
Michigan	Utah (\$1,000)			Washington		Kansas
Nevada	Virginia (\$1,000)					Kentucky
New Mexico	W. Virginia (\$1,000)					Maine
N. Carolina						Missouri
Oregon						Nebraska
						N. Hampshire
						New York
						Ohio
						Oklahoma
						Pennsylvania
						S. Dakota
						Texas
						Vermont
						Wyoming
10 states	8 states	3 states	2 states	6 states	2 states	19 states



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APPENDIX F

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

Summary of Building Contractor Registration/Licensing Legislation 1985-1999

Prepared by the Maine Legislature's Office of Policy and Legal Analysis

LD and Session	Disposition of legislation
120th Legislature (2001-2002) LD 1731 AA to Require Registration of Building Contractors LD 310 AA to Require Bonding of Building Contractors	ONTP (committee requested Sunrise Review on draft amendment) ONTP (died in committee)
119th Legislature (1999-2000) LD 2060 AA to License Home Building Contractors LD 2163 AA to Require Contractor Registration	ONTP (carried over from 1st to 2nd session; died in committee) ONTP (died in committee)
118th Legislature (1997-1998) LD 1005 AA to Provide for the Licensing of Building Contractors LD 1595 AA to License Home Building Contractors	ONTP (died in committee) ONTP (died in committee)
117th Legislature (1995-1996) LD 480 AA to Require Contractor Registration LD 1044 AA to License Contractors and Builders LD 1294 AA to Prohibit Home Repair Fraud and Establish Aggravated Penalties	ONTP/OTP-A (died on floor) ONTP (died in committee) Enacted (4/11/96) PL 1995, c. 681 (17-A, §908, 32, §§4667, 4682-A, 4688, 14512)
116th Legislature (1993-1994) LD 699 AA to Regulate Home Repairs by Transient Contractors LD 1315 AA to Establish a Registration System for General Contractors	Enacted - PL 1993, c. 444 ONTP/OTP-A (died on floor)
115th Legislature (1991-1992) LD 993 AA to Regulate Building Contractors LD 2204 AA to Regulate Home Repair by Transient Contractors	LV/WD (Leave to withdraw report accepted) ONTP (died in committee)
114th Legislature (1989-1990) & 113th Legislature (1987-88)	N/A
112th Legislature (1985-1986) LD 1892 AA to License Contractors/Subcontractors to a Statewide Building Code	ONTP (died in committee)