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Legislative Document

No. 1565

H.P. 1135

House of Representatives, June 19, 2013

An Act To Preserve Code Enforcement Officer Training and Certification

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CAREY of Lewiston.

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

2 **Sec. 1. 5 MRSA §13072, sub-§7, ¶A**, as amended by PL 2011, c. 655, Pt. FF, §1
3 and affected by §16, is further amended to read:

4 A. The Community Development Block Grant Program; ~~and~~.

5 **Sec. 2. 5 MRSA §13072, sub-§7, ¶G**, as enacted by PL 2011, c. 655, Pt. FF, §1
6 and affected by §16, is repealed.

7 **Sec. 3. 10 MRSA §9723, sub-§2**, as amended by PL 2011, c. 633, §6 and c. 655,
8 Pt. FF, §2 and affected by §16, is repealed and the following enacted in its place:

9 **2. Training program standards; implementation.** The committee shall direct the
10 training coordinator of the Division of Building Codes and Standards, established in Title
11 25, section 2372, to develop a training program for municipal building officials, local
12 code enforcement officers and 3rd-party inspectors. The Department of Environmental
13 Protection, Bureau of Land Quality Control, pursuant to Title 30-A, section 4451,
14 subsection 3-A, shall implement the training and certification program established under
15 this chapter.

16 **Sec. 4. 25 MRSA §2374**, as amended by PL 2011, c. 633, §11 and c. 655, Pt. FF,
17 §3 and affected by §16, is repealed and the following enacted in its place:

18 **§2374. Uniform Building Codes and Standards Fund**

19 The Uniform Building Codes and Standards Fund, referred to in this section as "the
20 fund," is established within the Department of Public Safety to fund the activities of the
21 division under this chapter and the activities of the board under Title 10, chapter 1103 and
22 the Department of Environmental Protection, Bureau of Land Quality Control under Title
23 30-A, section 4451, subsection 3-A. Revenue for this fund is provided by the surcharge
24 established by section 2450-A. The Department of Public Safety and the Department of
25 Environmental Protection, Bureau of Land Quality Control shall together determine an
26 amount to be transferred annually from the fund for training and certification under Title
27 30-A, section 4451, subsection 3-A to the Maine Code Enforcement Training and
28 Certification Fund established in Title 30-A, section 4451, subsection 3-B. Any balance
29 of the fund may not lapse, but must be carried forward as a continuing account to be
30 expended for the same purpose in the following fiscal year.

31 **Sec. 5. 25 MRSA §2450-A**, as amended by PL 2011, c. 633, §12 and c. 655, Pt.
32 FF, §4 and affected by §16, is repealed and the following enacted in its place:

33 **§2450-A. Surcharge on plan review fee for Uniform Building Codes and Standards**
34 **Fund**

35 In addition to the fees established in section 2450, a surcharge of 4¢ per square foot
36 of occupied space must be levied on the existing fee schedule for new construction,
37 reconstruction, repairs, renovations or new use for the sole purpose of funding the
38 activities of the Technical Building Codes and Standards Board with respect to the Maine

1 Uniform Building and Energy Code, established pursuant to Title 10, chapter 1103, the
2 activities of the division under chapter 314 and the activities of the Department of
3 Environmental Protection, Bureau of Land Quality Control under Title 30-A, section
4 4451, subsection 3-A, except that the fee for review of a plan for the renovation of a
5 public school, including the fee established under section 2450, may not exceed \$450.
6 Revenue collected from this surcharge must be deposited into the Uniform Building
7 Codes and Standards Fund established by section 2374.

8 **Sec. 6. 30-A MRSA §4215, sub-§4**, as amended by PL 2011, c. 655, Pt. FF, §5
9 and affected by §16, is further amended to read:

10 **4. Fees.** The plumbing inspector shall issue any permit under this section upon
11 receipt and approval of a completed application form as prescribed by the commissioner
12 and payment by the applicant of the fee established by the municipality. The fee must be
13 at least the minimum amount determined by rule of the department. One-quarter of the
14 amount of the minimum fee must be paid through the department to the Treasurer of State
15 to be maintained as a permanent fund and used by the department to implement its
16 subsurface wastewater disposal rules, to administer the receipt and collation of completed
17 permits and to issue plumbing permit labels to the municipality and by the Department of
18 ~~Economic and Community Development, Office of Community Development~~
19 Environmental Protection, Bureau of Land Quality Control for training and certification
20 of local plumbing inspectors. The department and the Department of ~~Economic and~~
21 ~~Community Development, Office of Community Development~~ Environmental Protection,
22 Bureau of Land Quality Control shall together determine an amount to be transferred
23 annually by the Treasurer of State for training and certification of local plumbing
24 inspectors to the Maine Code Enforcement Training and Certification Fund established in
25 section 4451, subsection 3-B. The remainder of the fee must be paid to the treasurer of
26 the municipality.

27 **Sec. 7. 30-A MRSA §4221, sub-§1**, as amended by PL 2011, c. 655, Pt. FF, §6
28 and affected by §16, is further amended to read:

29 **1. Appointment; compensation; removal.** In every municipality, the municipal
30 officers shall appoint one or more inspectors of plumbing, who need not be residents of
31 the municipality for which they are appointed. Plumbing inspectors are appointed for a
32 term of one year or more and must be sworn and the appointment recorded as provided in
33 section 2526, subsection 9. An individual properly appointed as plumbing inspector and
34 satisfactorily performing the duties may continue in that capacity after the term has
35 expired until replaced. The municipal officers shall notify the department and the
36 Department of ~~Economic and Community Development, Office of Community~~
37 ~~Development~~ Environmental Protection, Bureau of Land Quality Control of the
38 appointment of a plumbing inspector in writing within 30 days of the appointment.

39 Compensation of plumbing inspectors is determined by the municipal officers and paid
40 by the respective municipalities.

41 The municipal officers may remove a plumbing inspector for cause, after notice and
42 hearing.

1 **Sec. 8. 30-A MRSA §4451**, as amended by PL 2011, c. 613, §27 and affected by
2 §29 and amended by c. 655, Pt. FF, §8 and affected by §16, is further amended to read:

3 **§4451. Training and certification for code enforcement officers**

4 **1. Certification required; exceptions.** A municipality may not employ any
5 individual to perform the duties of a code enforcement officer who is not certified by the
6 former State Planning Office ~~or~~, the Department of Economic and Community
7 Development, Office of Community Development or the Department of Environmental
8 Protection, Bureau of Land Quality Control, except that:

9 A. An individual other than an individual appointed as a plumbing inspector has 12
10 months after beginning employment to be trained and certified as provided in this
11 section;

12 B. Whether or not any extension is available under paragraph A, the Department of
13 ~~Economic and Community Development, Office of Community Development~~
14 Environmental Protection, Bureau of Land Quality Control may waive this
15 requirement for up to one year if the certification requirements cannot be met without
16 imposing a hardship on the municipality employing the individual;

17 C. An individual may be temporarily authorized in writing by the Department of
18 Health and Human Services, Division of Health Engineering to be employed as a
19 plumbing inspector for a period not to exceed 12 months; and

20 D. An individual whose certification has expired or is about to expire may be
21 temporarily authorized in writing by the Department of ~~Economic and Community~~
22 Development, Office of Community Development Environmental Protection, Bureau
23 of Land Quality Control to extend that individual's certification for a period not to
24 exceed 12 months ~~in cases where the necessary training or examination is suspended~~
25 ~~under subsection 3-B, paragraph E.~~

26 **2. Penalty.** Any municipality that violates this section commits a civil violation for
27 which a forfeiture of not more than \$100 may be adjudged. Each day in violation
28 constitutes a separate offense.

29 **2-A. Code enforcement officer; definition and duties.** As used in this subchapter,
30 "code enforcement officer" means a person certified under this section and employed by a
31 municipality to enforce all applicable laws and ordinances in the following areas:

32 A. Shoreland zoning under Title 38, chapter 3, subchapter 1, article 2-B;

33 B. Comprehensive planning and land use under Part 2, Subpart 6-A;

34 C. Internal plumbing under chapter 185, subchapter 3;

35 D. Subsurface wastewater disposal under chapter 185, subchapter 3; and

36 E. Building standards under chapter 141; chapter 185, subchapter 1; Title 5, sections
37 4582-B, 4582-C and 4594-F; beginning June 1, 2010, Title 10, chapter 1103; and
38 Title 25, chapter 313.

1 **3. Training and certification of code enforcement officers.** In cooperation with
2 code enforcement officer professional associations, the Maine Community College
3 System, ~~the Department of Environmental Protection,~~ the Department of Health and
4 Human Services and the Department of Public Safety, ~~except as otherwise provided in~~
5 ~~paragraph H,~~ the Department of ~~Economic and Community Development, Office of~~
6 ~~Community Development~~ Environmental Protection, Bureau of Land Quality Control
7 shall establish a continuing education program for individuals engaged in code
8 enforcement. This program must provide basic training in the technical and legal aspects
9 of code enforcement necessary for certification. The basic training program must include
10 training to provide familiarity with the laws and ordinances related to the structure and
11 practice of the municipal code enforcement office, municipal planning board and appeals
12 board procedures, application review and permitting procedures, inspection procedures
13 and enforcement techniques.

14 ~~H. If funding is not available to support the training and certification program~~
15 ~~authorized under this subsection, the Department of Economic and Community~~
16 ~~Development, Office of Community Development shall discontinue training and~~
17 ~~certification activities related to laws and ordinances referenced in subsection 2 A,~~
18 ~~paragraphs A and B and shall adopt by routine technical rules under Title 5, chapter~~
19 ~~375, subchapter 2 A a program to register code enforcement officers that meet~~
20 ~~training and education qualifications. The Department of Economic and Community~~
21 ~~Development, Office of Community Development shall publish the list of persons~~
22 ~~registered for code enforcement who have submitted evidence of required~~
23 ~~qualifications. Persons registered under this paragraph must meet the requirements~~
24 ~~for training and certification under this subchapter. The Department of Economic~~
25 ~~and Community Development, Office of Community Development shall consult with~~
26 ~~the Department of Health and Human Services for the purposes of carrying out~~
27 ~~training and certification activities related to laws and ordinances referenced in~~
28 ~~subsection 2 A, paragraphs C and D. Within one month of discontinuation of~~
29 ~~training and certification under this paragraph, the Department of Economic and~~
30 ~~Community Development, Office of Community Development shall report to the~~
31 ~~joint standing committee of the Legislature having jurisdiction over appropriations~~
32 ~~and financial affairs and the joint standing committee of the Legislature having~~
33 ~~jurisdiction over state and local government matters a recommendation for funding~~
34 ~~the training and certification program or for further changes in program requirements.~~

35 **3-A. Training and certification of inspectors in the Maine Uniform Building and**
36 **Energy Code.** In accordance with the training and certification requirements developed
37 pursuant to Title 10, section 9723, the Department of ~~Economic and Community~~
38 ~~Development, Office of Community Development~~ Environmental Protection, Bureau of
39 Land Quality Control shall provide the training necessary to certify municipal building
40 officials, local code enforcement officers and 3rd-party inspectors.

41 **3-B. Maine Code Enforcement Training and Certification Fund.** The Maine
42 Code Enforcement Training and Certification Fund, referred to in this section as "the
43 fund," is established as a nonlapsing fund to support training and certification programs
44 administered by the Department of ~~Economic and Community Development, Office of~~
45 ~~Community Development~~ Environmental Protection, Bureau of Land Quality Control for

1 code enforcement officers, local plumbing inspectors, municipal building officials and
2 3rd-party inspectors in accordance with this subchapter.

3 A. Beginning July 1, 2009, and each year thereafter on July 1st, the funds identified
4 in section 4215, subsection 4 for training and certifying local plumbing inspectors
5 must be transferred to the fund.

6 B. Beginning July 1, 2009, and each year thereafter on July 1st, the funds identified
7 in Title 25, section 2374 for training and certifying municipal building officials, local
8 code enforcement officers and 3rd-party inspectors must be transferred to the fund.

9 C. The Department of ~~Economic and Community Development, Office of~~
10 ~~Community Development~~ Environmental Protection, Bureau of Land Quality Control
11 shall place in the fund any money it receives from grants to support the requirements
12 of this subchapter.

13 D. Funds related to code enforcement training and certification may be expended
14 only in accordance with allocations approved by the Legislature and solely for the
15 administration of this subchapter. Any balance remaining in the fund at the end of
16 any fiscal year may not lapse but must be carried forward to the next fiscal year.

17 ~~E. If the fund does not contain sufficient money to support the costs of the training~~
18 ~~and certification provided for in this subchapter, the Department of Economic and~~
19 ~~Community Development, Office of Community Development may suspend all or~~
20 ~~reduce the level of training and certification activities.~~

21 **4. Examination.** The Department of ~~Economic and Community Development,~~
22 ~~Office of Community Development~~ Environmental Protection, Bureau of Land Quality
23 Control shall conduct at least one examination each year to examine candidates for
24 certification at a time and place designated by it. The Department of ~~Economic and~~
25 ~~Community Development, Office of Community Development~~ Environmental Protection,
26 Bureau of Land Quality Control may conduct additional examinations to carry out the
27 purposes of this subchapter.

28 **5. Certification standards.** The Department of ~~Economic and Community~~
29 ~~Development, Office of Community Development~~ Environmental Protection, Bureau of
30 Land Quality Control shall adopt routine technical rules under Title 5, chapter 375,
31 subchapter 2-A to establish the qualifications, conditions and licensing standards and
32 procedures for the certification and recertification of individuals as code enforcement
33 officers. A code enforcement officer need only be certified in the areas of actual job
34 responsibilities. The rules established under this subsection must identify standards for
35 each of the areas of training under subsection 2-A, in addition to general standards that
36 apply to all code enforcement officers.

37 **6. Certification; terms; revocation.** The Department of ~~Economic and Community~~
38 ~~Development, Office of Community Development~~ Environmental Protection, Bureau of
39 Land Quality Control shall certify individuals as to their competency to successfully
40 enforce ordinances and other land use regulations and permits granted under those
41 ordinances and regulations and shall issue certificates attesting to the competency of
42 those individuals to act as code enforcement officers. Certificates issued by the former
43 State Planning Office ~~or~~, the Department of Economic and Community Development,

1 Office of Community Development or the Department of Environmental Protection,
2 Bureau of Land Quality Control are valid for 6 years unless revoked by the District Court.
3 An examination is not required for recertification of code enforcement officers. The
4 Department of ~~Economic and Community Development, Office of Community~~
5 ~~Development~~ Environmental Protection, Bureau of Land Quality Control shall recertify a
6 code enforcement officer if the code enforcement officer successfully completes at least
7 12 hours of approved training in each area of job responsibility during the 6-year
8 certification period.

9 A. The District Court may revoke the certificate of a code enforcement officer, in
10 accordance with Title 4, chapter 5, when it finds that:

11 (1) The code enforcement officer has practiced fraud or deception;

12 (2) Reasonable care, judgment or the application of a duly trained and
13 knowledgeable code enforcement officer's ability was not used in the
14 performance of the duties of the office; or

15 (3) The code enforcement officer is incompetent or unable to perform properly
16 the duties of the office.

17 B. Code enforcement officers whose certificates are invalidated under this subsection
18 may be issued new certificates provided that they are newly certified as provided in
19 this section.

20 **7. Other professions unaffected.** This subchapter may not be construed to affect or
21 prevent the practice of any other profession.

22 **Sec. 9. 30-A MRSA §4452, sub-§7,** as amended by PL 2011, c. 655, Pt. FF, §9
23 and affected by §16, is further amended to read:

24 **7. Natural resources protection laws.** A code enforcement officer, authorized by a
25 municipality to represent that municipality in District Court and certified by the former
26 State Planning Office ~~or~~, the Department of Economic and Community Development,
27 Office of Community Development or the Department of Environmental Protection,
28 Bureau of Land Quality Control under section 4453 as familiar with court procedures,
29 may enforce the provisions of Title 38, section 420-C, Title 38, chapter 3, subchapter 1,
30 article 5-A and Title 38, chapter 13-D by instituting injunctive proceedings or by seeking
31 civil penalties in accordance with Title 38, section 349, subsection 2.

32 **Sec. 10. 30-A MRSA §4453, first ¶,** as amended by PL 2011, c. 655, Pt. FF, §10
33 and affected by §16, is further amended to read:

34 The Department of ~~Economic and Community Development, Office of Community~~
35 ~~Development~~ Environmental Protection, Bureau of Land Quality Control shall establish
36 certification standards and a program to certify familiarity with court procedures for the
37 following individuals:

38 **Sec. 11. Appropriations and allocations.** The following appropriations and
39 allocations are made.

40 **ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF**

1 **Community Development Block Grant Program 0587**

2 Initiative: Transfers one Planner II position and reduces funding for related All Other
 3 costs due to the responsibilities for code enforcement officer training and certification
 4 being transferred to the Department of Environmental Protection.

5

6	OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
7	POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)
8	Personal Services	(\$67,245)	(\$71,310)
9	All Other	(\$41,233)	(\$41,233)
10			
11	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>(\$108,478)</u>	<u>(\$112,543)</u>

12

13	ECONOMIC AND COMMUNITY		
14	DEVELOPMENT, DEPARTMENT OF		
15	DEPARTMENT TOTALS	2013-14	2014-15
16			
17	OTHER SPECIAL REVENUE FUNDS	(\$108,478)	(\$112,543)
18			
19	DEPARTMENT TOTAL - ALL FUNDS	<u>(\$108,478)</u>	<u>(\$112,543)</u>

20 **ENVIRONMENTAL PROTECTION, DEPARTMENT OF**

21 **Land and Water Quality 0248**

22 Initiative: Transfers one Planner II position and related All Other costs due to the
 23 responsibilities for code enforcement officer training and certification being transferred
 24 from the Department of Economic and Community Development to the Department of
 25 Environmental Protection.

26

27	OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
28	POSITIONS - LEGISLATIVE COUNT	1,000	1,000
29	Personal Services	\$67,245	\$71,310
30	All Other	\$41,233	\$41,233
31			
32	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$108,478</u>	<u>\$112,543</u>

33

34	ENVIRONMENTAL PROTECTION,		
35	DEPARTMENT OF		
36	DEPARTMENT TOTALS	2013-14	2014-15
37			
38	OTHER SPECIAL REVENUE FUNDS	\$108,478	\$112,543
39		<u></u>	<u></u>

1	DEPARTMENT TOTAL - ALL FUNDS	\$108,478	\$112,543
2			
3	SECTION TOTALS	2013-14	2014-15
4			
5	OTHER SPECIAL REVENUE FUNDS	\$0	\$0
6			
7	SECTION TOTAL - ALL FUNDS	\$0	\$0

8 **SUMMARY**

9 This bill reassigns the responsibilities for code enforcement officer training and
10 certification from the Department of Economic and Community Development, Office of
11 Community Development to the Department of Environmental Protection, Bureau of
12 Land Quality Control. Current law partially funds the position from the Maine Code
13 Enforcement Training and Certification Fund, which receives fees and surcharges
14 imposed for the examination of plans for construction, reconstruction or repairs,
15 plumbing inspections and training and certification of municipal building officials and
16 code enforcement officers. Current law also provides that if insufficient funds are
17 available to support the training and certification program, the program is discontinued.
18 This bill removes that provision.

19 **FISCAL NOTE REQUIRED**
20 **(See attached)**