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**STATE OF MAINE FORESTER LICENSURE
PROGRAM AND POLICY REVIEW**

By

Stephen F. Holt

B.S. University of Maine, 1980

Master of Forestry Paper

Submitted in Partial Fulfillment of the

Requirements for the Degree of

Master of Forestry

The Graduate School

The University of Maine

May, 2006

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PROGRAM AND POLICY REVIEW**

By Stephen F. Holt

Graduate Advisor: Dr. David B. Field

An Abstract of the Master of Forestry Paper
Presented in Partial Fulfillment of the Requirements for the
Degree of Master of Forestry
(Forest Policy)
May, 2006

Despite the continued importance of the forest resources to the State of Maine that led to the initial forester registration law in 1975, forester regulation has been the subject of only one program audit and policy review. That occurred 20 years ago, in 1986.

It is important to understand the need for a periodic forester regulatory program review even if there are no currently apparent or expected public interest or resource protection related issues.

There have been many significant changes since the last forester regulatory program and policy review that have impacted forest policy, management, and the related forestry based economy. It is difficult to determine how these collective influences have combined to justify additional regulatory measures, or abated the need for it. It would be purely coincidental if the sum of these influences has yielded a “no net change” result.

The State of Maine has invested significant resources in the planning and management of the forest resources, but a disproportionate amount of policy time and focus has been given to the professionals who manage it. Public policy in previous decades regulated the practitioner. Some 30 years later, the State has significantly increased the amount of legislated and regulated forest practices pertaining to management, harvesting, and related forest management procedures and influences. This has resulted in more policy attention being given to the practice, and not the practitioner. Have we regulated the practice so much that the practitioner's (forester's) importance to the process has changed? It likely has, but how it has is less clear.

It is very difficult to objectively determine whether forester regulation should continue in its present form. If a program policy review was undertaken today, it would likely be inconclusive or yield ineffective results because it would be impaired, or result to some degree in subjective analyses due in part to insufficient or non-existing data.

Inconsistent regulatory program review evaluation criteria used by the State of Maine must also be considered. Different criteria are used depending on whether an existing regulatory program is undergoing a periodic policy and program review, or if a profession or occupation is the subject of becoming regulated for the first time or an existing program is substantially expanded.

The probability of an inadequate Board program review, if not substantially delayed or waived entirely, appears likely under the present circumstances. This result would be in sharp contrast to a sunrise review. The utilization of the sunrise review process would result in the most objective findings given present program review options because of its intended purpose and the use of specific criteria.

Board administration can also be improved in several areas including the more timely appointment of Board members, and recommended review of Board administration and operations to ensure that optimum efficiencies and cost controls are being achieved.

DEDICATION

This paper and my Master of Forestry Degree are dedicated to my family for their impacts, either known or unknown to them, on my academic success. To my father, Stanwood E. Holt, who despite his premature death when I was young, allowed me to observe through his own successes the importance of higher education. To my wife Miriam whose encouragement and personal sacrifices, particularly during the research and writing phases of this paper, were so important. To my sons Christopher and Stephen II, who both have begun their respective college careers, for their joint enthusiasm and support. I hope I have demonstrated to them the importance of ultimately fulfilling a commitment, both to yourself and the people who have supported you in pursuit of it. More importantly, may they better appreciate the need to complete their academic careers in a much more timely fashion without interruption and to take their own college careers seriously. Finally, and most important, to my mother Pauline F. (Holt) Taylor who has always been a consistent and unending source of unselfishness, love, caring, and support for those in her life. I will always be grateful for the many sacrifices you made so I could complete my undergraduate degree, and for the many additional contributions provided while I attended graduate school. I hope any disappointment that you may have quietly harbored all those years because your son did not finish his degree will now end, and that I can finally be in your presence without that burden. And for the monkey that I have carried on my back for twenty four years, a consequence of prolonged academic procrastination, it is finally time for you to get off and say good-bye.

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Graduate Committee

The author will forever be indebted to those individuals whose collective encouragement, support, and assistance have made my graduate education and degree possible. Foremost, I wish to thank my advisor, David Field, PhD for reaching out when all hope for completing my degree had seemingly past, and with it a substantial amount of academic self respect and any opportunity to return academically to The University of Maine. To Lloyd Irland, PhD and Greg White, PhD, thank you sincerely for your steadfast support and personal interest in my academic pursuits. To you collectively as my Advisory Committee, thank you for your academic guidance and support. It doesn't seem possible that it has been twenty-six years since we began this journey. A lot has changed during this time. I will always be grateful that you have remained at the University of Maine, and that health, life events, fate, and all other blessings have allowed us to work together to complete my degree. I am a richer person because of your academic and personal friendships.

Contributors and Other Assistance

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DISCLAIMER

The author is a member of the State of Maine Board of Licensure of Foresters. All information and data gathered in connection with this paper were obtained by the author acting as a citizen of the State of Maine, and not as a representative of the Board of Licensure of Foresters, or any branch of State of Maine government. All Board related information obtained is considered public record and was obtained during normal business hours.

All statements, opinions, and conclusions contained in the paper, either expressed or inferred, are solely those of the author, and not the Board of Licensure of Foresters, Department of Professional and Financial Regulation, or the State of Maine.

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Chapter One

INTRODUCTION

Purpose

The importance of forest resources to the State of Maine has been well researched and documented (Field, 1996), including its significant role in the state's manufacturing and related economies (Field, 1999). Substantial planning and analyses on current resource and forestry sector assessments (MSPO, 2004) and anticipating future conditions (DOC, 2006) continues. These forest resources also directly and indirectly affect our cultural values, socioeconomic characteristics, environmental goals, tourism, and multi-use. To maintain these resource and the societal interrelationships for future generations, a well-managed forest resource will be critical to sustain both the resource and all relationships that are dependent on it. Despite historical fluctuations in populations, rural agricultural expansions and reversions, urban sprawl in southern and central Maine, and significant changes in the state's forest-based economy, Maine remains the most heavily forested state in the nation. It is approximately 90% forested and 95% privately held (DOC, 2005). Its forest product output represents approximately half of the total output of the New England and New York region combined (DOC, 2005), and the long term importance of this economy remains critical (NESFA, 2001) despite many challenges.

Following decades if not centuries of relative stability and predictability, forestland ownership and associated land use objectives have entered an unstable era that is expected to continue (Ireland, 2003). Many separate cause and effects have combined to create a dynamic and challenging period for the long term management of this resource and related raw and finished products (Ireland, 2006). Changing land ownership patterns, including the rapid

divestiture of traditional paper company ownership, competing land uses, public perceptions and forest product consumer preferences, global markets and competition, alternatives to traditional Maine forest products, and new forest management considerations are all impacting the manner in which we use, manage, and value this critical resource (MSPO, 2004). This has created the demand to more thoroughly assess current conditions (INRS, 2005) and implement increasingly comprehensive and complex forest management standards (DOC, 2006).

Foresters play a vital role in all phases of long term sustainable multi-use forest management including forest inventory, silvicultural considerations, harvesting, forest health, and long term planning (DOC, 2006). This paper will benefit licensees and related stakeholders, as well as those either not directly involved in the profession or without a significant personal interest in the profession, to better understand who foresters are, what the profession of forestry is, and what constitutes the practice of forestry. Other issues examined include how the profession is regulated, whether it still is important to do so, how this regulation is administered and managed, and if there are appropriate alternatives to regulation. These fundamental facts and related issues are raised very infrequently, if at all, and seldom in a public policy discussion.

We have apparently invested more policy review related efforts on the management of the resource itself with less regard for the need to review and or update the regulation that governs the professionals who manage it. Outdated forester regulation policy may be the result.

Justification

Despite the increased awareness, reaction, and investments of time and resources to better plan the future utilization and management of Maine forestland, there has been relatively little public policy attention given to the regulation of foresters. Both the justification and need to continue to regulate foresters, and how regulations are administered by the State of Maine, has been the subject of infrequent and inadequate analyses. It may be because of a widespread perception that the obvious does not need to be discussed or debated. However, it is important to examine the continuing need to regulate this profession. Benefits can be gained, both by the public and the profession alike, for doing so. We may be investing a disproportionate amount of time to better understand the new pressures on the State's forest resources, and too little time on the regulated profession that has a substantial role in the implementation of these policies.

An examination of State of Maine forester regulation program and policy review appears both justified and timely given the fact that the next State of Maine Legislature periodic review of the Department of Professional and Financial Regulation, which has administrative responsibility for the Board of Licensure of Foresters (the Board), is scheduled to occur in 2007 (3 MRSA, c. 35).

Foresters have been regulated by the State of Maine since 1975, over thirty years, with little analysis given to the justification to continue this governance. Currently, periodic program reviews required under the Governmental Evaluation Act (GEA), (3 MRSA, c. 35), apply one set of criteria to evaluate existing programs (including professional licensing boards), yet newly proposed professional or occupational programs must meet another set of criteria (5 MRSA, §12015), thereby creating different and inconsistent evaluation standards.

This may result in both unintended and inconsistent public policy. It can directly affect or influence the future of forester regulation and even impact whether foresters should continue to be regulated. The perceptions relating to the value of, or need for, forester regulation by licensees may differ from those of the public, or even the rest of the forest industry. The design of periodic legislative reviews and implementation of recommended changes have a significant effect on the future of any professional regulatory program. An examination of these issues and related analyses will be helpful to document the history of forester regulation in the state of Maine and to create a reference that can better serve future policy discussions.

Scope

Eight criteria were established for this research in order to support a broad-based forester regulation program and policy review. First, the basic purpose and justification for professional regulation is summarized, including the purpose of regulation. Second, a historical summary of forester regulation in the United States is presented, followed by a more concentrated examination of Maine forester regulation and administration including the statutory and rule histories. To better evaluate the present and prepare for the future, we must first understand the various past and present forester regulation programs that exist in both the United States and in Maine. Third, the two primary State of Maine professional program review statutes that have the potential to impact forester regulation are described, including a comparison of goals, and whether one or both are likely to have a meaningful impact with respect to a forester regulatory program review. This includes consideration of current program resources and competing priorities. Fourth, previous forester board legislative reviews are presented including when they occurred, if they were in-depth and

adequate, superficial, or whether they resulted in meaningful outcomes and changes. Fifth, potential issues affecting the future of Maine forester licensing, including profession-specific influences and challenges, Board governance and administration, and other forestry and stakeholder influences are identified. Sixth, the need to understand the sunrise review goal and process, and why this is a potential policy concern is addressed. Seventh, the likelihood of a 2007 Board of Licensure of Foresters review or possible alternatives and their importance are analyzed, including a discussion of whether viable outcomes can be reasonably predicted at this time. Finally, summaries and conclusions are developed as a reference to be used for future public policy discussions.

Intended Use and Benefits

A successful review of State of Maine forester regulation, whether it occurs in 2007 or at some later date, will depend in part on the availability of appropriate historical data and useful information that address current and future issues related to the review. Legislative members, including those assigned to the joint standing committee(s) with review oversight, state department administrators, professional forestry associations and societies, licensees, consumers of licensed forester products and services, various forest related stakeholder groups, and the general public will benefit from this practical and timely exercise.

The goal of this paper is to identify important questions, facts, and emerging issues necessary for discussion in a future forester regulation policy discussion, and to create a broad-based reference useful in that exercise. The analysis does not concentrate on a particular subset of issues, nor is it specifically designed to answer the question of whether foresters should continue to be regulated by the State of Maine, or how the Board should be

administered. Several of the identified but unanswered issues and problems will require further study to fully determine their impacts.

Chapter Two

PROFESSIONAL REGULATION OVERVIEW

General Assumptions and Principles

Professional and occupational regulation exists primarily for two purposes: First, to protect a resource, thing, person, process, or some other object or subject that is the focus of a particular type of regulation; second, to protect the public from incompetent or dishonest practitioners and to establish a minimum standard of proficiency in the regulated field (OLR 2006). The regulation of occupations and professions has existed for centuries. The underlying premise in the justification for regulation has remained constant throughout time. Simply put, the benefits for imposing any form of occupational or professional regulation by a political body for the benefit of its citizens must outweigh the opportunity costs of not doing it. The primary beneficiaries of such regulation must be the public in general and not the occupation or profession that is the subject of the governance.

Abraham Lincoln was once quoted:

“The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot do so well themselves, in their separate and individual capacities. In all that the people can individually do as well for themselves, government ought not to interfere” (Sassone and Schaffer, 1978).

This was a broad reference to evaluating the need for government intervention in general. Therefore, it is certainly applicable in a more refined construction of a governance policy review including forester regulation.

To implement these principles, states have delegated their authorities and powers to state departments, boards, and commissions to regulate, license, and discipline practitioners. Professional regulatory oversight exists to protect the public safety, health and welfare by regulating those individuals who demonstrate a standard of competency in a regulated discipline and by enforcing statutes and rules against incompetent, unethical, or fraudulent practices (OLR, 2006). Regulatory boards generally serve to issue licenses to qualified individuals, to determine if licenses should be renewed, to investigate complaints brought against licensees, and for establishing administrative rules to further enforce their statutory authority. In the State of Maine, the authority and responsibilities of occupational and professional licensing boards is defined in 5 MRSA, Chapter 379, Administrative Procedures and Services. These boards typically do not have authority to pursue actions against unlicensed practice complaints. That authority usually rests with other areas of government. Within State of Maine government, it is the Office of the Attorney General.

Boards are comprised of qualified individuals, often appointed by a governor or some other member of a state's executive department and often contain at least one member of the public who is unaffiliated with the particular board's regulated discipline. Licensing regulatory board members in Maine are generally appointed by, and serve at the pleasure of, the Governor. Regulatory board governance is structured to ensure that public trust is not violated by ex parte communications, inappropriate board member conduct, conflicts of interest, or other issues involving freedom of access laws and open meeting policies. Nationally, the theory and application of professional and occupational regulation has evolved into a highly developed and focused discipline with several nationally based

organizations advancing these efforts, such as the Council on Licensure, Enforcement and Regulation (CLEAR, 2006).

Types of Regulation

The term “Regulation” is often used as a generic description for the implementation of professional or occupational governance, which may exist in several different forms. Substantial confusion has resulted from the inconsistent use of various terms and meanings in programs (SAF, 2001). The most restrictive form of regulation is the so-called “right to practice” standard, under which it is illegal for individuals to practice in a particular profession without first meeting pre-determined state requirements (Kleiner, 2005). Standards involving education, experience, internship, examination, or any combination thereof are usually mandated. These are referred to as licensed disciplines. A second form of regulation is certification, which is generally less restrictive. Certification often allows individuals who meet certain requirements to be titled by a state, which may offer certain professional advantages such as increased client recognition, etc. Certification standards by themselves are often not exclusive, thereby not barring non-certified individuals from the right to practice. They are usually voluntary in nature (SAF, 2001). Registration is another form of professional governance and is often more like certification than licensure in that it is not a right-to-practice approach to occupational regulation.

It is important to note that these are highly generalized descriptions, and the qualifications, credentialing, examination, and restrictiveness of each can vary dramatically from state to state, and even within a particular state by regulation program. Renewal conditions for licensure, certification, or registrations also can vary substantially, but these

generally involve some combination of renewal fee, continuing education requirements, or periodic reexamination.

Important Considerations and Consequences

The public policy exposure and ensuing debate leading up to the regulation of a profession, regardless of the form and degree of oversight it ultimately receives, is often extensive if not emotional for stakeholders. However, after the transitional period of regulatory implementation, a prolonged period of quiet existence usually follows. Kleiner (2005) compared this period of a regulated discipline's existence to that of the medieval guilds of Europe where entry is constrained by the profession, requirements are more extensive, and licensing fees increase. Occupational and professional licensing is rapidly growing in this country, both in geographical area and number of disciplines. In the 1950's, only 5% of the work force was subject to licensing as opposed to more than 20% currently (Kleiner, 2005). There is great diversity in the number and attributes of disciplines regulated in the United States. Roughly fifty occupations are regulated in all states, but more than three hundred are regulated in some states but not all (Kleiner, 2005).

Historically, the quality of products and services of newly regulated professions typically increased in part due to the exclusion of lesser-qualified practitioners. Demand for these services also increased, perhaps due to the perception of higher quality (Kleiner, 2005). This may or may not be the case in a profession such as forestry where the protection of the resource is as much of a consideration for regulation as is consumer protection. Obviously, the emergence of "green certification" in recent years supports this fact.

As a regulated discipline matures, the profession itself via board member participation may attempt to change the justification focus from that of the public to an agenda that better protects the financial wellbeing of current licensees. This may involve adding even more restrictions to licensing requirements, limiting geographical areas, or expanding the types of products and services defined under professional regulation. This can be viewed as a form of professional protectionism. Kleiner (2000) reported that occupational licensing has resulted in higher product pricing and earnings by licensees when compared to those demonstrating similar levels of educational requirements, experience, or capital investments in unregulated employment. For certain professions that are regulated in some but not all states, employment growth in those disciplines is approximately 20% higher than for the same professions in the unregulated states. Also, consumers who can no longer afford these services either do without, seek alternatives such as unregulated practitioners, or perform functions themselves.

Kleiner and Pecenka examined certain occupations in states that regulate the practice and those that do not (Kleiner, 2005). This work involved primarily health-care-related professions such as physical therapists, respiratory care providers, and physician assistants. Surprisingly, they found no meaningful differences in the number of complaints filed against these providers amongst the states. This is particularly noteworthy given the fact that they involved health-care related services that have high patient expectations, are often administered under trying circumstances, come under great scrutiny, and are therefore susceptible to a high complaint rate. Regulation, by itself, also does not guarantee lower malpractice rates for those practitioners practicing in regulated states as opposed to non-regulated states (Kleiner, 2005).

Another challenge is the fact that quantification of benefits derived from increased professional regulation can be difficult to determine for many reasons. Kleiner (2005) estimates that licensing reduces output by some \$38 billion annually due to associated opportunity costs. Yet, professional regulation continues to expand partly because professional fees are not always clear, or in the mainstream of public or client awareness. One example would be third party billing common in the healthcare profession. Also, professional services may be requested and used by a party not responsible for the payment such as when mortgage companies order an appraisal or a property survey as part of a mortgage application.

Despite the expansion of professional regulation nationally, the support and resulting policy is not uniform. Some professions exhibit no unified support for regulation. Professionals in some occupations may feel that obtaining an educational degree of both an appropriate level and discipline with accumulated experience is sufficient. In fact, many state registration or licensing statutes use these parameters to establish their programs (SAF, 2001).

Professions with politically weak or ineffective interest group representation are also less likely to gain regulatory status or to further advance an existing program. This can occur even if the primary reason for a profession to seek or further define regulation is for the public good and not for self-serving reasons. Another deterrent to new or more restrictive professional regulation is the increased burden and opportunity costs associated with compliance provision requirements. This can be in the form of additional direct and or indirect costs placed on regulated practitioners, often with little or no value adding effects to the consumer or practitioner profit.

Chapter Three

OVERVIEW OF FORESTER REGULATION HISTORY AND ADMINISTRATION

Forester Regulation in the United States

The Society of American Foresters (SAF) was founded in 1900 by Gifford Pinchot and is widely recognized as the national scientific and educational organization representing the forestry profession in the United States (SAF, 2003).

The SAF defines forestry as:

The profession embracing the science, art, and practice of creating, managing, using, and conserving forests and associated resources for human benefit and in a sustainable manner to meet desired goals, needs, and values. Note that the broad field of forestry consists of those biological, quantitative, managerial, and social sciences that are applied to forest management and conservation including such specialized fields as agro-forestry, urban forestry, industrial forestry, non-industrial forestry and wilderness and recreation forestry (Helms, 1998).

The term *forestry* as defined may contain reference to science, but the way states have approached the need for regulating foresters and implementing such policy is anything but a science. Of those states that do have a sufficiently important forest resource to consider regulating foresters, there is great diversity amongst them regarding land ownership types, forest composition, and public policy related issues. Therefore, there is less uniformity amongst those states that do control forester regulation. The number of states overseeing foresters has been relatively stable for several decades (see Table 1).

TABLE 1
STATES THAT REGULATE FORESTERS, BY
REGULATION TYPE AND
SELECTIVE YEARS

<u>1978 (14)</u>	<u>1998 (15)</u>	<u>2001 (16)</u>
<u>Voluntary</u>	<u>Voluntary</u>	<u>Voluntary</u>
Arkansas Michigan North Carolina Oklahoma West Virginia	Arkansas Michigan North Carolina Oklahoma West Virginia	Michigan New Jersey Oklahoma West Virginia
<u>Registration</u>	<u>Registration</u>	<u>Registration</u>
Alabama Florida Georgia Maine Mississippi South Carolina	Alabama Connecticut Georgia Mississippi South Carolina	Arkansas Georgia Mississippi North Carolina South Carolina
<u>Licensing</u>	<u>Licensing</u>	<u>Licensing</u>
California Maryland New Hampshire	California Maine Maryland New Hampshire Rhode Island	Alabama California Connecticut Maine Massachusetts Maryland New Hampshire

Source: Summarization compiled from data located in (SAF, 1978), (SAF, 1998), and (SAF, 2001).

During 1978-2001, the number of states governing foresters varied slightly from 14 to 16, although the total number of states involved was actually somewhat greater due to states sunsetting or creating regulation programs. By 1998, Florida had dropped regulation (State of Florida, 1978) and Rhode Island had created its program (SAF, 1998). In 2001, data indicated Rhode Island had discontinued its program, while Massachusetts and New Jersey

had been added since the 1998 study. There were also changes within regulation types for those states that continued oversight. The most evident was the increase in the number of states requiring a license, which increased from three in 1978 to seven in 2001. As of 2001, 16 states governed the practice of foresters. 12 were registration or licensing states, and four were voluntary states (See Table 2). A total of 11,500 foresters were regulated in these 16 states during 2001 (SAF, 2001).

TABLE 2
NUMBER OF STATES THAT GOVERN FORESTERS,
BY REGULATION TYPE,
2001

<u>REGULATION</u>	<u>MANDATORY</u>	<u>VOLUNTARY</u>	<u>TOTAL</u>
Licensing	6	0	6
Certification ¹	1	0	1
Registration	5	4	9
Total	12	4	16

Source: Compiled from data in Society of American Foresters Task Force Report on Forester Registration and Licensing 2001 (SAF, 2001).

Although it has become somewhat outdated, this report (SAF, 2001) continues to be a useful resource for those interested in researching state forester licensing programs and related requirements. Also, the Council on Licensure, Enforcement, and Regulation (CLEAR, 2006) offers comprehensive information.

The future growth or reduction of forester regulation in the United States remains unclear. The Forest Guild and SAF, two leading and well-respected forester and forestry

¹ One state, Connecticut, refers to its governance as certification, but it is functionally equivalent to licensing.

related organizations, have created position papers on forester licensure or credentialing. This was done primarily to advance the policies of these and other organizations to promote better protection and management of the forest resources, and to ensure forest sustainability through more effective forester regulation. These initiatives appear sincere, are reflective of the philosophical beliefs of many natural resource professionals in general, and are not considered to be subject to the licensee protectionist problems discussed in Kleiner (2005).

The Forest Guild (2004) states that existing forester licensing and regulation programs do little to ensure the management of forests in a sustainable fashion. Their policy statement on forester licensing distinguishes between programs that title foresters and the need to regulate forest activities. The Guild advocates a more comprehensive approach to forester regulation that includes a broader range of forest management and harvesting activities, and provides licensing boards with the correct expertise and administrative authority to increase enforcement effectiveness.

The overall forester licensing position of SAF (1996 and 2001) is similar. SAF (2001) reported that several states were contemplating some action ranging from credentialing to actual legislation. A 2001 SAF task force attempted to link forester regulation to better forest practices. Although their findings did suggest it, sufficient quantitative analysis did not exist to make a definitive determination. The SAF position also examined how best to approach, educate, and work cooperatively with the states that want to pursue regulation. Model legislation (SAF 2001) was developed to support this by discussing the type of statute, practices covered, board administration, educational and or experience requirements, license terms, continuing education, and reciprocity, which some states currently recognize.

Despite the uncertainty of future forester regulation on a national level, one fact is known. These decisions will be a function of the effectiveness of those interested in advancing these programs for whatever reason, combined with the identified social, political, environmental, and economic opportunity costs that emerge in public policy debates for either not continuing an existing program, or adopting new ones.

State of Maine Forester Licensing

The name of Maine's forester regulation board has changed several times since 1975. For the purpose of this paper, the present and former boards shall be referred to as the Board. Board administrative files and Board Minutes dating back to 1975 were examined at the current Maine State Board of Licensure of Foresters office within the Office of Licensure and Registration, Department of Professional and Financial Regulation located in Gardiner, Maine. This interesting and time-valued collection of records has been thoughtfully preserved. Relevant data and information were documented for a historical presentation on the forester licensing board and related attributes. The majority of these data were not previously compiled. It is presented in numerous tables in this and other chapters.

In 1975, The Maine State Legislature created forester regulation (PL 1975, c. 490) by enacting Legislative Document (LD) 1412, "An Act Relating to Forester Registration and Licensing", which followed a period of public debate on the justification, extent, and necessary regulatory form and oversight needed to implement the program. The Legislative Record (1975) contains the House of Representatives floor debate preceding the enactment. Opponents questioned, "Is the health and welfare of Maine citizens being jeopardized because this occupation is not now being licensed?" and "Why aren't several more obvious

professions regulated?” Some also expressed concern over a proliferation of professional licensing. Proponents argued an increase in environmental related laws, attempts to pass a Forest Practices Act, and increased emphasis on Public Lot management would combine to demand excellence from foresters.

The forester community apparently played a major role in this legislation since there were numerous references on record indicating “they are asking to regulate themselves” and “These people have asked to be registered and for the protection of the people and to show they are competent out in the field” (Legislative Record, 1975). Based on this research, State of Maine forester regulation apparently was influenced as much by the profession itself, in combination with the increased environmental awareness of the 1970’s, as by recognition of the need to protect the public welfare and consumers. Equally important, a search of the Legislative Record and other documents at the State of Maine Law and Legislative Reference Library strongly suggests that foresters, acting individually or collectively, supported this action primarily to improve the management and protection of the resource, and not necessarily for personal financial gain or other similar business reasons.

The Maine law was considered more liberal (less restrictive) than other states at the time, based on the Legislative Record.

The Practice of Forestry

Although substantially similar to the SAF definition of forestry throughout time, Maine has always chosen to adopt its own unique definition of forestry and the practice of forestry. The 1975 forester registration law defined forestry as:

“Forestry” shall mean the science, the art and the practice of managing, harvesting and using primarily for human benefit, the natural resources which occur on and in association with forest land.

The same law also defined the practice of forestry as:

“The practice of forestry” shall mean any professional services relating to forestry requiring the application of forestry principles and techniques. Such services shall include but not be limited to investigations, consultations, development of forest management plans, responsible supervision of forest management, forest utilization, forest economics or other forestry activities as carried out in connection with any public or private lands. Forestry instructional and educational activities shall be exempted. The practice of forestry shall not include services rendered for wages or for salary for the cutting, hauling, handling or processing of forest products, or wages, salary or payments received for timber stand improvements or other silvicultural activities on the forest lands of the owner thereof, or on the forest land of another.

The Maine definition of “forestry” was nearly identical to SAF’s in 1975. From 1975 to 2001, both the definition of forestry and the practice of forestry remained unchanged.

The current in-force definition of “forestry” as adopted by the Legislature in 2001 (MRSA, §5501(4)) is:

"Forestry" means services relating to forestry requiring the application of forestry principles and techniques. The services include, but are not limited to, investigations, consultations, timber inventory, development of forest management plans, responsible supervision of forest management, forest utilization, appraisal of severed or unsevered timber, forest economics or other forestry activities as carried out in connection with any public or private lands. "Forestry" does not include services for the physical implementation of cutting, hauling, handling or processing of forest products or for the physical implementation of timber stand improvements or other silvicultural activities or measuring or scaling activities performed by persons licensed under Title 10, section 2365-A.

Simply because the definitions have been fairly static through time and subject to only occasional review does not mean that it is universally endorsed in the forestry community, or even within the profession. It is the root of all meaning when considering what forester regulation is, or is not, attempting to regulate. The definition of forestry, and what forestry related practices should be regulated as a result, were arguably the two most contentious issues faced by the Board when it redrafted the statutes in 2001, and then again during the public hearing process. Although licensed foresters could not reach consensus on these issues, there was sufficient agreement to ultimately support the final adopted definition of “forestry”. Therefore, it is logical to assume that a similar discussion involving non-

forestry related professionals, including policy makers and the general public, would be even more problematic.

Statutory and Agency Rule History

State of Maine forester regulation statutes have been the subject of legislative action, repeal, replacement, or revision no fewer than 25 times (see Table 3). This has involved 12 different Legislative Sessions. These changes have ranged from minor Administrative Procedures Act compliance to comprehensive licensing revisions. Table 4 summarizes the more notable results of the legislative actions depicted in Table 3.

A number of statutory changes occurred following the inception of forester registration, either to correct unintended effects of the new law or to further clarify intent. These events were consistent with start-up related experiences involving other similarly created professional and occupational programs. From 1976 to 1987 conforming changes to the Administrative Procedures Act (APA), state government reorganizations affecting the departments with Board oversight, and other changes to statutes resulted. In or about 1979, licensure requirements for individuals were substantially broadened when the exemption of practicing on land of others was narrowed and better defined. This removed from exemption a large number of corporate foresters who had previously been exempt from licensing. This represented a significant change in both the number of individuals regulated, and the total acreage ultimately impacted by forester registration since approximately 50% of the forestland at that time was owned by corporate landowners.

TABLE 3
STATE OF MAINE LEGISLATURE
INDEX OF PUBLIC LAWS AND RESOLVES
RELATED TO FORESTER REGULATION 1975-2006²

<u>YEAR</u>	<u>PUBLIC LAWS</u>	<u>REFERENCE</u>
1975	PL 1975, c. 490	32 MRSA, c. 75, §5001
1975	PL 1975, c. 623	32 MRSA, §5002
1975	PL 1975, c. 373	32 MRSA, §5007 et seq.
1975	PL 1975, c. 771	32 MRSA, §5004 et seq.
1978	PL 1978, c. 694	32 MRSA, §5009, §5018
1979	PL 1979, c. 118	32 MRSA, §5002 et seq.
1979	PL 1979, c. 285	32 MRSA, §5004 et seq.
1983	PL 1983, c. 413	32 MRSA, §5004 et seq.
1983	PL 1983, c. 812	32 MRSA, §5004 et seq.
1983	PL 1983, c. 814	5 MRSA, §12011 et seq.
1985	PL 1985, c. 748	10 MRSA, §8001 et seq.
1987	PL 1987, c. 395	3 MRSA, §507-B sub-§10
1987	PL 1987, c. 395	10 MRSA, §8001 et seq.
1989	PL 1989, c. 142	32 MRSA, §5012 et seq.
1991	PL 1991, c. 283	32 MRSA, §5004 et seq.
1991	PL 1991, c. 428	32 MRSA, §5014 et seq.
1993	PL 1993, c. 600	32 MRSA, §5004 et seq.
1993	PL 1993, c. 659	32 MRSA, §5017
1995	PL 1995, c. 397	10 MRSA, §8001, et seq.
1995	PL 1995, c. 502	10 MRSA, §8003
1999	PL 1999, c. 547	32 MRSA, §5018 et seq.
1999	PL 1999, c. 687	32 MRSA, §5018
2001	PL 2001, c. 261	32 MRSA, §5501 et seq.
2002	Resolves re: LD 2125	Board Rules, Chapter 50
2002	Resolves re: LD 2139	Board Rules, Chapter 90

Source: Compiled by author from State of Maine Legislature Law library, and MRSA Index and Titles.

Disclaimer: The above index is presented for illustrative purposes only. It is not intended to be an official or complete record and the author does not represent it as such.

² The intent of this Table is to document the important law changes with respect to Forester regulation, and not to also document those changes that involve Board administration or compliance with State of Maine Administrative Procedures Act.

TABLE 4
NOTEWORTHY LAW OR RULE CHANGES³ IMPACTING
STATE OF MAINE FORESTER REGULATION, 1975-2006

<u>YEAR</u>	<u>SUMMARY OF CHANGE IN LAW AND/OR RULES</u>
1975	Initial Forester licensing law enacted creating the Board of Registration for Professional Foresters. “Forestry” and “The Practice of forestry” and qualifications defined in statute. Bylaws and procedures were established for Board governance. The law was quickly amended to clarify that certain employees and landowners were exempt from licensing.
1978	Board conforms to State of Maine Administrative Procedures Act setting forth license review, revocation, disciplinary action, and administrative and civil appeal procedures. Board adopts rules.
1979	Law removes license exemption status for certain landowners, employees, and persons and clarifies federal employee status. Also clarifies that the Board does not have power to create rules on forest practices, and further defines educational and licensure requirements. Additional legislation further defines new rule making and bylaw authorities.
1983	Qualified forestry technician experience is granted as a substitute for experience for applicants.
1985	Legislation further addresses Board powers and responsibilities relating to refusals to issue licenses, licensee complaint investigations, disciplinary actions, and administrative processes and appeals.
1987	Symbolic and more substantive regulation changes are made to Department of Professional and Financial Regulation statutes to institute professional licensing and discontinue registrations. The title and reference to Registered Professional Forester is changed to Licensed Professional Forester. The law also requires foresters to include their license number on any plans, maps, and reports issued.
1989	Significant changes to forester licensing occurs with the creation of new forester educational requirements, establishment of internship requirements beginning January 1, 1990, and written examination requirements beginning January 1, 1991.
1991	Legislation creates new forester requirements relative to forest management and harvesting plans, and qualifies certain activities as Class E crimes.

³ For legal references, please see Table 3, State of Maine Legislature Index of Public Laws and Resolves Related to Forester Regulation, 1975-2006.

Table 4 (continued)

- 1993 Legislature creates provisions to allow Forester licensure reciprocity with other states, and provides guidance for standards and procedures.
- 1994 Legislation pertaining to continuing education requirements, standards, and audit provisions is enacted.
- 1996 Board rules amended including changes to continuing education and disclosures on maps or property descriptions prepared by foresters stating that they are not a legal survey.
- 2001 Significant changes to Forester statutes and rules occur following lengthy public hearings, Legislative hearings, amendments to original legislation, and rule making procedures. Inconsistencies between statutes and rules were eliminated. The Board name is changed to Board of Licensure of Foresters within DPFR. Intern Forester is defined and mandatory internship established, thereby eliminating numerous requests for internship waiver based on experience. Substantive rule changes are approved for educational variances and registration to supervise unlicensed individuals. Changes are also made to educational requirement for Forester and Intern Forester applicants and continuing education requirements.

Source: Compiled by author from researching the Legislative Record and Public Laws in addition to Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

In 1987, forester registration was discontinued and replaced with licensing. This was partly the result of the Board conforming to recently adopted policy standards that were created by a new oversight department. More meaningful changes occurred in 1989 when continuing education requirements were established for licensees, and internship classification was created. Information contained in Board records, including Board Minutes and proposed rule hearings, indicated there was substantial discussion regarding the need for continuing education. Some licensees, who were leaders in the forestry profession at the time, spoke against the initiative, stating that it was unnecessary. Others opined that it was essential to maintaining professional competency, and the public both deserved and

demanded that professionals maintain their proficiency. The proposed rule was successfully adopted with the involvement of the professional community and modeled in part after other licensing programs within the same State administrative agency, which had advocated the Board adopt the requirement. A significant mandate was added with the creation of the compulsory written examination for forester licensing in 1991. In 1993, at the request of stakeholders and in recognition of practices in other states, the Board adopted provisions to allow reciprocity and created procedures to pursue these agreements where practical. To increase the oversight of continuing education administration procedures, audit provisions were created in 1994.

The first comprehensive revision to the forester licensing laws in 25 years occurred in 2001. This resulted in the repeal of the original licensing law, 32 MRSA, Chapter 75, and the creation of 32 MRSA, Chapter 75 (PL 2001, c. 261). From 1975 to 2001, inconsistencies increased between the statutes and rules with respect to applied definitions, terminology, intent, and policy, particularly with respect to Intern Forester and Forester experience and education qualifications. A series of Board meetings and public hearings attended by stakeholders resulted in proposed legislation that repealed the existing Board statutes, 32 MRSA, § 5001 et seq., and resulted in a new set of board statutes, 32 MRSA, Chapter 76, §5501 et seq., which remain current (Board Statutes, 2006). These are presented in Appendix A.

Following the enactment of new statutes, the Board revised its rules to eliminate remaining inconsistencies and provide uniformity via minor technical rule change procedures. Two chapters were adopted as major substantive rule changes following submission and approval by the Legislature. Chapter 50, Variance from Educational

Qualifications for Issuance of Intern Forester License, addressed provisions to allow those not meeting educational requirements to apply for an Intern Forester license amongst other changes. Chapter 90, Registration of Foresters for the Supervision of Unlicensed Personnel, was adopted to increase oversight of unlicensed individuals and related issues. A significant result of these statutory and rule changes was the elimination of provisions that permitted waiving intern requirements in recognition of prior experience. The former statutes were extremely problematic in this regard, particularly during application reviews. The granting of experience waivers consistently defeated the original intent of the internship program established in 1989.

The Legislature (PL 1975, c. 694; 32 MRSA, §5009) vested the Board with the authority to create bylaws and procedures, later redefined as Rules for APA reasons (CMR, 2006), to better enforce its responsibilities and to ensure proper performance. Original rules were adopted on November 19, 1978. The Board operated under a set of general administrative bylaws until that time. A chronological index of significant forester rule changes is presented in Table 5. These were mostly the result of administration and program implementation changes that occurred due to statutory revisions including internship requirements, examination, license fee increases, disclosure laws, and licensing qualifications as they related to educational and prior professional experience or practice. Most, but not all, were minor technical rule changes. Appendix B contains the current Board rules (Board Rules, 2006).

Selected Historical and Current Forester Related Data

The Board administrative files contain useful historical licensee group statistics and administrative information dating back to 1976. A thorough presentation of this material is

**TABLE 5
INDEX OF RULES AND RULE CHANGES,
STATE OF MAINE FORESTER REGULATION, 1976-2006**

<u>YEAR</u>	<u>SIGNIFICANT RULE CREATION OR AMMENDMENTS</u>
1976	Original rules created including code of ethics.
1978	Original rules further developed for clarity and omissions.
1983	Amendment to Chapter 4 re: forest technician experience.
1987	Comprehensive conformity rule revisions.
1988	New Rules to support internship and clarify existing rules.
1990	Establishment of new Board rules.
1991	Technical amendments to 1990 Board rules.
1994	Technical amendments to 1990 Board rules.
1996	Amendments to clarify definitions and qualifications.
2000	Department rules enacted regarding fees and other administration.
2001	Substantial revisions and additions to Board rules to reflect significant statutory changes.
2002	Major substantive rules implemented involving education variances and registration to supervise unlicensed individuals.

Source: Compiled by author from State of Maine Legislature Law Library and Secretary of State references, and Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

Disclaimer: The above index is presented for illustrative purposes only. It is not intended to be an official or complete record and the author does not represent it as such.

beyond the scope of this paper. The more relevant and meaningful data are contained in this section.

The number of licensees registered (1975-1987) or licensed (1988-present) to practitioners in the State of Maine rose steadily following the enactment of forester regulation. In 1990, the number of licensees peaked at 1050. Since 1990, there has been a gradual and sustained decrease in licensees regulated by the Board. There were 853 licensees in December, 2005 (see Table 6).

TABLE 6
NUMBER OF FORESTER BOARD LICENSEES⁴,
STATE OF MAINE,
1976-2006⁵

<u>YEAR</u>	<u>LICENSEES</u>
1976	265
1977	347
1978	429
1979	459
1980	591
1981	633
1982	718
1983	720
1984	764
1985	764
1990	1050 ⁶
1998	918
1999	890
2000	885
2001	873
2002	854
2003	850
2004	857
2005	853

Source: Compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

There are few available historic sources or statistics that address forester attributes.

One document located in Board files contained a reference to 1985 statistics, which suggested that roughly 25% of licensees were part-time, and another 25% were either retired

⁴ Licensee totals from 1976-1985 represent foresters. Intern foresters, who were created by Statute in 1989 and became licensed in 1990, are included and combined in the 1990-2005 totals.

⁵ No data were found for years 1986-1989 and 1991-1997.

⁶ The number of licensees peaked in 1990. Source: Board Newsletter Vol. 12: No. 1, Spring 2003.

or inactive. The remaining 50% consisted of full time practitioners, academia, government employees, or others. In 2003, there were 726 resident and 132 non-resident licensees.

The number of foresters and intern foresters during the past several years was examined. The new statutes and rules adopted between 2001-2003 included the elimination of the internship waiver. This was necessary because the basic intent of requiring internship was not being met in many situations. The old rule permitted a waiver request, which the Board often exercised. Unfortunately, it did not ensure that the intern had actually been properly supervised by the licensed forester sponsor. The sponsor, who was responsible for the supervision of the intern, was often unaware that the individual employed at that time would credit that experience in their licensing application. Table 7 details licensee totals from 1998-2005.

**TABLE 7
NUMBER OF LICENSED FORESTERS AND INTERN FORESTERS,
STATE OF MAINE,
1998-2005**

<u>YEAR</u>	<u>FORESTERS</u>	<u>INTERN FORESTERS</u>	<u>TOTAL</u>
1998	893	25	918
1999	868	22	890
2000	865	20	885
2001	840	33	873
2002	826	28	854
2003	815	35	850
2004	814	43	857
2005	806	47	853

Source: Compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

The number of licensed forester interns nearly doubled during this time. Also, there were 21 individuals registered with the Board as unlicensed but supervised by a Licensed Forester as of December, 2005.

The number of foresters declined by approximately 10% between 1998-2005. There were several contributing factors for this including the aging of initial licensees, changes in environmental perceptions and values, decreased enrollment at accredited forestry schools, changing employer characteristics, land ownership shifts, and other factors impacting the availability, employment and prosperity of foresters.

The number of new licenses issued from 1996-2005 was analyzed, including both intern foresters and foresters (see Table 8). Data also include intern foresters who have successfully fulfilled their internship and met all other qualifications for licensure as a forester, including the written examination.

**TABLE 8
NUMBER OF COMBINED NEW FORESTER AND INTERN FORESTER
LICENSES ISSUED,
STATE OF MAINE,
1996-2005**

<u>YEAR</u>	<u>TOTAL</u>
1996	14
1997	24
1998	13
1999	13
2000	20
2001	24
2002	19
2003	30
2004	19
2005	13

Source: Compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

The license increase during 2003 was due mainly to transitional requirements stemming from the 2001 statute changes and ensuing rule revisions. The annual license cost was stable over the initial 20 years. From 1976-1995 the fee was \$25. The fee from 1996-1999 increased to \$40, and then to \$50 for 2000. Since 2001, the fee has been \$70.

Finally, as part of its involvement in forester regulation in 2001, the Legislature asked the Board to examine an expansion of license reciprocity with other states. Of the 16 states that regulate foresters (SAF, 2001), the Board identified the states of Alabama, Connecticut, Georgia, New Hampshire, Oklahoma, Mississippi, California, Massachusetts, and North Carolina for further consideration based on the comparison of each state's regulation program to the State of Maine. Most states did not respond. Of those that did, only two ultimately resulted in signed reciprocity agreements: North Carolina, on April 4, 2000, and Connecticut, on February 2, 2003. These have resulted in few if any new licenses being issued via reciprocity.

Governing Board and Department History

The Board has experienced a number of name changes and has operated within several different state administrative departments since 1976. This was the result of changing political views, administrations, legislatures, and the attempt to administratively combine many professional and occupational licensing boards under a single umbrella agency to create certain economies of scale with respect to uniform procedures and more effective oversight. From 1975-1987 the Board name was the Maine State Board of Registration for Professional Foresters. When registration was discontinued in favor of licensing in 1987, the Board was renamed the State Board of Licensure for Professional

Foresters. In 2001, the word “Professional” was deleted because it was no longer defined in the statute (see Table 9).

TABLE 9
NOTEWORTHY CHANGES TO FORESTER BOARD AND STATE DEPARTMENT
NAMES AND ADMINISTRATION CONTROL,
STATE OF MAINE FORESTER REGULATION, 1975-2006

<u>YEAR</u>	<u>BOARD OR ADMINISTRATIVE DEPARTMENT NAME CHANGE</u>
1975	The Board of Registration for Professional Foresters was created within the Maine Forest Service.
1975	Legislation was enacted to create a central licensing board within the Department of Business Regulation to centralize professional and occupational licensing.
1979	The Board was transferred to Department of Business Regulation.
1984	The Board was transferred to a newly created Department of Business, Occupational and Professional Regulation, Central Licensing Division.
1985	The Department of Business, Occupational and Professional Regulation was abolished. The Board was transferred to a new Department of Professional and Financial Regulation (DPFR). The Board was re-aligned under the Division of Licensing and Enforcement.
1987	The Board name was changed to The Board of Licensure for Professional Foresters within DPFR.
1995	The Division of Licensing and Enforcement named was changed to Office of Licensing and Registration (OLR) and The Board of Professional Foresters was aligned within the Division.
2001	The Board name was changed to The Board of Licensure of Foresters.

Source: Compiled by author from researching the Legislative Record and Public Laws in addition to Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

The number of members and the composition of the Board have remained constant since it was created in 1975. It consists of five licensed foresters and one member of the

public. The public member must not have any special association with the regulated profession or with any member thereof (OLR, 2006). This member plays an important role to ensure that the public welfare is being protected by reducing the potential for Board activity that would result in favor to the forestry profession over that of the public. The public member also serves to promote public confidence and trust in government and increases the credibility of Board decisions and advocacy (OLR, 2006). Although it has never been written in statute or rule, there has always been an effort to ensure that a broad representation of professional interests and expertise exists on the Board. Historically, one member has represented the forestry academic community at the University of Maine. A second member represented the Maine Forest Service until that was discontinued in 1998 and more recently forbidden under law (DPFR, 2005). State statute prohibits most State employees from serving on boards that are not limited to advisory responsibilities (PL 1983, c. 814). Two other members typically have represented the industrial forestland owners, given the substantial acreage owned or controlled by that group. Also, consulting foresters have usually been represented. All Board members are appointed by the Governor and serve staggered three year terms.

A total of 33 citizens of the State of Maine have served on the Board since 1976. A list of those who have given service with the years served was compiled from Board records and is presented in Table 10.

**TABLE 10
HISTORIC BOARD MEMBERS,
STATE OF MAINE FORESTER LICENSURE BOARD
1975-2006**

<u>NAME</u>	<u>YEAR(S)</u>
Linda Alverson	1982-1986
Jane Arbuckle*	1991-1993
Marshall D. Ashley, PhD	1977-1985
Mark Beauregard	2006-present
Gerry Bley*	1986-1991
Arthur Carroll*	2006-present
Donna Cassese	1980-1982
Howard Charles	1990-1998
Albert J. Childs, Jr.	1975-1980
Stephen C. Coleman	1994-1999
Thomas J. Corcoran, PhD	1975-1977
Roger F. Erdmann	1979-1982
Robert B. Fiske	1975-1980
Lester W. Hazelton	1975-1976
Stephen F. Holt	1998-present
Stuart C. Hymers*	1998-2000
Sumner A. Jones*	2002-2005
Fred B. Knight, PhD	1990-1998
Vladek Kolman	1986-1990
Louis Lapham*	1982-1986
Ronald Locke	1980-1982
Ronald Lovaglio	1987-1995
Craig Maclean	2000-2002
John W. McNulty	1989-1992
Rene D. Noel, Jr.	1994-present
William D. Ostrofsky, PhD	1998-present
Carol L. Redelsheimer	1995-2005
Albert D. Schaeffer	1983-1989
David C. Schaible	1984-1994
Robert S. Seymour, PhD	1985-1990
Edward E. Sprague*	1975-1978
Clifford L. Swenson Jr.	1977-1981
Robert C. Umberger	1975-1986

* Denotes Public Member.

Source: Compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006.

Of these members, 12 have served in the capacity of Chairperson (see Table 11).

**TABLE 11
HISTORIC CHAIRPERSONS,
STATE OF MAINE FORESTER LICENSURE BOARD
1975-2006**

<u>YEAR(S)</u>	<u>NAME</u>
1975-1977	Robert B. Fiske
1978	Albert J. Childs, Jr.
1979-1981	Clifford L. Swenson, Jr.
1982-1985	Marshall D. Ashley, PhD
1985-1987	Linda Alverson
1987-1990	Robert S. Seymour, PhD
1990-1994	Ronald Lovaglio
1995-1996	Thomas Charles
1997	Fred B. Knight, PhD
1998-2001	Carol L. Redelsheimer
2002	Stephen F. Holt
2002-2005	William D. Ostrofsky, PhD
2006	Stephen F. Holt

Source: Compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

Current Board and Administrative Oversight

The Board of Licensure of Foresters is defined as an occupational and licensing board, one of 13 different State of Maine classifications of boards and commissions. There are currently 46 different occupational and licensing boards

Board administration governance authority is under 5 MRSA, Chapter 379: Boards, Commissions, Committees and Similar Organizations. Primary responsibilities of the Board are governed by 5 MRSA, §12004-A and defined as follows:

§12004-A. Occupational and professional licensing boards

The primary responsibilities of occupational and professional licensing boards include the examination of applicants, issuance of licenses or certificates, registration of licenses and rules of licensees with respect to the practice of a particular occupation or profession. The primary powers of these boards include the authority to hold hearings, adopt rules, establish standards and procedures, issue licenses and initiate action for the revocation or suspension of occupational or professional licenses.

For purposes of any occupational or professional licensing boards which have a public member or members, "public member" means a person who has no financial interest in the profession regulated by the Board to which that member has been appointed and who has never been licensed, certified or given a permit in this or any other state for the occupation or profession that member is appointed to regulate.

The Board has operated within the Office of Licensing and Registration (OLR), Department of Professional and Financial Regulation (DPFR) since 1999 and its administrative predecessors before that. In 1975, DPFR administered three boards. From 1975-1999, it expanded to 41 boards and registrations, 235 license categories, and 91,000 licensees after becoming the State umbrella agency for professional and regulatory matters. It also is responsible for budgeting and State law compliance for six affiliated boards representing an additional 36 license categories and nearly 40,000 licensees (DPFR, 2006).

OLR was created in 1995 (PL 1995, c. 502) and was further amended in 1999 (PL 1999, c. 687). This law represents the administrative law by which boards operate. The more relevant parts of that law as they pertain to present Board operations are as follows:

10 MRSA §8001: There is created and established the Department of Professional and Financial Regulation, in this chapter referred to as the "department," to regulate financial institutions, insurance companies, grantors of consumer credit and to license and regulate professions and occupations. The mission of the department is to encourage sound, ethical business practices through high-quality, impartial and efficient regulation of insurers, financial institutions, creditors, investment providers and numerous professions and occupations for the purpose of protecting consumers. The department is composed of the following:

10 MRSA §8002: The Commissioner of Professional and Financial Regulation, referred to in this chapter as the "commissioner," is the chief administrative officer of the department and is responsible for supervising the administration of the department. The commissioner is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over banking and insurance matters, and to confirmation by the Legislature. The commissioner serves at the pleasure of the Governor. Unless otherwise provided in law, the commissioner may not exercise or interfere with the exercise of discretionary regulatory authority granted by statute to

the bureaus, offices, boards or commissions within and affiliated with the department. As chief administrative officer of the department, the commissioner has the following duties and authority to:

10 MRSA §8003, sub-§2-A: Office of Licensing and Registration. There is created an Office of Licensing and Registration, referred to in this subsection as the "office," composed of the Boards, commissions and regulatory functions set forth in section 8001, subsection 38. The commissioner may appoint a Director of the Office of Licensing and Registration and those clerical and technical assistants who are necessary to discharge the duties of the office and shall outline their duties and fix their compensation, subject to the Civil Service Law. Notwithstanding any other provision of law granting authority to a board or commission, the Director of the Office of Licensing and Registration has the following superseding powers, duties and functions:

A. To administer the office and maximize and direct the use of personnel and financial resources to regulate professionals in the best interest of the public;

B. To prepare and administer, with the advice of the Boards and commissions, budgets necessary to carry out the regulatory purposes of the Boards and commissions. The Director of the Office of Licensing and Registration shall maintain one office budget that includes a separate account for each board or commission. The Director of the

Office of Licensing and Registration has the authority to disapprove expenditures by boards and commissions that are not necessary to protect the public health and welfare or that would seriously jeopardize a board's or commission's fiscal well-being;

C. To provide all staffing necessary and appropriate to administer the office and carry out the statutory missions of the Boards, commissions and regulatory functions. All clerks, technical support staff and supervisors must be assigned to the office and allocated by the director to perform functions on behalf of the various boards, commissions and regulatory functions according to need;

D. To establish by rule all fees necessary and appropriate for all boards, commissions and regulatory functions within the office, subject to any fee cap established by statute and applicable to that board, commission or regulatory function. The Director of the Office of Licensing and Registration shall set the criteria for all fees. The criteria must include, but are not limited to, the costs, statutory requirements, enforcement requirements and fees and expenses of each board, commission or regulatory function. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A;

E. To establish by rule, such processes and procedures necessary to administer the various boards, commissions and regulatory functions of the office, including, but not limited to, a uniform complaint procedure,

a uniform procedure regarding protested checks, a uniform policy regarding the treatment of late renewals and a uniform procedure for substantiating continuing education requirements. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A;

F. To keep records of public meetings, proceedings and actions and to make those records available to the public at cost upon request, unless otherwise prohibited by state or federal law;

G. To enter into contracts to ensure the provision of goods and services necessary to perform regulatory functions and to fulfill statutory responsibilities. This authority includes the ability to employ and engage experts, professionals or other personnel of other state or federal regulatory agencies as necessary to assist the office in carrying out its regulatory functions and to contract office staff to other state and federal regulatory agencies to assist those agencies in carrying out their regulatory functions;

H. To perform licensing functions for other state agencies on a fee-for-service basis;

I. To enter into cooperative agreements with other state, federal or foreign regulatory agencies to facilitate the regulatory functions of the office, including, but not limited to, information sharing, coordination of examinations or inspections and joint examinations or inspections. Any information furnished pursuant to this paragraph by or to the office

that has been designated confidential by the agency furnishing the information remains confidential and the property of the agency furnishing the information and may not be disclosed by the recipient of the information unless disclosure has been authorized by the agency that furnished the information;

J. To direct staff to review and approve applications for licensure or renewal in accordance with criteria established in statute or in rules adopted by a board or commission. Licensing decisions made by staff may be appealed to the full board or commission;

K. To prepare and submit to the commissioner an annual report of the office's operations, activities and goals; and

L. To study jurisdictional overlap between the department's boards and commissions and other state agencies for purposes of streamlining and consolidating related legal authorities and administrative processes.

The Board is presently supported by three OLR staff members who perform administration, support, and operations for it and other OLR boards. A Board Administrator is assigned who is responsible for budgeting, legislative issues, Administrative Procedures Act (APA) compliance, enforcement coordination, other Board compliance, and managing the Board's many other administrative functions. Two support staff positions report to the Administrator. The Board meets four times annually or more times as necessary to conduct its business, including hearing complaints. It offers the written Licensed Forester examination twice each year, usually in the spring and fall. Board revenues and expenses for 2001-2006 are summarized in Table 12.

TABLE 12
SUMMARY OF REVENUE AND EXPENSES,
BOARD OF LICENSURE OF FORESTERS,
FISCAL YEARS 2001-2006

<u>FISCAL YEAR</u>	<u>BEGINNING BALANCE</u>	<u>REVENUES</u>	<u>EXPENSES</u>	<u>BALANCE</u>
2001	\$33,895	\$45,351	\$51,543	\$27,703
2002	\$27,703	\$63,055	\$44,009	\$46,749
2003	\$46,749	\$64,310	\$65,231	\$45,828
2004	\$45,828	\$65,705	\$60,454	\$51,079
2005	\$51,079	\$64,365	\$59,452	\$55,992
2006	\$52,637	\$64,000	\$59,000	\$57,637

Source: Compiled by author from Board of Licensure of Foresters administrator budget report and files located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

Revenues (license and other Board authorized fees) have been increased in recent years to offset increased operating expenses charged to the Board by OLR. The Board is funded by dedicated revenue derived mostly from the generation of licenses, application, exam, and related fees. The Board is required by OLR to maintain a certain operating balance.

Chapter Four

STATE OF MAINE PROFESIONAL PROGRAM REVIEW STATUTES

Repealed Sunset Review Laws and Legislative Committee Oversight

In 1977 the Legislature created procedures for the periodic review of State agencies, boards, and commissions (PL 1977, c. 338, c. 554 et seq.) as 3 MRSA, Chapter 23: Justification of State Government Programs. For many years, these and related statutes were collectively known as the “Maine Sunset law”. The Legislature Joint Standing Committee on Performance Audit and later The Joint Standing Committee on Audit & Program Review had review and analyses oversight of these government agencies and programs to determine whether they should continue with or without change, or be allowed to sunset (terminated).

In 1989, this law was repealed (PL 1989, c. 483, Pt. A, @3) and replaced with a new law of similar authorities and responsibilities (PL 1989, c. 483, Pt. A, @4) as 3 MRSA, Chapter 33: Justification of State Government Programs. State government program reviews continued under this chapter until it was repealed (PL 1995, c. 488, @1).

Government Evaluation Act

The Government Evaluation Act (GEA, 2006) was created in the First Regular Session of the 117th Legislature in the same Public Law that repealed the Justification of State Government Programs statutes (PL 1995, c. 488@2). See Appendix C. It replaced the role of the former Audit and Program Review Committee. While the Legislature can target any department or program on its own initiative at any time for sunset or sunset review, the GEA continues as the primary legislative program for conducting periodic reviews of state

agencies, boards, and commissions. This allows a more systematic and reasonable approach to government review and permits the Legislature to prioritize time and resources to more time sensitive issues. It also allows state agencies adequate time to prepare since the scheduling of reviews is generally spelled out in statute.

The GEA is not a sunset review per se. Functionally, it is a periodic (generally 8-10 year) audit in which recommendations can result in changes. 35 MRSA, §952 defines the scope of these studies as:

This chapter provides for a system of periodic review of agencies and independent agencies of State Government in order to evaluate their efficacy and performance. Only those agencies, independent agencies or parts of those agencies and independent agencies that receive support from the General Fund or that are established, created or incorporated by reference in the Maine Revised Statutes are subject to the provisions of this chapter. The financial and programmatic review must include, but is not limited to, a review of agency management and organization, program delivery, agency goals and objectives, statutory mandate and fiscal accountability.

Whether or not licensing boards that operate on dedicated revenue and not solely from the general fund are subject to this chapter was researched. It would not appear they would if a narrow interpretation held. However, it was generally accepted by the DPFR and OPLA staff contacted that OLR controlled boards would be included under the parent department review (in the case of the Board of Licensure of Foresters it is OLR and DPFR) since DPFR as a department is dependent on general fund revenue.

There are four major components of the Act. The Legislature Joint Standing Committee(s) with jurisdictional oversight of the agency or program that is the subject of review has oversight. Depending on the department or program, some studies are done jointly with other committees. Second, either at the request of the committee(s) or more frequently on its own initiative in anticipation of a need, the agency or regulatory board prepares a Program Evaluation Report. The criteria for this report are located in Appendix C, 3 MRSA, § 956. The third step is for the inclusion of other timely government reform initiatives such as strategic planning, performance enhancement measures, budget efficiencies, etc. if necessary. The scope and use of these reports is controlled by the Legislature oversight committee that considers the importance of the initiatives with the program under review. Fourth, the GEA was intentionally designed to allow committee leadership and membership substantial flexibility in the manner by which these reviews are conducted.

GEA audits are driven by time related milestones. Generally by April 1 of the First Regular Session, the committee with oversight considers the list of scheduled reviews to be acted on during the Second Regular Session and notifies the agency by May 1 of its intent to review. The agency has until November 1 to submit its Program Evaluation Report. The committee(s) must begin their review by February 1 of the Second Regular Session and then submit its findings and recommendations to the full Legislature by March 15 for further action. The previously discussed committee authority and flexibility regarding the timing and nature of review described in the GEA criteria is significant. The committee, by a 2/3 vote of all committee members, may establish a modified review process or grant an outright review exemption (3 MRSA, §954). It can also add an agency for review under certain

circumstances. The GEA as it pertains to the Board of Licensure of Foresters will be discussed in greater detail in Chapter 8.

Legislative Oversight of Government Agencies and Programs

A second form of legislative review of State agencies and programs can occur as the result of legislation created in 2001 (PL 2001, c. 702) as 3 MRSA, Chapter 37: Legislative Oversight of Government Agencies and Programs (OPEGA, 2006). See Appendix D. This created a new organization and program within the Legislature separate from the GEA program, but the two do share several common goals. The legislation resulted from an effort to benchmark similar government evaluation programs in other states. While the Legislature had always undertaken budget reviews, legislative studies, etc., insufficient staff, resources, and the ability to effectively prioritize work involving many levels of government were considered major constraints.

The law was further amended in 2003 to create a Government Oversight Committee (GOC) and the Office of Program Evaluation and Government Accountability (OPEGA). The GOC is the Joint Standing Committee of the Legislature with jurisdictional oversight and responsibilities under 3 MRSA, Chapter 37. The initial meeting was held in 2004. Amongst other duties, it provides direction to OPEGA, determines and prioritizes lists of programs, topics, and issues to be reviewed and evaluated, and acts on the result of OPEGA findings and recommendations. GOC itself has liberal investigative and related authority to initiate discovery, order the appearance of witnesses and parties, conduct hearings, request audits, and submit legislation based on its work.

OPEGA consists of a non-partisan, independent staff with a primary mission to evaluate efficiency and effectiveness of government programs. Following a period of staffing and other start up processes and challenges, the Office began operations in 2005. The Legislative Council, comprised of Legislative leadership, appoints its director, who serves at the will of the Council. OPEGA has broad program review authority including state, local, regional, and municipal entities as well as public employees and officials, and state contractors. OPEGA is primarily focused on efficient and effective use of governmental resources, federal and state compliance, sufficient internal control procedures, and related issues. Time will determine if the justification for continuing existing licensing boards and related public policy issues will be addressed by OPEGA, if that responsibility will exist primarily under GEA, or whether either program is utilized for comprehensive professional and occupational policy reviews.

In summary, the Legislature may perform reviews on existing agencies, boards, and other forms of government at least three different ways: through a periodic GEA report, via GOC and/or OPEGA, or on its own initiative. Professions and occupations considered for new regulation, or those that are the subject of major changes to existing programs, are reviewed by other criteria as explained in Chapter Seven.

Chapter Five

PAST LEGISLATIVE FORESTER REGULATION REVIEWS

Despite the importance of the forest resources to the State of Maine that led to the initial forester regulation law in 1975, the regulation of this profession has been the subject of infrequent review by the Legislature. Only one periodic review has been conducted. That occurred in 1987. Another may be is scheduled for 2007 and is the basis of Chapter Eight.

The 1987 Review

The first planned periodic legislative program review of forester regulation after the 1975 enactment occurred in 1986 as part of the former Justification of State Government Programs sunset review procedures. Preparatory work by both the Legislature and the Board occurred in 1985 and 1986. Changes that resulted from the study became effective in 1987.

The first phase of this review required the Board to prepare and submit a report describing Board authorities and operations to the Joint Standing Committee on Audit & Program Review by no later than December 31, 1985. The Board transmitted this report on October 25, 1985 (Board, 1985). The Board replied in a standard sunset review format that included data on statutory authority, Board member information, priorities, objectives, operations, and complaints. It also contained a list of challenges, possible program efficiencies, and proposed changes.

The Board noted that it served two constituencies: the over 100,000 landowners who control 17 million acres of forest land, and the over 800 registered foresters. It also listed two objectives: “First and foremost is to ensure proper management of the forest resources

on all ownership by setting a standard of qualification for foresters.” Put another way, to reduce malpractice. The second objective was to “protect the public from unqualified practitioners.” The Board left little doubt that it was as committed to protecting the resource and administering a program that respected licensee involvement and efficient budgeting, as it was to protecting the public.

In that era, the Board met twice a year, although a review of Board minutes indicated that more meetings were conducted than required. It reported to the former Department of Business Regulation. For the period 1981-1985, the Board reported that an average of 60 new licenses were granted annually based on a 91% approval rating. This preceded the adoption of the written examination, which took effect in 1991. An average of five complaints were received and investigated annually during the same period. Of these, roughly 50% involved unlicensed practice or similar cases such as false advertising of “forestry” services, etc.

During this era, the Board was aware there were inconsistencies between statute and rule language that could lead to conflicting decisions and results. The complaint process also was identified as an area to improve. The report cited both a lack of expertise and necessary resources in this area. The Board also noted its difficulty in coping with administrative procedures, which resulted in the first Board Manual being produced. It has been continuously updated (OLR, 2006).

The review also discussed at least two issues that later were reflected in law, although they were not specifically listed as findings or recommendations in the 1987 report. These were the internship and continuing education requirements. Other issues that were suggested

for further review were the registration exemption status of federal employees, the supervision of unlicensed (but practicing) individuals, and the license and fee structure.

The Joint Standing Committee on Audit & Program Review issued a report detailing the financial and statistical history of licensing boards, including the Board, which was relied on extensively by the full Legislature (JSCAPR, 1985). The report utilized performance indicators such as administrative budgets, revenues, expenditures, number of licenses, etc.

On February 9, 1987, the Committee met and recommended to continue the State Board of Registration for Professional Foresters under the provisions of the Maine Sunset Law. Its report restated much of what the Board had previously transmitted (Board, 1985). The Committee also made two additional recommendations (JSCAPR, 1986): First, to authorize a per diem for members as compensation for time and services rendered. Second, to change the Board statute references of “registration” or “certification” to “licensure” in an attempt to more accurately reflect the intended level of regulation. These recommendations were ultimately adopted by the Legislature, as were the continuing education requirements that were established by rule making.

The 1996 Review

There were at least two important policy related events that occurred before the next periodic review of forest regulation scheduled for 1996. The old sunset law itself was sunsetted in favor of a new program (PL 1989, c. 483 Pt. A @ 3). That law subsequently met the same fate (PL 1995, c. 488 @ 1) in favor of the current Government Evaluation Act (PL 1995, c. 488 @ 2) during the time the Board would have been preparing its self-review for the legislative committee with oversight. Also during that time, the Board found itself

administratively within the Office of Licensing and Regulation (OLR), Department of Professional and Financial Regulation (DPFR).

There was no forester regulation policy review in 1996, nor has there been one at any later time. Program policy reviews during this era generally only involved department (DPFR) level reviews down to OLR, and not to a board level. Memoranda obtained from OLR files indicated that these studies focused much more on the administration and delivery of support services, and not on the program justification and related audit of the numerous boards under OLR (DPFR, 1999).

Therefore, forester regulation has been the subject of only one periodically scheduled program audit and policy review since 1975. That occurred 20 years ago, in 1986.

Chapter Six

POTENTIAL ISSUES AFFECTING THE FUTURE OF FORESTER LICENSING

The significant lapse in time since a meaningful forester regulation review in of itself is not necessarily problematic if there have been no or only inconsequential changes affecting the justification, need, scope, responsibilities, or administration of the Board of Licensure of Foresters. Public policy has therefore relied on the use of periodic statutory and rule revisions to sufficiently address long-term policy related issues, which may be an inadequate or ineffective approach given the piecemeal nature of these changes. Even if an adequate study had been completed as planned in 1996, ten years has since lapsed. During this period, unprecedented change has occurred in the Maine forest landscape, ownership, competing primary and multiple uses, new forest management practices, increased forest protection statutes and programs, and public forest policy and goals affecting the manner in which we manage this resource.

Several key issues should be examined and the related findings used in the next forester regulation policy review to better determine if regulation has added value to the intended processes and beneficiaries, and to what extent. First, a better understanding of whether forester regulation has improved the quality of forest practices is necessary. If it has, the extent that it has impacted particular practices must be established. Careful thought will be required to determine these performance indicators and how they should be measured. Second, there is a need to better identify and measure whether forester regulation has protected the landowner, and to what extent. Proper planning must minimize the risk of subjective analysis. Third, determine whether forester regulation by itself has improved

professionalism amongst licensees. If so, then what positive effect, if any, it has had on SAF, Forest Guild, and similar professional membership should be examined. This could also be measured in part by determining if there is more licensee exposure to various technical articles and forestry research journals. Fourth, determine if some level of professional self-regulation, combined with the recent increase in the amount of forest practices standards, could provide substantially the same protection to the resource, landowners, and the public interest as currently done by forester regulation. Whether this would have occurred if regulation had not existed should be better understood as well. Also, some believe that the degree of professionalism or participation level in professional associations has declined over the past 20 years, citing the economic reality that foresters may not be maintaining the relative wealth standards as in the past, and the perception that some degreed foresters have left the field in pursuit of better paying occupations. These are important issues with no current answers. Public opinion, economic pressures, regulation, and many other factors have changed during the past 30 years, which makes it very difficult to determine the effects on forester regulation. Foresters, government administrators, individuals, the public, and other stakeholders that are affected by, or are dependent on, forester related products and services would benefit from such analyses. There also may opportunities to improve the manner in which the Board is administered, or how it conducts its business.

Irland (2006) refers to the “coming of the dark time” in Maine’s hardwood industry followed by a “new dawn”. This observation may be generalized and expanded to include the majority of the Maine forestry sector. Clearly we are in a period of dynamic change. Substantial investments to better understand these relationships and to marshal changes by adopting new public policies are being made and will no doubt continue. The future is

promising nonetheless, driven in part by the premise that the challenge of uncertainty will inspire us to succeed by overcoming the difficulties associated with change.

When all of this is considered, it is unclear if a timely forester regulation policy review and implementation of findings would lead to a continuation of the status quo or provoke unanticipated changes. This chapter identifies issues, circumstances, and events that may warrant additional attention and action in the next forester regulation review, which may occur as early as 2007 as part of the Department of Professional and Financial Regulation review under the Government Evaluation Act. To supplement the sources cited in the References section, informal interviews were conducted with knowledgeable State policy makers, natural resources administrators, consulting foresters, industrial and small forest land owners, members of the forest education community, logging and harvesting interests, and professional licensing individuals. These discussions identified many issues that should be examined further to more accurately assess their impacts on forester regulation in Maine.

Professional Related Considerations, Influences, and Challenges

Traditionally, foresters have been generalists in their chosen occupation; so was the family doctor whose signature was making house calls. That and other professions have become increasingly specialized. Law practitioners now specialize in real estate, family and domestic issues, litigation, injury and malpractice, and countless other areas. The Maine Guide designation remained unchanged for years. It now has no fewer than six separate designated specialties based on redefined and emerging practice areas, and the need to respond to public and consumer demands. The practice of forestry may evolve into a number of specialized areas, or it may become increasingly general due to the erosion of forester

demand caused by the expansion of related occupations. Foresters have become “marginalized” due to other professions offering some of the traditional forester services. One fact is clear. Public policy and the markets will dictate these boundaries.

Foresters were once considered well qualified in a variety of related disciplines such as forest land appraisal, woodlot surveying, wildlife management, scaling, and others. Over time, other professions have emerged to perform these roles. Some have been regulated, such as land surveyors, real estate appraisers, and scalers, while others have become specialized in these disciplines, such as wildlife biologists. This has resulted in interesting situations. Foresters are not legally qualified to perform real estate forestland appraisals, only stumpage appraisals. Yet, most appraisers lack the education or experience to value forestland. Wildlife biologists without adequate forestry education or experience must rely on foresters to prescribe silvicultural prescriptions to implement their recommendations.

Little or no useful data were located to address the supply and demand of foresters in the State of Maine. In general, professionally accredited college forestry curricula may be turning out fewer general forestry majors in favor of increasing areas of specialization supplemented with a concentration in forestry. This is not true, however, at the University of Maine. Enrollment at forestry schools has also decreased since the 1970’s and early 1980’s when the supply of new graduates exceeded demand. The swelling number of licensed foresters in the 1980’s was driven by a broad age-class of foresters. The average licensee age continues to increase. The number of practitioners is decreasing due to slower in-growth into the profession for a variety of reasons. Many feel that the current Intern Forester and Forester requirements are too restrictive and serve as a deterrent for individuals coming into the field. Of the roughly 850 current licensees, no more than 300 appear to be “muddy boot”

types based on records in Board files. Many are retired baby boomers or are those nearing that age. Some no longer actively work in forestry but continue to maintain their license for many reasons, while others are government or academic employees.

The global economy and related effects on the Maine forest products industry and landowner attributes, particularly the large industrial owners, has had a negative impact on the employment market and long-term professional forestry employment. This employment market has diminished because of merger and acquisitions, and the shrinking presence and investment by the paper manufacturing sector. The forest resources remain, but forest management activities have changed.

One result of these events has been an increase in the number of foresters who are now employees of logging companies. In many cases, a forester can supplement those services provided by these companies and, in the case of Master Logger certified companies, add substantial value to predetermined processes. In some instances, however, this can lead to questionable practices or fiduciary responsibilities and other conflicts in the Forester Code of Ethics (see Appendix B, Chapter 100). Many foresters are critical of this fact and question how a forester can simultaneously act as a buyer's agent and advise a seller (landowner). The results of a high-grading harvest can look the same as an improvement cut, but usually mean significant differences in both long-term fiber yields and present income to the landowner. When these unfortunate circumstances occur, they seldom are the basis for a formal complaint against a licensee due to the fact the landowner is unaware.

Another challenge that foresters currently face is finding sufficient time to mentor an intern forester when acting as their sponsor, to register and supervise unlicensed individuals, or comply with an increasing mountain of forest regulation and harvesting practices

paperwork, and still have time to make an adequate income to justify the investment in the profession. The demand for forester-related services exists and may be increasing, but the ability for these markets to offer sufficient compensation may be lagging. Also, intern foresters and unlicensed individuals registered with the Board may not be receiving sufficient forester supervision or may be inadequately managed. If this is true, it is unclear what impact this has on both the resource and the protection of the public.

The forest based economy and the management of the resource will likely continue to experience significant changes at a rate equal to or greater than the past several years. Some believe the forester profession, including individuals and professional societies and groups collectively appear to be unaware, uninterested, or slow to react to these changes. Others believe this problem may be limited only to a certain segment of the forester practitioner population. Certainly, this would not apply to those foresters with public policy related responsibilities. By their very nature, many natural resource professionals are oriented towards being good land stewards and may not place a high priority on business advocacy. Some believe the profession has continued on a constant course of trying to market its traditional products and services as it has in the past and not anticipated or identified new opportunities to market different products and services. Still, others believe there are opportunities for private sector foresters to take better advantage of Maine Forest Service and other government programs to provide services. It is uncertain whether these factors, if studied, would influence the manner in which foresters are regulated in the future.

Other Forestry Sector Related and Stakeholder influences

The creation and increasing acceptance of the Certified Master Logger Program (Master Logger) has affected how landowners and consumers view the role of wood harvesters. The program was developed to allow voluntary logger certification that could provide the opportunity to lower workers compensation insurance rates through training, increase the qualifications of practitioners, improve a critical value-adding phase of the forest products industry, and better implement forest practices and environmental regulations (Master Logger, 2004). It has redefined a market segment and is being increasingly embraced by State regulators, woodlot owners, and others. In seven years, the program has certified approximately 100 individuals or companies. Seven states are reported to be considering adopting initiatives based on the Maine program.

The potential for conflict between foresters and certified loggers exists given the current definition of the practice of forestry (see Appendix A, 32 MRSA §5501). The demarcation between forestry practices that can only be legally provided by a Licensed Forester, or a designee, and certain silvicultural activities identified within the physical harvesting and hauling of wood that is exempt from licensing remains an issue. The Master Logger program recently took steps to better qualify its role and to provide disclaimers that members do not provide services that require a forester license. However, to some, the Master Logger certification literature still appears to address several areas that have been the traditional domain of foresters. These include long term sustainability, health of forest ecosystems, and biodiversity. Performance standards that enforce their goal to support forest ecosystems also address the need to leave adequate numbers of desirable crop trees, address plans to ensure adequate regeneration, post-harvest best management practices, canopy

exposures, and similar silvicultural prescription considerations. They also provide a systematic and detailed harvesting plan that some have interpreted as being similar in scope to a forest management plan.

The Master Logger program has also become a credible component in green forest certifications and has qualified its services as not being those that require a Licensed Forester designation. Time will tell what impact this program is currently having on the landowner demand for forester services and what market share shifts may have already occurred. The Master Logger program does not require the participation of a forester, nor has Maine law ever required a landowner to seek these services prior to a harvest under many conditions.

Another consideration is how State of Maine public policy has increasingly relied on Licensed Foresters to implement new programs, which has increased demand for these professionals but may or may not contribute to increased forester wealth. A number of statutory programs requiring forester participation were identified (see Table 13). The data suggest that foresters are increasingly becoming public policy implementing servants in this respect. Many of these statutes require frequent and substantial participation by foresters, while others do not. A search was also done to identify the more significant rules that address the use of foresters in carrying out statutory or other state and/or federal agency programs (see Table 14).

TABLE 13
SIGNIFICANT STATUTORY LAW CITES
REQUIRING OR REFERENCING THE USE OF A FORESTER,
STATE OF MAINE⁷

<u>STATUTES</u>	<u>DESCRIPTION</u>
5 MRSA §1766	Energy Conservation in Buildings Act requires management plans be signed by foresters supplying biomass to qualifying facilities
12 MRSA §1880	Allagash Wilderness Waterway. Control of timber harvesting.
12 MRSA §1826	Bureau of Parks and Lands language pertaining to management and harvesting per a licensed forester management and harvesting plan.
12 MRSA §8011 et seq.	Certified Resource Manager grant fund for forester certification.
12 MRSA §8612	Maine Forest Service cooperative forest management description of service forester duties.
12 MRSA §8866 et seq.	Forest Practices Act re: harvest planning, regeneration certification, clearcutting and liquidation harvesting matters.
12 MRSA §8869	Forest harvest regulations.
12 MRSA §8883-B	Forest Operations Notification procedures.
14 MRSA §7552	Civil Court procedures pertaining to timber trespass.
18-A MRSA §7-752	Probate Court trust administration of sale of timber within Uniform Principal and Income tax Act of 1997.
30 MRSA §7056	Plantations may appoint a forester to enforce regulations and care for forestland.
30-A MRSA §4404	Subdivision review criteria re: forester investigative review for liquidation harvesting violations.
36 MRSA §571 et seq.	Tree Growth Tax Law.
36 MRSA §5122	Imposition of taxable income on individuals beginning in 2015. Several instances where a licensed forester involvement will be required.
36 MRSA §5200-A	Imposition of tax on corporations beginning in 2015. Several instances where a licensed forester involvement will be required.
36 MRSA §5219-C	Forest management income tax credit.
38 MRSA §435 et seq.	Department of Environmental Protection shoreland zoning guidelines permit more intensive harvesting with licensed forester certification.

Source: Compiled by author from MRSA search index on March 31, 2006.

Disclaimer: The above index is presented for illustrative purposes only. It is not intended to be an official or complete record and the author does not represent it as such.

⁷ Excludes citations pertaining to forester licensing statutes found in a separate table.

TABLE 14
SIGNIFICANT STATE OF MAINE AGENCY RULES
REQUIRING OR REFERENCING THE USE OF A FORESTER

<u>RULE</u>	<u>DESCRIPTION</u>
04-058 CMR, c. 4	Rules for Silvicultural Treatment and New Market Withdrawal.
04-058 CMR, c. 20	Forest Regeneration and Clearcutting Standards.
04-058 CMR, c. 21	Statewide Standards for Timber Harvesting and Related Activities in Shoreland Area.
04-058 CMR, c. 22	Certified Resource Manager Grant Program.
04-058 CMR, c. 23	Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting.
06-96 CMR, c. 1000	Guidelines for Municipal Shoreland Zoning Ordinances re: timber harvesting and related activity.

Source: Compiled by author from CMR search index on March 31, 2006.

Disclaimer: The above index is presented for illustrative purposes only. It is not intended to be an official or complete record and the author does not represent it as such.

Approximately 16 different laws and seven rules define and/or depend on forester involvement to varying degrees. Several government sponsored or funded programs such as the Maine Forest Land Enhancement Program (FLEP), Woods Wise Incentives to Stewardship Enhancement (WoodsWise), and portions of the Forest Stewardship program (FSP) also depend on foresters.

Another consideration is the green forestry certification movement. Over 7 million acres of Maine forestland are currently certified as “green”. During initial certifications performed in this state, several certifying reports performed for large landowners were written and signed by unlicensed individuals, thereby creating obvious concerns for regulators and many stakeholders. In 2001, the Board issued a letter of guidance to the Maine forestry community stating that green certification related reports in most cases constitute the practice of forestry, and therefore must follow the forester licensing laws.

The profession also has been the subject of reputation and loss of business issues that have resulted from the incompetent, unethical, or unlicensed practice by individuals. Board files seem to suggest this was a more frequent problem in the past, but this may be misleading. It still occurs. Some licensees and informed professionals believe many landowners do not file complaints because it involves the disclosure of their name in the process. Landowners may also be concerned with the threat of a defamation suit, legal system involvement, and retaliation. Ultimately, only formal complaints are acted on by the Board. The Board of Licensure of Foresters has no jurisdiction over unlicensed, practice-related complaints since it only regulates licensees. However, these complaints and other information brought to the Board's attention are forwarded to the Office of Attorney General for consideration. Data are not maintained on this type of complaint. These must be prioritized with other and frequently more important investigations. Also, if an unlicensed practice complaint is to be prosecuted, the respective District Attorney must also prioritize the matter with competing cases.

These issues should be examined further to better understand their importance in the next forester regulation review and to better determine whether they collectively cause a significant change in the way we interpret the need to protect the public interest.

Board Governance and Administration

As previously described, the Board of Licensure of Foresters is one of over 40 licensing and occupational boards within or affiliated with the Office of Licensing and Registration (OLR), Department of Professional and Financial Regulation (DPFR). OLR and DPFR were established in part to bring certain administration precision, work process and

procedure standardization, more effective methods of employing and utilizing common shared resources, and economies of scale to the management of these many regulatory bodies. The Board has gradually transitioned from having great independence both in its authority and the manner in which it conducted its business in 1976, to conforming to much more extensive procedural practices (OLR, 2006). There were reasons and perceived advantages for combining these boards under a single umbrella agency. They should not be discounted during this discussion, but can instead be appropriately reconsidered in a Board related discussion.

There are a number of legitimate issues and perceptions which all boards under OLR face. Some are common to all boards, while others may be more relevant or significant when addressing the Board of Licensure of Foresters. The Board is tasked primarily with ensuring that those who apply for licensure are qualified to serve, and with regulating existing licensees through its authority to educate, inform, enforce statutes and rules, offer policy guidance, and discipline as necessary. Historically, the Board was not viewed as a political vehicle to advocate, dictate, or influence forest policy despite the fact its members are appointed by the Governor. The Board does not have statutory authority to promote significant changes in forest policy. That role has generally been left to the Legislature and other offices in State government, including the Maine Forest Service, State Planning Office, and the Office of the Governor. Members were historically appointed based on nominations or recommendations that originated from various segments of the profession. Vacancies were filled without undue delay and without lengthy consideration as to how a particular nomination may change the balance of the philosophical or political thinking of the Board as a whole. Past nominations were largely based on professional capabilities and not as a return

on a prior political investment. Unlike numerous gubernatorial appointments that require Legislative confirmation and demand a substantial amount of Executive Department resources, Board members are not confirmed by the Legislature. Nonetheless, lengthy delays in the reappointment of existing members or the appointment of new Board members can result.

The Board has been negatively impacted over the past five years because of a high percentage of expired Board member terms that have not been successfully dealt with in a timely manner. Significant delays in the nomination or appointment processes have resulted despite the efforts of OLR staff and Board leadership. The problem is further compounded by the fact that it is a common problem amongst many of the 40 boards and commissions within OLR. This has resulted in cancelled, postponed, and shortened meetings due to a lack of quorum, delays in the election of officers, delayed actions on applications and examination results, postponed action on complaint investigations, and the delay of other normal Board activities. The dynamics and dialogue at Board meetings can also be compromised and diminished without a full complement of members. The Board is only scheduled to meet four times annually, so any delays are cause for concern. Although recent appointments have filled two positions, one vacancy still exists with another member serving at will despite this member's term having expired two years ago. It is becoming more difficult for people to volunteer for public service for many reasons. At the same time, several groups and individuals within the forester community have submitted recommendations for appointments which for whatever reason, have not materialized.

Another commonly held opinion is that the Board's action and involvement in disciplinary matters is weak or ineffective at best. There are widespread misconceptions

regarding the scope of Board responsibilities and powers, even amongst the profession and State government itself. However, the result is that sometimes perception is reality. The frustration is also real for many and therefore is cause for discussion. Many associated with the profession feel changes should be made within present guidelines and policies to increase the effectiveness of disciplinary actions. The Board does not have jurisdiction over unlicensed practice as previously explained. It can only discipline licensees. It also only hears complaints that have first been investigated by the Board's Complaint Officer and Board-assigned Assistant Attorney General (AAG) that have sufficient probable cause to be presented to the full Board for further action. Second, all disciplinary matters are subject to the Administrative Procedures Act and Rules of Civil Procedure. In fairness to the licensee and respect for due process, the Board must exercise extreme care in how it conducts hearings, weighs disciplinary options, considers defendant's rights under appeal, adherence to processes intended to perfect the record in a *de novo* or other hearing, and anticipate certain events on appeal including judicial reviews. The Board relies heavily on advice from the AAG who is provided by OLR and a Hearing Officer, when appropriate and if necessary. The final disposition of a complaint may be in deep contrast to initial Board member opinions, which may favor more serious disciplinary measures. Even if the Board acts aggressively on such matters, the perception of its inability to adequately discipline licensees on ethical or incompetence issues remains. An unintended result is the fact that this may influence the way some licensees conduct their business. This would be an unfortunate event, one that would seriously question the effectiveness of forester regulation.

The subject of publicizing disciplinary actions is another current issue. Some licensees see it as an unnecessary intrusion of professional privacy that does little good.

Others, including public sector forest policy interests, criticize the Board for not publishing its actions more openly by issuing press releases, conducting news conferences, etc. The Board at times has wanted to take similar action but it must follow OLR practices, which ultimately decide the action based on DPFR policies. Although not as highly publicized, all disciplinary actions taken by the Board are posted on its website.

The Board must also address an antiquated exam question data base and method of offering the written examination. There is widespread and growing concern over the ineffectiveness of the present examination method and the Board's inability to adequately test applicant knowledge in certain subject areas, particularly the recent changes in forest practice regulations. The examination has used a short answer, multiple-choice, and essay type format since it was first offered. Other possibilities would include the adoption of a standardized testing format.

The registration and supervision of unlicensed individuals is another concern the Board may choose to address for compliance-related reasons. This was the subject of a major substantive rule change in 2003 but has been the subject of little discussion since, either by the profession or the Board.

Board meetings are generally sparsely attended. In recent years, very few if any licensees or members of the public attend. This is likely the result of great indifference, frustration in the Board's actions resulting from justified or perceived causes, or widespread acceptance and support of Board performance, or some combination thereof.

A result of the Board's current existence within a much larger agency, some would say a bureaucracy in the kindest sense, is the loss of its independence and dual purpose philosophy that it should not only protect the interests of the public, but also be responsible

to licensees by prudently managing license costs and minimizing Board expenses. The Board in earlier years was very sensitive to the latter goal. Over time, OLR has received additional authorities to further control licensing boards that resulted from DPFR recommendations to the Legislature, which were enacted (DPFR, 1999). These include the power to set global fee caps and other actions designed to increase the overall performance of OLR and how it manages the boards. This has resulted in some boards losing certain authorities and the ability to directly respond to issues, including budgeting.

The Board of Licensure of Foresters is charged an annual assessment by OLR. The “transfer” represents the Board’s share of the cost to run OLR. It is based on a little known or understood cost allocation levied by DPFR amongst the various boards and commissions based on a variety of variables such as the number of licensees, license cost, demand on OLR overhead resources, etc of each of the approximately 40 boards. This represents a large portion of the annual Board expenses listed in Table 12 located in Chapter 3. As a result, there is now less incentive for Board members to be frugal with licensee license fees or associated revenues. The Board practiced fiscal austerity for many years. This resulted in accumulated surpluses that could be used the following year to offset license fee increases or to lower license costs. Even though the Board functions on dedicated revenue from licensees and administers a regulatory program that the public benefits from, licensees may be paying a disproportionate sum for the ultimate cost of this program with little knowledge of these events.

In an effort to balance the State budget, the Legislature has transferred funds from OLR boards including the forester board on at least two occasions in recent years. This practice was called “raiding” for many years within the public sector. It is now referred to as

“sweeping”. Recently, the Board has questioned this practice and restated its desire to have licensee funds managed in a more accountable manner. Unfortunately, the Board was informed that these funds belonged to the department, and the Board had no authority to prohibit the practice since the Board is not the final authority on budget issues. Apparently, the nomenclature change from “raiding” to “sweeping” somehow makes it more justified or acceptable to some, but it does not diminish its significance or the need to be aware of this public policy practice.

The Board is supported by capable and devoted public sector employees who are also responsible for supporting other licensing boards and commissions. They are charged with implementing DPFR and OLR policies that impact how the Board operates. Board meetings are also heavily staffed with the three staff members and the AAG in attendance for the majority of the time. The Board meetings are generally somewhat scripted, which includes a reading of an opening statement regardless of whether there are any members of the public in attendance. Board agendas are typically set by staff without Board leadership input unless the leadership is proactive in this regard.

Official board business is not allowed to be conducted outside of duly advertised and scheduled public meetings, for good reason. OLR is very sensitive to the possibility of unintended ex parte communications amongst board members and the possible loss of public trust associated with it, not to mention the administrative law and appeal issues associated with such practices. Still, it is unfortunate that OLR policy frowns on most communications of non-agenda issue items, including general discussions of possible items for the next meeting agenda, without following Office procedures. Current communications between Board meetings are mostly limited to suggested continuing education credit proposals

submitted by organizations offering training. These communications originate from the staff. Also, the leadership role and the value of the chair and vice-chair positions have diminished over time. Their primary roles currently are serving as meeting managers and acting within a narrowed administrative boundary as compared with their predecessors. Many of the important decisions and tasks handled by Board leadership in the past are now done by OLR staff. The need to create standard procedures and to reduce administrative liabilities is important, but it has occurred in some instances at the expense of Board dynamics that can lead to ineffectiveness and inefficiency. In fairness and with all respect to the Department, Board member frustrations may be a reflection of the level of interest they have in public policy issues. This may not be an issue for more passive boards, or with licensees of those boards.

Like most costs of doing business, Board administration costs continue to rise. Several boards have resisted the Legislature and other efforts to be combined within OLR. These include various health and medical licensing boards, and the engineer and arborist professions. They all have common reasons for maintaining their board independence. The licensees of each profession were active in public policy discussions to ensure this result, and they continue to be. As a group, foresters have not been particularly active in this regard, nor is the suggestion being made that they must. However, one observation is clear. Licensee groups that are active in public policy discussions are generally more effective in securing favorable results relating to how their regulated profession is administered.

There may be advantages to both forester licensees and stakeholders for considering Board administration reform. This could be done as part of a broader department review, or as a more focused single board study. This could be done at anytime, particularly if a full

program review is not likely to occur in the foreseeable future, assuming sufficient resources are secured. It is uncertain whether the recommendations of such a study would conclude that the present Board relationship within OLR is in fact the best administrative management practice, or if it would lead to change.

The arborist and engineering professions appear to be similar to that of foresters in many respects. Both are specialized professions that have been subject to regulation for a number of years. Arborists are regulated by the Maine Arborist Advisory Council within the Department of Agriculture, Food, and Rural Resources. The fact that they are an advisory board and not a licensing board may be an important distinction, although it is unclear. Engineers are regulated by The Board of Registration of Professional Engineers. In the case of both boards, the resistance to join (engineers) or for leaving (arborists) OLR appears to have been driven by the desire to a better manage board administration costs and the ability to self-administer board management to a certain point.

Certain data were assembled in an effort to do an extremely preliminary comparison of these three boards: one within OLR (foresters), one affiliated but operating independently from OLR (engineers), and one within a different State agency (arborists). Differences in board authority and responsibilities, rules, etc. were not fully researched. Also, the arborist and engineer board costs may not accurately reflect all overheads, such as AAG and other major expenses that are reflected in the Board budget. The results, while inconclusive, are suggestive at the least. (see Table 15).

TABLE 15
SUMMARY OF SELECTED COMPARISONS BETWEEN THE FORESTER,
ARBORIST, AND ENGINEER
LICENSING/ REGISTRATION BOARDS^{8,9},
2005 ACTUAL OR IMPLIED REPRESENTATIVE YEAR

<u>CATEGORY</u>	<u>FORESTERS</u>	<u>ARBORISTS</u>	<u>ENGINEERS</u>
Number of Licenses	853	585	5,000 ¹⁰
License Renewal Costs	\$70 annual	\$30/45 annual	\$80 bi-annual
Disciplinary Actions ¹¹	0-2	1-2	5
Disciplinary Action Rate	1:853	1:390	1:1000
Bi-annual Budget	\$120,000	\$30,000	\$385,000
Board Cost/License/Year	\$70	\$26	\$39
Primary Support Staff ¹²	3- OLR Shared	2-Dept. shared	3-Dedicated
Primary Staff FTE	1	.5	1.5
Exams/Year	2	4	2
Examinees/Year	16	55	280
Board Meetings/Year	4	8	4

Source: Forester Board information compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration (OLR), Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

⁸ Information regarding the Arborists Advisory Council and Board of Licensure for Professional Engineers was acquired from telephone interviews with the respective Council and Board administrators and related communication of public information. It is contained in the author's files. The data were not audited. While the values obtained did include several recent years in some instances, representative numbers were used for comparison purposes. Arborists and Engineers offer two licenses and exams. These totals were combined.

⁹ All values are approximated for illustration purposes

¹⁰ Approximately 2,500 are non-residents.

¹¹ Only considers formal complaints filed and action taken against licensees, and does not include dismissals or unlicensed practice

¹² Foresters utilize shared services from OLR including an administrator and two staff positions. Arborists use two Department of Agriculture staff positions for support. Engineers have a half time Executive Director, full time office manager, and a part time clerk. Excludes other contributions of legal, IT, finance, leadership, etc.

Subject to further qualification, inferences can be made based on this data. The most significant observations involve both the annual license costs and board cost expressed on a per license basis. Foresters' costs are substantially higher in both cases. Comparisons of disciplinary actions and the number of examinees handled each year are also useful.

It is unclear what other options within State government exist if licensees and interested parties wanted to explore Board governance alternatives. It is possible that the forester profession could be more efficiently regulated in a manner similar to how arborists are currently administered (within the Department of Agriculture, Food and Rural Resources) within the Maine Forest Service, Department of Conservation where it originated in 1975. It is uncertain whether this would create conflicts in missions and authorities within the Maine Forest Service, if the form of regulation would need to change, or if the Maine Forest Service would even support it. This possibility could result in conflicting policy interests amongst various departments. Obviously this comparison is inconclusive due to its scope, but it does raise possible questions with respect to current Board and licensee costs, which perhaps will lead to further analysis as part of the next forester regulation program review.

Chapter Seven

THE SUNRISE REVIEW PROCESS

Justification and New Standard

Professional and occupational licensing in this country has expanded continuously for several decades (Kleiner, 2005). In the state of Maine, new regulatory programs have been added as well. One of the less desirable results of this public policy of periodic program expansion of professional and occupation regulation has been the inconsistent process and depth of analysis given such requests. There has been no standard procedure that is considered adequate to meet a sensible goal of a fair and objective analysis of the pros and cons of whether the subject discipline should become regulated, or what form of regulation was most appropriate. Decisions to either initiate regulation, or to substantially change an existing program could be done on somewhat subjective and emotional grounds, and not on a set of comprehensive data on which to basis an objective decision. Professions and occupations may have become regulated without adequate analysis and conclusions based on fact.

A second consideration has been the amount of time the Legislature needs to invest to entertain these proposals. Anyone who has ever been even remotely involved with the legislative process appreciates how a bill, either for good cause or submitted at the request of a constituent, can place considerable resource burdens on the system. This is particularly true with the joint standing committee with oversight over the proposed legislation, and its staff. Even initiatives that show promise are often referred back to special committees or held for further consideration during the next session.

There have been additional reasons as well. These included what would be the future impact to State government without a more effective process, and whether standard guidelines should be created to review these requests in a more consistent and objective manner.

Statutory Discussion

After considerable discussion, the Legislature adopted a new set of standards to review any professional or occupation that is the subject of proposed regulation or a significant change (expansion) to an existing program. This is known as the Sunrise Review Evaluation Criteria (PL1995, c. 686, §2). In addition, 5 MRSA, Chapter 379: Boards, Commissions, Committees and Similar Organizations, was amended to include the requirement of a “sunrise review” (5 MRSA, §12015 (3)). See Appendix E.

The sunrise review procedure requires that the criteria described in 32 M.R.S.A. § 60-J be applied to the proposed regulatory program to determine if and how the profession or occupation should be regulated. Sunrise reviews are generally prepared by or through the Department of Professional and Financial Regulation (DPFR), which is the State department that has general oversight of professional and occupational regulation.

A sunrise review process may be initiated in one of three ways (5 MRSA, §12015 (3)). The Legislature Joint Standing Committee with oversight of the profession or occupation may hold a public hearing for the purposes of receiving information that substantially addresses the review requirement criteria. The Committee can also direct the DPFR Commissioner to undertake an independent assessment of the submitted criteria responses with a further requirement to report back with findings. A third method, similar to

the second, calls for the Commissioner to establish a technical review committee to assess and report back to the Commissioner, and ultimately the Legislature.

Based on these new criteria, the regulatory method chosen for any newly regulated profession or occupation is usually the least restrictive type, such as a registration, as opposed to full licensure. The regulatory bar seems to have been raised for these new proposals when compared to the standards used for many older boards.

Policy Implications Resulting from Inconsistent Standards

The adoption of the sunrise review program has created an interesting if not an unintended inconsistency in State public policy as it relates to the why, when, and how we conduct periodic professional and occupational regulatory program reviews.

The sunrise criteria appear to represent a well-justified effort to bring both consistency and accountability to the program evaluation process. Several years have passed since these requirements were established, perhaps enough time to reach some conclusions. A reasonable estimate of the number of programs that have either sought or been the subject of regulation since program inception is approximately 12 (based on conversations with OLR/DPFR staff and file review). Of these, there were two reviews completed in both 2002 and 2004, and one in 2006. The four proposals conducted prior to 2006 all failed, and the 2006 report concluded that no meaningful net public benefit would result in adopting regulation (DPFR, 2006). Only one program is thought to have gained regulatory status since the Legislature adopted the sunrise review program: the Interpreters for Deaf and Hard of Hearing, which is a registration program within OLR.

As want-to-be regulated professions and occupations look to the promised gates with hope and an eye for entry into the regulatory family at some future time for whatever reason or justification, there may also be existing members (regulatory boards) within this group that could be classified as honorary members. Put another way, some past reviews conducted by the Legislature may now be considered substandard when compared to the new sunrise criteria. There may be suits (regulatory boards) in that collection in the OLR regulatory closet that are becoming out of style, or no longer look or fit the same as when they were first obtained. Some may have come into existence for a presumed future need that never materialized.

In 1999, the Legislature repealed a subsection of 5 MRSA, Chapter 379 that was a provision for automatic state agency and regulatory program termination if they were not scheduled for review, which therefore eased the need for the Legislature to do so.

Another possible disparity amongst those that are and those that would like to be is the era in which many of the currently regulated professions and occupations first became regulated. If it occurred in an era of pro regulation with easier standards, then a second dynamic is therefore introduced for consideration.

In summary, the sunrise review criteria and laws governing new regulatory boards were created to ensure that a systematic and comprehensive analysis is done when considering new professional and occupational regulation. With Legislature and committee workloads only increasing and with greater need to spend on higher profile issues, combined with limited OLR resources, it appears that existing boards may not be receiving either sufficient or timely program reviews. Of course the Legislature can review and take action

on any regulatory program at will and totally separate from any periodically scheduled Government Evaluation Act (GEA) review.

The sunrise review process appears to be meeting the goals established by the Legislature. It is clear the value of this program is not limited to the review of newly proposed professional regulatory programs.

Chapter Eight

THE NEXT BOARD OF LICENSURE OF FORESTERS PROGRAM REVIEW

The 2007 GEA Review Required by Statute

The Government Evaluation Act (GEA) is the primary program the State of Maine relies on to conduct periodic agency and program reviews (see Appendix C). The Board of Licensure of Foresters is one of approximately 40 professional and occupational regulatory boards within the Office of Licensing and Registration (OLR), Department of Professional and Financial Regulation (DPFR). The GEA, established in 1995 (PL 1995, c. 488), created a list of program reviews by agency, commission, etc., that are scheduled out to the year 2011. The DPFR review is scheduled for 2007 (3 MRSA, §959 1. C. (5)). This will likely be before the Joint Standing Committee on Business, Research, and Economic Development and held in conjunction with the Joint Standing Committee on Insurance and Financial Services, given the broad responsibilities of DPFR in addition to professional and occupational regulation.

The GEA statutes list the schedule for independent regulatory boards, and those boards affiliated with OLR but not administratively within OLR, separately. There appears to be more uncertainty and confusion with respect to how the roughly 40 boards within OLR will be reviewed in 2007, or to what extent these program reviews will be undertaken, if at all. Given the agency size and comprehensive program responsibilities, there is a high probability that DPFR will be reviewed on schedule.

Even if a 2007 review is designed to assemble and analyze data down to the individual OLR board level, the program evaluation report criteria set forth in 3 MRSA, §956

do not suggest its main intent is to assess or judge the current justification of professional and occupational regulatory governance policy. 3 MRSA §952 describes the scope of the GEA program as providing a periodic review of agencies and independent programs of State Government in order to evaluate their efficiency and performance. The evaluation report criteria support this goal by listing federal compliance, organizational structure, and opportunities to include certain administrative performance indicators as core areas of review. While GEA could be used as a tool for regulatory board program reviews, this is not likely due to its primary design (OPLA, 2005). It could nonetheless add value by properly analyzing board administration and management efficiencies including those discussed in Chapter Six, Board Governance and Administration, and Table 15. Partly because of this, it does not appear that the Board of Licensure of Foresters will be the subject of a meaningful regulatory program policy review as part of the GEA process in 2007, or at some other time in the near future.

Legislature, OPEGA, and State Government Constraints and Challenges

The Legislature could review the Board separate from the GEA process any time it determines a need to do so. However, this is not likely to occur due to the competing demands on the Legislature given the fact it is a relatively low-profile board that is not currently the subject of great negative publicity, public crisis, or otherwise attached to a political issue or agenda. Also, despite there being many forest-related public policy issues confronting the State presently, the Board has generally been insulated and disengaged from these events with good cause, as discussed in Chapter Three.

The Legislative Oversight of Government Agencies and Programs Office of Government Evaluation and Government Accountability (OPEGA) is a third alternative as detailed in Chapter Four (see Appendix D). The Government Oversight Committee could ask OPEGA to conduct a study, or the Joint Standing Committee on Business, Regulation, and Economic Development could ask OPEGA to become involved. However, it also seems unlikely that a useful review would come via this method.

A third consideration is whether OLR and DPFR resources, which would be required for a Board regulatory program policy review regardless of whether it was part of an all-OLR licensing board review or subject to a special inquiry, would be adequate for the task. A Legislature review under the GEA would require the Department to self-staff the processing of data requests and provide detailed analysis as part of an all-OLR licensing board study. This would pose significant challenges. Anything less than superficial exposure to each board without additional short-term resources, such as outsourcing options, would require planning. A GEA review could be limited in scope to focus on fewer boards with more obvious problems. Because the boards are funded by dedicated license fee and related income, they may be expected to pay for this work as part of the OLR overhead transfer program explained in Chapter Six. The Department appears to be more appropriately resourced to perform this analysis on a smaller scale with sufficient detail as is done for the evaluation criteria that support sunrise reviews (see Appendix E). This could be done on an as-needed basis, or by modifying the list of scheduled GEA reviews that would spread these reviews out over time. This may not be realistic given the constraints on the Legislature as previously discussed.

In 1999, the DPFR submitted a report (DPFR, 1999) pursuant to PL 1999, Chapter 16, to the Joint Standing Committee on Business and Economic Development and others. It consisted of a detailed report describing Department missions, State umbrella functions, public accountability, board purposes and structures, recommendations under the GEA, and related administrative issues (DPFR, 1999).

The report listed, as one of its recommendations regarding the opportunity to improve the operations of licensing programs, the possibility to amend the GEA to eliminate separate sunset review of boards within OLR. This is somewhat inaccurate since the GEA is not a sunset program per se. However, this recommendation created concerns at the time. The Department interpreted the GEA law as including a review schedule for each of the boards within OLR in addition to the already named affiliate boards. The report further stated that this was in addition to an overall GEA 10-year review for the Department as a whole. “It is resource-intensive for boards, department, and legislative staff to collect and analyze program information for GEA review. It is also time consuming for the legislature committee to meet the current review schedule while handling a full legislative workload” (DPFR, 1999 @ p. 7).

A statute and rule did not confirm that the DPFR recommendation was ever enacted into law. The Legislature leadership or the full Legislature may have decided that it wanted to retain control, knowing that it could invoke the waiver from review provision (3 MRSA, §954 (2)) as necessary (see Appendix C).

Likelihood and Risks Associated with Application of Incorrect Standards

We learned in Chapter Seven that there are two major State review programs of different purposes and designs that affect professional and occupational regulatory issues. The GEA concentrates on mostly administration governance and related operational issues and is not geared towards public policy reviews, which go to the core of asking should an existing program continue. The sunrise review process, if done properly, centers on whether a discipline should be regulated, or if an existing program should be more regulated.

There are other resource and research options available to the Department that are used for the standardized collection and analyses of multi-board data, such as the Council on Licensure, Enforcement, and Regulation's Framework for Developing Consistent Descriptions of Regulatory Models (CLEAR, 2006). DPFR has its own criteria. But any similarly attempted process and related efforts would likely suffer from the same resource constraints described in the prior section.

Repealing or reducing professional and occupational licensing requires legislative action where a combination of different interests including licensees (sometimes with lobbyists), unlicensed providers, other advocacy groups, and the public debate an outcome (Kleiner, 2005). Without a Legislature review and enacted legislation to affect a desired outcome, there will be no change. The likelihood of incorrect policy review standards being applied is very low since no study is foreseen. If incorrect standards were applied, decisions could result in unintended consequences in the form of less desirable outcomes for both the profession and the public interest.

The following event is important to better appreciate the need for a timely, adequate, and effective policy review before the next Legislative action involving forester regulation in

the State of Maine occurs. If for no other purpose, it illustrates the need to adopt a quality driven process that involves the majority of stakeholders so that all relevant information can be utilized, and that the most desirable outcome is achieved. In 1976, the State of Florida examined its forester regulation program based on the Regulatory Reform Act in effect at that time (State of Florida, 1976). That investigation looked at many of the same issues currently used in the State of Maine sunrise review criteria: Would the absence of regulation harm the public welfare? Are there other police powers that could achieve the same goals? Is there another less restrictive form of regulation available? Does regulation disproportionately increase the costs of services? Are all aspects of the regulatory program designed for the public and not the licensee's interests?

The report concluded that Florida forester regulation came about as the result of efforts from the profession itself despite the profession's assertions that their sole interest was to protect the resource and not self-benefit. It also stated for a number of reasons that the absence of forester regulation would not significantly endanger public health, safety, and welfare. Whether the State of Florida Executive Department, or Legislature and staff, adequately understood the benefits of forester regulation is unclear. However, the result was clear. The regulation supporters were left to react with little time and insufficient organized resources to rebut the report's assumptions and findings. As a result, the state of Florida forester regulation program was sunsetted based on that study. It was reported there was insufficient oversight of, or disciplinary action taken against, foresters, and the Governor allowed the regulation to be repealed. Flawed implementation of the regulatory program, and not the fundamental justification for it, may have received more attention during that review. Based on informal interviews of individuals who are knowledgeable of the 1976

action, and those currently involved in the profession in Florida, the repeal has had little or no effect on forest practices, landowners, or the protection of the public. Apparently, professional self-regulation and the State's forest practices are considered sufficient. There is no movement to reinstate forester regulation in the State of Florida.

Unintended Consequences and Ramifications

A fundamental forester regulation policy review, initiated as a result of a periodic government review program, pressing public need, related government policy agendas, or stakeholder participation, does not appear likely any time soon. Many would conclude that if there is no obvious need to direct attention to it, then there are no problems or public policy exposure. An analogy to a preventive medicine example is helpful to better put this in perspective. Should a patient who has not had a physical for 10 or 20 years expect to be told that "if you think you feel well, or if others aren't noticing anything concerning, there is no need to do a comprehensive physical and just continue on with whatever lifestyle you are leading". Chronic or sudden pain is frequently cause for immediate examination and attention. But silent symptoms associated with hypertension, diabetes, glaucoma, cholesterol, and other problems can exist undetected. These ultimately require attention, and often demand more radical treatment with less than desirable results.

The most significant contributing factors driving our public policy of not revisiting fundamental professional and occupational regulatory program justification related issues on a more systematic basis is due to more pressing short term issues and longer term resource constraints. Consequently, the Legislature has assumed the cautious approach. This assumes

that more regulation, rather than possibly less or a different type of regulation, is a wise and defensible policy absent a completed policy review in order to safeguard the public interest.

Both the number of complaints filed before the Board and the number of complaints that require some form of action is small, particularly when compared to other regulatory boards within OLR. Only about one-half of all complaints filed with the Board annually are approved for further study and disposition. The remaining are dismissed for lack of cause, jurisdiction, or other reasons.

Table 16 illustrates the disciplinary actions taken by the Board in recent years.

**TABLE 16
COMPARISON OF NUMBER OF DISCIPLINARY ACTIONS
AND LICENSEES,
STATE OF MAINE BOARD OF LICENSURE OF FORESTERS,
2000-2005**

<u>YEAR</u>	<u>LICENSEES</u>	<u>DISCIPLINARY ACTIONS</u>	<u>DISPOSTION</u>
2000	885	2	Case 1: License surrender. Case 2: Reprimand and probation.
2001	873	0	
2002	854	1	Suspension, probation terms, fine.
2003	850	0	
2004	857	1	Warning, reimbursement of costs.
2005	853	2	Case 1: Suspension, reexamination, reprimand, probation, and costs. (on appeal) Case 2: Voluntary license surrender, re: continuing education violation.

Source: Compiled by author from Board of Licensure of Foresters files and Board meeting minutes located at Board offices, Office of Licensing and Registration, Department of Financial and Professional Regulation, Gardiner, Maine on February 2, 2006 and subsequent occasions.

To put this in perspective, OLR received a total of 8,000 complaints involving the approximately 40 regulated professions and occupations under its control in 2005 (as supplied by OLR staff). Some may argue that the low complaint incident rate involving foresters, interns, or supervised unlicensed individuals, suggests that forester regulation is no longer necessary since there are few documented cases involving this group, and that the public welfare is not at risk. But, a more informed and rational opinion based on further research and analyses could conclude that the complaint incidence rate is low because the public is being adequately protected by forester regulation, which is functioning as intended.

Chapter Nine

SUMMARY AND CONCLUSIONS

Should State of Maine Forester Regulation Continue?

It is very difficult, if not impossible, to objectively answer this question at the present time. Even if a program policy review were undertaken today, it would likely be inconclusive or yield ineffective results. This is because it would be impaired or result in some degree of subjective analyses due in part to insufficient or non-existing data. It is equally difficult to predict if forester regulation should continue as currently designed and implemented, or how substantial changes could be proposed and implemented based on existing data. This is because we simply do not know, and will not know until an adequate program and policy review is completed. This is due to the fact that very little data have been created or monitored since the initial debate and study period that led to the original regulation. Until then, we will continue with the assumption that forester regulation is justified, that licensing is the most appropriate form of regulation, and that the Board is currently being administered using best management practices techniques.

It is important to recognize the need for a periodic forester regulatory program review even if there are no apparent or expected public interest or resource protection related issues. There have been many significant changes in the state of Maine since the last forester regulatory program and policy review in 1986 that have impacted Maine's forest policy, management, and related economies. It is also difficult to determine if and how these collective influences have combined to justify additional regulatory measures, or abated the

need for it. It would be purely coincidental if the sum of these influences has yielded a “no net change” result.

Should State of Maine forester regulation continue as a form of licensing? Since licensure is one method of regulation, we also cannot objectively answer this question without the correct type and amount of data. Perhaps, a better and more realistic question is, “Should foresters be regulated in the future, and at what point in the data collection and analyses phases can we determine that they should or shouldn’t?” The answers are certainly obtainable, but not with currently existing data.

Summary of Key Findings

A primary goal of this paper was to identify, collect, consolidate, analyze, and present data and other information on the regulation of foresters, Board administration, and current issues that affect both. Eight criteria were established to support a successful broad based forester regulation program and policy review. This has yielded a document designed for foresters, legislators and their staff, members of State government, academia, the many forestry related stakeholder groups, and the citizens of the State of Maine as a useful resource and reference when discussing this issue. Since the State of Maine first regulated foresters in 1975, there has been only one Legislature review of this program. That occurred 20 years ago in 1986. Another study, scheduled in 1996, was not done.

The State of Maine has invested significant resources in the planning and management of the forest resources, but a disproportionate amount of policy time and focus has been given to those professionals who manage it. The benefits for imposing any form of professional regulation by a political body for the benefit of its citizens should outweigh the

opportunity costs of not doing it. Professional regulation programs, such as the State of Maine forester licensing, may lead a quiet existence with little or no policy review for an extended period of time. Professions that are politically weak or that have ineffective lobbying efforts are at risk to other stakeholder groups that are more effective at influencing the political and regulatory processes.

The Maine forester community was very active, if not instrumental, in creating the original forester registration law in 1975. The current forester profession may not be as politically active as their predecessors were for a number of reasons. Regardless of this observation, one point is clear. When forester regulation is readdressed, there will be no substitute for effective participation by the profession and other interests if the most desirable overall outcome is to be achieved.

The definitions of the terms “forestry”, or “the practice of forestry”, often include references to “*the science thereof*”. Yet, the practical application of these definitions as they relate to a public policy issue is anything but a science, given the need to reconcile them with the many political influences and considerations. This may become the catalyst that ultimately justifies the time and resources to do an appropriate forester program and policy review.

Chapter Six dealt with the identification of many issues that may affect the future of forester licensing. These involve issues relevant to national forester regulation, and Maine-specific factors such as current professional issues and Board administration. The Board historically has not been used to effect changes in forest policy. It does not have statutory authority to do so. That mission is generally left to other areas of State government and the Executive Branch. Still, some politically astute individuals may view the Board as being

potentially capable of doing so. The perceptions and issues relating to the Board's ability to discipline licensees, and the effect that current regulation has on licensee entrance in to the field, were also raised.

The Board's administration and operations were also discussed, which yielded observations about the importance of timely Board member appointments or reappointments, cause and effects of the Board being within a large umbrella organization, and comparisons to two other State regulating boards with similar missions but under different administration forms.

The identification and the importance of several critical issues were also presented. These include: Has forester regulation improved the quality of forest practices? Has it provided additional protection to landowners and the public that would not otherwise exist? Has forester regulation upgraded professionalism? Could professional self-regulation, combined with the recent increases in forest practices regulations, substitute for forester licensing to provide substantially equivalent protection to the resource, landowners, and public interests? While these appear to be very important questions, the answers do not currently exist.

Perhaps the most important finding of fact centers on the inconsistent regulatory program review evaluation criteria used by the State of Maine. Different criteria are used depending on whether an existing regulatory board is undergoing a periodic policy and program review, or if a profession or occupation is the subject of becoming regulated for the first time or if an existing program is substantially expanded. Chapters Seven and Eight describe these programs and the resulting consequences. New programs have a much higher standard to meet based on regulatory policy criteria, whereas existing programs such as

foresters regulation appear to be reviewed mostly for efficiencies and other government accountabilities without a program policy focus. The reviews of existing regulatory programs are typically conducted under the GEA process and scheduled every 8-10 years, and may be waived by the Legislature for sufficient cause. This results in a professional regulatory program “black hole”. Existing regulatory programs can go on indefinitely with little or no policy review attention. A significant prospective recommendation would be to determine when a periodic review of the Board could be scheduled and conducted utilizing the sunrise review criteria and not solely rely on the GEA program evaluation standards. This appears to be a viable approach for the State to consider with all regulatory boards, lacking a compelling need for a more immediate review. Ironically, this policy could result in periodic reviews that would be similar in some respects to the former sunset review statutes that were repealed by the Legislature.

Conclusions

Forester regulation was initially established partly due to the recognition that skilled professionals, who benefit from academic and or practical experience, were needed to protect the public and the vital Maine forest resources. Public policy in previous decades regulated the practitioner. Some 30 years later, the State has significantly increased the amount of legislated and regulated forest practices that impact the management, harvesting, assessment, and other forest management related procedures and influences. This has resulted in more policy attention being given to the practice, and less to the practitioner. Have we regulated the practice so much that the practitioner’s (forester’s) importance to the process has changed? It likely has, but whether it has increased or decreased, and to what extent, is less

clear. A more complex series of issues must be researched and analyzed before this and other related questions can be fully answered to determine whether the value-adding roles that foresters play have increased or diminished. These include: Has forester regulation increased the quality of forest practices? Has forester regulation protected landowners? Has forester regulation increased professionalism? Does the increase in forest practices regulation, in combination with some degree of professional self-regulation, offer legitimate alternatives to licensing? Has the need for forester involvement been enhanced due to the increased complexities of forest practice regulations and the increased public policy reliance on foresters to implement these programs? Because little if any data presently exist to answer these questions, performance indicator criteria must be identified for each question. If we assume that forester regulation continues to be good public policy, the question of whether licensure is still the preferred method based on present needs remains unanswered.

When a forester regulation program and policy review is next undertaken, the State of Maine, the profession, and all interested parties can least afford to replicate the apparent circumstances that led to a decision in another state to sunset forester regulation. Policy makers were reportedly misinformed or uneducated about the role and the value that forester regulation plays in the protection of the public interest and or the forest resource. For their part, forester regulation advocates did not anticipate the coming change, nor were they successful in securing an outcome desirable to them.

The utilization of the State sunrise review process would result in the most objective findings given present program review options because of its intended purpose and the use of specific criteria. The probability of an inadequate Board program review, if not substantially delayed or waived entirely, appears likely under the present circumstances. The impact on

the public and the forest resources based on a continuation of present policy could be very different from that resulting from the implementation of sunrise review recommendations. It appears that a sunrise review, if and when it is properly applied, would yield the most objective conclusions and recommendations.

Board administration can also be improved in several areas, including more timely appointment of Board members, and a recommended review of some Board operations. The Board has little control over its operating costs, overhead, and mandatory budget transfers, which are largely controlled by OLR or are the result of other State government mandates. This is often contradictory to the Board's interest in budget austerity and managing licensee costs. With the exception of the statutory and rule revision processes that occurred from 2001-2003, licensees have not been active in Board processes for many years, which may explain these results. Licensees as a group appear to be satisfied with the fact that their profession is regulated, and not necessarily why or how it should continue to be regulated, or how the regulation should be administered to best represent their interests.

A justified, timely, well-designed, and sufficiently resourced forester regulatory program and policy review analysis with meaningful input from all stakeholders, and fact-based action by the Legislature if necessary, represents the best opportunity to ensure the most desirable outcome and adoption of best management practices. The importance of forester regulation in the State of Maine is deserving of this attention.

In conclusion, the author's opinion prior to this research was that forester regulation was justified despite an extended period of policy inattention, and to a lesser extent that it was also worth exploring how the Board may be administered differently. A conscious effort was made to conduct the research in a clinical fashion so as to not bias the findings and

conclusions. Personal experience with the Board was valuable in providing self-direction and other insights. I anticipated writing about how public policy review programs function, and particularly how these programs currently support the justification for the regulation of foresters. As in most studies, the research process was dynamic. It led to investigations in several unexpected areas that were necessary to better understand the fundamental policy question. These included the identification of several related issues that warrant further analyses before the original question can be adequately addressed. While the author believes that foresters should be regulated by the State of Maine due to the increasing complexity of the practice and societal demands to protect the forest resources, this paper has clearly demonstrated that it is not based on the degree of objectivity as originally thought. This opinion is now somehow less important than is the realization that it is not substantially fact-based, nor is likely to be in the near future despite the justification to do so.

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Appendix A

CURRENT FORESTER LICENSING STATUTES, 32 MRSA, CHAPTER 76

32 MRSA Chapter 76: FORESTER LICENSING (HEADING: PL 2001, c. 261, @4 (new))

Subchapter 1: GENERAL PROVISIONS (HEADING: PL 2001, c. 261, @4 (new))

§5501. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 261, §4 (new).]

1. Board. "Board" means the Board of Licensure of Foresters. [2001, c. 261, §4 (new).]

2. Department. "Department" means the Department of Professional and Financial Regulation. [2001, c. 261, §4 (new).]

3. Forester. "Forester" means a person licensed under this chapter to practice forestry. [2001, c. 261, §4 (new).]

4. Forestry. "Forestry" means services relating to forestry requiring the application of forestry principles and techniques. The services include, but are not limited to, investigations, consultations, timber inventory, development of forest management plans, responsible supervision of forest management, forest utilization, appraisal of severed or unsevered timber, forest economics or other forestry activities as carried out in connection with any public or private lands. "Forestry" does not include services for the physical implementation of cutting, hauling, handling or processing of forest products or for the physical implementation of timber stand improvements or other silvicultural activities or measuring or scaling activities performed by persons licensed under Title 10, section 2365-A. [2001, c. 261, §4 (new).]

5. Intern forester. "Intern forester" means a person licensed under this chapter to practice forestry under the sponsorship of a forester. [2001, c. 261, §4 (new).]

6. Person. "Person" means an individual. [2001, c. 261, §4 (new).]

7. Sponsor. "Sponsor" means a forester who is responsible for overseeing the activities of an intern forester. [2001, c. 261, §4 (new).]

8. Supervisor. "Supervisor" means a forester who is responsible for the activities of an unlicensed person providing services under the direction of the forester. [2001, c. 261, §4 (new).]

§5502. License required

Except as provided in section 5503, it is unlawful for a person to practice forestry or advertise or offer to practice forestry without a license issued under this chapter. [2001, c. 261, §4 (new).]

§5503. Exemptions to licensing

A license is not required for forestry activities conducted by: [2001, c. 261, §4 (new).]

1. Forestry instructional and educational institutions. A forestry instructional and

educational institution approved by the Commissioner of Education pursuant to the laws of the State or a program of education at an institution licensed or approved by the State to grant a bachelor's or higher degree; [2001, c. 261, §4 (new).]

2. Federal Government employee. Federal Government employees conducting forestry practices within the scope of their employment; [2001, c. 261, §4 (new).]

3. Person registered and practicing forestry. A person registered and practicing forestry under the supervision of a forester as set forth by section 5515, subsection 9; or [2001, c. 261, §4 (new).]

4. Owner. An owner managing or otherwise conducting forestry practices on that owner's land. [2001, c. 261, §4 (new).]

§5504. Penalties; injunction

1. Unlicensed practice. A person who violates section 5502 is subject to the provisions of Title 10, section 8003-C. [2001, c. 261, §4 (new).]

2. Endorsement. It is a Class E crime for a forester or intern forester to endorse any plan, map or report other than a forest management and harvest plan as defined in Title 36, section 573, subsection 3-A, unless that forester or intern forester prepared or was in charge of the preparation of the map, plan or report. [2001, c. 261, §4 (new).]

Subchapter 2: BOARD OF LICENSURE OF FORESTERS (HEADING: PL 2001, c. 261, @4 (new))

§5505. Board; organization

1. Establishment; purpose. The Board of Licensure of Foresters, as established within the department pursuant to Title 5, section 12004-A, subsection 17, administers the provisions of this chapter to protect the public by improving the standards relative to the practice of forestry, to protect the public from unqualified practitioners and to help ensure the proper management of the forest resources of the State. [2001, c. 261, §4 (new).]

2. Members. The Board consists of 6 members appointed by the Governor. Each member must be a citizen of the United States and a resident of this State. The Board consists of: [2001, c. 261, §4 (new).]

A. One public member; and

[2001, c. 261, §4 (new).]

B. Five foresters who hold valid licenses.

[2001, c. 261, §4 (new).]

3. Terms; removal. Terms of the members of the Board are for 3 years. Members may be removed by the Governor for cause. [2001, c. 261, §4 (new).]

4. Meetings; quorum. The Board shall meet at least once a year and at such other times as the Board determines necessary. A majority of the members of the Board constitutes a quorum for the transaction of business under this chapter. [2001, c. 261, §4 (new).]

5. Election of officers. The Board shall annually elect a chair and other officers as it determines necessary. [2001, c. 261, §4 (new).]

§5506. Rules

The Board may establish guidelines and rules by which this chapter is administered. Except where otherwise indicated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 261, §4 (new).]

1. Education. The Board may adopt rules to be applied in determining whether educational programs meet the license qualifications under this chapter. [2001, c. 261, §4 (new).]

2. License qualifications. The Board may adopt rules relating to the qualifications of an applicant for a license authorized under this chapter that ensure that an applicant is sufficiently trustworthy and competent to practice forestry. [2001, c. 261, §4 (new).]

3. Standards of practice. The Board may adopt rules consistent with the standards set forth in this chapter governing the practice of forestry in order to establish standards of practice that serve the public interest. The Board may not adopt rules that govern forestry practices. [2001, c. 261, §4 (new).]

4. Other. The Board may adopt and enforce other rules that are necessary for the performance of its duties under this chapter. [2001, c. 261, §4 (new).]

§5507. Fees

The Director of the Office of Licensing and Registration, pursuant to Title 10, section 8003, subsection 2-A, paragraph D, may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for a purpose may not exceed \$100 annually. Rules adopted pursuant to this section are routine technical rules as define in Title 5, chapter 375, subchapter II-A. [2001, c. 261, §4 (new).]

§5508. Duties and powers

The Board has the following duties and powers, in addition to those otherwise set forth in this chapter. [2001, c. 261, §4 (new).]

1. Consent agreements. The Board may execute a consent agreement that resolves a complaint or investigation without further proceedings pursuant to Title 10, section 8003, subsection 5, paragraph B. [2001, c. 261, §4 (new).]

2. Denial of license. The Board may not refuse to issue or renew a license for a reason other than the failure to pay a required fee unless the applicant has been afforded an opportunity for an adjudicatory hearing consistent with the Board's rules. [2001, c. 261, §4 (new).]

3. Hearings. The Board shall conduct hearings in conformity with Title 5, chapter 375, subchapter IV to the extent applicable. The Board after hearing may impose disciplinary sanctions pursuant to Title 10, section 8003, subsection 5, paragraph A-1. In addition, the Board, pursuant to Title 5, section 10004, may revoke or suspend a license. [2001, c. 261, §4 (new).]

4. Investigation. The Board shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with or violation of this chapter. [2001, c. 261, §4 (new).]

5. License qualification. The Board shall evaluate the qualifications for licensure under this chapter. [2001, c. 261, §4 (new).]

§5509. Grounds for disciplinary action

1. Grounds. After a hearing pursuant to section 5508, subsection 3, the Board has the authority to impose disciplinary sanctions at any time when a licensee is found guilty of one or more of the following: [2001, c. 261, §4 (new).]

A. Subject to Title 5, chapter 341, a Class A, B or C crime or any other crime that bears directly on the practice of forestry;

[2001, c. 261, §4 (new).]

B. An act or conduct that constitutes deceit, misconduct, misrepresentation, fraud, incompetence or gross negligence in the practice of forestry;

[2001, c. 261, §4 (new).]

C. Procuring or attempting to procure a license under this chapter by knowingly making a false statement, submitting false information or making a material misrepresentation in an application filed with the Board;

[2001, c. 261, §4 (new).]

D. Aiding or abetting a person in conduct that constitutes a violation of this chapter;

[2001, c. 261, §4 (new).]

E. Violating a rule adopted by the Board or a provision of this chapter; and

[2001, c. 261, §4 (new).]

F. An act or conduct that constitutes or demonstrates unprofessional practice.

[2001, c. 261, §4 (new).]

Subchapter 3: LICENSING QUALIFICATIONS (HEADING: PL 2001, c. 261, @4 (new))

§5510. General qualifications

1. Application. The applicant shall submit a properly completed application on forms furnished by the Board, together with the prescribed fee. [2001, c. 261, §4 (new).]

2. Criminal history information. Subject to Title 5, chapter 341, the applicant shall provide criminal history record information. [2001, c. 261, §4 (new).]

§5511. License limited to persons

A license issued under this subchapter may only be issued to a person, and licensure must be determined based on individual and personal qualifications. A firm, company, partnership, limited liability company or corporation may not be licensed under this chapter. [2001, c. 261, §4 (new).]

§5512. Changes

The licensee shall report any change of address or name or other material change in the conditions or qualifications set forth in the original application no later than 30 days after the change. Upon proper notice, the Board's records must be changed and a new license issued for the unexpired term of the current license, if appropriate. [2001, c. 261, §4 (new).]

§5513. Denial of license

A license may be denied to an applicant: [2001, c. 261, §4 (new).]

1. Complete application. Who fails to submit a completed application within 30 days after being notified of the materials needed to complete the application; [2001, c. 261, §4 (new).]

2. Proof that applicant is trustworthy. Who fails to provide satisfactory proof that the applicant is trustworthy and competent to conduct forestry practices in a manner that safeguards the interests of the public; [2001, c. 261, §4 (new).]

3. Suspension or revocation of license. Who has had a professional or occupational license suspended or revoked for disciplinary reasons or an application rejected for reasons relating to untrustworthiness within 3 years prior to the date of application; [2001, c. 261, §4 (new).]

4. Conviction of crime. Subject to Title 5, chapter 341, who has been convicted of a Class A, B or C crime or a crime that bears on the practice of forestry; or [2001, c. 261, §4 (new).]

5. Meeting requirements of subchapter. Who fails to meet the professional qualifications for licensure as provided in this subchapter. [2001, c. 261, §4 (new).]

§5514. Intern forester

1. Scope of practice. An intern forester license entitles the holder to perform forestry practices under the sponsorship of a forester. [2001, c. 261, §4 (new).]

2. Professional qualifications. Each applicant for an intern forester license shall submit evidence of an associate's degree or a bachelor's degree from a curriculum in forestry or of graduation from a postgraduate curriculum in forestry leading to a degree higher than a bachelor's degree in a school or college approved by the Board. The Board may grant a variance to an applicant who does not hold a degree pursuant to rules adopted by the Board. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 364, §1 (amd).]

3. Filing with board. The requirements for licensure as an intern forester are as follows. [2003, c. 364, §2 (amd).]

A. The internship may not commence until after the applicant has met the professional qualification requirements of subsection 2.

[2001, c. 261, §4 (new).]

B. Applicants shall apply to and be approved by the Board for internship prior to beginning their internship.

[2001, c. 261, §4 (new).]

C. The applicant shall submit 3 references from persons demonstrating the applicant's good character to work as an intern forester. One of the references must be from the individual who is proposed to serve as the sponsor.

[2003, c. 364, §2 (amd).]

4. Continuing education required. As a prerequisite to renewal of an intern forester license, the applicant must complete continuing education as set forth by rules adopted by the Board. [2001, c. 261, §4 (new).]

5. Renewal. Licenses expire annually on December 31st or on a date the commissioner

determines. The Board shall issue a renewal license, subject to the limitations set forth in subsection 6, upon receipt of the written request for renewal, the annual fee and evidence of satisfactory completion of continuing education as set forth in subsection 4. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license has expired is required to pay a late renewal penalty fee in addition to the 90-day late fee and renewal fee. [2003, c. 364, §3 (amd).]

6. Limited license term. Intern forester licenses may only be renewed for 5 annual terms. If after the 5th annual renewal term the intern forester has not qualified for licensure as a forester, the intern forester may reapply to recommence the internship process, but may not receive any credit towards completion of the new internship for work performed during the prior internship. [2001, c. 261, §4 (new).]

7. Endorsement of documents. Plans, maps and reports issued by the intern forester must be endorsed with the intern forester's name and license number during the life of the intern forester's license. By endorsing a document, the intern forester is representing that the document has been reviewed by the sponsor. [2001, c. 261, §4 (new).]

§5515. Forester

1. Scope of practice. A forester license entitles the holder to engage in the practice of forestry. [2001, c. 261, §4 (new).]

2. Professional qualification. The applicant must demonstrate compliance with the professional qualifications as set forth in section 5514, subsection 2. [2001, c. 261, §4 (new).]

3. Internship. An applicant for a forester license shall complete an internship as follows. [2001, c. 261, §4 (new).]

A. An applicant with an associate's degree or no degree shall demonstrate 48 months of forestry experience as an intern forester satisfactory to the Board. Applicants must complete the 48 months within 6 calendar years prior to application.

[2001, c. 261, §4 (new).]

B. An applicant with a bachelor's degree or higher shall demonstrate 24 months of forestry experience as an intern forester satisfactory to the Board. Applicants must complete the 24 months within 6 calendar years prior to application.

[2001, c. 261, §4 (new).]

4. Recommendation. The applicant shall submit references from 3 foresters familiar with the applicant's forestry practice. At least one of the references must be from the sponsor, unless the sponsor is unavailable as a reference through no fault of the applicant. An applicant exempted under subsection 5 shall submit references from 3 forestry professionals familiar with the applicant's forestry practice. [2001, c. 261, §4 (new).]

5. Exemption to internship; professional practice in another jurisdiction. Notwithstanding subsection 3, the Board may waive the internship requirement, as set forth in subsection 3, for an applicant who has at least 24 months of lawful prior professional forestry practice in another jurisdiction within the 6-year period prior to application, as long as the practice is determined by the Board to be substantially equivalent to the successful

completion of forestry internship under subsection 3. [2001, c. 261, §4 (new).]

6. Examination. Each applicant for a forester license shall submit an application and examination fee and successfully pass an examination administered by the Board designed to test an individual's knowledge to engage in the practice of forestry. Applicants shall meet all other qualifications for licensure prior to taking the examination. [2001, c. 261, §4 (new).]

7. Continuing education required. As a prerequisite to renewal of a forester license, applicants must complete continuing education as set forth by rules adopted by the Board. [2001, c. 261, §4 (new).]

8. Renewal. Licenses expire annually on December 31st or on a date the commissioner determines. The Board shall issue a renewal license upon receipt of the written request for renewal, the annual fee and evidence of satisfactory completion of continuing education as set forth in subsection 7. Licenses may be renewed up to 90 days after expiration upon payment of a late fee in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the Board may, in its discretion and giving due consideration to the protection of the public, waive examination and internship if the renewal application is within 2 years from the date of expiration for those applicants who demonstrate compliance with subsection 7 and upon payment of a late renewal penalty fee in addition to the 90-day late fee and renewal fee. [2003, c. 364, §4 (amd).]

9. Endorsement of documents. Plans, maps and reports issued by the forester must be endorsed with the forester's name and license number during the life of the forester's license. [2001, c. 261, §4 (new).]

10. Sponsor; supervisor. A forester: [2003, c. 364, §5 (amd).]

A. May act as a sponsor for an intern forester pursuant to the requirements of section 5514 and rules adopted by the Board; and

[2001, c. 261, §4 (new).]

B. Must register with the Board to supervise the activities of an unlicensed person pursuant to rules adopted by the Board.

Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 364, §5 (amd).]

§5516. Nonresidents; applicants licensed in another jurisdiction

1. Reciprocal agreements. The Board may enter into reciprocal agreements with other jurisdictions that have substantially equivalent licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State. [2001, c. 261, §4 (new).]

2. Applicants licensed in another jurisdiction. An applicant who is licensed under the laws of another jurisdiction is governed by this subsection. [2001, c. 261, §4 (new).]

A. An applicant who is licensed under the laws of a jurisdiction that has a reciprocal agreement with the Board may obtain a license upon the terms and conditions as agreed upon through the reciprocal agreement.

[2001, c. 261, §4 (new).]

B. An applicant who is licensed in good standing under the laws of a jurisdiction that has not entered into a reciprocal agreement with the Board may qualify for licensure by submitting evidence satisfactory to the Board that the applicant has met all of the qualifications for licensure equivalent to those set forth by this subchapter for that level of licensure, including, but not limited to, passing the examination as required by section 5515, subsection 6.

[2001, c. 261, §4 (new).]

C. All nonresident license applicants shall submit with the application an irrevocable consent that service of process on the applicant for an action filed in a court of this State arising out of the applicant's activities as a forester in this State may be made by delivery of the process to the Director of the Office of Licensing and Registration if, in the exercise of due diligence, a plaintiff can not effect personal service upon the applicant.

[2001, c. 261, §4 (new).]

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Appendix B

CURRENT BOARD OF LICENSURE OF FORESTER RULES, 02-333 CMR

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 10: DEFINITIONS

Summary: This chapter defines specialized terms that are used in the Board's rules.

1. Technical Terms Incorporated by Reference

The Board hereby incorporates by reference the definitions of technical terms relating to forestry contained in the Dictionary of Forestry, edited by John A. Helms (Society of American Foresters 1998). A copy of the dictionary may be purchased from:

Society of American Foresters
5400 Grosvenor Lane
Bethesda, MD 20814
ph: 301·897·8720
internet: <http://www.safnet.org/pubs/books.html>

STATUTORY AUTHORITY: 32 MRSA §5506(4)

EFFECTIVE DATE:

August 6, 1976 - as Chapter 1, "General Provisions and Definitions"

REFILED UNDER THE APA:

October 19, 1978

REPEALED AND REPLACED:

January 31, 1987

January 1, 1990

AMENDED:

February 9, 1991

May 12, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 10, "Definitions" and Chapter 20, "General Information"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 20: GENERAL INFORMATION

Summary: This chapter provides for the election of Board officers.

1. Officers

The Board shall elect or appoint its officers at its first regularly-scheduled meeting of each calendar year.

STATUTORY AUTHORITY: 32 MRSA §5506(4)

EFFECTIVE DATE:

August 6, 1976 - as Chapter 1, "General Provisions and Definitions," and Chapter 2, "Rule Making Procedures"

REFILED UNDER THE APA:

October 19, 1978

REPEALED AND REPLACED:

January 31, 1987
January 1, 1990

AMENDED:

February 9, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 20, "General Information"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 30: ADVISORY RULINGS

Summary: This chapter provides for the discretionary issuance of advisory rulings by the Board.

1. Request and Consideration

Upon written request of any interested person, the Board may issue an advisory ruling pursuant to 5 MRSA §9001 with respect to the applicability of any statute or rule it administers. Requests for advisory rulings must set forth in detail all facts pertinent to the question. The Board may decline to issue an advisory ruling if the question is hypothetical, if there is insufficient information upon which to base a ruling, or for any other reason the Board deems proper.

2. Response

The Board shall respond to every written request for an advisory ruling within ninety days of its receipt of the request, indicating whether or not a ruling will be issued by the Board.

STATUTORY AUTHORITY: 5 MRSA §§8051, 9001(4)

EFFECTIVE DATE::

January 31, 1987 - as Chapter 4

REPEALED AND REPLACED:

January 1, 1990

AMENDED:

February 9, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 30

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
333 BOARD OF LICENSURE OF FORESTERS
Chapter 40: EDUCATIONAL QUALIFICATIONS FOR ISSUANCE OF AN INTERN FORESTER LICENSE

Summary: This chapter establishes standards for approval of educational programs that qualify graduates to apply for the intern forester license.

1. Graduate, Bachelor or Associate Degree

An applicant for the intern forester license shall submit evidence of:

1. Associate degree

An Associate of Science, Associate of Applied Science, Associate of Agriculture, Associate of Applied Agriculture or Diploma (Canada) from a curriculum in forestry or forest technology approved in accordance with section 2 below;

2. Bachelor degree

A Bachelor of Science or Bachelor of Science in Forestry from a curriculum in forestry approved in accordance with section 2 below; or

3. Master or Doctorate degree.

A Master of Science, Master of Forestry, Doctor of Philosophy or Doctor of Forestry from a curriculum in forestry approved in accordance with section 2 below.

2. Approved Educational Programs

1. Accredited programs

The Board hereby approves the specific educational programs in forestry and forest technology that are accredited by the Society of American Foresters or the Canadian Institute of Forestry.

[Note: Lists of accredited programs are available from the Board or:

Department of Science and Education
Society of American Foresters
5400 Grosvenor Lane
Bethesda, MD 20814-2198
ph: (301) 897-8720, ext. 122
internet: <http://www.safnet.org/educate/index.html>

Canadian Forestry Accreditation Board
18 Pommel Crescent
Kanata, Ontario K2M1A2
ph: (613) 599-7259]

2. Date of accreditation or certification

The applicant's degree must have been awarded while the program was accredited or certified.

3. Non-approved Educational Programs

1. Case-by-case consideration

Applicants who have graduated from—

- A. A forestry or forest technology program not in the United States or Canada; or
- B. A non-approved forestry or forest technology program from an accredited institution in the United States or Canada,

will be considered by the Board on a case-by-case basis using the applicable approval standard from subsection 2 below

2. Approval standards.

The Board hereby incorporates by reference the following approval standards:

Accreditation Handbook / Standards, Procedures, and Guidelines for Accrediting Educational Programs in Professional Forestry (Society of American Foresters, October 2000), available from the Board or—

Department of Science and Education
Society of American Foresters
5400 Grosvenor Lane
Bethesda, MD 20184
ph: (301) 897-8720 ext. 119
internet: <http://www.safnet.org/educate/accnews.htm>

Standards and Procedures for Recognizing Educational Programs in
Forest Technology (Society of American Foresters, September 2000),
available from the Board or—

Department of Science and Education
Society of American Foresters
5400 Grosvenor Lane
Bethesda, MD 20184
ph: (301) 897-8720 ext. 119
internet: <http://www.safnet.org/educate/accnews.htm>

4. Variance

An applicant who does not meet the educational qualifications contained in this chapter may apply for a variance pursuant to Chapter 50 of these rules.

STATUTORY AUTHORITY: 32 MRSA §5506(1)

EFFECTIVE DATE:

January 1, 1991 - part of Chapter 5, "General Requirements for Licensure"

AMENDED:

February 9, 1991

May 23, 1994

May 12, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

EFFECTIVE DATE:

February 16, 2002 - as Chapter 40, "Educational Qualifications for Issuance of an Intern Forester License"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
333 BOARD OF LICENSURE OF FORESTERS
Chapter 50: VARIANCE FROM EDUCATIONAL QUALIFICATIONS FOR
ISSUANCE OF AN INTERN FORESTER LICENSE

Summary: This chapter provides a pathway to licensure for applicants who do not meet the educational qualifications contained in Chapter 40.

1. General

A person who does not meet the educational qualifications contained in Chapter 40 of these rules may apply for a variance from the educational qualifications. The variance allows a person to apply for the intern forester license. The Board may grant a variance upon consideration of the applicant's work experience and supplemental forestry education as set forth in this chapter.

2. Work Experience

1. Nature and duration

Except as set forth in subsection 4 below, the applicant shall demonstrate four years of lawful work experience during the eight years preceding the date of application in the following four subject areas that constitute the profession of forestry. Each of the four subject areas must be substantially represented in the applicant's work history.

- A. Forest Biology - including but not limited to tree growth, species identification, forest ecology, wildlife and fish ecology and habitat manipulation, tree disease and insect problems, silvicultural, soils and water relationships, and fire ecology.
- B. Forest Resources Measurement - including but not limited to basic surveying, area determination, sample design and analysis, measurements of trees and forest products, and photo interpretation and mapping.
- C. Forest Resource Management and Harvesting - including but not limited to multiple-use principles, road design and construction, harvest layout, harvesting methods, environmental protection, marketing and utilization standards, stand analysis and prescriptions,

forest and wildlife habitat management, recreation management, urban forestry, fire, insect and disease protection, and financial management.

- D. Forest Resource Policy and Administration - including but not limited to state environmental and forest practice laws, boundary and trespass laws, contract and sale administration, forest taxation, and forest economics.

2. Recognition of Physical Labor

Up to 10% of the work experience required by subsection 1 above maybe satisfied by the physical implementation of cutting, hauling, handling or processing of forest products; the physical implementation of timber stand improvements or other silvicultural activities; the physical implementation of forest management road construction and maintenance; and measuring or scaling activities performed by persons licensed under 10 MRSA §2365-A, provided that the applicant demonstrates the relevance of the physical labor for which credit is claimed to any of the four areas of work experience described in subsection 1 above.

3. Documentation

To document the four years of experience required by this chapter, the applicant shall provide:

- A. An employment résumé that includes employer-generated job descriptions wherever possible; and
- B. A letter of recommendation from the supervising forester (or similar supervisor) of each employer the applicant wishes the Board to consider in connection with the four years of work experience required by this chapter. The Board may accept other forms of recommendation in situations where the applicant, in the exercise of due diligence, is unable to procure a letter of recommendation from the supervising forester.

4. Certain applicants with prior professional experience in other jurisdictions

An applicant seeking a variance pursuant to this chapter and an exemption from internship pursuant to 32 MRSA §5515(5) must show the four years of work experience required by this section in addition to the 24 months of work experience set forth in §5515(5), except that the four years of work experience may have occurred during the ten years preceding the date of application for a variance.

3. Supplemental Forestry Education

1. Nature and amount

The applicant shall demonstrate 60 contact hours of supplemental forestry education during the four years preceding the date of application.

Supplemental forestry education may consist of any of the following:

- | | |
|---------------------------|--|
| Category 1 | Organized course work, technical sessions, seminars, courses or workshops, or activity in forestry or forestry-related subject matter. One contact hour per clock hour of instruction. |
| Category 2 | Organized course work, seminars, workshops or technical sessions not specifically forestry related but of direct benefit to a forester, such as business, writing, real estate, etc. One contact hour per clock hour of instruction. |
| Category 3 | The development, preparation and presentation of forestry or forestry-related material accomplished for public service. Two contact hours per presentation, regardless of length and inclusive of preparation. Credit may only be awarded once for identical or substantially similar presentations. |
| Category 4 | Self-improvement activities of a professional nature such as holding elected or appointed office or active committee assignment in a forestry or closely-allied professional organization, or for serving on national, state or local boards that deal with natural resource and land use issues. One contact hour per year for each position. |
| Post-secondary coursework | Post-secondary coursework in forestry or natural resources at an accredited educational institution. Fourteen contact hours per academic credit hour awarded. |

Supplemental forestry education contact hours may be earned throughout the world, including in-service courses within organizations. Contact hours reported pursuant to this chapter may also be used to fulfill continuing education requirements of licenses or certifications held by the applicant.

2. Reporting and documentation

The applicant shall submit a Supplemental Forestry Education Statement as part of the license application. The applicant shall submit with the application detailed documentation for each course, program, presentation or other

activity listed on the statement. Documentation may consist of proof of attendance accompanied by a program or course outline, or an appointment letter to a board or committee. In the case of post-secondary courses, documentation consists of an original, sealed transcript issued by the educational institution.

3. Certain applicants with prior professional experience in other jurisdictions

An applicant seeking a variance pursuant to this chapter and an exemption from internship pursuant to 32 MRSA §5515(5) shall demonstrate 60 contact hours of supplemental forestry education as described in this section during the four years preceding the date of application.

STATUTORY AUTHORITY. 32 MRSA §5514(2)

EFFECTIVE DATE:

January 1, 1991 - Chapter 5, "General Requirements for Licensure"

AMENDED:

February 9, 1991

May 23, 1994

May 12, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 40, "Educational Qualifications for Issuance of an Intern Forester License"; Chapter 60, "Sponsorship of Intern Foresters"; Chapter 70, "Licensure as Forester"; and Chapter 80, "Continuing Forestry Education"

FURTHER REPEALED AND REPLACED:

July 4, 2002 - as Chapter 50, "Variance from Educational Qualifications for Issuance of an Intern Forester License," a major substantive chapter, filing 2002-180 accepted June 5, 2002

Summary: This chapter establishes the responsibilities of intern foresters and their sponsors.

1. Responsibilities of Intern Foresters

1. Nature of Work Experience

During an internship the intern forester shall acquire experience in the following four subject areas that constitute the profession of forestry. Each of the four subject areas must ordinarily account for no less than 10% of the intern forester's work experience during the internship. However, the Board may specify percentages of work experience to be earned in the four subject areas based on the intern's prior work experience and any supplemental forestry education.

- A. Forest Biology – including but not limited to tree growth, species identification, forest ecology, wildlife and fish ecology and habitat manipulation, tree disease and insect problems, silvicultural, soils and water relationships, and fire ecology.
- B. Forest Resources Measurement – including but not limited to basic surveying, area determination, sample design and analysis, measurements of trees and forest products, and photo interpretation and mapping.
- C. Forest Resource Management and Harvesting – including but not limited to multiple-use principles, road design and construction, harvest layout, harvesting methods, environmental protection, marketing and utilization standards, stand analysis and prescriptions, forest and wildlife habitat management, recreation management, urban forestry, fire, insect and disease protection, and financial management.
- D. Forest Resource Policy and Administration – including but not limited to state environmental and forest practice laws, boundary and trespass laws, contract and sale administration, forest taxation, and forest economics.

2. Full-time equivalency

The forestry internship is expected to be a full-time experience. Part-time experience is acceptable, but must accumulate to the full-time equivalent of the 48-month or 24-month internship required by 32 MRSA §5515(3)(A) or (B), as the case may be.

3. Log

The intern forester shall maintain a log during the course of the internship. The log shall record the dates, employer, location, duties and subject area with respect to each assignment performed by the intern forester. The intern forester shall produce the log to the Board for inspection at any time.

4. Completion of internship

Upon completion of the internship and payment of the applicable fee, the intern forester may apply for licensure as a forester on forms provided by the Board. The intern forester shall submit at that time the three references required by 32 MRSA §5515(4).

[Note: All fees relating to forestry licensure, including the examination fee, are set forth in Chapter 10 of the rules of the Office of Licensing and Registration, entitled “Establishment of License Fees.”]

2. Responsibilities of Sponsors

1. Guidance

All forestry work performed by an intern forester must be performed under the guidance of a forester who has agreed to sponsor the intern forester. Such guidance need not be day-to-day, direct personal supervision. However, the sponsor must have sufficiently detailed, current knowledge of the intern forester’s work to enable the sponsor to:

- A. Adequately evaluate the intern forester’s performance on an ongoing basis; and
- B. Submit the reference at the conclusion of the internship required by 32 MRSA §5515(4).

2. Report to board

The sponsor need not ordinarily report to the Board prior to the completion of the internship. However, the sponsor shall report to the Board on the progress and performance of the forestry intern if, at any time prior to completion of the internship—

- A. In the opinion of the sponsor, the quality of the intern forester's work or any other factor may, if not corrected, prevent the sponsor from submitting a favorable recommendation to the Board upon the conclusion of the internship;
- B. The intern forester changes sponsors, has a change in internship status or terminates the internship; or
- C. The sponsor resigns as sponsor.

3. Replacement sponsor

If a forester ceases to serve as sponsor without arranging for a replacement, an intern forester working under the guidance of that forester must arrange for a replacement within 30 days of the sponsor's resignation or unavailability. No work performed by an intern forester after 30 days following the resignation or unavailability of the sponsor will be recognized as part of the internship unless and until a replacement sponsor is obtained. The intern must immediately notify the Board of the name and address of the replacement sponsor.

Notwithstanding anything in this subsection to the contrary, the intern forester may not endorse plans, maps and reports unless the document has been actually reviewed by the sponsor of the intern forester prior to endorsement.

STATUTORY AUTHORITY: 32 MRSA §5515(10)

EFFECTIVE DATE:

January 1, 1991 - part of Chapter 5, "General Requirements for Licensure"

AMENDED:

February 9, 1991

May 23, 1994

May 12, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - Chapter 60, "Sponsorship of Intern Foresters"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 70: LICENSURE AS FORESTER

Summary: This chapter describes the licensure process following completion of the internship.

1. Consideration of References and Other Inquiries

The Board will contact the three references submitted by the intern forester pursuant to 32 MRSA §5515(4) for the purpose of determining if the intern forester merits licensure as a forester. In this evaluation, the Board will ask these individuals to assess:

- The applicant's knowledge of forestry;
- The applicant's ability to independently carry out professional forestry work;
- The applicant's character and ethical conduct during the internship; and
- Other items relevant to the practice of forestry the Board deems appropriate.

In addition, the Board will ask the sponsor to describe the intern forester's work in the four areas of forestry described in Chapter 60, §1(1) of these rules. The Board may also ask the intern forester to submit the log required by Chapter 60, §1(3).

2. Board Action on References

On the basis of the information received from the references and the intern forester, the Board will determine whether or not the intern forester has successfully completed the internship. If the Board concludes that the intern forester is unprepared to practice forestry ethically, competently, and independently, the Board may require that the internship be extended for a period of up to two additional years to remedy such deficiencies and provide an additional record of the intern forester's potential for licensure as a forester. The total duration of the internship and the extension may not exceed the limited license term for the intern forester license prescribed in 32 MRSA §5514(6).

3. Examination

1. Eligibility

An intern forester who has successfully completed the internship is eligible to take the written licensing examination. Upon passing the examination and paying the required fees, the intern forester shall be licensed as a forester.

2. Substance

The examination shall test the applicant's knowledge in the four areas of forestry described in Chapter 60, §1(1) of these rules.

3. Availability

The Board generally offers the examination at least twice per year. Application to take the examination shall be made on a form provided by the Board. The completed form, along with the nonrefundable examination fee, must be received by the Board at least two weeks prior to the examination date.

4. Passing Score

To be licensed as a forester, the applicant must obtain a total passing score of at least 70 percent with a minimum score of 60 percent in each of the four areas of forestry described in Chapter 60, §1(1). The Board may decide to scale the passing score for the whole exam, as well as for each section based on the difficulty of the exam.

5. Re-examination An applicant who fails to pass the examination may apply to be re-examined. A separate fee must be paid for each sitting.

STATUTORY AUTHORITY: 32 MRSA§5506(2)

EFFECTIVE DATE:

January 1, 1991 - part of Chapter 5, "General Requirements for Licensure"

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May 23, 1994

May 12, 1996

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October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 70, "Licensure as Forester"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 80: CONTINUING FORESTRY EDUCATION

Summary: This chapter establishes the minimum continuing education required for license renewal.

1. Nature and Amount

Each forester and intern forester shall complete twelve contact hours of continuing forestry education during the two-year period ending on December 31 of each even-numbered year. Continuing forestry education may consist of any of the following:

Category 1 Organized course work, technical sessions, seminars, courses or workshops, or activity in forestry or forestry-related subject matter. One contact hour per clock hour of instruction. A minimum of four contact hours must be earned in this category during the two-year continuing forestry education period ending on December 31, 2002. A minimum of eight contact hours must be earned in this category during each two-year continuing forestry education period thereafter.

Category 2 Organized course work, seminars, workshops or technical sessions not specifically forestry related but of direct benefit to

a forester, such as business, writing, real estate, etc. One contact hour per clock hour of instruction.

Category 3 The development, preparation and presentation of forestry or forestry-related material accomplished for public service. Two contact hours per presentation, regardless of length and inclusive of preparation. Credit may only be awarded once for identical or substantially similar presentations.

Category 4 Self-improvement activities of a professional nature such as holding elected or appointed office or active committee assignment in a forestry or closely-allied professional organization, or for serving on national, state or local boards that deal with natural resource and land use issues. One contact hour per year for each position.

Continuing forestry education contact hours may be earned throughout the world, including in-service courses within organizations. Contact hours reported pursuant to this chapter may also be used to fulfill continuing education requirements of other licenses or certifications held by the forester.

2. Optional Pre-Approval

The sponsor of a category 1 or 2 activity, or a prospective attendee, may request prior approval from the Board as to:

- The activity's eligibility for category 1 or 2 status, and
- The number of contact hours that attendees may report on the Continuing Forestry Education Statement for that activity.

The sponsor and attendee shall supply such information as the Board may require in order to act on the request.

3. Reporting and Documentation

Each forester and intern forester shall submit a continuing forestry education statement as part of the renewal application for even-numbered years. The forester or intern forester shall list on the statement all educational activities completed during the two-year period described in section 1 above for which credit is sought.

The forester or intern forester shall maintain detailed documentation for each course, program, presentation or other activity listed on the statement. Documentation may

consist of proof of attendance accompanied by a program or course outline, or an appointment letter to a board or committee. The forester or intern forester shall retain documentation until December 31 of the two-year reporting period next following the reporting period during which credit was claimed for the documented activity.

The Continuing Forestry Education Statement may be audited at any time. The forester or intern forester shall provide the underlying documentation to the Board upon request.

4. Deferment of Continuing Forestry Education

A forester or intern forester may request a deferment of continuing forestry education from the Board due to health problems or other extenuating circumstances. The forester must make up the deferred continuing education in the time and manner set forth by the Board.

5. Nonpracticing Foresters

This chapter does not apply to a forester who has attained the age of 62 years and practices less than 250 hours per year.

STATUTORY AUTHORITY: 32 MRSA §5515(7); 32 MRSA §59-B, as enacted by PL 2001, c. 285.

EFFECTIVE DATE:

January 1, 1991 - part of Chapter 5, "General Requirements for Licensure"

AMENDED:

February 9, 1991

May 23, 1994

May 12, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 80, "Continuing Forestry Education"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
333 BOARD OF LICENSURE OF FORESTERS
Chapter 90: REGISTRATION OF FORESTERS FOR THE SUPERVISION OF
UNLICENSED PERSONNEL

Summary: This chapter implements a registration system for foresters who supervise unlicensed individuals in the practice of forestry.

1. General

1. Registration available

A forester may register with the Board to supervise and direct an unlicensed person in the practice of forestry.

2. Registration required

No forester may permit an unlicensed person to practice forestry unless:

- A. The forester registers with the Board and enters into a supervision agreement with the unlicensed person as set forth in this chapter; or
- B. The unlicensed person is exempt from licensure pursuant to 32 MRSA §5503.

3. Supervision agreement between supervising forester and unlicensed person

The supervising forester and unlicensed person shall enter into a written agreement signed by both parties acknowledging that the supervising forester will provide direction and supervision to the unlicensed person in the practice of forestry. If not for general employment, the supervision agreement shall describe the particular project, assignment, contract or subcontract for which direction and supervision will be provided. The supervising forester shall provide a copy of the agreement to the unlicensed person. The supervising forester shall retain a copy of the agreement for one year following the termination of supervision, and shall provide the Board with a copy of the agreement upon request.

4. Responsibility for activities of unlicensed person

A supervising forester must provide direction and supervision to all unlicensed persons with whom the supervising forester has executed a supervision agreement as described in this chapter. The supervising forester is responsible for all activities of an unlicensed person relating to the practice of forestry that arise from or are related to the employment, particular project, assignment, contract or subcontract referenced in the supervision agreement, whether or not such activities are authorized by the supervising forester.

2. Time and Manner of Registration

A supervising forester shall register annually with the Board at time of license application or renewal, although the supervising forester may initially register with the Board at any time. The supervising forester shall provide the name and address of each unlicensed person whom the forester anticipates supervising during the year for which registration is made, and the name and address of each unlicensed person whom the forester actually supervised during the year preceding the year for which registration is made.

STATUTORY AUTHORITY: 32 MRSA §5515(10)(B)

EFFECTIVE DATE:

July 4, 2002 - major substantive chapter, accepted for filing June 5, 2002, filing 2002-181

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 100: CODE OF ETHICS

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the Board in this chapter.

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. "Client" means the individual or entity who is the recipient of the forestry services provided by the forester, other than an employer of the forester.
2. Forester. "Forester" means a person who holds a license from the Board as a forester or an intern forester.

3. Obligations to clients and employers

A forester shall bear the following obligations to clients and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing services on land or timber owned, leased or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester shall act towards the client and employer in all professional matters with loyalty, fidelity, and integrity.

2. Confidentiality

A forester will not voluntarily disclose information concerning the affairs of the forester's client or employer without the client's or employer's express permission, except as required by law.

3. Conflicts of Interest

A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If, in spite of precautions taken to avoid a conflict of interest a conflict is discovered, the forester must

- (i) Promptly and fully disclose the conflict to the client or employer in writing; and
- (ii) Either act immediately to resolve the conflict, or obtain written consent from the client or employer.

- B. Disclosure. The disclosure required by subparagraph (i) above shall include, but not be limited to:
- (i) The role in which the forester proposes to provide the services (e.g., procurement forester, management assistance forester, landowner's assistance forester);
 - (ii) The person or entity paying for the services; and
 - (iii) A description of any confidential client information that may be disclosed to the person or entity paying for the services.
- C. Arising from timber appraisals. In the event that a conflict of interest as a result of a timber appraisal should arise on a later transaction, in which a forester has a direct or indirect interest, the forester shall disclose to the former client or employer the nature of the conflict of interest immediately.

4. Fee Disclosure

Prior to providing services, a forester shall disclose all direct and indirect costs or obligations of the services to be provided. This disclosure shall include the rates, commissions and methods by which compensation shall be calculated and any estimate of the overall cost of the services to be provided. In the event that written confirmation of the scope of duties is provided pursuant to subsection 6 below, the fee disclosure required by this paragraph shall be included in the written confirmation. If circumstances cause the fee estimate to become significantly inaccurate, the forester shall consult the client and convey a revised estimate to the client as soon as practicable thereafter.

5. Fees

Fees may be negotiated on any mutually agreeable basis, except that no fee may be contingent upon the reporting of a predetermined result or value, or direction of a result or value that favors the interests of the client or employer. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

6. Written confirmation

A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment. This written confirmation must set

forth with reasonable certainty the scope of the project, any fee disclosure required under subsection 4 above, and the anticipated time of completion.

7. Client Funds

A forester who has custody of client funds shall maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds.

8. Due Care

A forester shall strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

9. Client Objectives

A forester shall obtain a clear understanding of the client's objectives in connection with providing any services to the client.

10. Qualified

A forester shall perform only those services for which the forester is qualified by education or experience.

11. Other Experts

A forester shall advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action and the forester will work cooperatively with other professionals.

12. Endorsement of Document.

A forester shall only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester shall clearly disclose "not a legal survey."

13. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted professional standards, the forester must advise the client or employer in advance of the consequences of such deviation. In no event shall a forester participate in or condone any violation of any laws.

4. Obligations to the Public

1. Disclosure of Role

A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him- or herself, the client, and any other person whose interests the forester is representing.

2. Public Comment

A forester shall base public comment on forestry matters on accurate knowledge and shall not distort or withhold pertinent information to substantiate a point of view.

3. Ethics First

A forester shall uphold this Code of Ethics above the demands of employment.

4. Comply With Laws

A forester shall at all times in the performance of forestry services abide by federal and state laws and municipal ordinances involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.

5. Advertising

A forester shall only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but may not include references to past clients served without their prior written consent.

6. Supervision of Unlicensed Individuals

A forester shall comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, shall be accurate, factual and objective.

2. Duties of Sponsor

A forester shall perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

STATUTORY AUTHORITY: 32 MRSA §§ 5506(3)

EFFECTIVE DATE:

August 6, 1976 - as Chapter 5, "Code of Ethics"

REFILED UNDER THE APA:

October 19, 1978

AMENDED:

January 31, 1987 - as Chapter 6, "Code of Ethics"

January 1, 1990 - as Chapter 6, "Ethics and Standards of Professional Conduct"

February 9, 1991

May 7, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

October 23, 1996

REPEALED AND REPLACED:

February 16, 2002 - as Chapter 100, "Code of Ethics"

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 110: TRANSITION PROVISIONS

Summary: This chapter implements the transition provisions of PL 2001, c. 261, §6.

1. New Applicants

1. Registration

Any applicant for a forester license who wishes to qualify under the education provisions of former 32 MRSA Chapter 75 by substituting experience for education must register with the Board, on forms provided by the Board, no later than April 30, 2002.

2. Experience Substituted for Education

The applicant shall document two years of experience in forestry work of a character satisfactory to the Board, including any internship as required by former 32 MRSA §5012(2), for each year of education required by former 32 MRSA §5012(1). The Board will evaluate the applicant's experience against the criteria contained in Chapter 50, §2 of these rules. Each applicant must complete all required experience, including a two-year internship pursuant to Chapter 60 of these rules, no later than April 30, 2008.

3. Conclusion of Internship; Licensure as Forester

At the conclusion of an internship, the references submitted by the intern forester shall be evaluated as set forth in Chapter 70 of these rules. The intern forester is subject to and shall comply with the provisions of Chapters 70 and 80 of these rules.

2. Current Interns

Any person who is currently registered as a forestry intern pursuant to 32 MRSA §5012(2) shall complete the remaining term of the internship pursuant to Chapter 60 of these rules and shall submit a renewal application for licensure as an intern forester pursuant to PL 2001, c. 261, §7(2).

3. Licensure as Forester

An intern forester who fulfills the requirements of Chapters 70 and 80, and whose application is not subject to denial under 32 MRSA §5513(1) – (4), shall be licensed as a forester.

STATUTORY AUTHORITY: PL 2001, c. 261, §7(3)

EFFECTIVE DATE:

February 16, 2002

Appendix C

STATE GOVERNMENT EVALUATION ACT,3 MRSA, CHAPTER 35

3 MRSA Chapter 35: STATE GOVERNMENT EVALUATION (HEADING: PL 1995, c. 488, @2 (new))

§951. Short title

This chapter may be known and cited as the "State Government Evaluation Act." [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§952. Scope

This chapter provides for a system of periodic review of agencies and independent agencies of State Government in order to evaluate their efficacy and performance. Only those agencies, independent agencies or parts of those agencies and independent agencies that receive support from the General Fund or that are established, created or incorporated by reference in the Maine Revised Statutes are subject to the provisions of this chapter. The financial and programmatic review must include, but is not limited to, a review of agency management and organization, program delivery, agency goals and objectives, statutory mandate and fiscal accountability. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§953. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 488, §2 (new).]

1. Agency. "Agency" means a governmental entity subject to review pursuant to this chapter, but not subject to automatic termination. [1995, c. 488, §2 (new).]

2. Committee or committee of jurisdiction. "Committee or committee of jurisdiction" means the joint standing committee of the Legislature having jurisdiction over the same policy and substantive matters as an agency subject to review under this chapter. [1995, c. 488, §2 (new).]

3. Independent agency. "Independent agency" means a governmental entity subject to review and to termination pursuant to this chapter. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§954. Designation by legislative policy committee

1. Authorization. On or before April 1st of any first regular session, the committee of jurisdiction shall review the list of agencies scheduled for review in section 959. [1995, c. 488, §2 (new).]

2. Waiver from review. The committee of jurisdiction may, with a 2/3 vote of all committee members, do one of the following with regard to an agency review: [1995, c. 488, §2 (new).]

A. Exempt an agency or independent agency from review and establish a new review date;

[1995, c. 488, §2 (new).]

B. Establish a modified review process in which an agency or independent agency may be asked to provide less information than required by this section or additional information; or

[1995, c. 488, §2 (new).]

C. Add an additional agency or independent agency for review, except that an agency that has been reviewed in accordance with this chapter in the legislative session immediately preceding the current legislative session may not be added for review.

[1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§955. Committee schedule

1. Review established. The committee of jurisdiction shall establish its agency review schedule in accordance with this chapter and upon approval of the necessary resources by the Legislative Council. The committee of jurisdiction shall provide each agency with a written notice of its intent to review an agency by no later than May 1st of the first regular session of the Legislature. [1995, c. 488, §2 (new).]

2. Submission of program evaluation report. Each agency and independent agency shall prepare and submit no later than November 1st prior to the second regular session of the Legislature, a program evaluation report as required in section 956, to the Legislature through the committee of jurisdiction. [1995, c. 488, §2 (new).]

3. Conduct review. The committee of jurisdiction shall begin its agency review process no later than February 1st of the second regular session of the Legislature and in accordance with this chapter. [1995, c. 488, §2 (new).]

4. Report issued. For those agencies and independent agencies selected for review by the committee of jurisdiction, the committee shall submit to the Legislature no later than March 15th of the second regular session of the Legislature the findings, administrative recommendations or legislation required to implement recommendations made as a result of its review, analysis and evaluation. [1995, c. 488, §2 (new).]

5. Follow-up review. The committee of jurisdiction shall establish in its final report a specified time in which the committee may review the progress of an agency in meeting the recommendations of the committee report. A follow-up review may consist of written progress reports, public hearings with the agency and committee or any other method approved by the committee of jurisdiction in its final report. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§956. Program evaluation report

1. Report required. Each agency and independent agency shall prepare and submit to the Legislature, through the committee of jurisdiction, a program evaluation report by a date specified by the committee. [1995, c. 488, §2 (new).]

2. Program evaluation report; contents. Each report must include the following information in a concise but complete manner: [2001, c. 495, §1-3 (amd).]

A. Enabling or authorizing law or other relevant mandate, including any federal mandates;

[1995, c. 488, §2 (new).]

B. A description of each program administered by the agency or independent agency, including the following for each program:

- (1) Established priorities, including the goals and objectives in meeting each priority;
- (2) Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
- (3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives;

[1995, c. 488, §2 (new).]

C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;

[1995, c. 488, §2 (new).]

D. Compliance with federal and state health and safety laws, including the Americans with Disabilities Act, the federal Occupational Safety and Health Act, affirmative action requirements and workers' compensation;

[1995, c. 488, §2 (new).]

E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;

[1995, c. 488, §2 (new).]

F. When applicable, the regulatory agenda and the summary of rules adopted;

[1995, c. 488, §2 (new).]

G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;

[1999, c. 661, §1 (amd).]

H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;

[1995, c. 488, §2 (new).]

I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;

[1995, c. 488, §2 (new).]

J. Identification of emerging issues for the agency or program in the coming years;

[1999, c. 661, §1 (amd).]

K. Any other information specifically requested by the committee of jurisdiction;
[2001, c. 321, Pt. A, §1 (amd).]

L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;
[2001, c. 495, §1 (amd).]

M. Agency policies for collecting, managing and using personal information over the Internet and nonelectronically, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement; and
[2001, c. 495, §2 (amd).]

N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public. The list must include:

- (1) The statutory authority for each filing requirement;
- (2) The date each filing requirement was adopted or last amended by the agency;
- (3) The frequency that filing is required;
- (4) The number of filings received annually for the last 2 years and the number anticipated to be received annually for the next 2 years; and
- (5) A description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication.

[2001, c. 495, §3 (new).]

PL 1995, Ch. 488, §2 (NEW).

PL 1999, Ch. 661, §1,2 (AMD).

PL 2001, Ch. 321, §A1-3 (AMD).

PL 2001, Ch. 495, §1-3 (AMD).

§957. Committee analysis and recommendations

1. Authority. For each agency or independent agency or a component part of each agency or independent agency subject to review pursuant to section 952, the committee of jurisdiction may conduct an analysis and evaluation that may include, but need not be limited to, an evaluation of the program evaluation report, including the extent to which the agency or independent agency has increased or reduced filing requirements and paperwork duplication burdens on the public; the extent to which the agency or independent agency operates in accordance with its legislative authority; and the degree of success achieved by the agency or independent agency in meeting its statutory and administrative mandate. In consultation with the Legislative Council, the committee shall select agencies or independent agencies for review either in accordance with the scheduling guidelines provided in this chapter or at any time determined necessary or warranted by the committee. [2001, c. 495, §4 (amd).]

PL 1995, Ch. 488, §2 (NEW).

PL 2001, Ch. 495, §4 (AMD).

§958. Termination of independent agencies

1. Termination process. The committee of jurisdiction may recommend to the Legislature that any independent agency be terminated if indicated or warranted by the committee's review, analysis and evaluation of the independent agency. An independent agency may be accorded a grace period of not more than one year from the effective date of the legislation approving termination in which to complete its business. During the grace period, the statutory powers and duties of the independent agency are not limited or reduced. [1995, c. 488, §2 (new).]

2. Disposition of property, funds and records. During the grace period, the Legislature shall determine the disposition of: [1995, c. 488, §2 (new).]

A. All property, including any land, buildings, equipment and supplies used by the independent agency;

[1995, c. 488, §2 (new).]

B. All funds remaining in any account of the independent agency; and

[1995, c. 488, §2 (new).]

C. All records resulting from the activities of the independent agency.

[1995, c. 488, §2 (new).]

3. Expiration of grace period. Upon the expiration of the grace period, the independent agency shall cease its activities and terminate. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§959. Scheduling guideline for review of agencies or independent agencies

1. Scheduling guidelines. Except as provided in subsection 2, reviews of agencies or independent agencies must be scheduled in accordance with the following. Subsequent reviews must be scheduled on an ongoing basis every 8 years after the dates specified in this subsection. [2005, c. 155, §1 (amd); c. 294 §1 (amd); c. 397, Pt. C, §3 (amd).]

A. The joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters shall use the following list as a guideline for scheduling reviews:

- (1) Baxter State Park Authority in 2009;
- (2) Department of Conservation in 2005;
- (3) Blueberry Advisory Committee in 2005;
- (4) Board of Pesticides Control in 2005;
- (5) Wild Blueberry Commission of Maine in 2005;
- (6) Seed Potato Board in 2005;
- (7) Maine Dairy and Nutrition Council in 2007;
- (8) Maine Dairy Promotions Board in 2007;
- (9) Maine Milk Commission in 2007;
- (10) State Harness Racing Commission in 2007;

- (11) Maine Agricultural Bargaining Board in 2003;
- (12) Department of Agriculture, Food and Rural Resources in 2009; and
- (14) Land for Maine's Future Board in 2007.

[2003, c. 578, §1 (amd); c. 600, §1 (amd).]

B. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters shall use the following list as a guideline for scheduling reviews:

- (1) State Employee Health Commission in 2009; and
- (2) Department of Professional and Financial Regulation, in conjunction with the joint standing committee of the Legislature having jurisdiction over business and economic development matters, in 2007.

[2003, c. 600, §1 (amd).]

C. The joint standing committee of the Legislature having jurisdiction over business, research and economic development matters shall use the following list as a guideline for scheduling reviews:

- (1) Maine Development Foundation in 2005;
- (5) Department of Professional and Financial Regulation, in conjunction with the joint standing committee of the Legislature having jurisdiction over banking and insurance matters, in 2007;
- (19) Department of Economic and Community Development in 2005;
- (23) Maine State Housing Authority in 2007;
- (32) Finance Authority of Maine in 2009;
- (36) Board of Dental Examiners in 2011;
- (37) Board of Osteopathic Licensure in 2011;
- (38) Board of Licensure in Medicine in 2011;
- (41) State Board of Nursing in 2011;
- (42) State Board of Optometry in 2011;
- (45) State Board of Registration for Professional Engineers in 2011; and
- (50) Maine Science and Technology Foundation in 2007.

[2005, c. 155, §1 (amd); c. 294, §1 (amd).]

D. The joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters shall use the following list as a guideline for scheduling reviews:

- (1) Department of Public Safety, except for the division designated by the Commissioner of Public Safety to enforce the law relating to the manufacture, importation, storage, transportation and sale of all liquor and to administer those laws relating to licensing and the collection of taxes on malt liquor and wine and the Emergency Services Communication Bureau, in 2001; and

(2) Department of Corrections in 2011.

[2003, c. 600, §1 (amd).]

E. The joint standing committee of the Legislature having jurisdiction over education and cultural affairs shall use the following list as a guideline for scheduling reviews:

- (1) Telecommunications Relay Services Advisory Council in 2005;
- (2) Department of Education in 2005;
- (2-A) State Board of Education in 2005;
- (3) Maine Arts Commission in 2007;
- (5) Maine Historic Preservation Commission in 2007;
- (5-A) Notwithstanding section 952, Maine Historical Society in 2007;
- (6) Maine Library Commission in 2007;
- (6-A) Maine State Cultural Affairs Council in 2007;
- (6-B) Maine State Library in 2007;
- (6-C) Maine State Museum in 2007;
- (7) Maine State Museum Commission in 2007;
- (8) Office of State Historian in 2007;
- (9) Board of Trustees of the Maine Maritime Academy in 2009;
- (10) Board of Trustees of the University of Maine System in 2009;
- (12) Maine Community College System in 2009;
- (13) Maine Health and Higher Educational Facilities Authority in 2011; and
- (14) Maine Educational Loan Authority in 2011.

[2003, c. 600, §1 (amd).]

F. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall use the following list as a guideline for scheduling reviews:

- (2) Office of Substance Abuse in 2005;
- (3) Maine Advisory Committee on Mental Retardation in 2007;
- (6) Department of Health and Human Services in 2009;
- (7) Board of the Maine Children's Trust Incorporated in 2011;
- (9) Maine Developmental Disabilities Council in 2011.

[2005, c. 397, Pt. C, §3 (amd).]

G. The joint standing committee of the Legislature having jurisdiction over inland fisheries and wildlife matters shall use the following list as a guideline for scheduling reviews:

- (1) Department of Inland Fisheries and Wildlife in 2005;
- (2) Advisory Board for the Licensing of Taxidermists in 2007; and

(3) Atlantic Salmon Commission in 2011.

[2003, c. 600, §1 (amd).]

H. The joint standing committee of the Legislature having jurisdiction over judiciary matters shall use the following list as a guideline for scheduling reviews:

- (2) Maine Human Rights Commission in 2009;
- (3) Maine Indian Tribal-State Commission in 2011; and
- (4) Department of the Attorney General in 2011.

[2003, c. 600, §1 (amd).]

I. The joint standing committee of the Legislature having jurisdiction over labor matters shall use the following list as a guideline for scheduling reviews:

- (1) Maine State Retirement System in 2005;
- (2) Department of Labor in 2007;
- (3) Maine Labor Relations Board in 2009; and
- (4) Workers' Compensation Board in 2009.

[2003, c. 600, §1 (amd).]

J. The joint standing committee of the Legislature having jurisdiction over legal and veterans' affairs shall use the following schedule as a guideline for scheduling reviews:

- (2) State Liquor and Lottery Commission in 2007;
- (3) The division within the Department of Public Safety designated by the Commissioner of Public Safety to enforce the law relating to the manufacture, importation, storage, transportation and sale of all liquor and to administer those laws relating to licensing and the collection of taxes on malt liquor and wine in 2007; and
- (4) Department of Defense, Veterans and Emergency Management in 2011.

[2003, c. 600, §1 (amd).]

K. The joint standing committee of the Legislature having jurisdiction over marine resource matters shall use the following list as a guideline for scheduling reviews:

- (1) Atlantic States Marine Fisheries Commission in 2005;
- (2) Department of Marine Resources in 2005;
- (4) Lobster Advisory Council in 2007; and
- (5) Maine Sardine Council in 2007.

[2003, c. 600, §1 (amd).]

L. The joint standing committee of the Legislature having jurisdiction over natural resource matters shall use the following list as a guideline for scheduling reviews:

- (1) Department of Environmental Protection in 2007;
- (2) Board of Environmental Protection in 2007;
- (3) Advisory Commission on Radioactive Waste and Decommissioning in 2005;

- (4) Saco River Corridor Commission in 2005; and
- (5) Board of Underground Oil Tank Installers in 2011.

[2003, c. 600, §1 (amd).]

M. The joint standing committee of the Legislature having jurisdiction over state and local government matters shall use the following list as a guideline for scheduling reviews:

- (1) Capitol Planning Commission in 2011;
- (1-A) Maine Governmental Facilities Authority in 2005;
- (2) State Civil Service Appeals Board in 2005;
- (3) State Claims Commission in 2005;
- (4) Maine Municipal Bond Bank in 2007;
- (5) Office of Treasurer of State in 2007;
- (6) Department of Administrative and Financial Services, except for the Bureau of Revenue Services, in 2011;
- (7) Department of the Secretary of State, except for the Bureau of Motor Vehicles, in 2011; and
- (9) State Planning Office, except for the Land for Maine's Future Board, in 2007.

[2003, c. 600, §1 (amd).]

N. The joint standing committee of the Legislature having jurisdiction over taxation matters shall use the following schedule as a guideline for scheduling reviews:

- (1) State Board of Property Tax Review in 2011; and
- (2) Department of Administrative and Financial Services, Bureau of Revenue Services in 2011.

[2003, c. 600, §1 (amd).]

O. The joint standing committee of the Legislature having jurisdiction over transportation matters shall use the following schedule as a guideline for scheduling reviews:

- (1) Maine Turnpike Authority in 2005;
- (2) The Bureau of Motor Vehicles within the Department of the Secretary of State in 2007;
- (3) The Department of Transportation in 2007; and
- (4) Maine State Pilotage Commission in 2009.

[2003, c. 600, §1 (amd).]

P. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall use the following list as a guideline for scheduling reviews:

- (1) Public Advocate in 2005;
- (2) Board of Directors, Maine Municipal and Rural Electrification Cooperative

Agency in 2007;

(3) Public Utilities Commission in 2007; and

(4) The Emergency Services Communication Bureau within the Department of Public Safety in 2009.

[2003, c. 600, §1 (amd).]

2. Waiver. Notwithstanding this list of agencies arranged by year, an agency or independent agency may be reviewed at any time by the committee pursuant to section 954. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

PL 1995, Ch. 560, §K82 (AMD).

PL 1995, Ch. 560, §K83 (AFF).

PL 1995, Ch. 671, §1-3 (AMD).

PL 1997, Ch. 245, §19 (AMD).

PL 1997, Ch. 455, §31 (AMD).

PL 1997, Ch. 526, §14 (AMD).

PL 1997, Ch. 683, §D1 (AMD).

PL 1997, Ch. 727, §A1,2 (AMD).

PL 1999, Ch. 127, §C1-15 (AMD).

PL 1999, Ch. 415, §1 (AMD).

PL 1999, Ch. 585, §1 (AMD).

PL 1999, Ch. 603, §1,2 (AMD).

PL 1999, Ch. 687, §A1 (AMD).

PL 1999, Ch. 706, §1 (AMD).

PL 1999, Ch. 790, §D14 (AFF).

PL 1999, Ch. 790, §D2,3 (AMD).

PL 2001, Ch. 354, §3 (AMD).

PL 2001, Ch. 439, §EEEE1,2 (AMD).

PL 2001, Ch. 471, §D4,5 (AMD).

PL 2001, Ch. 519, §1 (AMD).

PL 2001, Ch. 548, §1 (AMD).

PL 2001, Ch. 597, §1 (AMD).

PL 2001, Ch. 697, §A1 (AMD).

PL 2003, Ch. 20, §OO2 (AMD).

PL 2003, Ch. 20, §OO4 (AFF).

PL 2003, Ch. 451, §T1,2 (AMD).

PL 2003, Ch. 578, §1 (AMD).

PL 2003, Ch. 600, §1 (AMD).

PL 2005, Ch. 155, §1 (AMD).

PL 2005, Ch. 294, §1 (AMD).

PL 2005, Ch. 397, §C3 (AMD).

§960. Future or reorganized agencies and independent agencies

The chief staff administrator of a newly created or substantially reorganized agency or independent agency shall contact the committee to ensure placement of that agency or independent agency in the scheduling guideline outlined in section 959. The committee and the Legislative Council shall determine the placement of that agency or independent agency in the scheduling guideline. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§961. Legislative Council

The Legislative Council shall issue rules necessary for the efficient administration of this chapter and shall provide the committees of jurisdiction with assistance as required to carry out the purposes of this chapter. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§962. Legal claims

Termination, modification or establishment of agencies or independent agencies as a result of the review required by this chapter does not extinguish any legal claims against the State, any state employee or state agency or independent agency. The provisions of this chapter do not relieve the State or any agency or independent agency of responsibility for making timely payment of the principal and interest of any debt issued in the form of a bond or note. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

§963. Review

The joint standing committee of the Legislature having jurisdiction over state and local government matters shall review the provisions and effects of this chapter no later than June 30, 2000 and at least once every 10 years after June 30, 2000. [1995, c. 488, §2 (new).]

PL 1995, Ch. 488, §2 (NEW).

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Appendix D

**LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCY AND PROGRAMS,
3 MRSA, CHAPTER 37**

3 MRSA Chapter 37: LEGISLATIVE OVERSIGHT OF GOVERNMENT AGENCIES AND PROGRAMS (HEADING: PL 2001, c. 702, @2 (new))

§991. Evaluation and Government Accountability

The Office of Program Evaluation and Government Accountability is created for the purpose of providing program evaluation of agencies and programs of State Government and, when determined necessary by the committee, local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation. The office also is established to ensure that public funds provided to local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation are expended for the purposes for which they were allocated, appropriated or contracted. When authorized by the committee, the office also may examine or direct an examination of any state contractor financed in whole or part by public funds and any expenditure by any public official or public employee during the course of public duty, including, but not limited to, any expenditure of private money for the purposes of the agency or other entity. [2003, c. 673, Pt. GGGG, §1 (amd).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK1 (AMD).

PL 2003, Ch. 673, §GGGG1 (AMD).

§992. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 702, §2 (new).]

1. Committee. "Committee" means a joint legislative committee established to oversee program evaluation and government accountability matters. [2001, c. 702, §2 (new).]

2. Director. "Director" means the Director of the Office of Program Evaluation and Government Accountability. [2001, c. 702, §2 (new).]

3. Office. "Office" means the Office of Program Evaluation and Government Accountability established in section 991. [2001, c. 702, §2 (new).]

4. Other entity. "Other entity" means any public or private entity in this State that may be subject to program evaluation under this chapter as the result of its receipt or expenditure of public funds. "Other entity" may include local and county governments, quasi-municipal governments, special districts, utility districts, regional development agencies or any municipal or nonprofit corporation. [2003, c. 673, Pt. GGGG, §2 (amd).]

5. Program evaluation. "Program evaluation" means an examination of any government program that includes performance audits, management analysis, inspections, operations, research or examinations of efficiency, effectiveness or economy. [2003, c. 673, Pt. GGGG, §3 (amd).]

5-A. Qualified auditor. "Qualified auditor" means an auditor who meets the education and experience requirements of the Office of State Auditor as defined in Title 5, section 241. [2003, c. 463, §2 (new).]

6. State agency. "State agency" means each state board, commission, department,

program, office or institution, educational or otherwise, of this State. [2001, c. 702, §2 (new).]

7. Working paper. "Working paper" means all documentary and other information acquired, prepared or maintained by the office during the conduct of a program evaluation, including all intra-agency and interagency communications relating to a program evaluation and includes electronic messages and draft reports or any portion of a draft report. [2001, c. 702, §2 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 463, §1,2 (AMD).

PL 2003, Ch. 673, §GGGG2,3 (AMD).

§993. Committee membership; chairs

The membership of the committee and the selection of chairs are established by joint rule of the Legislature. [2001, c. 702, §2 (new).]

PL 2001, Ch. 702, §2 (NEW).

§994. Duties of committee

The committee has the following duties: [2001, c. 702, §2 (new).]

1. Director. To evaluate the director of the office and make a recommendation to the Legislative Council in writing regarding the reappointment of the director of the office before the Legislative Council considers the reappointment of the director of the office; [2001, c. 702, §2 (new).]

2. Annual work plan. To review and approve the annual work plan of the office; [2001, c. 702, §2 (new).]

3. Direct evaluations. To direct the office to conduct program evaluations; [2001, c. 702, §2 (new).]

3-A. Auditing services. When the committee determines that an examination as part of a program evaluation requires the services of a qualified auditor, to request the Department of Audit to conduct all or part of an examination or, if the Department of Audit is unable to perform the examination within the time frame established by the committee, to direct the office to obtain the services of a qualified auditor; [2003, c. 673, Pt. GGGG, §4 (new).]

4. Conduct hearings. To hold public hearings for the purpose of receiving reports from the office and questioning public officials about office findings and recommendations; [2001, c. 702, §2 (new).]

5. Examine witnesses. To examine witnesses and to order the appearance of any person or the appearance of any person for the purpose of production to the committee of papers or records, including books, accounts, documents, computer disks or memory or other electronic media and other materials regardless of their physical or electronic form; [2001, c. 702, §2 (new).]

6. Administer oaths. To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee determines the administration of an oath necessary and advisable, to determine if there is probable cause that a witness has committed perjury by

testifying falsely before the committee and to direct the Attorney General to institute legal proceedings as provided by law; [2001, c. 702, §2 (new).]

7. Vote on reports. To vote at the committee's discretion to endorse, to endorse in part or to release a report of the office without endorsement; [2001, c. 702, §2 (new).]

8. Subpoenas. To issue subpoenas upon a majority vote of the committee in the event of refusal to appear or to produce papers or records, including books, accounts, documents, computer disks or memory or other electronic media and other materials regardless of their physical or electronic form. A subpoena issued under this subsection must be issued pursuant to the provisions of section 165 and chapter 21; [2003, c. 451, Pt. KKK, §2 (amd).]

9. Meetings. To conduct meetings at such times as the cochairs determine necessary; [2003, c. 673, Pt. GGGG, §5 (amd).]

10. Adopt rules. To adopt rules, as long as the rules are not in conflict with the Joint Rules of the Legislature. By January 1, 2005, the committee must develop a mission statement to be included in the rules; [2005, c. 104, §1 (amd).]

11. Information available to committee. To receive certain information. Information that is made available to the committee is governed by chapter 21, which governs legislative investigating committees, and by Title 1, chapter 13, which governs public records and proceedings; and [2005, c. 104, §2 (amd).]

12. Immediate review system. To establish a system to provide immediate review of a program or function of a state agency or other entity in the event that there is a suspicion of a major mismanagement of public funds or functions. If the director determines to proceed under the immediate review system and the committee approves proceeding under that system, qualified auditors and investigators may be retained by the director for that purpose. The director shall coordinate efforts with the Attorney General, State Auditor, State Controller and others considered appropriate by the director. [2005, c. 104, §3 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK2 (AMD).

PL 2003, Ch. 463, §3 (AMD).

PL 2003, Ch. 673, §GGGG4-7 (AMD).

PL 2005, Ch. 104, §1-3 (AMD).

§995. Director

1. Appointment. Not earlier than April 1, 2003, the Legislative Council shall appoint by an affirmative vote of 8 members of the Legislative Council a nonpartisan director of the office for the purposes of conducting program evaluations pursuant to this chapter. The director must be appointed to an initial 5-year term, which is subject to renewal by the Legislative Council every 5 years thereafter. During the term of the contract, the director may be terminated only for cause by an affirmative vote of 8 members of the Legislative Council. The Legislative Council shall establish the compensation of the director. The director's duties must be performed independently and in a nonpartisan manner but under the general policy direction of the committee. [2003, c. 673, Pt. GGGG, §8 (amd).]

2. Duties. The director shall supervise the staff of the office in accordance with policies adopted by the committee and consistent with the policies of the Legislative Council. The

director shall prepare and present a biennial budget to the committee for its approval. Money appropriated or allocated to the office must be expended in the discretion of the director and the committee only. The director also shall prepare and present an annual work plan to the committee for its consideration and approval. The director also may contract with private individuals or entities for the conduct of program evaluations under this chapter. The director may request the committee to issue subpoenas. [2001, c. 702, §2 (new).]

3. Employees. Employees must be nonpartisan. Employees of the office are employed by and are responsible to the director, who shall hire and fix the compensation of each employee, subject to the approval of the committee and within resources available in the biennial budget. Other than the director appointed pursuant to subsection 1, an employee of the office may not be employed prior to July 1, 2003. [2003, c. 673, Pt. GGGG, §8 (amd).]

4. Annual report. The director shall prepare an annual report of the office's activities for each calendar year and shall submit that annual report to the committee and the Legislature no later than January 15th of each calendar year. [2003, c. 463, §4 (amd).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 463, §4 (AMD).

PL 2003, Ch. 673, §GGGG8 (AMD).

§996. Assistance to committee

The Department of the Attorney General, the State Auditor, the State Controller, the Commissioner of Administrative and Financial Services, the Director of the Office of Fiscal and Program Review and the Director of the Office of Policy and Legal Analysis shall assist the committee and office with program evaluations under this chapter if the committee and the director determine that such assistance is necessary. [2001, c. 702, §2 (new).]

The Commissioner of Administrative and Financial Services shall provide office space to house the office within the Burton M. Cross Building. This office space must be provided at no charge. [2003, c. 451, Pt. KKK, §3 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK3 (AMD).

§997. Conduct and issuance of program evaluation reports

The director and the office shall adhere to the following provisions relative to conducting and issuing program evaluation reports under this chapter. [2001, c. 702, §2 (new).]

1. Review and response. Prior to the presentation of a program evaluation under this chapter to the committee by the office, the director of the evaluated state agency or other entity must have an opportunity to review a draft of the program evaluation report. Within 15 calendar days of receipt of the draft report, the director of the evaluated state agency or other entity may provide to the office comments on the draft report. If provided to the office by the comment deadline, the comments must be included in the final report when it is presented to the committee. Failure by the director of an evaluated agency or other entity to submit its comments on the draft report by the comment deadline may not delay the submission of a report to the committee or its release to the public. [2001, c. 702, §2 (new).]

All documents, writings, drafts, electronic communications and information transmitted

pursuant to this subsection are confidential and may not be released to the public prior to the time the office issues its program evaluation report pursuant to subsection 3. A person violating the provisions of this subsection regarding confidentiality is guilty of a Class E crime. [2001, c. 702, §2 (new).]

2. Submission of final report to committee. The director shall notify the committee when each final program evaluation report under this chapter is completed. The report must then be placed on the agenda for a future committee meeting. At the meeting where a report appears on the agenda for the first time, the director will release that report to the committee and to the public simultaneously. The committee, at its discretion, may vote to endorse, to endorse in part or to decline to endorse the report submitted by the director. If the committee determines it is necessary, the committee may report out to the Legislature legislation to implement the findings and recommendations of any program evaluation report presented to it by the office. [2001, c. 702, §2 (new).]

3. Confidentiality. The director shall issue program evaluation reports, favorable or unfavorable, of any state agency or other entity, and these reports are public records, except that, prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and exempt from disclosure pursuant to Title 1, chapter 13. All other records or materials in the possession of the director or other entity charged with the preparation of a program evaluation report under this chapter that would otherwise be confidential or exempt from disclosure are exempt from disclosure pursuant to the provisions of Title 1, chapter 13. Prior to the release of a program evaluation report pursuant to subsection 2 or the point at which a program evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the working papers in the possession of the director or other entity charged with the preparation of a program evaluation report are confidential and may not be released or disclosed by the director to the Legislative Council or an agent or representative of the Legislative Council. This subsection may not be construed to prohibit or prevent public access to the records of a state agency or other entity in the possession of the director that would otherwise be subject to disclosure pursuant to the provisions of Title 1, chapter 13. The director shall refer requests for access to those records directly to the state agency or other entity that is the official custodian of the requested records, which shall respond to the request for public records. [2001, c. 702, §2 (new).]

4. Information available to office. Upon request of the office and consistent with the conditions and procedures set forth in this section, state agencies or other entities subject to program evaluation must provide the office access to information that is privileged or confidential as defined by Title 1, chapter 13, which governs public records and proceedings. [2003, c. 673, Pt. GGGG, §9 (amd).]

A. Before beginning a program evaluation under this chapter that may require access to records containing confidential or privileged information, the office shall furnish a written statement of its determination that it is necessary for the office to access such records and consult with representatives of the state agency or other entity to discuss methods of identifying and protecting privileged or confidential information in those

records. During that consultation, the state agency or other entity shall inform the office of all standards and procedures set forth in its policies or agreements to protect information considered to be confidential or privileged. The office shall limit its access to information that is privileged or confidential by appropriate methods, which may include examining records without copying or removing them from the source.

[2003, c. 673, Pt. GGGG, §9 (amd).]

B. Documentary or other information obtained by the office during the course of a program evaluation under this chapter is privileged or confidential to the same extent under law that that information would be privileged or confidential in the possession of the state agency or other entity providing the information. Any privilege or statutory provision, including penalties, concerning the confidentiality or obligation not to disclose information in the possession of a state agency or other entity or its officers or employees applies equally to the office. Privileged or confidential information obtained by the office during the course of a program evaluation may be disclosed only as provided by law and with the agreement of the state agency or other entity subject to the program evaluation that provided the information.

[2001, c. 702, §2 (new).]

C. If the office accesses information classified as privileged or confidential pursuant to state agency or other entity policy or procedures or by agreement, the office shall comply with the state agency's or other entity's standards or procedures for handling that information. The office may include in its working papers the excerpts from information classified as confidential or privileged as may be necessary to complete the program evaluation under this chapter, as long as the use does not infringe on department policies or procedures applicable to the original provision of information.

[2001, c. 702, §2 (new).]

5. Confidentiality of working papers. Except as provided in this subsection, working papers are confidential and may not be disclosed to any person. Prior to the release of the final program evaluation report, the director has sole discretion to disclose working papers to the state agency or other entity subject to the program evaluation when disclosure will not prejudice the program evaluation. After release of the final program evaluation report, working papers may be released as necessary to the state agency or other entity that was subject to the program evaluation under this chapter. [2001, c. 702, §2 (new).]

6. Confidential sources. If data supplied by an individual are needed to initiate, continue or complete a program evaluation under this chapter, the director may, by written memorandum to the file, provide that the individual's identity will remain confidential and exempt from disclosure under Title 1, chapter 13, and this written memorandum protects the identity of the person from disclosure under Title 1, chapter 13, notwithstanding any other provision of law to the contrary. [2001, c. 702, §2 (new).]

7. Disposition of final report. A final copy of a program evaluation report under subsection 2, including recommendations and the evaluated state agency's or other entity's comments, must be submitted to the commissioner or director of the state agency or other entity examined at least one day prior to the report's public release, and must be made available to each member of the Legislature no later than one day following the report's receipt by the committee. The office may satisfy the requirement to provide each Legislator a

copy of the report by furnishing the report directly by electronic means or by providing notice to each Legislator of the availability of the report on the office's publicly accessible site on the Internet. [2001, c. 702, §2 (new).]

PL 2001, Ch. 702, §2 (NEW).

PL 2003, Ch. 451, §KKK4 (AMD).

PL 2003, Ch. 673, §GGGG9 (AMD).

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Appendix E

**SUNRISE REVIEW REQUIREMENT, 5 MRSA, CHAPTER 379,
AND CRITERIA, 32 MRSA, §60-J**

5 MRSA, Chapter 379: BOARDS, COMMISSIONS, COMMITTEES AND SIMILAR ORGANIZATIONS (HEADING: PL 1983, c. 812, @39 (new); 1987, c. 786, @2 (rpr))

§12015. New boards

Any boards established on or after July 25, 1984 shall conform to the following provisions. [RR 1997, c. 2, §16 (cor).]

1. Membership; terms; vacancies. Each board may have no fewer than 3 members. Boards established after September 1, 2000 to regulate professions or occupations may have no more than 9 members, including at least 2 public members. Law establishing the Board must provide for appointments, terms of office, qualifications and removal of its members. In the event of the death, resignation or removal of any member, the vacancy for that member's unexpired term must be filled in the same manner as that member's original appointment. [1999, c. 687, Pt. B, §2 (amd).]

2. Sunset. [1999, c. 668, §49 (rp).]

3. Sunrise review required. Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation" means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by Title 32, section 60-J. Following this informal review, the committee shall: [1995, c. 686, §1 (rpr).]

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation;

[1995, c. 686, §1 (rpr).]

B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or

[1995, c. 686, §1 (rpr).]

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II and report its findings to the commissioner within 6 months of establishment of the committee.

[1995, c. 686, §1 (rpr).]

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation. [1995, c. 686, §1 (rpr).]

SUNRISE REVIEW EVALUATION CRITERIA

32 MRSA §60-J. Evaluation criteria

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are: [1995, c. 686, §2 (new).]

1. Data on group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group; [1995, c. 686, §2 (new).]

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met; [1995, c. 686, §2 (new).]

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years; [1995, c. 686, §2 (new).]

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public; [1995, c. 686, §2 (new).]

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers; [1995, c. 686, §2 (new).]

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public; [1995, c. 686, §2 (new).]

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners; [1995, c. 686, §2 (new).]

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate; [1995, c. 686, §2 (new).]

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis; [1995, c. 686, §2 (new).]

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation; [1995, c. 686, §2 (new).]

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits; [1995, c. 686, §2 (new).]

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and [1995, c. 686, §2 (new).]

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms. [1995, c. 686, §2 (new).]

PL 1995, Ch. 686, §2 (NEW).

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Stephen F. Holt was born in Gardiner, Maine on July 22, 1956. He was raised in Gardiner, Maine and graduated from Gardiner Area High School in 1974. He attended the University of Maine and graduated in 1980 with a Bachelor of Science degree in Natural Resource Management (Resource Economics).

He continued at the University of Maine in the fall of 1980 and entered the Master of Science in Resource Economics and Policy graduate program and later transferred to the Master of Forestry program. He completed his graduate assistantship and course studies in 1982. In the fall of 2005, Mr. Holt was readmitted to the Graduate School to complete his Master of Forestry paper and degree.

Mr. Holt is a Licensed Forester in the State of Maine, having been first licensed in 1981. He has served in both the public and private sectors within the state of Maine in the forestry, natural resources, and energy fields since that time.

Stephen is a candidate for the Master of Forestry degree from The University of Maine in May, 2006.