



**Report of the Department of Professional and
Financial Regulation**

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

On

**Public Law 2006, Chapter 237
(LD 1508)**

***“Resolve Directing the Department of Professional and
Financial Regulation to Conduct a Sunrise Review
Regarding the Regulation of Fire Alarm Contractors”***

January 15, 2007

***John Elias Baldacci
Governor***

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Acting Commissioner***

I. Introduction

LD 1508, in its original form, provided for a new regulatory program for fire alarm installation contractors and triggered application of the sunrise review statute (5 MRSA § 12015(3)). The Joint Standing Committee on Business, Research and Economic Development amended the bill to require sunrise review (independent assessment) of the proposal. The bill was enacted as Public Law 2006, chapter 137. This report reflects the independent assessment of the Commissioner of the Department of Professional and Financial Regulation as to whether the health, welfare and safety of Maine citizens warrants regulation of individuals and companies that install fire alarm systems.

II. Sunrise Review

Pursuant to 5 MRSA § 12015(3), “sunrise review” is required when a legislative proposal calls for creation of a regulatory program for a profession or occupation not previously regulated, or that proposes to expand existing regulation. Sunrise review is a systematic review of proposed new or expanded regulation undertaken to assist the Maine Legislature in determining when state regulation is necessary to protect the health, safety, and welfare of the public.

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

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

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

In this case, an independent assessment of proposed regulation was requested by the Maine Legislature. Copies of 5 MRSA § 12015(3) and a summary of the Sunrise Review process are included in **Appendix A**.

III. Charge to the Commissioner from the Maine Legislature

Public Law 2006, chapter 137 as enacted by the 122nd Maine Legislature, requires the Commissioner of the Department of Professional and Financial Regulation to conduct an independent assessment (“sunrise review”) pursuant to the provisions of Title 32, sec. 60(k), of the proposal to regulate the activity of fire alarm contractors. This report documents the methodology of the Commissioner’s assessment and includes recommendations for consideration by the Joint Standing Committee on Business, Research and Economic Development in the 123rd Legislature.

IV. Independent Assessment by Commissioner

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

The Commissioner’s report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment about whether final answers to the evaluation criteria are sufficient to support some form of regulation. In addition, if there is sufficient justification for some form of regulation, the report must recommend an agency of State government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the report must reflect the least restrictive method of regulation consistent with the public interest.

V. Current Regulatory Environment in Maine

The State of Maine has implemented a variety of methods of regulating for public safety in the area of fire protection and fire suppression systems. First, the State Fire Marshal’s Office within the Department of Public Safety has statutory authority to regulate companies and individuals that install fire suppression systems including fire sprinkler systems (See 32 MRSA Sec. 1371 et seq.). The State Fire Marshal’s Office (SFMO) has adopted many chapters of the National Fire Protection Association (NFPA) fire and life safety codes. According to information provided by the SMFO for this report, there are approximately 106 fire sprinkler system installers registered with that agency and working in Maine.

The Board of Licensure of Professional Engineers provides a second source of regulation of this industry by licensing and regulating professional Fire Protection Engineers. The Board indicates that fire protection engineers routinely design, install, test, maintain and inspect fire alarm systems as permitted by the statutory scope of practice for licensed professional engineers.

Finally, the Electricians' Examining Board within the Department of Professional and Financial Regulation licenses and regulates licensed electricians and electrical contractors and has statutory authority to issue limited low-voltage licenses to individuals and companies that employ licensed electricians who are permitted to install fire alarm systems in residential and commercial settings. Information provided by the Electricians' Examining Board (EEB) for this sunrise report indicates that in addition to the 5813 licensed master and journeyman electricians who are qualified to install fire alarm systems, there are also 286 Limited to Low Voltage licensees who are permitted to install low-voltage electrical systems. In addition, there are 36 electrical contractors (companies) licensed by the Office of Licensing and Registration which employ licensed electricians to install fire alarm and other low-voltage systems.

VI. Evaluation Criteria

As part of the independent assessment process, the Commissioner must review and assess the responses to the evaluation criteria submitted by the applicant group and interested parties. In this instance, Norris Incorporated, owned and operated by Mr. Harty Norris, is considered the “applicant group.”

To begin the assessment process, the Department forwarded sunrise survey instruments to Norris Incorporated and to the State Fire Marshal's Office. Both entities had been involved in prior legislative discussions on the issue of fire alarm contractor regulation and each entity submitted completed sunrise surveys which are appended to this report in **Appendix B**. Both entities support new regulation of fire alarm installation contractors within the SFMO.

Survey instruments were also sent to and responses solicited from the Maine Burglar and Fire Alarm Association (MBFAA) and the Maine Board of Registration of Professional Engineers. MBFAA did not respond to the Department's invitation to submit comments. The Board of Licensure of Professional Engineers Board submitted a statement raising concerns about regulation of fire alarm installers without indicating support or opposition to the proposal that led to sunrise review. Subsequent to its initial response, the Professional Engineers Board supplemented its statement with additional information. The Board's responses and information are appended as part of Appendix B.

The Department's analysis tracks the evaluation criteria set forth in 32 MRSA § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in statute;
2. A summary of the responses received from the applicant group and interested parties;
and
3. The Department's assessment of the response to the evaluation criteria.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Responses:

Harty Norris, of Norris Incorporated, did not submit a specific description of the group that would be subject to regulation under this proposal. He did indicate, however, that the bill submitted on his behalf was not designed to be a licensing bill. Finally, Mr. Norris listed the Maine Burglar and Fire Alarm Association as an organization that would represent potential licensees.

The State Fire Marshal's Office responded that 300 burglar and fire alarm contractors and 1500 electricians would make up the group subject to state regulation. The response also listed the Maine Burglar and Fire Alarm Association located in West Rockport, Maine, as an organization that would represent potential licensees. It was upon the receipt of this information that a separate sunrise survey was forwarded to the MBFAA. The SFMO also listed the Automatic Fire Alarm Association in Lake Mary, Florida and the National Burglar and Fire Alarm Association in Irving, Texas as organizations that might represent potential licensees. Finally, the SFMO stated that there would not be any new licensing under the proposal being studied.

Department assessment:

Although the proponent of LD 1508 may not have intended for there to be new licensing of a profession or occupation, "licensing" is one of several terms used interchangeably to describe state oversight and regulation of individual conduct or business activity to ensure public protection. Currently, the State Fire Marshal's Office is required by statute to administer a registration program for companies that install fire suppression systems. These systems include fire sprinkler systems and other fire suppression systems. Regardless of the term used to describe the proposed program for fire alarm contractors, the proposal contemplates a state program that would prohibit companies or individuals from installing fire alarm systems without a license to do so.

It appears that the intended target group, that is, fire alarm system installers, is already subject to regulation through the Electricians' Examining Board.

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

Responses:

Mr. Norris responded that specialized skill would include “knowledge of systems operation, testing installation to comply with Life Safety Codes.”

The SFMO responded that “as with any type of specialized contractor, the public needs to do its homework about who they hire in order to be sure that the installation will be professional.”

Department Assessment:

The licensing law of the Electricians’ Examining Board sets forth the minimum requirements that must be satisfied in order to be permitted to install fire alarm systems. All master electricians and journeyman electricians as well as limited to low-energy licensees are qualified to install and test these installations. The statutory provisions at issue in this review are attached as **Appendix C**.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public’s health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Responses:

Mr. Norris notes that there is potential harm to the public if the “installation and testing of life safety systems are below NPFA minimum standards.” He further asserts that “many systems are not installed in accordance with NFPA Codes.”

The SFMO responded that “if a fire alarm system does not operate properly, then building occupants may not have sufficient time to exit the building before fire and smoke endanger their lives during the event of a fire.” In addition, “we (SFMO) have heard of complaints of improper installations, and installations that cause false alarms, but have not received any formal written complaints.”

Department assessment:

There is potential harm to occupants of a structure if a fire alarm system installed in the structure fails to operate correctly in the event of a fire. Evidence of harm to the public in the absence of regulation is a key factor to be considered in the course of most sunrise reviews. In the context of this report, however, evidence of consumer complaints against companies and individuals who install fire alarm systems is an important set of data to be

considered when the Legislature evaluates the public need for *expanded* regulation of fire alarm installers. The staff of the Electricians' Examining Board has reviewed the complaints filed within the past five years against licensed electrical companies and licensed electricians. The staff could identify no complaint that focused on improper installation of a fire alarm system. To date, there is no hard evidence of actual harm to the public in the absence of regulation beyond that provided through the Electricians' Examining Board. (See Appendix D.)

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Responses:

Mr. Norris indicated that “the Association,” presumably the Maine Burglar and Fire Alarm Association, has promoted certifications and NICET qualification standards.

The SFMO indicated that “only a few have become “UL certified” and that “most of the larger contractor companies are members of the Maine Burglar and Fire Alarm Association.” Further, “electricians obtain low-voltage wiring licenses.” Finally, SFMO asserts that the “vast majority of installers are not members of an association and even more are not monitored by a third party such as Underwriters Laboratory.

Department assessment:

Information submitted by the State Fire Marshal's Office indicates that although the Maine Burglar and Fire Alarm Association has promoted private certification among its members in the past, the concept of private certification has not been embraced by association members.

Evaluation Criterion #5. Costs and benefits of regulation. 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.

Responses:

Mr. Norris responded that “the cost of a state inspection sticker and UL certification would be plus or minus \$35 per year.”

The SFMO stated that under this proposal, “each installation would increase in cost by the cost of a sticker issued by our office, plus the cost of inspection by a third-party verifier. The sticker cost would be minimal, approximately \$20.

Department assessment:

The additional cost of expanding an existing regulatory program is typically passed along to the consumer of the product or service. The cost associated with additional regulation of fire alarm contractors is unclear from the responses received.

Evaluation Criterion #6: Service availability under 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.

Responses:

Mr. Norris stated that service available under regulation “would decrease as some providers may not opt for UL certification costs and requirements.”

The SFMO indicated that there would be no change in availability of service.

Department Assessment:

In general, imposing additional regulation on an already regulated group results in a decrease in licensee numbers. That decrease may, in turn, decrease the availability of services to the public in the area of fire alarm installer services. A decrease in the availability of services caused by imposing additional requirements on the licensed group, in the absence of compelling documented safety issues and concerns, does not result in a net benefit to the public.

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

Mr. Norris stated that the SFMO is currently overseeing enforcement of NFPA Codes, but it does not have any authority over electrical contractors or alarm installers.

The SFMO states that there is presently no licensing of installers other than the electricians low-energy wiring licenses. Moreover, there is no third-party verification of installation work, according to the SFMO.

Department Assessment:

It is true that the State Fire Marshal’s office does not have statutory authority to regulate electrical contractors and installers of fire alarm systems. The Maine Legislature granted

that authority to the Electricians' Examining Board. The Board, through its licensing process and its administrative complaint process ensures that the public is protected in the manner mandated by the Maine Legislature.

The Board has adopted various chapters of the National Electric Code which cover installation of low-voltage electrical systems. Electrical contractors who employ electricians to install fire alarm system are also required to be licensed by the EEB. Individuals and companies that design fire alarm systems may also be required to be licensed, in many instances, by the Board of Licensure of Professional Engineers.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Responses:

Mr. Norris responded that third-party oversight by UL is in place in numerous jurisdictions and is an industry standard which has been used on the security system side of alarms for years.

The SFMO responded that the "sticker method of third-party verification is chosen to keep things simple for all parties involved, and to avoid additional licensing which would be inappropriate seeing that electricians already have licensing oversight."

Department assessment:

Any discussion of the appropriateness of one method of regulation over another would be premature at this time.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Responses:

Mr. Norris indicated that Texas, Florida and Maryland regulate fire alarm contractors.

The SFMO indicated that Delaware appears to regulate this profession through the State Fire Marshal's Office which requires a certificate of completion from the installing contractor. California regulates fire alarm contractors installing systems in schools. Oregon has laws regarding smoke detectors, but not fire alarm systems.

Department assessment:

States have developed widely differing governmental structures for regulating professions and occupations. Each state's arrangement evolves over time and various factors including funding, staffing, and political environment affect how professions and occupations are regulated.

To illustrate the variety of arrangements in other states the Department obtained a recent survey from the National Association of Electrical Contractors which is attached to this report as **Appendix E**. The survey indicates that of the 47 states responding:

- 20 states regulate fire alarm contractors through an electricians licensing entity similar to the Maine EEB;
- 10 states reported no state level regulation;
- 7 states regulate fire alarm installers through a contractors licensing entity,
- 4 states reported that regulation of this group is within the statutory responsibilities of the State's Fire Marshal's Office; and
- 6 states had licensing programs located within the Department of Health, Department of Public Safety or the Secretary of State's Office.

Maine is in the majority of states that regulate fire alarm contractors and installers through the electricians licensing entity.

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

Responses:

Mr. Norris indicates that LD 1508 was proposed in prior legislative sessions in Maine but was taken back when it became apparent that misinformation about the requirements of the bill had been circulating. There was a misperception that the bill would bar electricians from installing fire alarm systems.

The SFMO indicates that this area has been the subject of discussion for about 10 years and that several different drafts have been developed. Several fire alarm companies have requested that the SFMO develop a regulatory law because they were impressed with the Office's successful regulation of the fire sprinkler industry for over fifteen years. They indicated an interest in being held to a consistent standard.

Department assessment:

No assessment necessary.

Evaluation Criterion #11: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

Mr. Norris states that the minimum standards would be UL standards and the appropriate NFPA codes that have been adopted by the State of Maine.

The SFMO indicates that the current standard is the National Fire Protection Association's Fire Alarm Code #72 and that the proposed mechanism for regulation merely establishes a procedure to verify that NFPA 72 is adhered to.

Department assessment:

Minimum standards of competency for fire alarm contractors have been set by the Legislature through the Electricians' Examining Board.

Evaluation Criterion #12: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Responses:

Mr. Norris did not respond to this criterion.

The SFMO states that "money generated from the sale of stickers would help fund a new position. Initially, the remainder of support would come from revenues generated by licenses and permit fees associated with the existing regulation of the fire sprinkler industry. This position would share responsibilities with regulating both industries."

Department Assessment:

The response of the State Fire Marshal's Office contemplates that the additional program costs associated with regulating fire alarm system installers and inspecting installations would be paid through a combination of dedicated revenue from existing licensees (application fees and inspection stickers associated with inspection of fire suppression systems) and from new dedicated revenue associated with application fees and the sale of inspection stickers for fire alarm installations. The Department of Professional and Financial Regulation does not have knowledge of how the State Fire Marshal's Office

funds its programs. Theoretically, however, the Department assumes that the added costs of regulation of fire alarm contractors by the SFMO would be paid, at least in part, by companies and individuals already licensed by the Electricians' Examining Board.

VII. Conclusions and Recommendations

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

The purpose of the sunrise process with respect to additional regulation of fire alarm contractors is to assess the public need for expanded regulation and the consequences to the public and to fire alarm contractors of the expansion of an existing regulatory program.

The following factors have been considered in formulating the Department's recommendations:

1. The absence of information that the public is in jeopardy because fire alarm contractors are not regulated by both the State Fire Marshal's Office and the Electricians' Examining Board;
2. The absence of information as to the estimated number of individuals and companies that install fire alarm systems that are not already licensed for this purpose by the Electricians' Examining Board;
3. The absence of documented complaints against individuals or businesses who have harmed Maine citizens because of how fire alarm systems have been installed and tested; and
4. Information indicating that the Maine Legislature intended the Electricians' Examining Board authority to license and regulate electricians, all of whom are qualified to install fire alarm systems, and to issue limited to low-energy licenses to individuals who meet the qualifications and requirements for that license;
5. Lack of response from individuals, companies or other interested parties in support or in opposition to the proposal.

The Department has reviewed and evaluated information supplied by the applicants and obtained by the Department and concludes that this information, when considered as a whole, does not support additional regulation of fire alarm contractors over and above the regulation and public protection currently provided by the Maine Legislature through the regulatory and inspection program of the Electricians' Examining Board.

The State Fire Marshal's Office is statutorily responsible for regulation of the fire sprinkler industry in Maine. Currently, the SFMO administers a registration program for companies and individuals involved in the installation of fire suppression systems, including sprinkler systems, in residential and commercial structures. Sprinkler systems involve significant piping, pipe fittings and drain connections to ensure that once triggered, the sprinkler system directs water to specific locations within the structure and suppresses a fire. There are currently 106 companies registered as approved sprinkler system installers with the SFMO. In addition, the SFMO registers "responsible managing supervisors" and inspectors who supervise the actual installation. Maine law requires that before a fire sprinkler system is installed, the plans for the installation must be reviewed and approved by the SFMO. At the time of renewal of the company's registration, a review is conducted of all previous installations to ensure that plans have been verified.

Fire alarm systems, on the other hand, are low energy wiring systems used to warn occupants of the existence of a fire—but they are not fire suppression systems. Maine law requires installers of these systems to be licensed by the Electricians' Examining Board because of their electrical components. All licensed master and journeyman electricians are qualified by virtue of their licenses to install these systems. In addition, the Board has created a special limited license for individuals who satisfy qualifications and requirements to obtain the limited license and who agree to limit their work to installation and testing of low energy systems. If installed improperly, licensees of the board can be disciplined pursuant to the statute and rules of the board. To date, no complaints have been filed by consumers or the Board, on its own motion, about the improper installation of a fire alarm system. There are currently 3,754 Active Master Electricians, 2,059 Active Journeyman electricians, and 286 limited to low energy electricians qualified to install fire alarm systems. The 36 electrical contractors (companies) licensed by the EEB are required to use licensed electricians to install these systems.

It appears from all information available to the Department that fire sprinkler system contractors are adequately regulated by the State Fire Marshal's Office and fire alarm system installers are adequately regulated by the Electricians Examining Board. Through these two entities of state government, the Maine Legislature has identified the potential harm to the public in the absence of regulation and has taken steps to protect the public.

The purpose of this sunrise review is to determine whether the public is placed at risk without expanded regulation of fire alarm contractors. In this case, the Department cannot identify justification for additional regulation of fire alarm installers through the State Fire Marshal's Office or through another entity of state government. The

Department concludes further that existing state regulatory programs adequately protect the health, safety and welfare of Maine citizens. The proposed expansion of regulation of fire alarm contractors by creating a program for fire alarm contractors that mirrors an existing regulatory program for fire suppression system installers is not warranted.