

SB 315-FN – AS AMENDED BY THE SENATE

03/13/14 0890s

2014 SESSION

14-2744
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SENATE BILL ***315-FN***

AN ACT establishing a board of building officials.

SPONSORS: Sen. Carson, Dist 14; Rep. Renzullo, Hills 37; Rep. Goley, Hills 8

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill establishes the board of building officials for the certification and regulation of persons enforcing the state building code and conducting building inspections.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT establishing a board of building officials.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Joint Board of Licensure and Certification; Building Officials Added. Amend RSA 310-A:1 to
2 read as follows:

3 310-A:1 Joint Board Established. There shall be a joint board of licensure and certification for
4 professional engineers, architects, land surveyors, foresters, professional geologists, natural
5 scientists, landscape architects, court reporters, home inspectors, accountants, manufactured
6 housing installers, real estate appraisers, and electricians, **building officials**, and the board of
7 manufactured housing, consisting of each of the members of the board of professional engineers,
8 board of architects, state board of licensure for land surveyors, foresters’ board, board of professional
9 geologists, the board of natural scientists, the board of landscape architects, the board of court
10 reporters, the board of home inspectors, the board of accountancy, the real estate appraiser board,
11 the electricians’ board, the manufactured housing installation standards board, **the board of**
12 **building officials**, and the board of manufactured housing.

13 2 New Subdivision; Joint Board; Board of Building Officials. Amend RSA 310-A by inserting
14 after section 201 the following new subdivision:

Board of Building Officials

16 310-A:202 Purpose; Scope of Practice.

17 I. The purpose of this subdivision is to assure that a building official or inspector is qualified
18 by the demonstration of understanding state construction codes, referenced in RSA 155-A, by way of
19 achieving certifications from the International Code Council or it’s successor, or other approved code
20 promulgation agencies.

21 II. The scope of practice of a building officials certified under this subdivision shall be
22 consistent with the authority granted under RSA 155-A:7 and RSA 674:51.

23 310-A:203 Definitions. In this subdivision:

24 I. “Board” means the board of building officials.

25 II. “Code of ethics” means the code of ethics adopted by the board to be followed by building
26 officials who are certified by the board.

27 III. “Building official” means the officer or other designated authority charged with
28 administration and enforcement of the state building code under RSA 674:51. This shall also include
29 any company or individual who contracts with a municipality to conduct building inspections on

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1 behalf of the municipality.

2 310-A:204 Standards of Practice. The board shall adopt, under RSA 541-A, minimum and
3 uniform standards of practice which shall apply to New Hampshire building officials and be enforced
4 by the board.

5 310-A:205 Code of Ethics for New Hampshire Building Officials. The board shall adopt under
6 RSA 541-A a code of ethics for building officials, which shall include substantially the following:

7 I. The code of ethics details the core guidelines of building official professionalism and
8 ethics, covering crucial issues such as conflicts of interest, good faith, and public perception.
9 Integrity, honesty, and objectivity are fundamental principles embodied by this code, which sets forth
10 obligations of ethical conduct for the building official profession.

11 II. Building officials shall comply with this code, avoid association with any person or
12 enterprise whose practices violate this code, and strive to uphold, maintain, and improve the
13 integrity, reputation, and practice of the building official profession.

14 III. Building officials shall avoid conflicts of interest or activities that compromise, or appear
15 to compromise, professional independence, objectivity, or building official integrity. Officials shall
16 not:

17 (a) Inspect properties in which they have, or expect to have, a financial interest.

18 (b) Building officials shall avoid activities that may harm the public, discredit
19 themselves, or reduce public confidence in the profession.

20 (c) Withhold a report of substantive and willful violations of this code to the board.

21 (d) Receive financial compensation for any work which requires a building permit in the
22 jurisdiction where they also serve as a building official.

23 310-A:206 Board of Building Officials.

24 I. A board of building officials is established to administer the provisions of this subdivision.
25 The board shall consist of 7 persons as follows:

26 (a) Five members, each of whom shall be member of the New Hampshire Building
27 Officials Association, appointed by the governor and council. Each building official member shall
28 hold a current and valid International Code Council (ICC) certification and shall have actively
29 practiced as a building official for a minimum of 5 years prior to appointment. Initial building
30 official appointees to the board shall be required to hold a current and valid ICC certification, and
31 shall have been actively practicing as a building official for a minimum of 5 years prior to
32 appointment.

33 (b) Two public members, each to be appointed by the governor and council. Each public
34 member of the board shall be a person who is not, and never was a building official nor directly or
35 indirectly involved in the construction industry.

36 II. Each member of the board shall be a citizen of the United States and a resident of this
37 state.

1 III. Members shall be appointed for 5-year terms. Initial appointments for terms of less
2 than 5 years may be made in order to stagger the appointments. No appointed member shall be
3 eligible to serve more than 2 full consecutive terms, provided that for this purpose only, a period
4 actually served which exceeds 1/2 of the 5-year term shall be deemed a full term. Upon expiration of
5 a member's term, the member shall serve until a successor is qualified and appointed. Vacancies
6 occurring prior to the expiration of a specific term shall be filled by appointment for the unexpired
7 term. Appointees to the unexpired portion of a full term shall become members of the board on the
8 day following such appointment. A board member may be removed for cause by the governor and
9 council under RSA 4:1.

10 IV. Members of the board shall receive \$25 for each day actually engaged in the duties of
11 their office and shall be reimbursed for all actual travel, incidental, and clerical expenses necessarily
12 incurred in carrying out the provisions of this subdivision.

13 V. The board shall hold at least 3 regular meetings each year and special meetings at such
14 times as it may deem necessary. Notice of all meetings shall be given in such a manner as rules
15 adopted by the board may provide. The board shall biennially elect or appoint a chairperson, vice-
16 chairperson, and secretary. Four members shall constitute a quorum.

17 VI.(a) The board shall keep a record of its proceedings and a register of all applications for
18 certification, which shall show:

- 19 (1) The name, age, and residence of each applicant.
- 20 (2) The date of application.
- 21 (3) The place of business of such applicant.
- 22 (4) The applicant's educational and other qualifications.
- 23 (5) Proof of passing ICC certification.
- 24 (6) Whether the applicant was rejected and the reasons for such rejection.
- 25 (7) Whether a certification was granted.
- 26 (8) The date of the action of the board.
- 27 (9) Such other information as may be deemed necessary by the board.

28 (b) The records of the board shall be prima facie evidence of the proceedings of the board,
29 and a transcript of such records certified by the secretary of the board under seal shall be admissible
30 in evidence with the same force and effect as if the original were produced. Biennially, as of
31 December 31, the board shall submit to the governor a report of the transactions of the preceding
32 biennium, and a complete statement of the receipts and expenditures of the board.

33 VII. The secretary of the board shall publish a roster listing the names and addresses of all
34 building officials certified under this subdivision by the board during February of each even-
35 numbered year. Copies of this roster shall be sent to each person so certified, placed on file with the
36 secretary of state, and furnished to the public upon request at a fee to be established by the board.
37 The board may include in such roster any other information it deems appropriate.

1 VIII. The board, its members, and its agents shall be immune from personal liability for
2 actions taken in good faith in the discharge of the board's responsibilities, and the state shall hold
3 the board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising
4 from claims and suits against them with respect to matters to which such immunity applies.

5 310-A:207 Rulemaking Authority.

6 I. The board shall adopt rules, pursuant to RSA 541-A, relative to:

7 (a) The application procedure for certification to practice under this subdivision.

8 (b) The qualifications of applicants in addition to requirements of this subdivision, and
9 including the qualifications for satisfactory evidence of good professional character.

10 (c) Procedures for auditing applicants and certificate holders.

11 (d) How certification to practice under this subdivision shall be renewed or reinstated,
12 including late fees and any requirements for continuing education.

13 (e) The establishment of all fees required under this subdivision.

14 (f) Disciplinary actions by the board that shall be implemented for violations of the
15 standards of practice, code of ethics, and rules adopted by the board.

16 (g) Procedures for the conduct of hearings consistent with the requirements of due
17 process.

18 (h) Procedures for approving education courses for eligibility for certification and for a
19 continuing education program.

20 (i) How an applicant shall be examined, including the time, place, type, and form of the
21 examination.

22 (j) The design of an official seal.

23 (k) The establishment of administrative fines which may be levied in the administration
24 of this subdivision.

25 II. The board shall accept ICC certifications, or certification from other code promulgating
26 agencies if approved by the board, as meeting the requirements for state certification.

27 III. At least 40 days prior to any hearing to be held pursuant to RSA 541-A:11, the board
28 shall furnish a copy of any proposed rules of or amendments thereto, to all affected professionals
29 certified by the board.

30 310-A:208 Fees. The board shall adopt rules, under RSA 541-A, which shall establish fees
31 required under this subdivision, which shall be sufficient to produce estimated revenues equal to 125
32 percent of the direct operating expenses of the board, including the following:

33 I. Application for certification.

34 II. Renewal for certifications building officials.

35 III. Late fees for a late renewal of certifications.

36 IV. Replacement of a lost or mutilated certifications.

37 V. Transcribing and transferring records and other services.

1 VI. Reinstatement fees.

2 VII. Other fees or fines deemed necessary by the board.

3 310-A:209 Certification Required. Beginning January 1, 2015, no person shall practice as a building
4 official in this state without a building official's certification issued by the board under this subdivision.

5 310-A:210 Eligibility Requirements for Certificate as a Building Official.

6 I. Each applicant for certification as a building official shall meet the following minimum
7 requirements:

8 (a) Completion of no less than 80 hours of board-approved education covering the core
9 components of the statewide building code; provided that this requirement shall not apply to
10 applicants until one year after the effective date of initial rules adopted by the board approving
11 education courses for eligibility for certification.

12 (b) Have successfully completed high school or its equivalent.

13 (c) Proof of passing the board-adopted examination required for certification.

14 (d) Be at least 18 years of age.

15 (e) Submit to the board a notarized criminal history records release form as provided by
16 the New Hampshire state police, which authorize the release of the applicant's criminal records, if
17 any. The applicant shall bear the cost of the criminal records check.

18 II. A person who was actively engaged as a building official in this state for at least 12
19 months preceding the effective date of this subdivision shall be eligible for certification by the board
20 without completion of the requirements of subparagraphs I(a) and (c). An applicant under this
21 paragraph shall be issued a certification by providing evidence satisfactory to the board of the
22 knowledge and experience equivalent to the requirements of subparagraph I(a). All such applicants
23 shall meet the requirements of subparagraphs I(b), (d), and (e), pay an initial fee, and fulfill all other
24 certification application requirements.

25 III. The board may reject an applicant who is not of good professional character, as
26 evidenced by:

27 (a) Conviction for commission of a felony;

28 (b) Misstatement of facts by the applicant in connection with the application; or

29 (c) Violation of any of the standards of practice or code of ethics as they are set forth in
30 this subdivision or in rules adopted by the board.

31 310-A:211 Certification Applications.

32 I. Applications for certification shall be on forms prescribed and furnished by the board.

33 II. Applicants shall include the following:

34 (a) Proof of required education.

35 (b) Proof of passing the eligibility testing requirements.

36 (c) Payment of applicable fees.

37 (d) Any other attachments as required by the board.

1 III. If the board denies the issuance of a certification to any applicant, any fee paid shall be
2 retained as an application fee.

3 310-A:212 Continuing Education. The board shall review all education and training programs to
4 determine suitability and amount of continuing education credits to be assigned.

5 310-A:213 Issuance of Certifications; Penalty. The board shall issue a certification upon
6 payment of the certification fee established by the board, to any applicant who, in the opinion of the
7 board, has satisfactorily met all the requirements of this subdivision. Certifications shall show the
8 full name of the certificate holder, have a serial number, and be signed by the chairperson or the
9 secretary of the board. The issuance of a certification by the board shall be prima facie evidence that
10 the person named in the certification is entitled to all the rights and privileges of a certified building
11 official while the certification remains valid. It shall be a class B misdemeanor for an individual to
12 work as a building official after his or her certification has expired or has been revoked, unless such
13 certification shall have been renewed, reinstated, or reissued.

14 310-A:214 Reciprocity. If, in the determination of the board, another state grants reciprocity to
15 residents of this state and is deemed to have state licensure or certification requirements equal to or
16 exceeding those of this state, the board may enter into a reciprocity agreement allowing applicants
17 who are certified under the laws of such other state to obtain a certification as a building official in
18 this state upon such terms and conditions as may be determined by the board.

19 310-A:215 Expiration and Renewals.

20 I. The board shall send, by mail or otherwise, notification of the impending certification
21 expiration to each certificate holder at least one month prior to the expiration of the certification,
22 along with a request for payment of a renewal fee. Building officials in good standing may renew
23 their certifications by paying the renewal fee prior to the expiration date of the certification, and by
24 presenting evidence satisfactory to the board of completion of the continuing education requirements.
25 If properly renewed, a certification shall remain in effect continuously from the date of issuance,
26 unless suspended or revoked by the board for just cause.

27 II. All certifications issued by the board shall expire on the last day of the certified
28 individual's month of birth in the second year following the year of issuance, or upon such other
29 biennial date as the board may adopt. If the renewal fee is not submitted within 12 months after the
30 expiration date, the certified individual's name shall be removed from current status, and application
31 for reinstatement shall be required to return to current status. The board shall charge a 20 percent
32 late fee for each month or fraction of a month the renewal is late, up to 12 months, in addition to the
33 renewal fee. Any renewal application received 12 months after the expiration date shall be rejected,
34 unless accompanied by proof of successful completion of the examination required by the board. A
35 certified building official shall complete at least 20 hours of board-approved continuing education
36 during each certification period in order to maintain his or her certification. If a certified individual
37 fails to renew such certification within the 12 months after the date of expiration, it shall become

1 null and void and the individual shall be required to reapply and to be re-examined for certification.

2 III. Building officials who have been activated by the military shall be exempt from any
3 penalties or fees for renewal or reinstatement due to their absence, as approved by the board.

4 310-A:216 Disciplinary Action.

5 I. The board may undertake disciplinary proceedings:

6 (a) Upon its own initiative; or

7 (b) Upon written complaint of any person which charges that a person certified by the
8 board has committed misconduct under paragraph II and which specifies the grounds therefor.

9 II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

10 (a) The practice of fraud or deceit in procuring or attempting to procure certification
11 under this subdivision.

12 (b) Conviction of a felony or any offense involving moral turpitude.

13 (c) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the
14 practice of, the profession.

15 (d) Unfitness or incompetence by reason of negligence or other causes; or negligent or
16 willful acts performed in a manner inconsistent with the interests of persons relying on the expertise
17 of the building official.

18 (e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders
19 the building official unfit to practice under this subdivision.

20 (f) Mental or physical incompetence to practice under this subdivision.

21 (g) Willful or repeated violation of the provisions of this subdivision.

22 (h) Suspension or revocation of certification, similar to one issued under this subdivision,
23 in another jurisdiction and not reinstated.

24 (i) Violations of the code of ethics for building officials, or any other rule adopted by the
25 board.

26 (j) Providing false testimony before the board.

27 (k) Failure to provide, within 30 calendar days of receipt of notice by certified mail,
28 return receipt requested, information requested by the board as a result of any formal complaint to
29 the board alleging a violation of this subdivision.

30 (l) Knowingly making or signing any false statement, certificate, or affidavit in
31 connection with practicing as a building official.

32 310-A:217 Hearings.

33 I. The board shall take no disciplinary action without a hearing. At least 14 days prior to
34 hearing, both parties to a disciplinary proceeding shall be served, either personally or by certified
35 mail, return receipt requested, with a written copy of the complaint filed and notice of the time and
36 place for hearing. All complaints shall be objectively received and appropriately pursued by the
37 board. Written complaints received by the board shall be acknowledged within 3 months of the date

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1 of notice to the board. Written notice of all disciplinary decisions made by the board shall be given to
2 both parties to the proceeding upon their issuance.

3 II.(a) The board shall have the power to administer oaths or affirmations, preserve
4 testimony, subpoena witnesses, and to compel, by subpoena duces tecum, the production of all books,
5 records, files and documents, whether originals, copies, or in electronic or other form, and other
6 materials, relevant to its investigation of any grievance, complaint, or disciplinary proceeding before
7 the board.

8 (b) The board may issue subpoenas with the approval of the office of the attorney
9 general.

10 (c) A minimum of 10 business days' notice shall be given for compliance with a subpoena
11 under this subdivision.

12 III. At any hearing, the named person or certification shall have the right to:

13 (a) Appear in person, by counsel, or both.

14 (b) Produce evidence and witnesses.

15 (c) Cross-examine witnesses.

16 IV. If the named person fails or refuses to appear, the board may proceed to hear and
17 determine the validity of the charges.

18 V. The board, upon making an affirmative finding under RSA 310-A:216, II, may take
19 disciplinary action in any one or more of the following ways:

20 (a) By written reprimand.

21 (b) By suspension, refusal to renew, limitation or restriction of a certification, or
22 probation for a period of time determined to be reasonable by the board.

23 (c) By revocation of certification.

24 (d) By requiring the person to participate in a program of continuing education in the
25 area or areas in which the person has been found deficient.

26 (e) By requiring the person to practice under the direct supervision of a certified building
27 official for a period of time specified by the board.

28 (f) By assessing civil penalties, after notification and due process, in amounts established
29 by the board which shall not exceed \$2,000 per offense or, in the case of continuing offenses, \$200 for
30 each day the violation continues, whichever is greater.

31 VI. Any person affected by a final decision of the board may appeal such final decision to the
32 state building code review board, pursuant to RSA 155-A:11-a.

33 VII. In addition to any other action, the board may assess all reasonable costs incurred in
34 connection with any disciplinary proceeding, including investigations, stenographers, and attorneys'
35 fees, as a condition of probation or reinstatement.

36 VIII. Any disciplinary action by the board shall be published in the report of the board and
37 shall be a public record in accordance with RSA 91-A.

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1 310-A:218 Reissuance of Certification. The board, for reasons it may deem sufficient, may
2 reissue a certification to any person whose certification has been suspended or revoked, provided 3 or
3 more members of the board vote in favor of such reissuance. A new certification may be issued,
4 subject to the rules of the board, and a fee shall be charged for such issuance.

5 310-A:219 Violations; Penalty. It shall be a class B misdemeanor for any natural person or a
6 felony for any business organization to:

7 I. Present or attempt to use a building officer certification of another as one's own;

8 II. Give any false or forged evidence of any kind to the board or to any board member in
9 obtaining a certification;

10 III. Falsely impersonate any other certified individual of like or different name;

11 IV. Attempt to use an expired or revoked certification;

12 V. Beginning January 1, 2015, practice as a building official in this state without a
13 certification; or

14 VI. Violate any of the provisions of this subdivision.

15 310-A:220 Restraint of Violations. The superior court shall have jurisdiction in equity to
16 restrain violations of RSA 310-A:219 on proceedings brought by the attorney general or the board.

17 310-A:221 Exemptions. Nothing in this subdivision shall be construed to prevent or affect a
18 person who is regulated in another profession from acting within the scope of that person's license,
19 registration, or certification.

20 3 Appeals; State Building Code Review Board. Amend RSA 155-A:11-a to read as follows:

21 155-A:11-a Appeal of Decisions of the Electricians' Board [~~and~~], the Board of Home Inspectors,
22 ***and the Board of Building Officials.***

23 I. The board shall hear appeals of final decisions of the board established under RSA 319-C:4
24 [~~and~~], the board established under RSA 310-A:186, ***and the board established under RSA 310-A:206.***

25 II. The board shall hold a hearing within 40 days of the receipt of an appeal, unless an
26 extension of time has been granted by the board at the written request of one of the parties and shall
27 render a decision within 30 days of the conclusion of the hearing.

28 4 Effective Date. This act shall take effect July 1, 2014.

SB 315-FN FISCAL NOTE

AN ACT establishing a board of building officials.

FISCAL IMPACT:

The Joint Board of Licensure and Certification, Judicial Branch, and Department of Justice state this bill, **as amended by the Senate (Amendment #2014-0890s)**, may increase state general fund revenue and expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no impact on county and local revenue and expenditures.

METHODOLOGY:

The Joint Board of Licensure and Certification states this bill establishes a Board of Building Officials within the Joint Board, and requires building officials practicing within the state to become certified. The Joint Board states that it has no information regarding the number of potential candidates for certification and is therefore unable to determine the number of building officials that will seek certification and pay dues. The Joint Board projects that the amount of revenue collected will be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the Board of Building Officials, as required by proposed RSA 310-A:208. Finally, the Board states that members of the Board of Building Officials will receive per diem payments of \$25 per day, as well as mileage reimbursement. The amount paid for per diem and mileage payments will vary depending on the number of Board meetings per year and the distance Board members will be required to travel.

The Judicial Branch states that various provisions of the bill may impact Branch expenditures in the following four ways: (1) proposed RSAs 310-A:213 and 219 provide for potential class B misdemeanors; (2) proposed RSA 310-A:219 provides for a potential felony offense; (3) proposed RSA 310-A:220 provides for potential injunction actions brought by the attorney general or the Board of Building Officials in the superior court; and (4) per current RSA 155-A:12, VI, decisions of the Board of Building Officials will be appealable to the Superior Court. The Branch has no information on which to estimate how many cases of each type will be prosecuted as a result of the bill. With respect to (1), the Branch projects that the average cost of a misdemeanor B case will be \$46.99 in FY 2015, and \$48.02 in FY 2016. With respect to (2), the Branch projects the average cost a felony case will be \$425.27 in FY 2015, and \$433.34 in FY 2016. With respect to (3) and (4), the Branch projects that the average cost of such cases, both of which are classified as complex equity cases, will be \$668.25 in FY 2015, and \$683.30 in

FY 2016. These projections are based on studies that are now more than eight years old, and do not include the cost of any appeals that may be undertaken following trial.

The Department of Justice states that the new Board of Building Officials will likely require assistance from the Department with respect to the promulgation of administrative rules, general operation of the Board, and investigation and prosecution of both civil and criminal violations. Because it is not possible to predict the amount of legal assistance that will be required, the Department states the fiscal impact of the bill is indeterminable.

The Judicial Council and New Hampshire Association of Counties state this bill will have no fiscal impact.