



Janet T. Mills
Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
OFFICE OF PROFESSIONAL AND OCCUPATIONAL
REGULATION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Anne L. Head
Commissioner, DPFR
Director, OPOR

TESTIMONY OF ANNE L. HEAD

**COMMISSIONER, DEPARTMENT OF PROFESSIONAL AND FINANCIAL
REGULATION**

IN OPPOSITION TO LD 1929

***“AN ACT TO PROTECT CONSUMERS BY LICENSING HOME BUILDING
CONTRACTORS”***

**BEFORE THE JOINT STANDING COMMITTEE ON
INNOVATION, DEVELOPMENT, ECONOMIC ADVANCEMENT AND BUSINESS**

**SPONSORED BY REPRESENTATIVE TIFFANY ROBERTS
PUBLIC HEARING: MAY 23, 2023, 3:00 PM**

Senator Curry, Representative Roberts and Members of the Committee. My name is Anne Head. I am Commissioner of the Department of Professional and Financial Regulation. I appear today on behalf of the Administration to speak in opposition to LD 1929 on both substantive and technical grounds. We appreciate the concerns raised by proponents, but we disagree that licensure is the means to address those concerns or achieve the goals of public protection.

It is unclear which problems this bill seeks to solve. If the goal is to address the fact that unqualified persons are doing substandard work on Maine homes, this bill does very little to ensure that those potential licensees are any more qualified with a license than without one. If the goal is to address potential financial harm from fraud or criminal behavior, this bill does very little to expand the enforcement mechanisms that already exist within the Attorney General's office or a private right of action. Perhaps the focus should be on expanding resources within the AGs office. If the goal is to establish construction standards, that is also not achieved by this bill.

Generally, licensure ensures that someone has obtained certain minimum qualifications and has at least a base level of competency in a profession or occupation. A person who meets those standards is awarded a license which is a state-granted right to practice a profession or perform a trade. A licensee has a vested property right in that license, meaning that boards cannot take any action against a licensee without affording the individual adequate due process.

OFFICES: GARDINER ANNEX, 76 NORTHERN AVENUE, GARDINER, MAINE

PHONE: (207)624-8500 (VOICE)

TTY users: call Maine Relay 711
WWW.MAINE.GOV/PER/PROFESSIONALLICENSING/

FAX: (207)624-8690

Adequate due process means that discipline may only be imposed if an individual agrees to the discipline (a consent agreement) or after an adjudicatory hearing. A board cannot revoke a license without a full adjudicatory hearing except in extremely narrow circumstances, i.e., “immediate” jeopardy” of harm, and even then, the revocation is of limited duration (30 days). Licensing boards have no authority to issue cease and desist orders to respond to a claim of unlicensed practice. For OPOR and DPFRR affiliated boards, all unlicensed practice matters are required to be referred to the Office of the Attorney General.¹

With respect to consumer complaints, boards cannot award damages or restitution; all fines imposed by a board are transferred to the General Fund. Further, boards can only take action on complaints that allege a violation of board law or rule. They are not staffed to investigate all complaints but rather, they rely on written submissions of the complainant and the licensee to make a preliminary determination whether there has been a violation of law or rule.

With that background, this bill does not require individuals offering construction services to meet minimal competency in building construction or workmanship nor does it require contractors to have knowledge of and build to certain building standards. Without a clear picture or description of the permissible scope of activity of a “contractor,” there are no standards for a board to determine a violation of law or rule. Simply stated, this bill cannot be implemented because it does not include the basic components of an actual licensing program.

If the committee is interested in creating a licensing program, it would need to identify its objectives and clearly set forth the standards. The Sunrise Review is usually the process by which the committee evaluates those objectives. The Committee has indicated a preference for undertaking its own Sunrise Review by sending out a questionnaire to the Interested Parties list. There is motivation bias inherent in any voluntary solicitation of feedback. No happy customers respond to questionnaires. The type of information the Committee seeks can only be developed through a comprehensive study. I recommend that you take the time to review the Maine studies from past legislatures available at these links:

[Sunrise Review of LD 1551, An Act to License Home Building and Home Contractors - 2004.](#)

[Study of Residential Contractor Licensing pursuant to Resolve 2007, c. 219 as amended by Public Law 2009, c. 261 - 2010](#)

If the committee chooses to move forward with this bill there are also a number of technical issues including, but not limited to:.

- **A licensing statute, not a rule, should state clearly who is required to obtain a license.** LD 1929 defines “residential construction” as building, demolition or alteration of a residential dwelling unit or building or premises with 4 or fewer residential dwelling units, and includes any activity affecting the residential portion of a building or premises that have both residential and commercial components if the building or premises include 4 or fewer residential dwelling units. The term includes interior and exterior construction, renovation and repair, paving, roofing, weatherization, installation or repair of heating,

¹ Title 10 MRS 8003-C

plumbing, solar, electrical, water or wastewater systems, and other activities to be specified by the board in rule.

- **“Contractor” is not defined** nor is the contractor’s scope of practice.
- **What is the purpose of this board and why is it so large?**
 - Title 5 §12015, sets a limit of 9 members for any new licensing board established after 2000 and must include 2 public members².
 - The bill does not appear to set any standards for minimal competency in building construction or workmanship and yet the board consists of thirteen members, many of whom represent areas of specific expertise such as the State Fire Marshal, the Director of the Efficiency Maine Trust, municipal code enforcement officers, an attorney with construction litigation experience. What is this board expected to do?
 - Is this board really a workgroup to figure out whether and how to license contractors?
- **The bill requires only six hours of unspecified education.** This requirement is significantly less than the number of hours that any other trade licensee needs aside from apprentices and helpers. What type of education and what subjects should be covered?
- **The bill requires an exam but doesn’t include a description of the standards the contractor must satisfy.** What type of exam and what subjects should the exam cover?
- The only standard governing the conduct of the contractor is whether there is a contract and whether the contractor complied with the terms of the contract.
- The bill sets forth that a violation of the chapter constitutes an unfair trade practice prohibited under Title 5, section 207. Violations of unfair trade practices are not enforced by licensing programs. They are enforced through a private right of action or through the Office of the Attorney General – which is already available to individuals who believe that they have been defrauded, cheated or scammed.
- It is unlikely that a board could deny a license for performing in an unprofessional and incompetent manner or bad faith. Those allegations are highly subjective and very difficult to prove. Furthermore, any claims of fraud would need to be referred to the Attorney General’s Office.

Thank you for your time. I would be happy to answer any questions now or at the work session.

² See, 5 MRS §12015(1).