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TESTIMONY OF ANNE L. HEAD

**Commissioner, Department of Professional and Financial
Regulation**

In Opposition to LD 1709

***“An Act to Establish a Baseline of Consistency and Safety for the Operation of Construction
Cranes and Elevators”***

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

Presented by Representative Tiffany Roberts

Public Hearing: May 12, 2023, at 9:30 am

Senator Curry, Representative Roberts, and members of the Committee, my name is Anne Head. I serve as Commissioner of the Department of Professional and Financial Regulation and Director of the Office of Professional and Occupational Regulation. I appear today to speak in opposition to LD 1709.

While I stand in opposition to the bill, I would like to start by thanking the Sponsor and the proponents for taking the time to meet with the Department on several occasions to discuss their concerns and to engage in productive and meaningful dialog. Although we may not always agree, we greatly appreciate the opportunities to have open and civil conversations.

While we appreciate that the proponents structured this bill in an effort to structure something less than licensure, it is, in essence, a licensure program. “Registration” is often thought of as a list or a registry. Licensure is often thought of as being issued a license from a governmental entity after providing evidence of meeting certain minimum standards. The terms registration and licensure are often used interchangeably, and the requirements set forth in this bill include minimum training standards and penalties and contemplate enforcement which are the basic tenets of licensure. I also note that OPOR does not have any registration programs.

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It is not evident that state registration of crane operator/trainers or elevator operator/trainers makes Maine citizens safer. Nor is it clear that state oversight would enhance public safety not already provided by required federal certification and required employer training. As a reminder, the sole purpose of licensure is to protect the public's health safety and welfare.

The 129th Legislature initiated a sunrise review pursuant to LD 904, "*Resolve, Directing the Commissioner of Professional and Financial Regulation To Conduct a Sunrise Review Regarding the Proposal To License Heavy Equipment Operators.*" That report is available at https://www.maine.gov/pfr/sites/maine.gov/pfr/files/inline-files/Crane_operators_4.pdf.

The Sunrise report concluded that crane operators and their employers are currently regulated by the US DOL Occupational Safety and Health Administration ("OSHA"). OSHA laws and rules impose full legal responsibility on employers to train and evaluate the individuals they hire to be crane operators. OSHA requires crane operators to undergo a stringent certification process that includes written and practical examinations. This certification process is *mandatory* and is, in effect, a federal license. In addition, OSHA rules require crane operators to be formally evaluated in writing by their employers. Per OSHA rules, it is the employers' legal responsibility to employ only nationally certified crane operators and to document, through ongoing written evaluation, that their employee crane operators are qualified to perform their duties.

LD 1709 also proposes regulation of individuals operating personnel hoists. Personnel hoists are installed on a temporary basis during construction and are used to carry supplies, materials, and workers to the floors of a multi-floor structure. There are only five (5) currently installed and operating construction hoists in Maine.

Under current Maine law, construction elevators (the equipment, not the operators) are regulated by OPOR's Elevator and Tramway Program (Program) within the statutory definition of "elevator."¹

Elevator installation and inspections must comply with the national standards that have been adopted by the Program through rulemaking. Personnel hoists are regulated by the Elevator Program by enforcing standards of the American National Standards Institute (ANSI) standard A10.4. Accordingly, Maine law and rule already requires plans for personnel hoists to be submitted and approved, and the hoists to be installed by a registered elevator contractor that employs a Maine-licensed elevator mechanic and inspected by a State elevator inspector. The owner of the hoist employs and trains their personnel hoist operators, who must maintain an operational maintenance and inspection log.

We have not seen evidence of poorly trained construction elevator operators. However, we have suggested to proponents of this bill that a reasonable way to address their concerns might be to memorialize an employer's responsibilities in a Program rule similar to the requirements placed

¹ 32 M.R.S. § 15202(5) ("Elevator" . . . means a guided hoisting and lowering mechanism equipped with a car, platform, or load-carrying unit, including doors, well, enclosures, means and appurtenances.")

on Tramway owners. I have included the Tramway rule below. We might need authority to adopt such a rule although that may not be necessary.

9. Maintenance Personnel

A. Training and Competence. *Tramway owners shall ensure that maintenance personnel employed to work on tramway equipment are trained and competent. Maintenance personnel shall possess demonstrable ability to solve problems related to tramways and to perform work necessary to ensure safe operation of the equipment. Such ability may be demonstrated by a recognized degree or certificate of professional standing, or by extensive knowledge, training, and experience.*

B. Training and Technical Proficiency. *It is the tramway owner's responsibility to ensure that all maintenance personnel are properly trained on the types of equipment that they maintain. Training must ensure that maintenance personnel possess technical proficiency in the equipment for which they are responsible and that they are familiar with the applicable national codes specified in Chapter 511 and the provisions of this section.*

Training may include, but is not limited to:

- (1) Manufacturers' training seminars;*
- (2) Other technical seminars; and*
- (3) On-the-job training.*

C. Scope of Obligation; Documentation. *The owner's responsibilities under this section extend to the owner's employees; contractors and subcontractors who work on or maintain the owner's tramways; and employees of such contractors and subcontractors. The training of all such individuals shall be documented in records maintained by the owner. The owner shall make these records available upon request to the Director and the Chief Inspector.*

It is well-established that state licensure requirements create barriers to entering a state's workforce. The Committee has heard how hard the Department is working to create licensing flexibilities to help expand the workforce. New regulatory programs should only be considered if there is evidence that without state regulation, public safety is threatened. Licensing proposals that duplicate existing safety regulations, such as this one, should not be enacted. Many of the crane operator licensing programs were enacted prior to the OSHA rule and just this past year West Virginia eliminated its state licensure to rely instead on the OSHA certification requirements.

Finally, the role of licensing programs is public safety – not employee safety. Many of the examples shared in past legislative sessions involved employee safety. While employee safety is extremely important, it should remain within the purview of labor laws.

We also note that the two-year \$50 fee proposed in the bill is unrealistic. This is a new program and as such will need to support all aspects of establishing and implementing the program and all expenses related to its ongoing regulation. There will be fixed and ongoing costs including staff

salaries and benefits, Attorney General Office legal services, lease and facility expenses, and expenses associated with the reconfiguration of the electronic licensing system. These costs must be borne solely by the potential licensees whose number is unknown but is likely small. A small licensing pool will necessarily result in very high fees for each licensee since the licensees themselves will have to fully fund all costs associated with any license (or registration) program.

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