Maine Human Rights Commission

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The Honorable Teresa Pierce, Senate Chair
The Honorable Traci Gere, House Chair
Joint Standing Committee on Housing
100 State House Station
Augusta, ME 04333

Re: LD 1710: An Act To Establish the Maine Rental Assistance and Guarantee Program and Amend the Laws Regarding Tenants and the Municipal General Assistance Program

Dear Senator Pierce, Representative Gere, and Members of the Joint Standing Committee on Housing:

The Maine Human Rights Commission ("Commission") is Maine's quasi-independent, neutral, apolitical State agency[1] charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* ("MHRA" or the "Act"). The Commission is statutorily charged with the duties of investigating, conciliating, and at times litigating discrimination cases under the MHRA and the Maine Whistleblowers' Protection Act ("WPA"); promulgating rules and regulations to effectuate the MHRA & WPA; and making recommendations for further legislation or executive action concerning infringements on human rights in Maine. 5 M.R.S. § 4566(7), (11). With those duties in mind, the Commission is pleased to provide this testimony neither for nor against LD 1710, *An Act To Establish the Maine Rental Assistance and Guarantee Program and Amend the Laws Regarding Tenants and the Municipal General Assistance Program.*

This Bill would, among other things, amend the MHRA to prohibit discrimination in housing on the basis of source of income (in addition to the current prohibition on discrimination based on receipt of public assistance) and to require certain owners of rental housing to provide "affordable housing".

Background: MHRA Coverage of Discrimination in Housing on the Basis of Receipt of Public Assistance

Recognizing a "basic human right to a life with dignity", *see* 5 M.R.S. § 4552, the Maine Legislature enacted the MHRA in 1971 to "prevent discrimination in employment, housing or access to public accommodations" on account of a protected trait. This includes protection against discrimination in housing on the basis of receipt of public assistance benefits by making it unlawful for "[a]ny person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient." 5 M.R.S. § 4581-A(4).

[1] The Commission itself is made up of five Commissioners, appointed by the Governor for staggered five-year terms. By statute, there can be no more than three Commissioners from any political party. 5 M.R.S. § 4561.

In 2014, the Maine Supreme Judicial Court, sitting as the Law Court, interpreted this provision in the case of a housing provider which refused to adopt the addenda required by a federal housing voucher program ("Program"), resulting in its declining to rent to a Program participant. *See Dussault v. RRE Coach Lantern Holdings, LLC et al.*, 2014 ME 8. The Law Court found that this did not amount to discrimination on the basis of the renter's status as a recipient of public assistance. First, the Court found that by refusing to adopt any addenda to its rental agreements, it was offering the same terms of rental to each of its prospective tenants. *Id.* at ¶ 16. Second, the Court found that Program participants were not excluded because of their status as recipients of public assistance, but because the owner did not want to be bound by the terms of the addendum. *Id.* at ¶ 17. The Court stated specifically that it was bound by the terms of the MHRA as enacted, noting that although it had considered amendments to § 4581-A(4), the Legislature had not amended the statute to make discrimination on the basis of public assistance programs' terms and conditions unlawful, or participation in Program mandatory. *Id.* at ¶ 19 (*citing* LD 685 § 2 (123rd Legis. 2007) and amendments thereto).

LD 1710's Impact on the MHRA and the MHRC

A. Section 3: Discrimination based on source of income:

Section 3 of LD 1710 would effectively overrule *Dussault*, making it unlawful to refuse to participate in state, federal, or local assistance programs. Housing providers owning four or more "dwellings"[2] would be required to participate in these programs by allowing inspections, making repairs needed to meet the program standards, completing program paperwork, and providing information to the programs. This change would likely remove a barrier to housing for individuals who participate in assistance programs, since the paperwork and other programmatic requirements would no longer be legitimate nondiscriminatory reasons for refusing individuals who use these programs to pay for their housing.

Because LD 1710 does not propose amending 5 M.R.S. § 4583, which provides that the antidiscrimination provisions do not prohibit housing providers from imposing specifications in the renting of a housing accommodation that are "consistent with business necessity and are not based on" protected class status, housing providers would be able to invoke an affirmative defense of business necessity if they refused to rent to a tenant receiving public assistance. As explained by the Law Court in *Dussault*, reading § 4581-A and § 4583 together "establish[es] that a landlord may not refuse to rent to, or impose different terms of tenancy on, a recipient of public assistance who is an otherwise-eligible tenant primarily on the basis of that person's status as a recipient unless the landlord can demonstrate a business necessity that justifies the refusal." *Dussault*, 2014 ME 8 at ¶ 13.

The Commission anticipates that this change would lead to a significant increase in housing discrimination complaints. The Commission has already seen a rise in housing complaints generally, and in housing complaints based on receipt of public assistance in particular, during the course of the COVID-19 pandemic. Housing investigations are among the Commission's most burdensome, because they must be completed within 100 days. 94-348 C.M.R. Ch. 2, § 2.05(H). This means that the Commission's investigators must juggle

[2] The Commission would recommend defining this term to clarify whether it applies to owners of four or more rental units (such as a four-apartment building) or of four separate buildings at which rental housing is offered. The term "dwelling" is not defined in the MHRA.

their workload every time a new housing case is filed, prioritizing that investigation to ensure it is completed within a very abbreviated timeline. Because the Commission's investigators are already at capacity with their housing work, we anticipate needing an additional 50% of an investigator position to handle the additional work associated with complaints under this provision.

B. Section 4: Requirement to provide affordable housing:

The section of the Bill would add a new requirement that "[a]n owner of more than 10 units of residential rental property"[3] must make at least 10% of those units affordable housing. "Affordable housing" is defined with reference to the median income of the area where the unit is located, as defined by federal law. Failure to provide the requisite units of affordable housing would amount to housing discrimination.

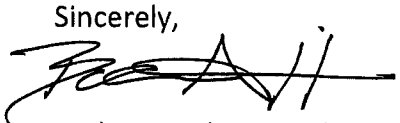
As the MHRA was intended to address adverse treatment based on a person's innate characteristics, this section may be something of an outlier in the MHRA framework. It is closest to the Commission's construction requirements, which make it unlawful discrimination to fail to design and construct multi-family housing to accommodate individuals with disabilities. *See* 5 M.R.S. §§ 4582-B & -C. Unlike those provisions, however, the affordable housing requirement is not tied to any particular protected class.

The Commission's current expertise does not include knowledge of affordable housing, median incomes, and housing costs. To address this new area of jurisdiction, the Commission's staff would require extensive training. The Commission would also need to update all of its housing informational, intake, and complaint forms, all of which are published online and in print in six different languages. The Commission anticipates receiving a huge increase in intakes and complaints based on the failure to provide affordable housing; as discussed above, any investigations in these cases must be completed within 100 days, a particular challenge since it appears these investigations would likely involve data-intensive analysis of available units, costs, and federal law. In order to absorb this work, the Commission anticipates needing at least one full-time investigator and one additional secretary associate legal position.

Conclusion

Thank you for this opportunity to provide testimony neither for nor against LD 1710. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,



Barbara Archer Hirsch
Counsel for the MHRC

[3] The Commission would recommend defining this term, which is not defined in the MHRA.