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DEPARTMENT OF PROFESSIONAL
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TESTIMONY OF
JOAN COHEN, COMMISSIONER
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
L.D. 1226

“AN ACT TO PROTECT CONSUMERS BY LICENSING RESIDENTIAL BUILDING CONTRACTORS”

SPONSORED BY REPRESENTATIVE ROBERTS

BEFORE THE JOINT STANDING COMMITTEE ON HOUSING AND ECONOMIC DEVELOPMENT

PUBLIC HEARING: APRIL 17, 2025

Senator Curry, Representative Gere and members of the HED Committee

My name is Joan Cohen, and I am the Commissioner of the Department of Professional and Financial Regulation (DPFR). I am here today to oppose LD 1226 as drafted, but to support a comprehensive study of the benefits and challenges of contractor regulation in Maine.

The administration supports efforts to stop bad actors who rip off customers or do substandard work. However, licensure as proposed in this bill, is not the vehicle to achieve that end.

The regulation of housing contractors cannot be imposed in a vacuum given the State's pressing housing crisis and the need for a comprehensive housing strategy. A proposal to impose a brand-new regulatory scheme on housing contractors must be considered within the broader context of the current housing crisis, the labor shortage, the uneven enforcement of the MUBEC building standards, and the appropriate location within state government of such a program. Simply stated, the State cannot afford to impose a regulatory system that could result in higher construction costs and fewer available contractors without putting considerable study and thought into the structure and implications of that regulatory system.

My testimony sets out three key points for your consideration.

First, a study of regulatory options would allow policy makers to carefully consider the right choices for Maine, which is especially important given our affordable housing crisis. There is no one-size-fits-all regulatory scheme – as illustrated by the wide variation in approach throughout the country ranging from no regulation to licensing.

Second, the bill as drafted does not address the shortcomings identified in earlier versions of this bill, like the one brought to the 131st Legislature – LD 1226 establishes a registration system without an enforcement mechanism, not a licensing program.

Third, OPOR is not the proper place to house this regulatory program. OPOR does not enforce the MUBEC building code and it is an agency bereft of the extraordinary resources needed to develop and support a new board and regulatory program of this magnitude.

1. Maine needs to determine what regulation is best for our State through a current and comprehensive study.

Maine's last comprehensive Sunrise study on regulation of contractors in Maine was completed in 2004 (over 20 years ago). DPFR submitted a brief report in 2010 (15 years ago) that referenced the 2004 report and identified the ongoing unresolved policy issues and recommended further study. A lot has changed in the past 20 – most notably our current crisis of available affordable housing and the important policy issues raised in the 2010 report have still not been studied and answered.

There are vastly different residential contractor regulation laws throughout the country ranging from no regulation to licensure and everything in between. By example, of our six (6) neighboring New England states:

- Two States, New Hampshire and Maine, do not regulate contractors.
- Only Massachusetts requires licensure¹ as opposed to registration. Massachusetts issues licenses for “construction supervisors” in a number of distinct categories, for example in masonry, or roof covering, and in 1&2 family dwellings. These construction supervisor licensees must have the equivalent of three years of experience and must pass an examination.
- Three of the New England states regulate through registration. For example, Connecticut has a registration program for “new home construction contractors” and “home improvement contractors,” operated by the state’s Department of Consumer Protection. Applicants need only provide information about insurance coverage and pay the registration fee.
- Of the New England States with residential contractor regulations, only two have regulatory boards and one has an advisory board. MA’s is one of the two New England State’s with a licensing board and it is the same board that oversees MA’s building codes.

A comprehensive study would help determine the best course for Maine by assessing:

- Who/what should be regulated based on a review of the kinds of harms that are occurring in Maine and by whom
- What the potential benefits of contractor certification or licensing could be for both improving consumer protection and to improve the quality of new homes and buildings in Maine

¹ Massachusetts also requires that all contractors, partnerships, and corporations that solicit, bid on, or perform residential contracting as a contractor or subcontractor on an *existing* one to four unit owner occupied residential property in MA to register as a Home Improvement Contractor (HIC).

- What type of regulation best addresses the harms identified in Maine
- What qualifications should a contractor have to ensure public protection given the type and nature of the identified harms
- The impact of regulations, or lack of regulations, on growing the housing stock and ensuring homes are built to modern quality and energy efficiency standards.
- Whether contractor regulation can rely on the Maine's building code, MUBEC, which is not universally enforced, and/or whether changes to MUBEC, or enforcement of MUBEC are necessary to effectively implement and enforce contractor regulation.

2. **LD 1226 does not resolve the fundamental issues identified in the predecessor bill introduced in the 131st.** Like LD 1929 from the 131st, LD 1226, as drafted, does not set forth a licensing program.

A licensing program includes a clear definition of who is to be regulated, the scope of practice allowed by the licensee, the minimum standards of education and experience required to show proof of competency, and a clear standard to assess whether a licensee has failed to meet identified standards.

This bill sets forth a registration system masquerading as a licensing program. Applicants will have to disclose copious information on their application, but the board has practically no enforcement authority based on that information – except for the ability to withhold issuing a license if the applicant doesn't provide proof of the required insurance and yet to be defined education/experience.

If the goal is to address quality of workmanship/substandard work, the bill must establish in law – not rule - clear construction standards, training/education standards, and a clear scope of practice for the licensee. The bill references MUBEC standards as the basis for the board's rules but MUBEC is not uniformly enforced. To have MUBEC as a basis for licensing standards, this committee and the legislature must decide is whether MUBEC standards will be enforced throughout Maine – that difficult policy decision should not be left to a licensing board.

If the goal of the bill to address financial harms, Maine licensing boards do not have the authority to order restitution, a power vested in the courts. Civil penalties imposed by licensing boards are not paid to the injured party, they are paid to the State Treasurer. While the bill makes a violation of the law a violation of the Maine Unfair Trade Practices Act, that law is enforced in court by the OAG or through a private right of action, not through a licensing board.

3. **OPOR is not the appropriate agency to locate any form of a new regulatory program for contractors.**

Section 7 of the bill establishes the residential construction board to be operated within OPOR. If a licensing board is established, it would be better housed (no pun intended) within MOCA. MOCA is supposed to be the one-stop shop for municipalities.

Municipalities issue permits and inspect home construction and improvement projects, so they are the first line of enforcement. A complaint likely would originate with a municipality's code enforcement officer, so it makes sense to have the board located within an office that is charged with facilitating regular coordination and communication between municipalities and state government. MUBEC's enforcement will also be administered by MOCA, so all pieces of the contractor enforcement puzzle would be in the same place. This would reduce inter-agency problems such as enforcement authority or code interpretation, and result in a much smoother process for municipalities and consumers alike.

On a more practical note, I would be remiss if I failed to inform you that OPOR does not have the expertise or staffing resources to develop and oversee this program. Establishing a new and complicated licensing program within OPOR will literally consume OPOR. At the moment, OPOR has no senior management (no director, no advisor to the director, and no staff attorney). At the end of April, the agency will lose two of its most experienced, long-time board managers to retirement. On May 1, the agency will have 4 vacancies out of 6 board manager positions, in addition to the vacant senior manager positions I mentioned. While we are posting and interviewing to fill those positions, that process takes time. And once new staff are in place, it will take time (a year or two) to train and bring them up to speed on their responsibilities. OPOR simply cannot take on this enormous endeavor and fulfill its mission to protect the public by administering its existing licensing programs.

In conclusion, a comprehensive study should be undertaken by a contracted expert, and analysis of the information should be coordinated by a professional facilitator. The administration recommends that a study be commissioned through the Governor's Office of Policy Innovation and the Future using existing resources and staff capacity and expertise. GOPIF was created by Governor Janet Mills to collaborate across State agencies, stakeholders, and public to recommend innovative policy solutions for critical issues facing Maine. GOPIF supports the work of the Maine Climate Council, which recommended in the 2024 update to the state's climate action plan, both addition to training for code enforcement officers and contractors, and evaluating the benefits and feasibility of contractor certification or licensing to establish a consistent level of education and code compliance across the building community.

Thank you very much for your time, and I would be happy to answer any questions now or at the work session. In the interim, I have included an appendix with my written testimony that sets forth in more detail some of the significant technical concerns we have about the bill.

APPENDIX - LD 1226 TESTIMONY - DPFR

Technical concerns with LD 1226

Training/Education Requirement

- The bill proposes six hours of unspecified education or work experience to supposedly address competency. Six hours is de minimis and may actually do more harm by misleading the public as to the contractor's competency. Six hours is significantly less (by hundreds and in many cases a thousand hours) than the number of hours required for any other trade licensee. Only the most entry level licensees, such as apprentices and helpers, have so few requirements.
- Since the bill would encompass nearly every type of person doing residential contracting work, how could 6 hours cover the range of subject matters needed to ensure competency for roofers, siders, excavators etc. and also address the financial competency concerns raised?
- The bill allows 6 hours of experience to substitute for the 6 hours of education. Wouldn't most of the existing problematic contractors identified meet those 6 experience hours?
- 19803 (5) Continuing Education (CE). What kind of CE, and who must take it? The contractor? The company? The president of the company? What about the guy on the roof actually doing the work? If the CE is for workmanship, that is not going to be meaningful unless everyone on the job doing the work takes the CE and the CE is specific to the type of work they are doing. Otherwise, it's just a meaningless requirement.

Definition/Scope of a residential general contractor

- The bill established a contract threshold amount to determine whether an individual needs to be licensed. Does the committee intend to have that contract amount be cumulative? In other words, if the proposed contract amount is \$15,000, and an individual undertakes two contracts each for \$8000 (total of \$16,000) does that trigger licensure?
- Using a contract threshold amount would mean that individuals undertaking work for under that threshold could potentially operate fraudulently with no recourse – including

individuals who were disciplined under this new licensing regime . There is no other professional within DPFR where a contract threshold determines professional conduct.

- Section 19803(1)(B) states a residential general contractor must be licensed to perform, offer to perform or agree to perform residential construction “[t]hat involves 2 or more professionals licensed under this Title.” Does that mean all of Title 32 which would include all of the trades (so a plumber and an electrician), so that small jobs with 2 or more licensees would now require a license?
- Section 19801(5) defines a “residential general contractor” as a “person”. Does that mean a human individual, only, or would it include entities such as corporations and LLCs?
- The bill exempts from the definition of contractor someone who hasn’t entered into a contract agreement with a customer for residential construction. The way this is worded implies that if a contractor doesn’t enter into an agreement with the customer, they aren’t subject to the licensing laws. This is counterintuitive to the law in Title 10 requiring contracts for any home construction contracts exceeding \$3,000.
- The bill exempts some licensed trades from the definition of contractor but doesn’t include others revealing just how difficult it is to establish the scope of “residential general contractor.” For example, the bill exempts master level oil burner and solid fuel technician licensees but does not exempt journeymen—.

Contents of License Applications

- Section 19803(3) Application for license. This section requires a lengthy disclosure of information.
 - Collecting and maintaining this information will require significant staff support and database configuration
 - Is board staff expected to confirm accuracy?
 - How is the licensee responsible for updating any changes to any of the information (e.g., liability insurance or civil actions)
 - What is the purpose of the information?
 - Will the disclosed information be publicly available to view? If yes, then consider the fairness of requiring the reporting of allegations (claim assertions and pending civil and criminal proceedings that have not been fully adjudicated)
 - Requires disclosure of an EIN. Does the bill propose licensing entities in addition to individuals?
 - Why track employers of applicant?
 - What is the time frame of the required disclosure of civil proceedings? Could be a challenging reporting requirement.

- Requires evidence that the applicant has liability insurance. What if the employer maintains the insurance on their behalf?
- Why would a licensing board track workers compensation coverage?

Composition of the Board

- Section 19802(2) establishes the composition of the board. It is unclear whether board members should be Maine-licensed, and not just any attorney, architect, code officer or residential contractor.