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LD 2173 – An Act to Update the Laws Regarding Housing Developments and Accessory Dwelling Units

Senator Curry, Representative Gere, and honorable members of the Housing and Economic Development Committee, my name is Shawn Esler, and it is a privilege to serve as Maine's State Fire Marshal. I am offering testimony **neither for nor against** LD 2173.

The Office of State Fire Marshal recognizes and appreciates Legislature's continued efforts to address Maine's housing challenges, and we understand that this bill is intended to make technical adjustments to prior housing legislation to improve clarity and implementation. Our comments today are offered in that same cooperative spirit. We do not question the policy goals of LD 2173, but we respectfully highlight several provisions where additional clarification may help ensure life-safety considerations remain aligned with existing law and legislative intent.

Section 1 – 25 MRSA §2463-B addresses fire suppression sprinkler requirements for accessory dwelling units. As written, the section limits sprinkler requirements based on the number of dwelling units within a structure, which generally aligns with existing life-safety rules, as the State has long exempted one- and two-family dwellings from sprinkler requirements.

Our Office's concern is not with accessory dwelling units themselves, but with how this provision could be applied in mixed-use or nonresidential buildings due to the absence of a statutory definition for "multi-unit structure." Without clarification, this language may be interpreted to base sprinkler requirements solely on dwelling unit count rather than on occupancy type or hazard level.

Taken as a standalone provision, the language could exempt an accessory dwelling unit located within or attached to a high-hazard occupancy—such as a fireworks retail store—from sprinkler protection, provided the structure contains two or fewer dwelling units. By definition, such a building would meet the statutory threshold, yet this outcome would not meaningfully enhance public safety for occupants. We believe this is an unintended consequence.

To address this concern, we respectfully request consideration of the following clarifying language: *This subsection may not be construed to exempt an accessory dwelling unit from fire protection requirements when the unit is located within or attached to a mixed-use or nonresidential building, or when sprinkler protection is otherwise required based on occupancy classification, building use, or hazard level under the National Fire Protection Association codes adopted pursuant to Title 25, sections 2452 and 2465.*

We would also note for the Committee that approximately 22 municipalities currently have local ordinances requiring sprinklers in one- and two-family dwellings. As such, this legislation—or any revision—may directly conflict with existing local ordinances and could raise home rule considerations.

Section 6 – 30-A MRSA §4364 allows additional building height for certain affordable housing developments and appropriately requires fire official review. We appreciate that recognition, as increased building height clearly presents additional life-safety considerations.

In reviewing Section 6, we respectfully raise two concerns.

First, while the Maine Uniform Building and Energy Code appropriately governs structural height limitations, the bill language may be read to limit fire official review exclusively to MUBEC by omitting reference to the nationally recognized fire and life-safety standards adopted under current Maine law, including those enforced pursuant to Title 25. Although National Fire Protection Association codes do not establish height limits themselves, they address critical life-safety considerations that are directly affected by increased building height, including means of egress, fire alarms, fire suppression systems, fire department access, and occupant safety. Fire officials rely on these standards, and their professional expertise, to evaluate the full range of risks associated with taller buildings. For this reason, we respectfully recommend clarifying Section 6 to reference rules adopted by the Commissioner of Public Safety or applicable NFPA standards in addition to MUBEC.

Second, Section 6 provides that an additional height allowance "must be reviewed" by a municipal fire official or designee, while also stating that the subsection may not be construed to grant additional authority or establish new standards for review. In practice, the requirement that a project must be reviewed may itself function as a new standard of review for municipalities that lack the personnel capacity, technical expertise, or training to conduct plan review for larger or more complex residential buildings.

These concerns are consistent with findings of the Legislature's LD 1005 Working Group, which identified gaps in statutory authority and statewide consistency for large-scale residential projects. The Working Group noted that Title 25, section 2448 currently authorizes fire and life-safety plan review for public projects or buildings, leaving no clearly defined review authority for complex residential construction. The group also observed variations in how fire and life-safety review is conducted at the municipal level, often reflecting differences in local resources, staffing, and technical capacity, which can lead to inconsistent application of requirements and differing outcomes across communities.

To address these challenges, the Office of State Fire Marshal recommends consideration of future legislative amendments to Title 25, section 2448, to authorize state-level fire and life-safety plan review for large-scale residential buildings—such as residential construction of four stories or greater or buildings containing 16 or more dwelling units—to promote consistency, technical expertise, and uniform public safety outcomes statewide. Implementation of such an approach would also require the staffing resources identified through the LD 1005 process, to ensure reviews can be conducted effectively and without delay.

In this context, the requirement in Section 6 that a project "must be reviewed," coupled with limits on fire official authority to MUBEC alone, risks creating an unfunded and inconsistent municipal review obligation that does not align with the jurisdictional and capacity issues identified through the LD 1005 process.

Thank you for your time and for your continued commitment to public safety, we stand ready to assist the committee with these necessary amendments.

Shawn Esler, State Fire Marshal