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Governor

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
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AUGUSTA, MAINE
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Anne L. Head
Commissioner

April 30, 2021

Senator Baldacci, Senate Chair
Representative Matlack, House Chair
Members of the State and Local Government Committee

Re: *LD 835 An Act To Allow Citizens to Petition Government Agencies to Repeal or Modify Occupational Regulations*

Dear Senator Baldacci, Representative Matlack and members of the State and Local Government Committee,

I write on behalf of the Office of Professional and Occupational Regulation (“OPOR”) within the Department of Professional and Financial Regulation to share our opposition to LD 835. OPOR is one of five regulatory agencies within the Department which also includes the Bureaus of Consumer Credit, Financial Institutions, and Insurance and the Offices of Securities. In addition, there are six boards affiliated with the Department. More information about DPFR is available at this [LINK](#).

This bill is part of an effort by a national organization to implement this and other bills like it across the country. LD 835 reflects model legislation entitled “Right to Earn a Living Act,” intended to “recognize that the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right.”

We believe that this legislation is unnecessary, especially in a state like Maine whose dedicated and responsible public servants are committed to facilitating entry into occupations and professions under their jurisdiction, while at the same time, keeping the public health and safety as their first and foremost concern.

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Without walking through each section of the bill, I would like to make three points. The bill is (1) redundant of protections already existing in state law, (2) overly burdensome to state agencies, and (3) it raises legal and constitutional concerns.

- First, LD 835 is redundant of many protections already provided in the Maine Administrative Procedures Act (MAPA.) The MAPA already provides meaningful ways for the public to participate in the rulemaking process and to petition an agency to commence rulemaking. To give you a specific example, the Maine Administrative Procedures Act already provides that “*any person*” may petition an agency for the adoption or modification of *any* rule, and a response is required from that agency within 60 days.

In fact, LD 835 seeks to implement procedures which reduce protections offered by MAPA, such as the opportunity for *broad* public participation in rulemaking. For example, under LD 835 any time a single person petitions a board to repeal or modify a rule, the board must, *within 90 days*, either repeal the rule, modify the rule or state the basis as to why the rule conforms to the bill’s standard. The MAPA, on the other hand, requires a notice and comment period to ensure the opportunity for *broad* public participation in board or agency decision-making before any rule could be modified or repealed. These notice and comment periods necessarily take longer than 90 days in order to ensure that all affected individuals have the opportunity to participate.

- Second, the bill imposes additional requirements on state agencies that are overly burdensome and could involve significant costs. Tasking an agency or board with a comprehensive review of all of its rules is time-consuming. Boards and agencies already routinely review and update their rules on an as needed basis and as required by the [Government Evaluation Act \(GEA\)](#). The Boards of Dental Practice, Osteopathic Licensure, Licensure in Medicine, Nursing, Optometry, and Professional Engineers just completed their GEA review in 2019.

In addition, boards and agencies are being asked by their legislative committees of jurisdiction to devote more time and staff to address consumer complaints and to speed up the licensure process. Asking them to spend the remainder of this year reviewing and justifying each one of its rules would be time-consuming and burdensome work that would only slow down efforts to serve license applicants, licensees, and the public.

- Third, the bill raises significant legal concerns, not the least of which may be a separation of powers and a constitutional issue. For example, LD 835 purports to give a court the ability to repeal or *modify* a rule if it finds by a preponderance of evidence that the rule on its face or in its effect does not meet the standard of review. Under current law, a court could potentially declare a rule invalid or void in certain limited circumstances. However, this bill would give a court the power to *rewrite* an agency rule, which poses a serious separation of powers concern.

DPFR's agencies and boards are busy diligently undertaking their state mandated mission to protect the public. They are not interested in unnecessarily burdening a person's ability to enter into an occupation, trade, or profession. They diligently follow the MAPA, encourage public participation in rulemaking, and carefully tailor their rules to state statutes to ensure the protection of the public's health, safety and welfare. We encourage you to vote this bill ought not to pass.

Thank you for your time and we would be happy to answer questions at the work session.

Sincerely,
Anne Head

Commissioner, Department of Professional and Financial Regulation
Director, DPFR Office of Professional and Occupational Regulation