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Office of the Secretary of State
Office of Professional Regulation
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May 1, 2024

To: Hon. Amy Sheldon, Chair
House Committee on Environment and Energy

From: Lauren Layman, General Counsel, Office of Professional Regulation

Re: H. 253 - An act relating to building energy codes

Dear Committee,

Thank you for the opportunity to testify about S. 253 and how the Office of Professional Regulation (OPR) can support the energy efficiency practices, homeowners, and residential contractors.

Unfortunately, OPR does not support the Senate-passed version of S. 253. The mandates of sections 5 and 6 of S. 253 deviate from OPR's fundamental mission of public protection by requiring OPR to publish unverified data more suited to marketing. This shift will require costly modifications to our existing software, designed for public protection purposes and to regulate 51 diverse professions, to offer these marketing functions for one of those professions. These costs will need to be borne by the registered residential contractors through increased registration fees, as Vermont requires professionals to bear the costs of regulating the profession. 3 V.S.A. § 124(a).

Moreover, the mandates of S. 253 would result in a shift away from the residential contractor registration program the state spent six years building and that just fully came into effect one month ago. The program the General Assembly established less than two years ago is intended to provide public protection against residential contractor fraud without imposing significant barriers to people entering the field. *See [Act 182, §§ 13-14 \(2022\)](#)*. Under S. 253, the state's role would shift to monitoring the quality of a residential contractor's work (i.e., if they complied with the RBES) and requiring additional data as a condition of registration.

OPR has proposed an amendment to sections 5 and 6 (attached) that will achieve the goals of collecting data for other parties to use for marketing and will facilitate increased awareness of residential contractors' existing obligation to comply with the RBES and CBES. We are also in regular communication with stakeholders to continue to develop and implement the residential contractor registry program established in 2022. We ask that S. 253 be amended to include this proposed amendment or that sections 5 and 6 be struck from the bill.

Below is additional information about OPR and the residential contractor registry program. Thank you so much for the opportunity to speak to the committee about S. 253 and our concerns. We look forward to further discussions about the residential contractor registry with this Committee and other stakeholders.

OPR Background and Software

OPR is the state's main professional licensing agency. Our core mission is public protection, a goal we accomplish through licensing, policy, and enforcement. We currently regulate 51 professions, from pharmacists to mixed martial artists, and about 80,000 licensees with a team of 41 employees.

OPR manages the administrative functions of licensing using a unique and cutting-edge form of professional licensing software: the Next Generation Licensing Platform (NGLP). NGLP was designed to fulfill OPR's core, public protection mission. The software has a public interface through which people can apply for and renew licenses. The public can use the software through OPR's website to download full lists of Vermont licensees and check on the licensing status (e.g., disciplined, active, etc.) of a single licensee. Members of the public can also submit consumer complaints through the software and can review conduct decisions after an adjudication. Additionally, dockets for ongoing disciplinary matters and investigation files are maintained in the system, associated with the relevant licensee.

OPR began developing NGLP with a private software company in 2017. The major development of the software has been completed. We still engage with the developers to address concerns but major or fundamental changes to the system would be very costly at this point.

Current Version of S. 253

Section 5(c)(3) of S. 253 would require OPR to create a live feed of licensing data from NGLP to our website and to make that information searchable in a different format than is already available. While OPR already makes licensing data readily available in a spreadsheet format from our website and through the Public Records Act, NGLP currently does not have a live feed function or a search function that allows consumers to filter their searches by sub-fields in a licensing file. OPR would need to engage the software developer to create such functions, which would be very costly. This cost, under current law, must be borne by the residential contractor registrants.

Moreover, publishing this information on our website does not serve a public protection function. The public can already view a residential contractor's address on our website and see whether the residential contractor has been disciplined for unprofessional conduct. There is no public protection interest served by sharing a residential contractor's service region or claimed (unverified) trade skills. Rather, these functions may actually increase the risk to the public. By labeling someone as skilled in a certain trade on our website, consumers may be misled to believe that the residential contractor's skill has been verified by OPR through assessment of qualifications. This will not, however, be the case.

OPR recommends eliminating the requirements that our website publish data and that we change our existing search function. The agency is able to request the data from registrants and make it available to third-party stakeholders seeking to create marketing tools without increasing costs for registered residential contractors or taxpayers. OPR is in the process of creating a process for certifying residential contractors in specific trade skills. This information will be available to consumers

Residential Contractor Registration

One of OPR's main functions is to determine whether a profession should be subject to regulation through licensure. Title 26, Ch. 57 of the Vermont Statutes Annotated provides that the policy of the State of Vermont is that no regulation should be imposed on a profession or occupation except for the purpose of public protection. *See* 26 V.S.A. § 5101. The policy goes on to state that, should regulation be needed to protect the public, the form of regulation should be the least restrictive form of regulation necessary to protect the public.

In 2017, OPR conducted a review of the home improvement and construction contractor occupation. OPR determined that there was a risk to homeowners from residential contractor fraud that other laws did not prevent and recommended that residential contractors be required to register with OPR. This form of regulation – registration – requires contractors to register with the Office but does not require the applicant to demonstrate any qualifications to obtain the registration. It allows OPR to remove bad actors from the marketplace while not creating barriers, such as required education or examination, for individuals seeking to enter the field.

The General Assembly adopted legislation requiring contractor registration in 2022. *See* Act 182, §§ 13-16 (2022). The adopted law specifically provides that OPR is charged with protecting the public from residential contractor fraud, not with addressing quality of work concerns. This distinction is essential for OPR because we do not have staff with the knowledge or experience to assess the quality construction or to inspect structures.

In addition to creating the residential contractor registry, the legislation authorized OPR to create certifications: a form of professional regulation that is optional for people but requires qualifications to obtain. Certifications provide an opportunity for residential contractors with a specialized trade to obtain a state credential recognizing this skill and expertise and for that credential to be viewable by the public.

Under the new law, residential contractors were allowed to start registering on April 1, 2023 but were not subject to charges for failing to register until April 1, 2024. In turn, the registration program is in its very nascent stages. OPR has spent the last two years working on outreach, establishing our electronic systems, and collaborating with stakeholders. Our full authority under the law just became effective one month ago. We have yet to draft rules or to establish the certification process.

Current Version of S. 253

Sections 5 and 6 of S. 253 would require residential contractors to provide additional information as a condition of registering with the Office. In an effort to implement the least restrictive form of professional licensing regulation necessary to protect the public, the negotiations leading to the adoption of a residential contractor registry carefully limited what data and qualifications an applicant must submit to register as a residential contractor. Adding these data requirements now risk that delicate balance that was negotiated in 2022.

Further, OPR, Vermont's residential contractors, and stakeholders have just begun the process of implementing the law passed in 2022. Residential contractors have only been required to register, or face disciplinary charges, for one month. S. 253 would deviate from the new program by adding requirements for registration and shifting our enforcement focus from solely investigating fraud to assessing compliance with quality-based standards (i.e., RBES and CBES). We do not yet know if the program that was established in 2022 will be effective or if there will be a need for these shifts and additional obligations in S. 253.

OPR recommends either eliminating the requirement that applicants be required to provide data on trade skills and service regions or to make provision of that data optional. OPR further recommends amending the requirements regarding RBES compliance statements in applications and the written contract to be acknowledgements of a residential contractor's obligation to comply with the RBES.

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OPR Proposed Amendment to S. 253

S.253 - OPR recommended language changes

Sec. 5. RESIDENTIAL BUILDING CONTRACTOR REGISTRY; WEBSITE UPDATES

(a) As part of its application to register with the residential building contractor registry administered by the Vermont Secretary of State, the Office of Professional Regulation shall ~~require~~ ask that a registrant to provide the following data:

- (1) ~~designate~~ the geographic areas the registrant serves; and
- (2) ~~designate~~ the trade services the registrant offers from a list of trade services compiled by the Office.

(b) As part of its application to register with the residential building contractor registry administered by the Vermont Secretary of State, the Office of Professional Regulation shall require that a registrant: acknowledge that compliance with 30 V.S.A. §51 (residential building energy standards) and 30 V.S.A. § 53 (commercial building energy standards) is required.

(c) On or before January 1, 2025, the Office of Professional Regulation shall update the website for the residential building contractor registry administered by the Vermont Secretary of State to:

- (1) regularize usage of the term “residential contractor,” or another term selected by the Office, across the website to replace usages of substantially similar terms, such as “builder,” “contractor,” or “residential building contractor”; and
- (2) ~~publish a registrant’s designations under subdivisions (a)(1) and (a)(2) of this section in the registrant’s listing on the website;~~
- (3) ~~implement a search feature to enable consumers to filter registrants by trade service provided, geographic area served, voluntary certification, or any other criteria the Office deems appropriate; and~~
- (4) add a clear and conspicuous notice that a residential contractor is required by law to comply with State building energy standards.

Sec. 6. RESIDENTIAL BUILDING CONTRACTOR CONTRACT TEMPLATES

The Office of Professional Regulation shall update any contract template the Office furnishes for residential building contracting to ~~provide~~ include a statement acknowledging that the residential contractor is required to comply with 30 V.S.A. § 51 (residential building energy standards) and 30 V.S.A. § 53 (commercial building energy standards).