

**Testimony of
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Before the Joint Standing Committee on Labor and Housing
in opposition to
L.D. 402, *An Act to Restore Overtime Protections to Maine Workers***

March 11, 2019

Sen. Bellows, Rep. Sylvester and members of the Joint Standing Committee on Labor and Housing, my name is Peter Gore and I am the Executive Vice President of the Maine State Chamber of Commerce, a statewide business association representing both large and small businesses speaking to you today in opposition to **L.D.402, *An Act to Restore Overtime Protections to Maine Workers***,

L.D. 402 proposes to increase the overtime threshold by \$22,224 over a four-year period, finally landing on \$55,224 by 2022, and then indexing the threshold each year thereafter by the second quartile of usual weekly earnings for employed full-time wage and salary workers as published by the United States Department of Labor's Bureau of Labor Statistics.

Passage of this bill would be catastrophic for thousands of for-profit and non-profit businesses of all sizes, across the state of Maine.

Referred to as the "overtime" threshold, or alternately as the "salaried" threshold, it is the monetary dividing line between employees who are considered salaried/exempt for the purposes of overtime pay, and those who are hourly workers and therefore eligible for overtime pay after working 40 hours in a week. As drafted, LD 402 would increase Maine's threshold from its current level of \$33,000 to \$40,408 in 2020, then increase it again to \$47,816 in 2021, and finally to \$55,224 in 2022.

Since 2009, Maine's monetary dividing line separating hourly/non-exempt versus salaried/exempt has been tied to changes in Maine's minimum wage. At that time, Title 26 was amended to create a threshold that is 3000 times the state's minimum wage. While the federal threshold is currently set at \$22,660, Maine's threshold has climbed to its current level of \$33,000. With the next scheduled increase in Maine's minimum wage (to \$12 an hour) set for 2020, the threshold will again climb to \$36,000. It will continue to increase, as Maine's minimum wage is indexed by changes to the CPI here yearly.

In 2015 and 2016, the final two years of President Barack Obama's tenure, he directed the U.S. Department of Labor to undertake rulemaking to adjust the threshold nationally. The process was a contentious one, with the U.S. Department of Labor receiving literally hundreds of

thousands of comments on the subject from employers and labor groups alike. After an initial recommendation of roughly \$52,000, the department issued threshold guidelines increasing the amount from \$23,660 to \$47,467, to take effect in 2016.

Not surprisingly, this represented a significant jump for many employers across the nation, and a particularly huge leap for many small businesses, who were paying salaried employees more than \$23,660, but less than \$47,467 (or \$912 per week). Employers balked, both at the amount and the small timeframe given to adjust salaries – or demote workers to hourly status.

Again, not surprisingly litigation ensued, and in August 2017, the U.S. District Court for the Eastern District of Texas later invalidated this regulation on the basis that the \$47,456 annual salary (\$913 per week) was so high as to render the duties tests for exemption irrelevant.

This is extremely important – because who is considered exempt from overtime eligibility versus those who qualify for overtime pay is a *two-pronged test* – the aforementioned pay test and a *duties test*. In addition to the minimum salary level, employees must also perform certain duties to qualify for the Fair Labor Standards Act's white collar (executive, administrative and professional) exemption. The court found that the duties tests were the more appropriate representation of Congressional intent for exemption, and that the salary test was to serve merely as a proxy, or shorthand, for the duties test. The court ruled that the salary test was increased so much as to make the duties test irrelevant, and that the new salary test would render non-exempt those employees who should be exempt due to the duties they perform.

With the huge salary threshold leaps LD 402 would require of Maine employers, the bill appears to make the same mistake. The ultimate level of more than \$55,000 is even higher than the final Obama threshold level of more than \$47,000, and higher than California's threshold level of \$49,000 – thereby making Maine the highest threshold in the nation. In addition, the indexing provision of the bill links it to a *national income level* which will, by definition, not be in sync with Maine's.

There was considerable concern expressed by employers with respect to the 2016 federal regulations what would certainly apply to LD 402 beyond cost. Many workers currently considered salaried or management employees would likely see their position converted to hourly. Employers would just not be able to keep pace with the salary adjustments necessary to maintain exempt status, which, leads to several unintended consequences.

First, it created considerable morale issues in the workplace. Previously salaried workers felt demoted and that their career trajectory had been stunted due to the change. Second, employers had to retool their workforce, all the while trying to maintain productivity. Employees who found themselves moving from salaried to hourly were asked to turn in cell phones, laptops, tablets, etc., and instructed to conduct no work after hours – even if their work ethic motivated them to continue to do so, and thereby negatively impacting productivity.

In the non-profit world, if LD 402 becomes law, the impact could be equally destructive – particularly for charitable non-profits. These groups survive on contributions, and in some cases, contracts with local governments to provide services. So, they are not necessarily able to go out and raise more revenue to cover these increased labor costs, particularly the amount necessary to cover the increases envisioned by LD 402. People working for these groups generally do so because they believe in the mission of helping others; they understand that they will not be making as much as other employees. In many cases, jacking up the salary thresholds for exempt employees means they will no longer be able to work the longer and irregular hours providing

these services demands. The same holds true for local and state governments, whose only method of raising revenues to cover LD 402's increases would be to raise property taxes on their citizenry.

LD 402 will significantly increase to cost of doing business for nearly every employer – for profit or non-profit, large or small – operating in Maine. Furthermore, it will make Maine an outlier compared to the other 49 states who have not imposed such standards on their employers. This bill will certainly hurt Maine's ability to attract new businesses, new jobs, and new opportunities for our citizens. It is for these reasons that we are strongly opposed to LD 402. Thank you for the opportunity to provide you with our comments.