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*Testimony of Michael J. Dunn, Esq., Acting State Human Resources Officer of Maine
Bureau of Human Resources Department of Administrative and Financial Services
testifying in Opposition to*

LD 61, An Act to Regulate Employer Surveillance to Protect Workers

Sponsored by Representative Amy Roeder
Before the Joint Standing Committee on Labor

Senator Tipping, Representative Roeder, and members of the Joint Standing Committee on Labor, I am Michael Dunn, Acting Human Resources Officer of the State of Maine Bureau of Human Resources. I am providing the below written testimony in opposition to LD 61.

This bill is of concern to the State as an employer because the State monitors employees under both routine and discrete circumstances. We believe that the State's use of monitoring is reasonable within the contexts deployed and not unnecessarily invasive, but we are nonetheless concerned that this bill would create an undue burden upon employers to justify and limit our monitoring and provide employees with recourse against valid monitoring.

Using a prominent example from within our own Department of Administrative and Financial Services, both incoming and outgoing calls at Maine Revenue Services have occurred over a recorded line for over 40 years. MRS uses the recorded line to establish an indisputable record of telephone interactions with taxpayers that holds both taxpayers and staff accountable, as well as for training purposes. The consequences of ignoring notices from MRS attempting to collect on long overdue taxes automatically escalate to holds on your bank accounts and liens placed against your property—these recordings are invaluable when taxpayers dispute the degree and content of their contact with MRS, but they can also be to the taxpayers' advantage if an error has occurred. Additionally, monitoring call volume answered, call duration, and call content provides MRS with insight that allows them to improve the quality of their customer service.

The Bureau of Human Resources also selectively engages in surveillance within the progressive discipline structure when employee performance is at issue. If an employee's productivity has been identified as exceptionally low, the Bureau of Human Resources can request that MainIT track the employee's computer activity to assemble an account of how the employee is spending their days and to build a case for termination. Employees are regularly reminded about the acceptable uses of their State provided technology upon login, but they are not informed if tracking is activated on their computer. This tactic is deployed sparingly but has revealed employees who are repeatedly inactive for extensive portions of their workday and employees who are operating private businesses and earning other income on State time, using their state computer to do so.

Retaining our ability to track employees without their knowledge is essential to documenting malfeasance and disciplining it accordingly.

Similarly, the State of Maine is self-insured for our Workers' Compensation program. The State, as do many private employers and/or their insurance carriers, will engage in employee surveillance through private investigators to ensure appropriate payment of claims under the workers' compensation laws. This bill, if passed, would harm our ability to ensure that taxpayer dollars are not spent on frivolous claims.

Most concerning about this bill is that it provides recourse to an aggrieved employee who could shift the issue from their performance to employer surveillance despite thorough documentation of neglecting their job responsibilities at the taxpayers' expense and thus complicating the State's ability to terminate poor performing employees.

This bill was previously introduced in the 131st Legislature (LD 949). LD 61 appears to be the version of LD 949 as amended by Committee Amendment A (H-173). However, LD 949 was further substantively amended on the House floor after it was recalled at the Governor's request. The changes to LD 949 reflected in the House Amendment to Committee Amendment A (H-575), included the following important components that the Administration will be looking for should LD 61 move forward: 1) shifting the timing of when employers must inform prospective employees that the employer engages in employers surveillance and 2) removing the provision that provides a private right of action.

Thank you for your consideration and if requested, I will make myself available to the Committee during the work session.