

Date:

(Filing No. H- )

**LABOR**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
132ND LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1045, L.D. 1587, “An Act to Establish Greater Alignment of Penalties for Certain Labor Law Violations”

Amend the bill by striking out the title and substituting the following:

**'An Act to Clarify the Bureau of Labor Standards' Investigatory and Enforcement Procedures'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 26 MRSA §54 is enacted to read:

**§54. Investigation; penalties**

**1. Investigation.** Whenever the director believes a person or employer has violated any provision of chapter 7 or 15, the director may conduct an investigation. During the investigation of a person or employer, the director may:

A. Examine or cause to be examined for that purpose any books, records, papers and memoranda of any person or employer of whatever nature relevant to the alleged violation;

B. Issue a subpoena pursuant to subsection 2 or otherwise require the attendance of the person or employer, or of any other person having knowledge of the subject of the investigation, take testimony, administer oaths or take acknowledgement in respect of any book, record, paper or memorandum and may require proof material for that person's or employer's information. Such testimony, administration of oaths or acknowledgement of any book, record, paper or memorandum must be taken in the county where the person or employer resides or has a place of business, or in Kennebec County if the person or employer is a nonresident or has no place of business within the State; and

C. Require production of any record required by law to be kept by the person or employer pursuant to any provision of chapter 7 or 15.

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1           **2. Issuance of subpoenas.** Subpoenas issued for the purposes of conducting an  
2 investigation pursuant to subsection 1 must be issued pursuant to Title 5, section 9060.  
3 Service of any notice or subpoena may be made by:

4           A. Delivering a duly executed copy of the subpoena to the person or employer to be  
5 served or to a partner or to any officer or agent authorized by appointment or by law to  
6 receive service of process on behalf of that person or employer;

7           B. Delivering a duly executed copy of the subpoena to the principal place of business  
8 in this State of the person or employer to be served; or

9           C. Mailing by registered or certified mail a duly executed copy of the subpoena  
10 addressed to the person or employer to be served at the principal place of business in  
11 this State of the person or employer to be served or, if that person or employer does not  
12 have a place of business in this State, to the person's or employer's principal office or  
13 place of business or publicly identified service address.

14           **3. Penalties for violations.** If the director determines a person or employer has  
15 violated any provision of chapter 7 or 15, the director may issue a notice of violation and:

16           A. Order the payment of penalties and other remedies consistent with section 53 and  
17 any other penalty or enforcement provision in chapter 7 or 15. Once a penalty or other  
18 ordered remedy is final and all administrative and legal appeal rights have been  
19 exhausted, the person or employer subject to the penalty or ordered remedy pursuant  
20 to this subsection shall make payment within 30 calendar days. Failure to make a timely  
21 payment is subject to an additional civil penalty of not more than \$1,000 for each day  
22 that the person or employer fails to make payment; or

23           B. Order the correction of ongoing violations. Any person or employer who fails to  
24 correct a violation for which a notice of violation has been issued within the permitted  
25 period for its correction is subject to an additional civil penalty of not more than \$1,000  
26 for each day during which the violation is not corrected. The permitted period for  
27 correction may not begin to run until the date on which all administrative and legal  
28 appeal rights have been exhausted in the case of any appeal proceeding initiated by the  
29 person or employer in good faith and not solely for delay or avoidance of penalties.

30 A person or employer who is ordered to pay wages, liquidated damages or interest to an  
31 employee pursuant to this subsection or the provisions of chapter 7 or 15 shall certify that  
32 payment was made within 7 calendar days from the date on which all administrative and  
33 legal appeal rights have been exhausted in the case of any appeal proceeding initiated by  
34 the person or employer in good faith and not solely for delay or avoidance of penalties.  
35 Such certification must demonstrate to the satisfaction of the director that payment was  
36 made to any employee's last known address or attest to the same under penalty of perjury.

37           **4. Failure to pay; notice of levy.** If a person or employer fails to pay any part of the  
38 wages, liquidated damages, interest or penalties due to an employee under this section or  
39 chapter 7 or 15, the director may notify by mail a 3rd party who has possession or control  
40 of property in which the delinquent person or employer may have an interest or who may  
41 owe a debt to the delinquent person or employer, other than earnings.

42           A. A notice of levy under this subsection may be given any time after the amount due  
43 under this section becomes delinquent. The notice of levy must state the aggregate  
44 amount of contributions, penalties, interest or other amounts due and any additional

1 amount that will accrue by operation of law in a period not to exceed the computation  
2 ending date of the month in which the notice of levy is given and, in the case of a credit,  
3 bank or savings account or deposit, the notice of levy is effective only up to that  
4 amount.

5 B. The delinquent person's or employer's property subject to levy includes:

6 (1) A credit, bank or savings account or deposit that is subject to execution pursuant  
7 to Title 14, section 4751; or

8 (2) Any other interest or personal property that is not exempt from attachment or  
9 execution pursuant to Title 14, chapter 507, subchapter 2, article 7.

10 C. A notice of levy is effective:

11 (1) At the time of delivery against all property, rights to property, credits and debts  
12 involving the delinquent person or employer that are not, as of the date of the  
13 notice, subject to a preexisting lien, attachment, garnishment or execution issued  
14 through a judicial process; and

15 (2) Against all property, rights to property, credits and debts involving the  
16 delinquent person or employer that come into the possession or control of the  
17 person or employer served with the notice.

18 D. A notice of levy sent under this subsection that attempts to prohibit the transfer or  
19 disposition of any property possessed or controlled by a bank is effective if it is mailed  
20 to the principal or any branch office of the bank, including any office of the bank at  
21 which the deposit is carried or the credit or property is held.

22 E. A person who has received a notice of levy under this subsection and who acts in  
23 accordance with the terms of the notice of levy issued by the director is discharged  
24 from any obligation or liability to the delinquent person or employer with respect to  
25 the affected property, rights to property, credits and debts of the person affected by  
26 compliance with the notice of levy.

27 F. A person who has received a notice of levy under this subsection and who transfers  
28 or disposes of any property or debt in a manner that violates this section is liable to the  
29 director for the amount of the indebtedness of the delinquent person or employer with  
30 respect to whose obligation or liability the notice was given to the extent of the value  
31 of that property or debt.

32 **5. Workplace posting.** A copy or copies of any notice of violation issued under this  
33 section or chapter 7 or 15 must be prominently posted in a conspicuous location in the  
34 workplace that is accessible to employees. If no such location exists, a copy or copies of  
35 the notice of violation must be delivered to each employee in a reasonable manner.

36 **6. Employee notification.** If a notice of violation issued under this section or chapter  
37 7 or 15 covers a defined time period, notice of violation must be provided to all employees  
38 employed during that time period. Mail, e-mail and text messages constitute reasonable  
39 manners in which to notify employees, as long as the mail, e-mail or text message is in the  
40 same language in which the employer typically communicates to the employees receiving  
41 the notice of violation.'

42 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
43 number to read consecutively.

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**SUMMARY**

This amendment replaces the bill and changes the title. The amendment provides the Director of Labor Standards within the Department of Labor the authority to conduct an investigation when the director believes a person or employer has violated any provision of the Maine Revised Statutes, Title 26, chapter 7 or 15. The amendment also provides the penalties the director may order if it is determined that a violation has occurred and authorizes the director to issue a notice of levy if the person or employer charged with a violation fails to pay. The amendment also requires persons or employers to prominently post in the workplace the notices of violation issued for a violation and requires the person or employer to notify employees if a notice of violation covers a defined period of time.

**FISCAL NOTE REQUIRED**

**(See attached)**