

**Testimony of
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On behalf of the
Maine State Chamber of Commerce
Before the Joint Standing Committee on Labor and Housing
in opposition to
L.D. 513, An Act Regarding Overtime Protections for Certain Maine Workers**

April 25, 2023

Sen. Tipping, Rep. Roeder and members of the Joint Standing Committee on Labor and Housing, my name is Peter Gore, and I am a Government Affairs Consultant with Maine Street Solutions, and I am here on behalf of my client, 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. 513, An Act Regarding Overtime Protections for Certain Maine Workers**.

L.D. 513 proposes to increase the overtime threshold by adjusting the multiplier that is currently part of Maine's wage and hour law, by over \$20,000 over a three-year period, finally landing somewhere above \$65,000 by 2026. It should be noted that this bill has been discussed and debated and rejected every year since its introduction in 2019 during the 129th Legislature.

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.

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, which was updated and became effective 1/1/2020 is currently set at \$35,568 (and apparently soon to be adjusted upwards by the Biden Administration) Maine's threshold has climbed to its current level of \$41,400 since this bill was last debated in 2022. It will continue to increase, as Maine's minimum wage is indexed by changes to the CPI here yearly.

Under the most current version, LD 513 would adjust the multiplier in statute, increasing it each year; to 3500 times in 2024, 4000 times in 2025, and 4500 times by 2026. It is difficult to access where our threshold would be by the time the full implementation of this law was complete. That itself presents problems for employers trying to plan and budget going forward, but the larger problem will be the cost. As I indicated, Maine's minimum wage will be adjusted annually based on changes in the UCPI. Last year that resulted in a 9.1 % increase – translated in to a \$1.05 increase, leaving our minimum wage at \$13.80 cents an hour. The size of that adjustment, like many other things, was impacted by the effects of skyrocketing inflation. As we predicted the last time we testified against this bill, in future years the adjustment could result in increases of greater than just the 15-cent increase of the first year of adjustment. However, taking a conservative approach, let us suppose that the \$1.05 cent increase is an anomaly, and future increases hover at half that, or .55 cents per year through 2026. That would leave Maine with minimum wage of \$15.45 an hour, and a salary threshold of \$69,525 (\$15.45x4500) – undoubtedly the highest overtime threshold in the nation. And unaffordable for many Maine small business.

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 *multi-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 513 would require of Maine employers, the bill appears to make the same mistake. The ultimate level of possibly more than \$69,000 is even higher than the final Obama threshold level of more than \$47,000, and only slightly lower than the nation's highest salary threshold in California's for employers with more than 26 employees - \$58,240 – thereby making Maine the highest threshold in the nation.

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, creating considerable morale issues in the workplace. Previously salaried workers will feel demoted and that their career trajectory stunted due to the change. What is more, employers will be forced to retool their workforce, all the while trying to maintain productivity. In situations where business cannot meet the new salary requirements, employees who move from salaried to hourly will be 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 513 becomes law, the impact could be equally destructive – particularly for charitable non-profits. The bill attempts to exempt these groups by allowing for the use of “compensatory time.” But the workability of this exemption is suspect at best. And it is likely that employees would, at some point in the future, rightfully want to be compensated for their work. 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 513. 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 513's increases would be to raise property taxes on their citizenry.

LD 513 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 nearly every other state that have not imposed such standards on their businesses. This bill will certainly hurt Maine's ability to attract new businesses, new jobs, and new opportunities for our citizens, at precisely the worst time. It is for these reasons that we are strongly opposed to LD 513. Thank you for the opportunity to provide you with our comments.