



Janet T. Mills
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
54 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0054

Laura A. Fortman
COMMISSIONER

**Testimony of Michael Roland, Bureau of Labor Standards, Maine Department of Labor
In Support of LD 248, An Act Regarding the Board of Occupational Safety and Health
To the Joint Standing Committee on Labor and Housing
Public Hearing, Monday, February 22, 2021**

Greetings, Senator Rafferty, Representative Sylvester and members of the Joint Standing Committee on Labor and Housing. I am Mike Roland, Director of the Bureau of Labor Standards at the Maine Department of Labor (Department).

The Bureau of Labor Standards works with businesses to continually improve workplace safety, health and workplace rights. Our programs include Division of Workplace Safety and Health, SafetyWorks!, the Wage and Hour Division and the Technical Services Division.

I am here today to speak on behalf of the Department in support of LD 248, "An Act Regarding the Board of Occupational Safety and Health." If passed, the Board of Occupational Safety and Health would be able to promulgate emergency rules. Currently, this Board is the only rulemaking authority within Title 26 without emergency rulemaking authority.

In August of 2015, the State of Maine was declared an OSHA State Plan for State and Local Governments only and as a result is currently a "developmental" state plan state. Maine remains an "OSHA State" for private sector and federal employees, meaning that the federal agency still enforces safety and health standards among those employers. The Safety and Health Division is still available to provide safety and health consultations to private employers, but they do not have enforcement authority. The Maine State Plan for State and Local Governments receives annually over a half million dollars in federal funds.

Maine's Board of Occupational Safety and Health, or BOSH, preexisted the transition to a State Plan (5 MRS §12004-G, §§24.). Maine statute (26 MRS §565) separately grants BOSH the authority to adopt rules assuring safe and healthy working conditions for state and local employees and requires that at a minimum those rules conform to federal standards promulgated by OSHA. Federal law requires these rules must be enacted within 30 days of adoption by OSHA (<https://www.osha.gov/laws-regs/regulations/standardnumber/1953/1953.5>). Failure to comply with this requirement could put federal funding at risk.

Currently, however, such rules cannot be quickly adopted. 26 MRS §565 states that rules adopted by BOSH "shall not become effective sooner than 90 days after adoption" and provides no authority to enact emergency rules. Therefore, under present circumstances, Maine is in danger of failing to fulfill its obligation as a state plan and at risk of losing significant federal funding designated for that purpose. The proposed bill seeks to remove this restriction in order to enable the Board to promulgate emergency rules.

As a result of the current pandemic caused by Covid-19, the Department reviewed our processes and ability to respond in order to protect the safety and health of public sector workers. If emergency temporary standards were enacted by OSHA, BOSH would be unable to adopt rules within the required time and the Department would be unable to enforce them.

Thank you for your time and attention. I would be happy to answer any questions you may have now or at a future work session.

The Maine Department of Labor is committed to serving Maine workers and businesses by helping employers recruit and train a talented workforce, providing workers with skills needed to compete in our economy, assisting individuals when jobs are lost, aiding people with disabilities reach career goals, ensuring safe and fair workplaces for people on the job and providing research and analysis of employment data to support job growth.