

M.C.C.A.

Stephen Gorden, President
Cumberland County

Brian Hobart, Vice President
Sagadahoc County

Norm Fournier, Secretary-Treasurer
Aroostook County

Lauren Haven
Administrator



4 Gabriel Drive, Suite 2
Augusta, ME 04330
207-623-4697
www.mainecounties.org

LD 965, an Act Concerning Nondisclosure Agreements in Employment

April 30, 2021

Chair Hickman, Chair Sylvester, and members of the Joint Standing Committee on Labor and Housing, and my name is Stephen Gorden and in addition to serving as chair of the board of commissioners for Cumberland County, I am writing today in my role as board president of the Maine County Commissioners Association. We appreciate the opportunity to provide testimony to the Committee in opposition to LD 965.

About MCCA. Briefly, the Maine County Commissioners Association was established in 1890 to assist Maine's county government in providing vital services to Maine citizens in a responsive, efficient, and credible manner. The Association is based in Augusta and currently represents 15 of Maine's 16 counties and is governed by a board with representation from each participating county.

About LD 965. This bill proposes to modify current Maine law by prohibiting employers from entering into certain agreements with employees regarding discrimination, harassment, or retaliation in the workplace. The bill covers public employers such as counties.

Our Association agrees with the apparent premise of the legislation to avoid or limit activities that have the effect of covering up or preventing remedial or enforcement actions to the extent harassment, discrimination, or retaliation is taking place in the workplace.

Our concern is that this bill not only covers actual instances of harassment, discrimination, or retaliation activities in the workplace, but it also covers instances where there is an allegation of such activities occurring, but in fact, such activities are not occurring. In the former instance, it would be inappropriate to prevent the reporting or enforcement of such harmful workplace activities. In the latter instance, false allegations can be destructive to the workplace, and continued publication of false allegations does not advance the public good.

Because discerning the difference between an accurate and a false allegation is difficult, and going through the legal process to prove an allegation, parties often settle their disputes without admitting

Comments of MCCA re LD 965

April 30, 2021

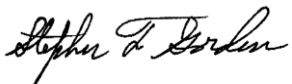
Page 2

fault. This allows both parties to move forward through mutual agreement that saves them and the taxpayers legal time and expense. The question raised by LD 965 is whether entry into such agreements will remain feasible if, following entry into a settlement agreement, the employee continues to allege workplace misfeasance. In our view, the answer to this question is “no” – settlements are much less likely if the parties cannot mutually agree to cease making further accusations about workplace activities. And, without such ability to mutually settle a case, we should expect more litigation, more costs, and more negative impacts on taxpayers.

To be clear, our Association does not oppose provisions that limit the ability of workers or others to report workplace misfeasance. We do, however, oppose legislation that would impede the ability of parties to mutually settle cases alleging workplace misfeasance, which typically requires an agreement not to continue alleging workplace misfeasance.

Conclusion. We appreciate the opportunity to provide testimony on this bill, and if you have questions or need additional information, please do not hesitate to let us know.

Respectfully submitted,



Stephen Gorden
President

cc: Commissioner Brian Hobart, Chair, MCCA Legislative Committee
James I. Cohen, Verrill Dana, LLP, MCCA Legislative Counsel