

MAINE STATE LEGISLATURE

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L.D. 2306

(Filing No. S-628)

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STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 907, L.D. 2306, Bill, "An Act to Promote Economic Development"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'26 MRSA c. 7, sub-c. X is enacted to read:

SUBCHAPTER X

STATE ECONOMIC SUPPORT AND HIRING PREFERENCES

§875. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Direct economic support. "Direct economic support" means the provision of a financial payment, grant, loan or evidence of debt, loan guarantee, tax increment financing arrangement or job or investment tax credit to an employer, for the purpose of supporting that employer's economic activities, by a public agency acting either on its own behalf or as an intermediary or administrator of funds provided in whole or in part from any public source. Unless specifically provided for in this subsection, the term does not include:

A. Job training programs under chapter 33;

B. Housing development assistance under Title 30-A, chapter 201 or 202; or

C. Tax exemptions or abatements.

2 2. Employer. "Employer" means any person, partnership,
3 private corporation or other private legal entity, whether
4 temporary or permanent, that employs more than 100 individuals in
5 the State at any time when direct economic support is received by
6 that employer. The term includes any related entity, such as a
7 corporate parent or subsidiary of an employer, or any other
8 entity or form in which the employer has any degree of beneficial
9 ownership.

10 3. Existing employee. "Existing employee" means:

11 A. Any individual who is employed in this State by an
12 employer receiving direct economic support; or

13 B. Unless discharged for good cause relating to the
14 individual's job performance, any individual:

15 (1) Who was an employee of the employer for at least 6
16 months at a facility in the State and was an employee
17 at any time when the employer received the direct
18 economic support; or

19 (2) Who was an employee of the employer for at least 6
20 months at a facility in the State within 3 years before
21 the employer's original receipt of the direct economic
22 support.

23 4. New employment position. "New employment position"
24 means any position of employment averaging at least 20 hours per
25 week that is available with an employer and that was not held by
26 an employee of that employer before the employer's receipt of the
27 direct economic support, including positions that involve duties
28 not previously performed for that employer by its employees and
29 the creation of additional positions involving duties currently
30 performed by existing employees of the employer.

31 5. Original receipt or originally received. "Original
32 receipt" or "originally received," as applied to the receipt of
33 direct economic support, means the date on which an employer
34 first receives the direct economic support. For tax benefits
35 subject to this subchapter, the terms mean the first day of the
36 tax year for which the benefit is applicable.

37 6. Public agency. "Public agency" means the State, any
38 political subdivision of the State, or any state or local
39 governmental or quasi-governmental entity.

40 **§876. Preference to existing employees**

41 1. Preference required. As a condition of receiving any
42 direct economic support, an employer shall obligate itself and
43 its successors and assigns to give preference in hiring for new
44 employees.

2 employment positions within the State to any existing employees
3 of the employer who apply for those positions, unless:

4 A. The existing employee is not qualified to perform the
5 duties of the new position and can not be made qualified
6 with the same training required for alternative applicants
7 who are not existing employees of the employer.

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9 (1) This paragraph does not require an employer to
10 provide any technical or advanced education to an
11 existing employee that would not be provided to
12 alternative applicants who are not existing employees
13 of the employer.

14 (2) An existing employee may challenge the employer's
15 determination of the employee's qualifications, or the
16 length or level of training necessary to make the
17 employee qualified by submitting to the employer
18 evidence of comparable qualifications, or the need for
19 a comparable period or level of training to become
20 qualified, relative to the qualifications or training
21 requirements of an alternative applicant who is not an
22 existing employee;

23 B. The new position is a supervisory position; or

24 C. That preference conflicts with any other state or
25 federal law.

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27 2. Term. The requirements imposed by subsection 1 apply to
28 an employer from the employer's original receipt of any direct
29 economic support until 3 years after the final date of receipt of
30 that direct economic support.

31 3. Notice to existing employees. An employer subject to
32 this section shall notify its existing employees of the existence
33 of a new employment position by publishing notice of the position
34 in 3 successive editions of a newspaper of general circulation in
35 the county where the new employment position is available and in
36 a newspaper of general circulation in any county in which the
37 employer employs individuals in the State.

38 **§877. Other obligations**

39 The requirements of section 876 are in addition to and not
40 in place of any other obligations to which an employer is
41 subject. The requirements of section 876 do not affect the
42 provisions of any individual or collective employment contract,
43 any agreement with any public agency or any obligation under any
44 other law or rule that offers greater reemployment opportunities
45 to existing employees.

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§878. Enforcement: penalty

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1. Attorney General to draft language. The Attorney General shall draft language that must be incorporated in all contracts, agreements, applications or other documents providing for direct economic support to employers. This language must obligate the recipient of any direct economic support to comply with this subchapter as a condition of receiving the direct economic support.

2. Complaint; court action. Any aggrieved existing employee of an employer subject to this subchapter may file a complaint with the Attorney General requesting the Attorney General to investigate the alleged violation of this subchapter. Upon receipt of a complaint, the Attorney General may investigate the merits of the complaint and, when justified, file a civil action in any court of competent jurisdiction to enforce this subchapter.

3. Injunction: penalty. Upon finding that an employer has violated this subchapter, the court shall issue an injunction compelling the employer to comply with this subchapter. If the employer fails to comply with this injunction within a reasonable time, as determined by the court, the employer forfeits either the right to or the value of, in the court's discretion, any direct economic support that creates a hiring preference under section 876 applicable to the employee or employees in question. The court shall determine the amount of this forfeiture and prescribe the method of repayment to the public agency or agencies providing the direct economic support.

§879. Application

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This subchapter applies to direct economic support originally received by an employer on or after the effective date of this section.

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FISCAL NOTE

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The Department of the Attorney General and the Judicial Department will absorb, within their budgeted resources, the additional costs that may be incurred as a result of implementing the enforcement provisions of this bill.'

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STATEMENT OF FACT

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This amendment replaces the bill to clarify the intent of the bill and to improve its effectiveness. The intent of this amendment remains the same as the intent of the bill. It requires employers who receive economic support from public

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2 agencies to give a hiring preference to their existing employees
when new employment positions are created. The amendment ensures
4 that when public funds are expended to support an employer's
economic activity in this State, the State receives its money's
6 worth in return. The amendment makes the following changes to
the bill.

8 1. The amendment expands the definition of "direct economic
support" to include loans, loan guarantees, tax increment
10 financing arrangements and job or investment tax credits, which
are the most common form of public subsidies for economic
12 development.

14 2. The amendment broadens the application of the job
guarantee by including direct economic support from counties,
16 municipalities, quasi-municipal corporations and other
governmental and quasi-governmental entities.

18 3. The amendment expands the definition of "employer" to
20 prevent an employer from avoiding the requirements for receiving
direct economic support by manipulating its corporate structure
22 or the use of other legal devices.

24 4. The amendment includes within the definition of
"existing employee" any person who had been laid off or
26 discharged without good cause related to the employee's job
performance while the employer received the direct economic
28 support or within 3 years before the employer received the direct
economic support. This prevents employers from avoiding the
30 requirements for receiving direct economic support by timing the
layoffs or discharges of existing employees.

32 5. The amendment expands the positions for which a
34 preference must be given by including part-time positions that
average at least 20 hours per week.

36 6. The amendment strengthens an existing employee's right
38 to a hiring preference by including existing employees who
require training to perform the duties of the new position if
40 other applicants who are not existing employees would also
require similar training. The amendment also clarifies that the
42 hiring preference does not apply to supervisory positions or when
the preference would conflict with any state or federal law.

44 7. The amendment clarifies that the hiring preference
46 applies to an employer during the time that the employer receives
the direct economic support and for 3 years thereafter. It also
48 specifies the method of providing notice to existing employees
that a new employment position is available with the employer.

50 8. The amendment clarifies that the requirements for
52 receiving direct economic support are additional to any other

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2 obligations of the employer. The hiring preference granted to
existing employees does not preclude the application of other
4 more stringent requirements under an individual or collective
employment contract or any state or federal law.

6 9. The amendment adds an enforcement provision to provide a
mechanism for aggrieved employees to assert their rights. Any
8 aggrieved employee may petition the Attorney General to
investigate the employee's claim. If the Attorney General
10 determines that the complaint is justified, the Attorney General
may file a civil action to compel the employer to comply with the
12 requirements for receiving direct economic support. If the
employer refuses to obey a court injunction to comply, the court
14 can require the employer to repay the full amount of any economic
support that creates a hiring preference for the employee or
16 employees whose rights were violated by the employer.
Alternatively, the court can require repayment of the value of
18 the economic support received by the employer. For example, if
an employer receives a \$1,000,000 low-interest loan from a public
20 agency and subsequently violates the requirements for receiving
direct economic support, the court, in its discretion, can order
22 the immediate repayment of the entire loan amount outstanding or
just the amount of the low-interest subsidy.

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Reported by the Majority for the Committee on Labor.
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