



Testimony in Qualified Support of L.D. 1048,
“An Act to Require Certain Notice Requirements for Whistleblower Protections”
April 24, 2025

Senator Lawrence, Representative Sachs, and Committee Members:

My name is Seth Berry, I am Executive Director of Our Power, and I live in Bowdoinham. Our Power is a Maine nonprofit advocating statewide for energy democracy. To us, “energy democracy” means informed and empowered citizens, community-focused energy systems, and utility accountability.

We support this bill because it improves public utility accountability. Improving our utility whistleblower laws will save ratepayer money and improve service.

A whistleblower is someone who comes forward, at significant personal and professional risk, with information that may help to protect the rest of us. By helping whistleblowers, we help ourselves.

Current Maine law provides limited protection against retaliation if an employee of a public utility, competitive energy provider, or their contractor or affiliate comes forward and speaks to you, to the Public Advocate, or to the Public Utilities Commission. Importantly, it also makes it illegal for contracts to gag or limit employee speech.

The bill before you would help notify covered employees of these rights. This is a step forward. Current law requires notification but does not say how it should happen. Is it buried now on an employee bulletin board in the break room? Or buried on page 34 of a 53-page manual? If so, this bill should help to boost employee awareness.

We do have a few concerns. First, the notifications required here may not be read or internalized. Another approach might be to provide employees with a prerecorded 5-to-10-minute video, followed by a brief online survey testing their knowledge. This brief training and assessment could be produced by an entity like the commission, the Public Advocate, or a third party.

Second, the law should provide for evidence and enforcement. What evidence will show that employees are now aware of their rights? Who will enforce this law, and how?

Third, there are other key weaknesses in Maine’s current utility whistleblower law:

- A. A retaliation loophole: An employee must report their concern to the employer prior to reporting to others. *If they skip this step, retaliation against them is legal.* According to the National Whistleblower Center,¹ this requirement is commonly introduced by lobbyists for employers, and its effect is to block whistleblower activity. It leads to preemptive retaliation, where an at-will employee expressing concern is fired before they can blow the whistle and become protected. Other whistleblower laws provide a limited exception, where prior notice is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice of concern to the employee.
- B. Lack of anonymity or compensation. Unlike most federal whistleblower programs,² no provisions exist for *anonymity or remuneration of time and risk* taken in the public interest. Even with the best protections, whistleblowers put their career and future at risk. This is especially true in at-will states like Maine, where an employee may be terminated without explanation. Hard-to-prevent retaliations include industry blacklisting, lawsuits and threats to sue, retirement or severance benefits tied to non-disparagement or nondisclosure agreements, and public statements using terms like “disgruntled former employee.” According to a 2019 study by the Bradley University Center for Cybersecurity, nearly 2/3 of the whistleblowers surveyed suffered retaliation of these and other types.³ In addition to career risk, whistleblower activity is extraordinarily time-consuming and is not a salaried or wage-earning occupation. All successful and active federal programs help to overcome these barriers by providing for anonymity and a possible award.

In sum, this bill may improve employee awareness. This is good. When we don’t know our rights, we don’t use them. What is not used becomes useless and eventually disappears.

That said, we also urge the committee to look more broadly at best practices, focusing on outcomes, and to consider other improvements. We understand you will soon see another bill that may help.

Thank you, and I am happy to answer any questions.



Seth Berry

¹ <https://www.whistleblowers.org/>

² See e.g. Dodd-Frank Sec. 922, *qui tam* law under the False Claims Act, and the National Highway Transportation Safety Board whistleblower program.

³ <https://www.whistleblowers.org/wp-content/uploads/2019/10/Marcum-Young-2019-Blowing-the-Whistle-in-the-Digital-Age.pdf>