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Testimony of Representative Sophie Warren Presenting
**L.D. 1048, An Act to Require Certain Notice Requirements
for Whistleblower Protections**

Before the Joint Standing Committee on Energy, Utilities and Technology

Good afternoon, Senator Lawrence, Representative Sachs, and respected colleagues of the Joint Standing Committee on Energy, Utilities and Technology. My name is Sophie Warren, and I represent House district 124. Thank you for the opportunity to present L.D. 1048, An Act to Require Certain Notice Requirements for Whistleblower Protections, which represents straightforward and practical legislation that would require Maine's public utilities, competitive electricity providers, and utility contractors who do business with the State to notify their employees in writing and annually of existing whistleblower protections that were strengthened in LD 1959¹² of the 130th.

At its core, this bill reinforces a principle we all share that employees should feel safe and supported when raising concerns or reporting misconduct, especially in industries as critical as our public utilities and competitive electricity markets.

This bill does not create any new rights for employees, it simply ensures that employees are aware of protections that already exist under Maine law, by requiring written notice per best practices acknowledged by experts in the field³ and as is already required by statute for general whistleblower protections to all employees in the state of Maine, a requirement in place since the 1980s.⁴⁵⁶⁷

¹ See https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1959&snum=130.

² Specifically, this bill did the following: "Section 3 of the bill enhances protections to employees of a public utility provided under the existing public utility whistleblower statute by expanding the definition of employee to include current and former employees of not only a utility, but an affiliated interest of the utility or a utility contractor. It also includes protection for an employee providing testimony not only to the Commission, but to the Public Advocate." See <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10006141>.

³ P. 776-777, Paul Latimer and A.J. Brown, "Whistleblower Laws: International Best Practice," UNSW Law Journal, Vol. 31(3), 766. <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/31-3-15.pdf>.

⁴ The language of LD 1959 stated as follows: "10. Notice of rights required. A public utility and a competitive electricity provider shall notify the public utility's and the competitive electricity provider's employees, affiliated interests and utility contractors of their rights under this section." See <https://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0697&item=19&snum=130> and <https://www.mainelegislature.org/legis/statutes/35-a/title35-Asec1316-1.html>.

⁵ To be clear, the only distinction here is the requirement to provide that notice *in writing*, which would put this law on statutory footing with all other employees in Maine since 1987, and best practices on whistleblower regulations, as cited further on in this testimony.

⁶ Per the bill sponsor's own testimony: "The bill also strengthens our existing utility whistleblower statute that protects utility employees who come forward, often at great risk to their careers, to inform this Committee or the PUC of questionable activities being undertaken by the utility. The bill proposes several changes to the statute

Under current statute,⁸ employees are protected when they act in good faith to share information or testify before legislative committees, the Public Utilities Commission, or the Public Advocate. The law is clear: managers “may not discharge, threaten or otherwise discriminate against” an employee for coming forward with information about the operation of a utility or service provider.

However, protections that aren’t reliably and regularly communicated are protections that may go unused. Since changes in this law, I have met employees who are not aware of any changes to their rights in law. This happened even in the context of bringing this language forward in the previous legislature, in seeking input from employees about this proposed language. This bill seeks to remedy that by requiring employers to notify workers of their existing whistleblower rights in a format that can be later referenced by the employee, and to be done on a regular, annual basis. Knowing written notice is an established practice for the rights of whistleblowers in Maine law more broadly, I see this as a minor tweak consistent with the intent of the law as written.

By ensuring increasing awareness, we empower employees to speak up when something is wrong, which was the intention of the law as written in LD 1959. That protects not just workers, but the public interest, ratepayers, and the integrity of Maine’s energy system.⁹ I advance this bill seeking modest reform to reinforce and ensure good communication of notice is provided. It is low-cost, common sense, and promotes accountability in a sector that directly affects all Mainers.

That said, this Committee may consider one further amendment to the bill. The language below would ensure that the protections in Maine law are not narrowly confined to the specific entities already listed and would help avoid unintentionally excluding disclosures to other appropriate parties,¹⁰ such as law enforcement, fire departments, or investigative journalists, depending on the nature of the situation and the seriousness of the potential harm or ongoing legal violation. This is offered because best evidence suggests^{11,12} that to allow the entity being retaliated against be the point of first resort tends to have a dampening effect on whistleblowers. The amendment would be to 35-A MRSA §1316, paragraph 3 after “supervisory authority” insert the following:

including...requiring utilities to inform their employees and contractors of their rights under the whistleblower statute.” See Page 2, <https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10006202>.

⁷ 26 MRSA §839. Notices of employee protections and obligations. See <https://legislature.maine.gov/statutes/26/title26sec839.html>.

⁸ 35-A MRSA §1316. See <https://www.mainelegislature.org/legis/statutes/35-a/title35-Asec1316-1.html>.

⁹ Government Accountability Project and the International Bar Association, “Are whistleblowing laws working? A global study of whistleblower protection litigation,” 2021. <https://whistleblower.org/wp-content/uploads/2021/03/Are-Whistleblowing-laws-working-REPORT.pdf>

¹⁰ P. 776-777, Paul Latimer and A.J. Brown, “Whistleblower Laws: International Best Practice,” UNSW Law Journal, Vol. 31(3), 766. <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/31-3-15.pdf>.

¹¹ Government Accountability Project, “International Best Practices for Whistleblower Policies,” July 16, 2016. <https://whistleblower.org/international-best-practices-for-whistleblower-policies/>

¹² Paul Latimer and A.J. Brown, “Whistleblower Laws: International Best Practice,” UNSW Law Journal, Vol. 31(3), 766. <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/31-3-15.pdf>

“or any other person whom the employee reasonably believes can help correct what he or she reasonably believes is a risk to public safety or the health of the environment or a potential violation of law.”¹³

This change would amend existing language to bring Maine’s whistleblower protections closer to those outlined by the Federal Whistleblower Protection Act.

I respectfully urge the Committee to support this measure, and I thank you for your time and consideration. I’d be happy to answer any questions.

¹³ Suggested from consultation with Sierra Club Maine, Vice Chair Jacob Stern, and cites “FAQ: Whistleblower Protection Act.” National Whistleblower Center, <https://www.whistleblowers.org/faq/whistleblower-protection-act-faq/>.