



AGC MAINE
THE CONSTRUCTION ASSOCIATION

Testimony of Matt Marks Against LD 1963

" An Act to Protect and Compensate Public Utility Whistleblowers"

Joint Standing Committee on Energy, Utilities and Technology

132nd Legislature

May 15, 2025

Senator Lawrence, Representative Sachs, and distinguished members of the Committee, I am Matt Marks, a Principal at Cornerstone Government Affairs, and here on behalf of the Associated General Contractors of Maine (AGC Maine). AGC Maine opposes the bill as written, particularly the provision that includes contractors.

Maine already has a whistleblower protection act, which is found in 26 ME Rev Stat § 831–833 and § 836–840. Maine DOL requires employers to post a notice and provides a copy available on their website.

It is illegal for your boss to fire you, threaten you, retaliate against you, or treat you differently because:

1. You reported a violation of the law;
2. You are a healthcare worker and you reported a medical error;
3. You reported something that risks someone's health or safety;
4. You have refused to do something that will endanger your life or someone else's life and you have asked your employer to correct it; or
5. You have been involved in an investigation or hearing held by the government.

You are protected by this law ONLY if:

1. You tell your boss about the problem and allow a reasonable time for it to be corrected; or
2. You have good reason to believe that your boss will not correct the problem.

From our perspective, the existing statute covers the essential protections required to ensure a safe work environment. The bill proposes additional protections, including the right for a utility contractor employee to testify. We are not aware of any situation that has prohibited or discouraged employees from testifying. We'd appreciate more employees participating; however, we believe that including this language is unnecessary.

We are also concerned about the financial incentive that exists in this bill. Since anonymous reports will be protected, a claim under this model will not provide sufficient information for a contractor or utility to conduct an appropriate investigation. The whistleblower may not have access to the entire scope of a construction project or deliverable, which could alter their perspective or render the claim invalid.



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Today, an employee can have a direct conversation and is encouraged to report when safety or risk to themselves, employees, or the public is occurring. OSHA's Whistleblower Protection Program enforces laws that protect employees from retaliation when they report safety concerns or violations to OSHA or their employer. This includes protecting employees who report unsafe or unhealthy conditions and participate in OSHA inspections. While this law appears to address additional considerations, such as cost, that may not be within the knowledge of utility contractors and could be misdirected. That places a burden on the utility and its contractors, mainly when multiple contractors may be operating without knowledge of the complaint's origin. Since projects involving utilities can be broad in scope, even management of a utility contractor might not have the required information to understand the value of the investment.

The financial incentive provided could lead to false claims, especially given the cost of infrastructure investment. Frivolous claims can incur unnecessary expenses and potentially delay projects. Any stoppage can incur demobilization costs, as crews and equipment are relocated from one project to another. We are concerned that the anonymous nature of the report will necessitate additional requests from the utility, which could be disruptive to operations. While it's difficult to predict what an administrative penalty or savings to ratepayers would provide in compensation, it's certainly a motivating factor that offers no recourse for misinformation or fraudulent reporting.

Lastly, the bill implies protections, but the reality of the construction procurement process doesn't facilitate those initiatives. Since businesses, not employees, bid on projects, there is no transparent methodology to determine whether a project award is lost due to a whistleblower claim. It's simply not practical. Many contractors, by nature, are not quiet or reserved, and I believe they would report anything nefarious. But the concept that contractors retain knowledge of perceived violations due to a lack of protection is not a reality.

A construction site already has protections built into a project starting with construction plans, contracts, supervisors, third-party inspectors, project owner representatives, state inspectors, and oversight by the Maine Public Utilities Commission. Utility projects, by their inherent complexity, are designed by licensed engineers and approved by local, state, and federal regulators. The exceptions are storm repairs, where existing utility facilities are repaired under emergency conditions. The vast oversight, including a detailed review by the Maine Public Utilities Commission (PUC), renders the inclusion of utility contractors in this bill irrelevant to its purpose.

In the current whistleblower protection act, there is a special provision for healthcare workers who report medical errors. This bill provides specific protection and has a broad scope. That is the primary issue, and for contractors, the job-specific activity appears to be limited by this bill. When contractors disagree with a designed and engineered project, they may request change orders or engage in discussions that ultimately lead to a decision on how to proceed. When cost-adjusted, these are managed in writing between the utility contractor and the utility or prime contractor. Since this process is standard practice and outlined in contracts, any additional requests, unless we are missing a suggested issue, are not related to the contracting process. We are happy to hear



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any suggestions where this might provide value to the public's interest. Still, we are not aware of a scenario from a contractor's perspective that isn't already covered.

We urge you to vote against this bill.