AGC MAINE
THE CONSTRUCTION ASSOCIATION

Testimony of Kelly Flagg in Opposition to LD 838 (As Amended)
"An Act to Establish the Maine Clean Energy Authority"
Joint Standing Committee on Energy, Utilities and Technology
January 20, 2026

Senator Lawrence, Representative Sachs, and distinguished members of the Joint Standing Committee on Energy, Utilities and Technology, my name is Kelly Flagg and I'm the Executive Director of Associated General of Maine (AGC Maine). AGC Maine represents more than 225 Maine-based construction firms employing approximately 30,000 workers statewide.

AGC Maine supports Maine's transition to cleaner Maine based-energy, grid reliability, and modern transmission infrastructure. Our members build most projects necessary to meet the State's greenhouse gas reduction requirements under Title 38 §576-A[1] and energy objectives under Title 35-A §3210[2].

However, LD 838, as amended, is deeply flawed. It creates a powerful, quasi-independent public authority with sweeping financial, eminent domain, procurement, and labor powers; duplicates recently established state institutions; embeds union-only labor structures that exclude most Maine workers; and does so through a rushed second-session amendment released days before this hearing.

For these reasons, AGC Maine urges the Committee to oppose LD 838 as amended, or at minimum hold it for comprehensive interim study.

LD 838 duplicates and undermines the recently created Department of Energy Resources (DOER)

In 2023, the Legislature enacted LD 1868, "An Act to Establish the Department of Energy Resources[3]", intentionally centralizing energy planning, procurement coordination, and transmission strategy within an accountable executive agency subject to public records law, gubernatorial oversight, and legislative review.

LD 838 would now create a Maine Clean Energy Authority that is:

- A "public instrumentality" but not an agency of the state,
- Not subject to administrative direction by any department, board, or commission,
- Empowered to plan transmission corridors, run competitive solicitations, finance projects, and coordinate with ISO-NE.

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[1] 38 M.R.S. § 576-A — Maine's statutory greenhouse gas reduction targets.

[2] 35-A M.R.S. § 3210 — State energy planning and policy objectives.

[3] LD 1868 (131st Leg.) — "An Act to Establish the Department of Energy Resources."

This would recreate the very fragmentation DOER was meant to eliminate. Rather than strengthening DOER, LD 838 bypasses it before it has fully matured. If additional tools are needed, they should be vested in DOER, not an unaccountable parallel authority.

The bill authorizes unlimited public borrowing in Maine's name without guardrails

Section 5 creates a revolving loan fund backed by unlimited revenue bonds issued by the Authority, exempt from taxation and eligible as "legal investments."

Unlike the Maine Turnpike Authority, which has a defined revenue stream (tolls), this Authority would rely on ***uncertain repayments*** from utilities, developers, or future ratepayer charges. This exposes Maine ratepayers to indirect risk without legislative appropriation oversight.

At minimum, any such authority should include:

- A statutory bond cap,
- Legislative approval for major issuances, and
- Independent ratepayer impact analyses before borrowing.

LD 838 includes none of these safeguards. In contrast consider Maine's authority for moral obligation bonds. Maine has occasionally used moral obligation bonds, but those are narrow, capped, and tied to clearly defined public purposes with identifiable repayment streams. The Authority in this bill is very different. It allows unlimited borrowing, with uncertain repayment, for projects that could otherwise be privately financed, and pairs that with eminent domain.

In effect, this bill creates far more public risk with far fewer safeguards than Maine's existing moral obligation model. If anything, this proposal goes well beyond what Maine has ever allowed even in limited moral obligation programs.

The delegation of eminent domain is premature and inappropriate

Section 4 grants the Authority eminent domain powers comparable to the Maine Turnpike Authority. Eminent domain is among the most consequential powers the state can delegate.

Granting this authority to a newly created board, partially appointed and partially reserved for organized labor, in a last-minute second-session amendment is inappropriate. A decision of this magnitude warrants cross-committee review and a formal study process.

The labor standards exclude the majority of Maine's construction workforce

Section 7 mandates prevailing wage, apprenticeship quotas, Project Labor Agreements (PLAs), and Labor Harmony Agreements for covered projects.

This is not neutral. In practice, PLAs and labor harmony agreements:

- Favor unionized firms,
- Discourage small and mid-sized Maine contractors from bidding,
- Increase reliance on out-of-state contractors, and
- Exclude many qualified Maine workers.

By most estimates:

- Only approximately 10% of Maine's construction workforce is unionized,
- Meaning **that approximately 90% of Maine construction workers are not affiliated with a union. Many of those workers are employee owners in companies with an ESOP structure.**

AGC Maine represents approximately **30,000 Maine workers**, most of whom would be disadvantaged by these requirements. Meaning, this bill directly impacts Maine residents who are trained, working, paying taxes and utility costs, would be sidelined.

Mandatory Project Labor Agreements do not just set standards; they restructure the market in ways that disadvantage the majority of Maine's construction workforce. In a state where roughly 90%+ of construction workers are open-shop, PLAs reduce competition, favor out-of-state union contractors, disrupt Maine's apprenticeship pipelines, and raise project costs. Multiple studies from NBER[4], FHWA[5], and the construction industry show that PLAs shrink the bidder pool and increase costs, a risk Maine cannot afford as we modernize our grid.

PLAs and labor harmony agreements can create hiring barriers for rural Maine workers

In many PLA projects hiring is routed through union halls and workers must either join or union or work under union dispatch rules. The challenges are heightened in rural areas, less attractive to out-of-state workers, reducing competition, and increasing costs and this can be a real barrier, especially for small family-owned firms whose employees live and work locally.

In Maine, where projects often already have limited competition due to geography and workforce availability, mandating PLAs risks materially higher construction costs[6] that will ultimately flow into electricity rates.

Labor harmony agreements sound benign, but in practice they function like mandatory unionization conditions. Courts have repeatedly struck them down when governments impose them as regulatory conditions rather than as true project owners, most notably in *Chamber of Commerce v. Brown*. In

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[4] National Bureau of Economic Research (NBER), "The Effects of Project Labor Agreements on Public Construction Costs" finds higher bids and reduced competition on PLA projects.
[5] Federal Highway Administration (FHWA) analysis of PLA highway projects found fewer bidders and higher costs in several states.
[6] In Maine, where projects often already have limited competition due to geography and workforce availability, mandating PLAs risks materially higher construction costs that will ultimately flow into electricity rates.

Chamber of Commerce v. Brown, the Supreme Court made clear that states cannot use public money or project conditions to influence union organizing, which is exactly what many labor harmony agreements attempt to do, making them legally vulnerable. In other states, similar requirements have delayed or halted renewable and infrastructure projects and forced agencies to remove labor conditions. If Maine embeds labor harmony mandates in LD 838, it will invite costly litigation, slow clean energy projects, reduce competition, and sideline most Maine construction workers.

Maine already mandated prevailing wage on clean energy and costs are rising

Through prior legislation, including elements of LD 1480[7], and in LD 1969, "An Act Concerning Equity in Renewable Energy Projects and Workforce Development" passed in 2022, expanded prevailing wage obligations to include qualifying renewable energy projects.

While AGC members comply with prevailing wage when required, economic literature consistently finds cost increases of 8–20% on projects subject to prevailing wage mandates[8]. When combined with PLAs and labor harmony agreements, some projects will become financially unbuildable, ultimately raising electricity prices for Maine families and businesses. While this Committee has already instituted policies that contribute to increased electricity costs, like the prior mandates for labor conditions and prevailing wage, this would apply tremendous pressure to a market where consumers are demanding relief.

The amended outline was released too late for a bill of this magnitude

LD 838 was a carryover bill, but the amended outline creating the Authority was shared publicly only days before this hearing. The Legislature is being asked to evaluate:

- A new public authority,
- Unlimited bonding,
- Eminent domain,
- Statewide corridor planning,
- Competitive developer selection, and
- Mandatory labor structures

All these complicated components to be decided in a compressed second-session timeline, an inadequate process for a structural overhaul of Maine's energy system.

Conclusion

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[7] LD 1480 (131st Leg.): Prevailing wage expansion for certain clean energy projects

[8] Belman, D., & Philips, P. (2012). *Prevailing Wage Laws and Construction Costs*. Labor Studies Journal (finding 8–20% cost impacts depending on project type).

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LD 838, as amended, is the wrong approach to achieving Maine's clean energy goals. We respectfully urge the Committee to oppose the bill or hold it for further study.