



## **Testimony of Matt Marks Against LD 1633**

### *An Act To Require Comprehensive Responsible Contracting Practices for Public Construction Projects*

May 5, 2021 10:00 AM

Joint Standing Committee on Labor and Housing

Senator Hickman, Representative Sylvester, and Members of the Joint Standing Committee on Labor and Housing. My name is Matt Marks; I am a Scarborough resident representing the Associated General Contractors of Maine today and here to testify against LD 1633.

The Associated General Contractors of Maine is a statewide construction trade association with construction managers, general contractors, subcontractors, specialty contractors, service and supply providers. We have members signatory to unions and firms that are non-union working without a collective bargaining agreement. Maine has an estimated 4,800 construction firms, of which more than 90% are considered small businesses with fewer than twenty people. Approximately 9% of the construction workers are unionized.

We outlined a series of challenges in a previous bill that shared similar language during the 129th Legislature. But the big picture, this bill discriminates against the vast majority of Maine's construction industry.

*Looking at the specific components, here is our first take;*

- Construction firms with a minor OSHA violation could be prevented from bidding as the language in this bill states that any fine over \$1,000 within three years of the bid date cannot be certified to bid.
- While our union members appear to be qualified under the mandatory apprenticeship program, our non-union members, even those with state apprenticeship programs, do not appear to allow it.
- The process of certifying contractors will require an increase in positions and could delay the issuance of contracts in a restricted season. If you are not familiar with current construction regulations, specifications about working in water, night work, and asphalt placement create layers of timeline challenges.
- Project labor agreements discriminate against the vast majority of Maine contractors and interfere with existing collective bargaining agreements. In Maine, a growing number of construction firms, including some of the largest currently providing services to state agencies, are employee-owned, and this policy restricts their ability to bid.
- Creating a seven-day submission process is challenging for both union and non-union contractors. Given the current market conditions and the lack of available subcontractors, this stipulation is unreasonable.

Often the contractor may not have determined the final agreement with their subcontractor.

- Delaying the contract with a 30-day agency review extends the timeline for bidding, and as we shared above, it is a critical time issue for a short season.
- The public review period will create massive delays. This bill doesn't outline a dispute resolution process, and the contractor will assume all the risk.
- The debarment process is flawed. If a contractor has a violation of ANY law and paid a fine of more than \$1,000 within three years will be prevented from bidding. As a regulated industry, fines are often a corrective action, which doesn't mean the company is not safe or responsible to employees.
- OSHA fines start at \$13,653, and they are issued for violations that range from minimal corrective action to more severe issues. Either way, we hope the Committee recognizes this is not an indication of a company that isn't responsible. Furthermore, this appears to include fines for various non-safety or labor issues and doesn't appear to consider an appeal process or even litigation.
- We are also unclear on the intent of a contractor default claim. What happens when the default is not the fault of a contractor? It also appears that the company could be at risk if an employee fails to maintain a license. While that is problematic, it isn't necessarily indicative of a company issue.
- We are also concerned about a three-year suspension for an error in the form, including information that is not under the control of the legal entity who bid.

This bill, of course, is one of many with similar recommendations from legislators. While it's clear that a significant push for project labor agreements and other conditions that favor signatory firms is seen throughout bills in various Committees, we hope we are very clear on our position. We support the ability for both signatory and open shop contractors to bid against each other. This bill does not support fairness, and it provides leverage to a tiny percentage of companies who work in Maine. It will negatively impact construction firms that are providing services now.

We ask the Committee to reject this bill; it simply goes too far.

Respectfully submitted by,



Matt Marks, AGC Maine