



Testimony of Matt Marks Against LD 1969 as Amended

An Act Concerning Equity in Renewable Energy Projects and Workforce Development

Committee on Labor and Housing

February 28, 2022 10:15 AM

Senator Daughtry, Representative Sylvester, and Distinguished Members of the Committee on Labor and Housing. My name is Matt Marks; I am a resident of Scarborough and testifying on behalf of AGC Maine. I am sharing my comments against this bill as written.

I want to start by sharing that I have a great deal of respect for bill sponsor Representative Cuddy for his work to advance clean energy in Maine. I also take his word to heart that he didn't intend for this amended version of the bill to land just a few days before the public hearing. I am incredibly disappointed that we continue to see the degradation of the process that previous legislatures have put in place to protect the ability of the general public to read, digest, research, and respond to bills presented. I think we all had a free pass with the pandemic, but at this point, there are a few reasons why this continues to occur.

This bill, as submitted this session, is also deeply disappointing. While I disagreed with the prior version in the first session, LD 1231, I didn't expect to see a nearly identical bill land in the second session. The Maine constitution states in Article IV, Legislative Power, Section 1, "that the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session."

I am sure my disagreement would have been better served when the legislative council voted to approve this bill, but I still think it's within this Committee's jurisdiction to weigh that consideration now. I can't see how this meets the standard of emergency nature. If this is truly the new standard of what is considered emergency, the legislature should consider amending the constitutional language and I question why that particular provision doesn't require the same treatment as other emergency bills needing two-thirds to enact. Each time I hear this subject between colleagues or legislators, it is almost thought of as amusing that we just have come to tolerate repeated bills, regardless of the law. An emergency is the loss of housing for 700 asylum seekers or the rapidly rising cost of electricity. This, in my opinion, is not an emergency.

To me, this bill is designed, and re-designed with this amendment, to provide a distinct advantage to some contractors in the procurement process. AGC Maine has fought diligently for creating a level playing field while supporting conditions that protect the public's interest in securing bids from contractors who can deliver the project safely and as specified in the designs. We spend countless hours working on changes to improve

bidding and the process that leads to public procurement. In this instance, the state could be mandating a new standard that creates an uneven playing field, which is demonstrated by the tactics used to modify the bill.

We met with the stakeholders in this process after we learned sometime after the last session another attempt would be made to pass a bill like LD 1231. In this language, modifications have been made to allow certain contractors to have bidding advantages if they are union, employee-owned, or agree to sign a project labor agreement.

But a shift occurred between my last meeting with the sponsor and the language that appeared just a few days ago, making it clear to me this was in fact designed to provide a distinct advantage to bidders who had programs that meet or exceed that of the sponsor's employer.

The United States Department of Labor and the Maine Department of Labor provides guidance to companies and unions to design an approved apprenticeship program. An approved craft apprenticeship minimum training hours is 144 classroom/education hours per year and 2,000 hours of on-the-job (OJT) training. This bill sets a different minimum requirement, 3,000 OJT Hours and 300 classroom hours and that I assume meets the requirements set by the sponsors union. I'm curious how it can be interpreted any other way? What basis did those specific numbers become the standard for what is acceptable?

While I debated this issue with the sponsor, he clarified that a training program that is one year, the minimum standard, couldn't lead to adequate knowledge or experience for an apprentice. If the Committee concurs, I think the correct pathway for that discussion is within the USDOL and MaineDOL, bringing together all stakeholders for their input. While I expect that few programs only have the limited 144 hours of education, some trades are undoubtedly adequate at that level at least in the eyes of the Federal government.

For pre-apprenticeship, we believe making an arbitrary decision without discussing the criteria will impact the existing programs for both apprenticeship and pre-apprenticeship. If the standard is 144 hours today, why would pre-apprenticeship be 120 hours, and what was used to develop that decision? We genuinely value both, and pre-apprenticeship can be a critical tool for recruiting and providing a formal pathway to a complete apprentice program. That is especially true for recently incarcerated individuals or those who have fallen upon hard times with addiction. Today is our only day to voice our opinion on these changes in a format where we can be heard, which is truly unfortunate.

I ask the Committee to take a minute and think about that 120-hour requirement. Some individuals learn better hands-on in the field. They might struggle with a classroom environment or have challenges that frustrate and even discourage their career pathways. It might be more appropriate to slowly introduce classroom experiences and have the flexibility to acquire some essential hours over a period of time. But again, we are setting a standard that hasn't shown any basis for why those specific hours have been recommended.

My Board has directed my team to work diligently to assist our members in creating formalized and approved apprenticeship programs. As you might have heard me say, most contractors work in companies with less than 20 people in Maine. That often means they work in very close-knit teams and have a good deal of OJT learning. Many are hired from generations of construction experience, from career and technical education centers, the community college, and our universities. We agree in the value of apprenticeship, but we also see distinct value in those who have acquired the classroom skills from attending one of those institutions. There are many pathways to a promising career.

Working with small to mid-size firms requires spending more time setting up new systems for them to help track their OJT and source good, qualified education programs. Under this law, many firms would struggle to meet those demands on the dates set forth. That means they could lose the advantages of much larger firms that already have programs or the capacity to adapt.

One of the critical components that might not be evident by the general reading of this document is a big advantage that some will receive when assembling proposals to compete. By complying with the standard, they will not be forced to pay prevailing wages for those workers who are in the apprentice program, and then there is this language that appears to exempt those signing a PLA from the same conditions:

C. The requirements of this subsection do not apply if the entity responsible for the assisted project has entered into or has ensured that the entity directly responsible for the construction of the assisted project has entered into a project labor agreement consistent with the requirements of Title 35-A, section 3210-G, subsection 1, paragraph C, subparagraph (2), division (h).

While that might be exactly what this Committee desires to support, to create that caveat for those who comply with the new conditions, there is no doubt it will lead to higher bid prices. Let me explain; if you have an apprentice program the wages can be lower than prevailing wage, they are permitted to be at today's minimum wage; anyone who isn't in that category will be forced to pay the prevailing wage. Realistically it's nearly impossible to hire anyone at that amount, especially in construction but it certainly will be different from the prevailing wage requirement all non-union firms without the specific programs will have to adhere to.

While it's still our belief that many of those crafts will exceed those public wages, you will find experienced workers and entry-level workers earning the same pay in many circumstances, and we've seen with some crafts that rate is as high as \$54/hour. That also creates an unlevelled bid process. While those savvy bidders, who have apprentices, can bring many new workers to the field and keep their costs much lower-reducing experience on a given job. Since Maine is largely non-union, and while apprenticeships are growing, they are still newer for most open shop contractors, this shrinks the pool of companies who comply with this law and can be competitive.

The Maine Department of Labor just finished the rule-making related to apprenticeships in response to 26 MRS. 43 §3501 and §3502 for renewable energy. It seems grossly irresponsible to enact another condition when this rule was just finalized. Why tackle another change before seeing the results of a recently adopted rule?

I know some of you on this Committee operate your own business. Think about the positions you offer from higher-skilled to lower-skilled careers. Do you have any positions that might require fewer than eight weeks of classroom time before you consider them qualified and competent to perform their craft? How would you feel if your competitor continued to propose laws that reflected their programs even though you met the standards to be approved and felt it was working?

This policy does, in my opinion, a great disservice to hard-working Mainers and will potentially add more costs to building renewable energy. Policy-makers must take a step back and listen to the concerns of homeowners and businesses who are publicly talking about their rising electric bills. There doesn't appear to be one single condition that can be attributed to those costs; it seems to be many challenges, but adding new requirements will only increase that overhead, and that lies at the feet of the decision-makers here today.

After speaking in front of this Committee for both sessions, I recognize the continued resentment when I present a view that might not be aligned with the majority. It's sometimes hard to communicate what my organization is doing and accomplishing regarding the careers of workers in just a few minutes. Most of our education programs are not mandated or required; we offer those courses to improve knowledge, safety, and skills advancement. In the last five years, my organization has trained 3,200 construction workers in various subject matters. That includes union, non-union, employee-owned, and small firms.

The industry has come together to help aspiring skilled workers offset their costs when they attend higher education by offering scholarships. We put together a retirement program that allows small Maine-based contractors to provide their employees the same investment advantage and reduced expenses as large firms. We adopted a Culture of Care program to welcome skilled workers into the industry who might see cultural barriers as discouraging.

Finally, we adopted a new program that will tie together those graduating seniors with career pathways, apprenticeships, and promising careers, focusing on women and minorities. Not a single one of those actions happened because of Government; it was driven by industry leaders who value their teams' hard work and know they deserve to provide for their families and build strong retirements using their skills to build Maine.

I welcome each of you to meet in person at my office and hear directly from workers we educate, visit a session where we deliver training in the field, and sit across the table from owners who know that investing in the future means changing the way we recruit, educate and build the new workforce. I believe you will see something much different than what you might sense is happening.

We hope the Committee evaluates the policy and understands that we support apprenticeship and continuing education. To us, this bill does more to protect larger firms and workers outside of Maine right now and will do more harm than good for the cost of delivering clean power on Maine's land.

Respectfully submitted by,

A handwritten signature in black ink that reads "Matt Marks". The signature is written in a cursive style with a large, stylized "M" and "M".

Matt Marks, AGC Maine

AGC Maine is a commercial construction trade association and a Chapter of AGC America. Members are diversified businesses: open shop, union, employee-owned, general contractors, construction managers, specialty contractors, service providers, and developers. AGC Maine provides safety, management, and technical training. AGC Maine is a liaison member companies with federal, state, and local regulatory agencies.