



**Testimony in Opposition to Sponsor Amendment LD 1223
An Act to Clarify Cost Allocations and Insurance in the Joint Use of Public Utility Equipment
May 10, 2023**

Senator Lawrence, Representative Zeigler, and members of the committee, my name is James Cote and I am here today on behalf of Versant Power in respectful opposition to LD 1223.

Working on utility poles and maintaining pole attachments is inherently dangerous, which is why such work is carried out by trained professionals. One of the ways this risk is managed – here in Maine and in jurisdictions across the country – is by ensuring the owners of all pole attachments are adequately insured, appropriately allocating that insurable risk across all attachers in an even and non-discriminatory manner.

Pole attachment agreements commonly require (i) all attachers, including municipalities, to insure against the risk of damage and loss to persons and property; and (ii) that all attachers ensure that those working on the poles (including all contractors working on poles on their behalf) are insured.

Such a requirement is complimentary to the authorization found in 14 MRS §8116 whereby municipalities are explicitly permitted to procure insurance to ensure that public and private property and persons are adequately insured against certain risks. Section 8116 allows a municipality to increase coverage above the limitation on damages set forth in Section 8105 to a level that best matches the nature of the risk and potential damage.

LD 1223, however, would change this broadly accepted framework by removing the requirement that everyone – municipal attachment owners and the contractors acting on their behalf – are adequately insured, and instead limiting the insurance requirement to only contractors.

Such a change may be difficult to implement in practice, does not fully allow all risk to be insured, and undercuts the effective legal construct set out in the Maine Tort Claims Act.

Several practical concerns could result. First, pole owners do not have a direct contractual relationship with contractors and there may be instances in which a contractor has failed to keep insurance or in which the attachment owner or contractor has broken their contractual relationship. Additionally, damage may not be due to the acts of the contractor, but the actions or inactions of the attachment owner.

Finally, even when a municipality engages a third party to perform construction work, it is very conceivable that a municipal employee (e.g. a public works person/safety inspector or otherwise) might have some contact or role with respect to the attachment that involves an insurable risk. Accordingly, it is important that all parties who own and maintain pole attachments as well as those who are contracted to perform construction work on the poles be adequately insured.

It is common practice for municipalities to enter into contracts with insurance requirements. LD 1223 would single out pole attachments and make ready work as the one area in which a municipality and a property owner or contractor could not agree for the municipality to obtain insurance necessary to properly cover the associated risk, as permitted under Title 14 Section 8116.



Pole attachment processes are highly technical and entail a range of potential risks to the personnel, equipment and infrastructure that are involved in their management. Versant Power remains committed to the efficient and cost-effective expansion of broadband in Maine by public and private entities alike and asks the committee to vote ought not to pass on LD 1223 to ensure the risks associated with this work continue to be appropriately allocated among all relevant parties.

Thank you for your consideration.