

March 4, 2025

Senator Tim Nangle, Senate Chair
Representative Lydia Crafts, House Chair
Joint Standing Committee on Transportation
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

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Re: Opposition of TrainRiders Northeast to Passage of LD 30, Resolve, to Require the Department of Transportation to Implement the Recommendations of the Portland to Auburn Rail Use Advisory Council Regarding the Rail Line from Portland to Yarmouth and LD 511, Resolve, to Direct the Department of Transportation to Implement the Recommendations of the Portland to Auburn Rail Use Advisory Council

Dear Senator Nangle and Representative Crafts:

I am the President of TrainRiders Northeast. TrainRiders is the grass roots citizens' organization that was the driving force behind the initiation of the Downeaster passenger rail service between Brunswick and Boston and which continues to strongly support that service to this day. It also supports improvements and expansion of passenger rail service in Maine and throughout the Northeast, where such expansion is rationally justifiable given current and potential economic and social conditions. TrainRiders Northeast strongly and absolutely opposes the passage of either of the above-captioned bills.

LD 30 seeks the removal of track and other rail infrastructure along the rail line on that part of the "Berlin Subdivision" between Portland and Yarmouth formerly owned by the St. Lawrence & Atlantic Railroad and now owned by the State of Maine, with that infrastructure to be replaced with a trail. LD 511 seeks the same thing with respect to the whole length of that State-owned portion of the Subdivision between Portland and the Auburn/New Gloucester line. Because these bills deal with the same line theme and involve identical issues, TrainRiders is submitting this one letter in opposition to both bills as follows:

State” and that the State of Maine “must take active steps to protect and promote rail transportation in order to further the general welfare.” 23 M.R.S. § 7102. Subsequent legislative support for these findings has proven their truth as shown, for example, by the vast success of the Downeaster service on the passenger side and the continuing survival of and need for the freight rail service provided by Eastern Maine Railway in northern Maine.

2. The State Railroad Preservation Act also provides that any track removal from a State-owned rail line must ensure “that the rail corridor will be preserved for future rail use.” 23 M.R.S. § 7107. Another statute also requires that all State-owned rail corridors “be preserved for future rail use”. 23 M.R.S. § 75(1).
3. LD’s 30 and 511 and others already filed in the current legislative session will test whether the Maine legislature retains what was formerly a steadfast commitment to both passenger and freight rail in this State. If this legislature turns its back on that commitment, it will permanently destroy a vital tool for economic development, environmental progress, and travel choices for all Maine residents and visitors.
4. In 2021, the Maine Legislature passed what became 23 M.R.S. § 75, providing for the creation by the Commissioner of Transportation of a rail use advisory council (a “RUAC”) upon the petition of one or more governmental entities along a State-owned rail corridor. Each RUAC is to make recommendations regarding the potential uses of the corridor, including, but not limited to, rail use, trail use, or bikeways. Each RUAC is also required to submit a report to the Commissioner on its findings and recommendations regarding the use of that corridor within nine months of the convening of its first meeting. If that report includes a recommendation of track removal or nonrail use of the corridor and the Commissioner concurs with that recommendation, then the Commissioner is required to submit legislation to be evaluated by this Committee prior to track removal or other change in use of the line for nonrail purposes. **Any legislation approving such a recommendation must provide that any track removal or other change to nonrail use must be “interim in nature, “and that the rail corridor will be “preserved for future rail use” even after that removal of rail or change in use, and this must be stated in the legislation approving the same. 23 M.R.S. §§ 75(1), 7107.**
5. In December 2022, a plurality of RUAC members recommended the removal of the rail on the Berlin Subdivision between Portland and the Auburn/New Gloucester line and its replacement with a trail. This decision was not without disagreement among the members of that RUAC, with 7 members voting in favor of that recommendation, 5 members voting to recommend that a trail be constructed beside the existing rail, 1 member voting to merely keep the rail in place without constructing a trail, and 2 members abstaining. Thus, less than half of the full RUAC membership voted to remove rail from the line.

6. More than a year after the RUAC issued its recommendation, MDOT submitted LD 30 seeking to remove track from the Berlin Subdivision between Portland and Yarmouth and replace it with a trail, and several legislators along the line filed LD 511 seeking removal of the track from the whole length of the State-owned portion of the Berlin Subdivision from Portland to the Auburn/New Gloucester line and its replacement by a trail.
7. As a technical matter, although the introductory "Whereas" clauses LD's 30 and 511 indicate that the conversion of the Berlin Subdivision to a trail would be an "interim nonrail use" and that the line would be preserved for future rail use, the body of the actual resolutions in those bills do not include the required statutory language. Thus, the operative portion of these resolutions is statutorily deficient.
8. As a second but potentially more important technical matter, MDOT cannot convert a State-owned rail corridor to nonrail use without going through the RUAC process. LD 511 does not comply with this constraint since the RUAC process only permits the conversion of a State-owned line upon the Commissioner's acceptance of the RUAC's recommendation.
9. **Most importantly, however, the cost of reinstalling rail after it has been ripped up is much higher than improving a rail line, even when the rail line is in terrible condition. For many years, federal law has provided a mechanism for rail banking in which rail ballast and other infrastructure are removed from a rail line and replaced by a trail, with the same legal requirement that it be held in readiness for trail removal if that becomes necessary for future rail use. Although thousands of miles of rail line have been removed nationally, probably less than 100 miles has ever again been reconverted to rail use. Instead, such reconversion simply becomes too expensive after the removal of rail, ballast, and other infrastructure, and this has sometimes made renewed rail use too costly to pursue even though it would otherwise have been economically or socially justified. This was recognized by MDOT in the December 2022 draft of the Maine State Rail plan, which stated on page 60 that "once a rail corridor is converted to a different use, it does not return to rail use". Additionally, despite the legal right for renewal of rail activities on a rail-banked line, in some instances, the outcry from trail users, NIMBYs, and others has made reconversion politically impossible even where economics and social need might otherwise favor it. Contrary to the explicit terms of Maine law, ripping up the rail line will not "protect and promote rail transportation" or preserve these lines for future rail use but, instead, will eliminate and destroy the possibility of such use of these lines, destroying rail service locally as well as undercutting regional rail use throughout this State.**
10. TrainRiders supports trails, but not if they eliminate the possibility of future use of potentially viable rail lines. Trails can be built beside rail lines within railroad rights-of-way without disturbing existing rail. Trail creation using this "rail with trail" ("RWT") option is more expensive than interim trail use but preserves the line for future rail use while allowing trails to be constructed and used. Thus, the RWT option, but not a trail on

an interim basis (also known as “trail until rail” or “TUR”), is consistent with the explicit wording and intent of the State Railroad Preservation Act. Only RWT preserves the rail as a vital and irreplaceable asset for the future economic development of this State.

11. **By statute, MDOT may only remove rail from a State-owned line or change that line to a nonrail use if it both goes through the RUAC process and “in consultation with a regional economic planning entity and a regional transportation advisory committee established in accordance with rules adopted under section 73, subsection 4, determines that removal of a specific length of rail owned by the State will not have a negative impact on a region or on future economic opportunities for that region.” 23 M.R.S. § 7107. MDOT has never issued such a determination for any of the RUAC-studied lines, including the Berlin Subdivision. Instead, MDOT has pointed to the studies and recommendations issued by each RUAC to satisfy this requirement. Those studies and recommendations are those of the RUACs, not of MDOT. Furthermore, no such conclusion has been stated in any of those studies or recommendations. Finally, although representatives of such an entity and such a committee may have served on each RUAC, there has been no showing that MDOT was ever “in consultation” with that entity or committee with respect to any such determination or that the RUAC representative was authorized to act on behalf of that entity or committee about that determination. Until such a determination has been made, consideration of LD 30 and LD 511 by this Committee is premature.**
12. Admittedly, freight needs along the Berlin Subdivision may be somewhat limited because it parallels CSX’s main line from Portland to Auburn. On the other hand, CSX is not required to permit anyone other than Amtrak to use its lines for passenger service, and past history at other locations indicates that it is loath to open its lines to anyone else for that purpose. This means the Berlin Subdivision is the only viable option for any passenger connection between Portland and Lewiston/Auburn (such as, for example, a commuter or light rail service) that is more localized than an intercity Amtrak run. Such a service would require CSX to transfer at least a short stretch of rail between the Auburn/New Gloucester line to Danville Junction in Auburn in order to be possible, and there are other obstacles to hurdle as well. However, ripping up the rail on that Subdivision will irrevocably destroy this option.
13. **The RUAC process was very flawed:**
 - a. MDOT hired outside contractors to prepare reports detailing the relative costs of the TUR, RWT, and improving the line for passenger rail use, as well as the economic benefits of each. **The scope of these studies, however, was very limited**, excluding exploration of many benefits of rail use, and, based upon experience with another RUAC formed to evaluate the Mountain Division in Maine (where the study showed an initial TUR cost of about \$20 million, which was then increased by about 50% in a later MDOT study) underestimating the construction cost of TUR. Many railroads

also think that the costs of RWT and rail upgrades for passenger service in the RUAC studies were overestimated, including, for example, perhaps as much as \$60 million for the cost of installing positive train control along the line, something that is only required if and when more than 6 passenger rail round trips per day utilize that corridor.

- b. **MDOT made no effort during the RUAC process to determine whether a railroad was interested in running service on the Berlin Subdivision.** Instead, MDOT concluded that no such interest existed because no party had approached it asking to operate on that line. MDOT failed to make such efforts in connection with the RUAC processes for both the State-owned Mountain Division between Standish and Fryeburg and the Lower Road line between Brunswick and Augusta. It turned out that the Conway Scenic Railway was interested in operating on the Mountain Division and that Maine Rail Services (which MDOT picked to operate the Rockland Branch) was interested in providing freight service on the Lower Road, and both remain interested in such operation to this day. Before obtaining authority to rip up the Berlin Subdivision, MDOT must take active measures to determine if any railroad is interested in operating on that line by issuing a properly prepared and administered Request for Proposals or equivalent action. In the absence of this, it cannot be said that there is no current interest in the operation of the line.
- c. **MDOT made no effort to determine what properties along the Berlin Subdivision would be available for freight rail use or what businesses now on the line might desire to use this service if it were available.** Additionally, MDOT made no effort to determine how many other businesses could be attracted to this corridor if it were improved for freight use. This means that no estimate was ever made of the value of the economic benefits that would be foregone if even the possibility of freight use of this were to be destroyed. **This is not only a failure of the RUAC process as administered here, but it also means that MDOT has no basis for making the required determination that “removal of a specific length of rail owned by the State will not have a negative impact on a region or on future economic opportunities for that region.”**
- d. **The RUAC study did not estimate the economic benefits that might result from purchases that potential rail passengers might make when they left the train but only included onboard spending.** This was based upon a presumption that such passengers would already be making trips along these lines and would spend no more than they now do. No basis was provided for making this assumption. Furthermore, a February 2005 MDOT study of Downeaster economic benefits found that Downeaster passengers residing outside of Maine and New Hampshire spent an average of \$237.41 in Maine for lodging, food, entertainment, and retail purchases on

their trips. Using these figures, if only 10 out-of-state non-commuter travelers used a line each day, they would collectively spend \$2,374 per day, or \$866,510 per year in Maine. Correcting for the 54.55% uptick in the Consumer Price Index from 2005 through 2023 increases these figures to \$3,669 per day and \$1,339,185 per year.

- e. **The RUAC studies estimated that 23% of trail users would come from out-of-state and that these non-local users would spend around \$118 per use in the local economy for a total of \$3.52 million to \$4.29 million being spent by non-local users each year. In its August 2022 New Hampshire Rail Trails Plan, the New Hampshire Department of Transportation determined that only 15% of New Hampshire rail trail users were from other States and that each non-local user spent \$40.71 in New Hampshire when using these trails. The New Hampshire study resulted from surveys of actual trail users and is available online at:**

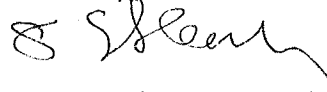
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[plans.pdf&usg=AOvVaw2CPVepHeYo4GYcknWwwV_1&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS4OG3xdWLAxX1FlkFHR0CFpMQFnoECBQQAQ&url=https%3A%2F%2Fwww.dot.nh.gov%2Fsites%2Fg%2Ffiles%2Fehbemt811%2Ffiles%2Fimported-files%2F2022-nh-rail-trail-plans.pdf&usg=AOvVaw2CPVepHeYo4GYcknWwwV_1&opi=89978449) at pp. 4-6, 63-64, and 66-68). That study also references other studies that support this same range of economic benefits from this type of trail use. Using these figures, non-local users would spend between about \$792,318 and \$1,190,767.50 per year. Thus, **the RUAC studies have aggressively overestimated the economic benefits of TUR.**

- f. The RUAC study shows that TUR construction on the Berlin Subdivision would cost between \$47.5-55 million, with an RWT project costing about \$90-94.3 million. and passenger rail service \$274,000,000. **What the RUACs ignored, however, is that these studies show that initial TUR construction on this line would result in about \$40.7-47.1 million in value added to the State's economy, wages, and employment, with RWT resulting in about \$77.1-80.8 million, and passenger rail improvements resulting in \$523,000,000 in such benefits. These benefits significantly reduce, and may even eliminate, the difference between overall costs net of overall economic benefits for the three options.**

For all of these reasons, as well as others, this Committee should vote out LD's 30 and 511 as "Ought not to Pass".

Sincerely,



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