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TESTIMONY IN OPPOSITION TO

L.D. 1222

AN ACT TO LIMIT SOVEREIGN IMMUNITY FOR SCHOOLS AND SCHOOL SUPERINTENDENTS

March 31, 2025

Senator Carney, Representative Kuhn, and members of the Committee on Judiciary, I am Steven Bailey, the executive director of Maine School Management Association, testifying on behalf of the legislative committees of the Maine School Boards Association and Maine School Superintendents Association in opposition to L.D. 1222.

This proposal suggests a drastic reversal of the understanding of liability of school districts and superintendents. This has long been held as a component included within the Maine Tort Claims Act, Title 14, Chapter 741: TORT CLAIMS. Provision §8103 provides immunity from suit for all governmental entities and employees of a governmental entity.

As we begin our testimony, we ask the question: What problem is this trying to fix with this initiative? And why the effort to single out school administrative units and superintendents, given all the other governmental entities and employees of these entities?

This bill would fundamentally change our laws, and it would effectively gut the Maine Tort Claims Act regarding school administrative units and superintendents. Schools are already held liable under several different legal statutes:

- There already is no immunity for schools under the MHRA.
- Title 42, Section 1983 of the United States Code already provides protection for claims arising under federal law. This applies for significant situations that shock the conscience.
- Reporting is already required under MRSA Title 22; individuals who fail to report can be held accountable under 22 MRSA, section 4009, where monetary penalties can be applied.
- There already is Title IX liability exposure for failure to address sexual harassment / abuse.
- The way the proposed law is written, regarding the "limited" exception is really quite broad and would seem to swallow the general rule about immunity.

Courts have long outlined the importance of sovereign immunity for the State, municipalities, officials and public employees to protect them from frivolous lawsuits and not hamper their ability to do their job.

It doesn't make sense to limit immunity for schools and superintendents, but no other governmental entities or officials. State and federal case law treat schools, towns, public safety departments, etc., and superintendents, town managers, select persons, police chiefs, etc., interchangeably in case law because the public policy underlying immunity is the same for all. It just doesn't make sense to carve out a limitation for schools and superintendents.

The bill suggests an environment where superintendents, who make decisions every day to ensure the safety of their students, could be held personally liable for every decision made, even those made in good faith. This could lead to a situation where superintendents become overly cautious and afraid to take necessary actions for fear of potential litigation. They could be held personally liable if they act, and they could be held personally liable if they don't take action. Either way, superintendents will be essentially handcuffed.

The bill allows for legal action to be taken for "failure to ensure student safety" or "failure to report misconduct," but the definition of "failure" is not clear. Failure for one person may not be the same as for another person. Holding superintendents liable for these situations based on vague and unclear standards could expose them to lawsuits even in circumstances where they took appropriate action.

Why would anyone consider serving as a superintendent?

The language for this bill is also vague and unclear. Section 3 states that the bill does not apply to school employees. Yet superintendents are school employees.

Why should a school be held responsible if an employee engages in criminal activity that is beyond the scope of employment? Criminal activity is also not covered under insurance, so any liability here would be a drain on the taxpayer-funded budget.

Aside from the legal questions, we expect L.D. 1222 would be considered a mandate that would be enormously expensive for local districts and taxpayers. Liability insurance carriers would view this extremely unfavorably, and overall pricing to districts would increase dramatically. The potential increase could be financially crippling to insurance carriers. We have seen verdicts in excess of \$50 million, and the average cost of a negligence claim has also increased. Maine doesn't have litigation financing. There has been no upside for this because of the Maine Tort Claims Act. But, with that eroded or gone entirely, that would change. Insurance premiums would spike – putting further pressure on school budgets at a time when they are facing lost federal funding, and many schools are looking at layoffs.

While we don't know or understand the motivation for such a bill to be proposed, we definitely do not think that L.D. 1222 should move forward. We strongly urge you to vote ought not to pass.