



Testimony in Opposition to LD 1761

An Act to Prohibit Indemnification Agreements

Senator Carney, Representative Kuhn and esteemed members of the Joint Standing Committee on Judiciary, my name is Anthony Hourihan, and I am representing Irving Woodlands and NBM Railways. I am here testifying in opposition to LD 1761. Our companies own and manage approximately 1.3 million acres of timberland in Aroostook County and operate more than 350 miles of railway in the State. All our lands, at our choice, are open to the public to access hundreds of miles of roads, snowmobile and ATV trails, and the best hunting and fishing in the Northeast. We have hundreds of agreements in place on road access, guide services, bear baiting, camp leases, and railway crossings that support local use as well as Maine's outdoor and logging economy, all of which have indemnity provisions. This bill, as currently written, is a sweeping ban on indemnification agreements, and the broad and vague language has a much wider application than is likely intended which could prohibit most indemnification agreements, even when both parties willingly agree to undertake this in private contracts and agreements.

The term "unintentional negligence" used in the bill is not defined in Maine statute or case law. In Maine, "negligence" is defined as doing something that an ordinarily careful person would not do, or failing to do something that an ordinary careful person would do in the same situation. It is unclear if the drafters of this bill want the term "unintentional negligence" to refer to "negligence" as defined above or are looking to redefine the term. Is the intent to redefine the term and forego hundreds of years of case law that exists in the State?

Many agreements entered by landowners are done not to benefit the landowner, but rather to provide an opportunity for others such as snowmobilers, ATV clubs, hikers, families looking to lease lake front lands for a getaway, or entrepreneurs running sporting camps and providing world class Maine hunts. In many cases the landowners would prefer not to have these activities occurring, and the related traffic, management time required, wear and tear on roads, bridges and other assets. Today these are allowed so long as owners are indemnified for the risks associated with having these people, in some cases people who have never driven off a paved State road, on their land. Eliminating the ability to indemnify landowners will probably see a further reduction in the appetite to have these activities on private lands. Currently landowners have some protection from liability from 14 M.R.S. §159-A that provides for protection of liability associated with outdoor recreation. The draft bill does not explicitly state that it does not impact 14 M.R.S. §159-A, it is a potential conflict between the bill and existing law. If this bill moves forward, we encourage the Legislature to clearly indicate that there is to be no impact on this existing Statute.

Overall, the language in L.D. 1761 is broad and therefore it is uncertain how its implementation could directly impact businesses and landowners like Irving Woodlands or the railways. As written, the bill is a sweeping ban outside of a few narrow exceptions and could invalidate many of the standard agreements that we operate under. Is it the intent to eliminate the right to have both parties agree to indemnification in contracts, and have landowners increase the amount of liability insurance required for contractors to carry before entering on private lands to undertake work? Indeed, are lease holders, and guides with bear baiting agreements able to incur increased liability insurance to fix a problem that has not been identified. These folks are not covered under current recreational liability legislation because they pay a fee for the right to use the land. This bill would make many landowners question the future viability of the North Maine Woods organization in existence for over 50 years, today the 100,000 visitors per year accessing the 3.5 million acres of private lands agree to indemnify the organization and the landowners which would not be allowed under 1761.

Commercial logging operations and farming are not covered under current recreational statutes, and today these parties enter private agreements to indemnify the railway owners to cross tracks for land and field access. In some cases, this saves tens if not hundreds of miles to go around to a "public crossing". Again, is the intent to eliminate this ability and require these loggers and farmers to purchase much higher indemnification insurance?

I have not heard examples of what issue this bill is designed to fix that warrant changing the historic contracts and agreements used by neighbors in the Maine woods. Do we really need the legislature to upset the tradition of private agreements associated with Maine's two largest contributors to the economy because some insurance trusts would like it?

Again, if there are specific issues that need addressed let's have that discussion and address those specifically, not an overly vague, broad-brushed piece of legislation once again changing the rules for private landowners in the State.

Thank you for your time and I urge that you vote ought not to pass on LD1761.

Thank you for your consideration.

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Irving Woodlands/ NBM Railways