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**Testimony of Nate Moulton
Maine Department of Transportation
Before the 132nd Legislature, Joint Standing Committee on Judiciary
In Opposition to the Proposed Amendment of LD 1761**

An Act to Prohibit the Transfer of Liability Relating to a Party's Own Negligence or Liability in Contracts

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, my name is Nate Moulton, Director of the Office of Freight and Business Logistics within the Bureau of Planning at the Maine Department of Transportation. MaineDOT is opposed to the proposed amendment of LD 1761.

As written, the amendment could negatively affect private landowner agreements related to third-party access. By eliminating blanket indemnification language and liability transfer provisions, property owners may be less willing to enter into new agreements or may choose not to renew existing agreements that allow access or crossings across their property. If landowners do proceed with access agreements, they are likely to increase associated fees or impose higher insurance requirements on the other party to offset increased liability and insurance exposure.

One example is private rail crossings and utility agreements within rail corridors. While some private crossings are established through easements, many exist through agreements with the rail property owner. Private railroad crossings, leases, and utility crossing agreements across rail corridors typically include blanket indemnification provisions to protect the railroad and/or rail property owner. If these provisions are weakened or voided by law, as proposed, rail corridor owners may be less inclined to enter into or renew private or temporary crossing agreements for camp roads, farmers, wood harvesters, and similar users. In addition, annual fees and insurance requirements for such crossings that continue to exist would likely increase. Similar challenges would arise for utility crossings within rail corridors.

This concern applies to the 600 miles of state-owned rail lines managed by MaineDOT, which include blanket indemnification clauses protecting both the State and our railroad operators for private entities that cross or use our rail property. Even under current conditions, it can be difficult for individuals or groups to obtain affordable insurance for private crossings and this

will only get worse should LD 1761 pass. The proposed amendment would likely make such insurance even more difficult and costly to secure. It likely would make it more difficult for MaineDOT to attract rail operators to our lines knowing there is increased liability at private crossings. Comparable impacts could occur in other utility-owned corridors as well.

Another concern related to the potential passage of LD 1761 involves the State-sponsored Downeaster Passenger Rail Service. If existing blanket indemnification provisions are altered by LD 1761, it could affect agreements among Amtrak, the Northern New England Passenger Rail Authority (NNEPRA), station communities, and track owner CSX. In response, CSX may increase insurance requirements and associated costs for operations on and near its rail lines and may be less willing to consider new station locations or expanded service over its property. Any increase in these costs would likely result in higher subsidies required to operate the service and/or increased financial burdens on station communities. Similar impacts could occur for other rail corridor owners if passenger rail operations are pursued on additional lines.

Finally, the amendment introduces uncertainty regarding liability by shifting interpretation of negligence and responsibility to the court system. In many cases, when there is an incident, liability could be shared between parties, requiring courts to determine percentages of fault. This raises practical concerns, particularly in situations where a party that would otherwise be indemnified may be found only minimally responsible—for example, one percent at fault—yet still exposed to liability.

Thank you and I am happy to answer any questions.