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DEPARTMENT OF ECONOMIC  
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January 7, 2026

**Testimony in Opposition to 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 Members of the Judiciary Committee, my name is Maureen Terry and I am the legislative liaison for the Department of Economic and Community Development (DECD).

Thank you for the opportunity to provide testimony for this bill proposal. I am here today to testify *in opposition to An Act to Prohibit the Transfer of Liability Relating to a Party's Own Negligence or Liability in Contracts*.

While the committee amendment narrows and clarifies the bill's original language, it does not resolve the fundamental concern: this proposal inserts the Legislature into an area of law that is already well developed, highly fact specific, and best handled by the courts. Contractual allocation of liability has long been governed by common law principles, judicial interpretation, and case by case analysis. Replacing that framework with a blanket statutory prohibition risk creating more uncertainty, not less.

Maine courts already possess robust authority to invalidate contractual provisions that are unconscionable, ambiguous, contrary to public policy, or that improperly attempt to shield a party from responsibility for intentional wrongdoing. Judges routinely evaluate indemnification and liability transfer provisions considering the parties' relative bargaining power, the clarity of the language, and the specific facts at issue. This judicial discretion allows the law to evolve responsibly and avoids unintended consequences that arise from one size fits all statutory rules.

By declaring entire categories of "transfer of liability" provisions void and unenforceable, the amended bill risks disrupting well established commercial practices that Maine businesses, municipalities, nonprofits, and contractors rely upon every day. Construction contracts, public works projects, professional services agreements, equipment leases, and public-private partnerships frequently include negotiated risk-allocation provisions that reflect insurance availability, pricing, and the realities of the work being performed. Prohibiting these provisions outright may lead to higher costs, reduced competition, and fewer willing contractors, particularly for complex or high-risk projects.



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Experience in other states illustrates these risks. States that have adopted broad anti-indemnification or liability transfer statutes have faced years of litigation to determine what contract language is still permissible, how insurance provisions interact with statutory prohibitions, and whether parties can achieve similar outcomes through alternate mechanisms. Rather than eliminating disputes, these statutes have often shifted them, from contract negotiation to the courtroom, driving up legal costs and delaying projects. In some cases, insurers have responded by tightening coverage terms or increasing premiums, ultimately passing those costs on to consumers and taxpayers.

The amended bill's exceptions, while expanded, also create additional complexity. Exempting insurance policies, surety bonds, and certain waivers of liability while prohibiting direct contractual risk transfer invites parties to restructure agreements in artificial ways to achieve the same practical result. This encourages form over substance drafting, disadvantages smaller entities with less access to legal counsel, and increases transactional costs without improving safety or accountability.

Perhaps most concerning are the unintended consequences for public entities and self-insured organizations. Municipalities, quasi agencies, and large employers often rely on contractual risk allocation precisely because they are self-insured or partially self-insured. Limiting their ability to manage exposure through negotiated agreements may reduce their willingness to enter contracts at all or force them to absorb risks that ultimately fall on taxpayers.

In short, the amended bill still attempts to solve a problem that Maine law is already equipped to address. It substitutes rigid statutory rules for judicial judgment, undermines freedom of contract, and risks destabilizing established risk-management practices across multiple sectors of the economy.

For these reasons, I respectfully urge the Committee to vote Ought Not to Pass on LD 1761, as amended.

Thank you for your time and consideration.