

Testimony of Robert Caverly

On Behalf of CSX Transportation

In Opposition to

LD 1761, “An Act to Prohibit Indemnification Agreements”

Before the Joint Standing Committee on Judiciary

Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary, my name is Robert Caverly, I am a Senior Government Relations Consultant with Resolve Government Relations, and I am here on behalf of CSX Transportation (CSX) to respectfully oppose LD 1761, “An Act to Prohibit Indemnification Agreements.” Thank you for the opportunity to provide testimony on this important matter.

CSX is a Class 1 major North American freight railroad providing reliable rail service across the eastern United States. In 2022, CSX acquired Pan Am Railways, significantly expanding its footprint in New England including much of the rail infrastructure in Maine. Since that acquisition, CSX has invested more than \$100 million to modernize rail infrastructure across the region, improving safety, reliability, and service for both freight and passenger operations. CSX has developed strong, collaborative working relationships with the Maine Department of Transportation, the Northern New England Passenger Rail Authority (NNEPRA), and Amtrak’s Downeaster service. Through these partnerships and investments, on-time performance for the Downeaster has improved dramatically—from the low 70 percent range prior to the acquisition to consistently above 90 percent today. We have expanded affordable, environmentally friendly freight access to countless Maine businesses throughout our state.

While CSX certainly shares the Legislature’s interest in promoting safety, accountability, and economic opportunity in Maine, LD 1761 would have significant unintended consequences for rail operations, contractual relationships, and future investment. The bill broadly restricts contractual indemnification provisions that are foundational to not just rail operations but risk management across the transportation sector.

CSX owns and operates the rail lines used by the Downeaster pursuant to contracts that include mutually required indemnification provisions. These shared-use arrangements rely on mutual indemnification provisions that fairly allocate risk between sophisticated parties operating on common infrastructure thereby maintaining safe and affordable service. These provisions are standard nationwide and essential to maintaining reliable passenger service. Disrupting this framework could negatively impact Downeaster cost, operations, reliability, and future expansion.

Railroads operate within a federally regulated system, and courts have repeatedly held that state laws interfering with railroad contractual risk allocation are preempted by federal law. A recent Connecticut case reaffirmed that state restrictions on railroad indemnification agreements

conflict with federal rail policy. LD 1761 raises serious preemption concerns and could expose the State of Maine and private parties to costly and unnecessary litigation.

Beyond passenger service, CSX enters into numerous agreements with private landowners and customers, including private crossing agreements, land leases for storage and staging, and sidetrack agreements that allow Maine businesses—such as paper mills and other manufacturers—to locate adjacent to rail lines and ship goods efficiently. These agreements depend on indemnification provisions to manage risk. Limiting CSX's ability to rely on these provisions would undermine the private right to contract, complicate renewals, and discourage new business investment.

Without standard indemnification protections, CSX would be forced to reconsider how sidetracks and rail access are provided, potentially increasing costs for Maine businesses and discouraging rail use. This would hinder economic development, limit rail expansion, and reduce the competitiveness of rail transportation in the state.

CSX's investment of more than \$100 million since acquiring Pan Am Railways reflects a strong commitment to Maine's transportation infrastructure. These investments are intended to modernize the rail network, improve safety, and bring the system up to Class 1 railroad standards. Legislation that disrupts standard risk allocation practices would chill future investment and slow progress toward these shared goals.

For these reasons, CSX respectfully urges the Committee to oppose LD 1761. CSX remains committed to working collaboratively with the State of Maine, the Legislature, MaineDOT, NNEPRA, and our passenger rail partners to support safe, reliable, and efficient rail service for the people and businesses of Maine.

Thank you for your time and consideration. I would be happy to answer any questions.