

JOHN BRAUTIGAM

Esq. LLC

February 8, 2022

Senator Ned Claxton, Chair
Representative Michele Meyer, Chair
Joint Standing Committee on Health and Human Services
Cross Building Room 209
Augusta, ME 04333
Clerk Karen Thomas

Via: <https://www.mainelegislature.org/testimony/>

RE: LD 1523, Act To Establish the Trust for a Healthy Maine
LD 1693, An Act to Advance Health Equity, Improve the Well-being of All Maine People
and Create a Health Trust

Dear Senator Claxton and Representative Meyer and Honorable Members of the Joint Standing Committee on Health and Human Services:

My name is John Brautigam and I am here today to testify in support of LD 1523 and LD 1693.

For those of you whom I have not met, I served in the 122nd and 123rd Legislatures, and I was honored to serve as House Chair of the Committee on Insurance and Financial Services. I also served as Assistant Attorney General in the Consumer Protection Division, which is the office that managed the tobacco settlement.

Based on my experience as an attorney, policy-maker, and state agency administrator, I believe that it is possible to create a successful structure to sustain an important public mission such as that contemplated by these bills. The essential elements would include a clearly defined mission, achievable goals, accountability, transparency, adequate resources, leadership, clear authority and verification of results. These can make a structure such as the Trust for a Healthy Maine a success.

Ultimately, the success of a trust created by a public body depends largely on a shared consensus in the mission of that trust, and in the trust's ongoing record of success. There are also other design features which can increase the odds of a successful trust. The attached chart lays out the continuum of protections available in legislation such as this. On the left side of the chart, there are essentially no protections and the legislature is expected to continuously revisit how the trust performs. On the other extreme, the legislature would be prohibited from changing the mission or defunding the recipient.

The Trust for a Healthy Maine is intended to move Maine toward the right side of that continuum—toward greater protection of the settlement funds. Funding would be entrusted to the Trust, which would be governed by a body of trustees as specified in the bills. As noted in the letter from the Attorney General, these factors will not completely prevent the possibility that future decisions could divert Trust funds to other purposes. But they will make it less likely.

When drafting this, we were aware that many other states have approached the tobacco settlement money in a variety of ways. The trust established in the bills before you was not specifically modeled on any other state's approach, though we did try to learn from their experience. We don't know of any other state that has created the combination of accountability and authority represented here. Therefore, although some other states have tried and ultimately rejected several different approaches, those should not be construed to limit what can be accomplished.

Knowing that the Efficiency Maine Trust, 35-A M.R.S § 10101 *et seq.* is generally regarded as an effective steward of the resources to which it has been entrusted, we considered that effort as a precedent for the Trust for a Healthy Maine.

I believe the Trust for a Healthy Maine reflects both the spirit and the clearly articulated intent of the Master Settlement Agreement of 1998, which is plainly directed at reducing and preventing youth smoking and tobacco use through measures such as a ban on youth targeting, merchandising, free samples, and a commitment by all participating manufacturers to adopt a corporate culture to reduce youth access to tobacco and the incidence of youth tobacco use. It also includes a ban on lobbying.

Ultimately, the success of the Healthy Maine Trust depends not just on a good organizational structure, but on a strong consensus of support from all stakeholders. The very word "trust" captures the necessary element—a common commitment, encoded into the strongest possible statutory language.

In a democracy, it is not possible to fashion a legal structure that will last forever. Even a trust authorized by a constitutional amendment could be changed. There is no substitute for a common public understanding that the funds at issue deserve special treatment. The sponsors of these bills have performed an invaluable public service by working to cultivate that understanding. With the agreement of this Committee and the entire Legislature, this Trust can succeed in accomplishing the vital roles described for you today.

Thank you for the opportunity to provide this testimony.

A handwritten signature in black ink that reads "John Brantigan". The signature is written in a cursive style with a large, looping initial "J".

Ensuring Intended Use of Special Revenue Sources

Protective Factors

1. Establishing a well-defined purpose that is directly related to the source of funding
2. Non-partisan political support
3. Public trust of the process and support for the purpose
4. Complimentary external circumstances that don't counter-balance other protective factors. These can include economic stability, dominant political ideology, and public culture and attitudes

Continuum of Long-Term Protection

	General Fund	Special Fund	Trust	Constitutional Amendment
Deciding body	Legislature	Legislature	Trustees	Defined with constitutional amendment
Intended Purpose	Undefined and unlimited	Defined but not limited (not withstanding)	Defined and limited	Defined and limited
Planning window	Short-term: 2 years	Short-term: 2 years	Long-term: 2 years and longer	Long-term: 2 years and longer
Buffers from future legislative action	Unlimited	Notwithstanding	Dissolution of trust	Initiation of new constitutional amendment