



January 7, 2026

Senator Carney, Representative Kuhn, and Distinguished Members of the Joint Standing Committee on Judiciary Maine Legislature

100 State House Station

Augusta, ME 04333

Re: Support for LD 1761 “An Act to Prohibit Indemnification Agreements”

Dear Co-Chairs and Members of the Committee,

On behalf of the Associated General Contractors of Maine, which represents stakeholders throughout Maine’s construction industry, we write to support LD 1761, “An Act to Prohibit Indemnification Agreements.” This legislation would clarify and update liability and risk-allocation standards in construction contracts by banning contractual indemnification that shifts liability for another party’s negligence. Such practices have historically placed disproportionate legal and financial burdens on contractors and subcontractors in Maine.

In Maine, the lack of indemnification protections exposes workers and small businesses to financial liability for personal injuries caused by others. LD 1761 would create a new chapter in Maine law (10 M.R.S.A. c. 201-B) declaring that contractual indemnification provisions aiming to indemnify or hold harmless a promisee from negligence, claims, or liability, including the negligence of the promisee or its agents, are against public policy and are therefore void and unenforceable.

The bill does not stop parties from including additional insured status in insurance contracts or impact workers’ compensation or other insurance agreements. Essentially, this bill safeguards the hardworking construction industry from harm resulting from another party’s negligence.

This reform addresses a major gap in Maine law: Maine still lacks a construction-specific anti-indemnity statute, unlike those in other states that update risk-sharing.

Legal Context in Maine

Unlike most states, Maine currently lacks an anti-indemnity statute specific to construction contracts. Maine courts rely on common-law contract interpretation rules but have no statutory standard limiting contractual indemnification for another party’s negligence.

- *Emery Waterhouse Co. v. Lea* (467 A.2d 986) — Maine courts enforce indemnity for a party's negligence only if the contract "clearly and unequivocally" reflects such an intention.
- *McGraw v. S.D. Warren Co.* (656 A.2d 1222) — A standard construction contract did not explicitly obligate a party to indemnify for the owner's negligence, and thus, indemnity was not enforced.

These decisions highlight that indemnification is controlled by contract language rather than statutory limits, leaving subcontractors and smaller contractors vulnerable to broad indemnity clauses that insurers might not cover and that can require contractors to accept liability for losses they did not cause.

Legal Liability Carried by Contractors Without This Reform

Under current Maine practice:

- A contractor can be contractually required to indemnify an owner or general contractor for claims resulting from the owner's negligence if the contract is written clearly and in a way that courts have explicitly allowed.
- This exposes contractors and subcontractors to the risk of litigation and financial loss for incidents they did not cause, which increases insurance costs and may discourage smaller firms from bidding on projects.
- Insurance policies might not cover indemnity obligations if the underlying contract's indemnity is unenforceable or excluded by contractual liability provisions in the policy, increasing financial risk. This also includes legal expenses related to the claim.

Without legislative reform, the construction industry in Maine continues to operate under uncertain and potentially unfair liability rules. This decreases the number of bidders, raises costs, and naturally hinders safety improvements and practices.

National Context: Other States' Anti-Indemnity Statutes

Across the U.S., anti-indemnity statutes in construction have become a nearly universal reform, aimed at preventing the shifting of contractual risks that benefits poorly performing parties while penalizing those with less bargaining power.

- According to comprehensive surveys, at least 43 states have enacted anti-indemnity laws that cover construction contracts, with variations in their scope. These laws generally restrict or prohibit enforcing indemnity clauses that would require one party to indemnify another for that party's negligence.
- Some states, like California, Colorado, Connecticut, North Carolina, New Jersey, and others, expressly prohibit *broad form* indemnity provisions or limit indemnity obligations to *limited form* (only indemnitee's own negligence).
- Other states also expand the ban to include additional insured requirements that would indirectly pass liability for another party's sole negligence, covering both contractual indemnity and insurance-related risk sharing.

In contrast, Maine's lack of such a statute leaves contractors less protected than their counterparts in other states and puts Maine's construction market at a disadvantage in interstate and interstate-linked project bidding.

Policy Rationale: Why This Matters for Maine Contractors

Anti-indemnity legislation, such as LD 1761, makes sure that each contracting party is responsible for its own negligence and that the allocation of contractual risk matches actual fault. This promotes fairness and enhances safety incentives because:

Parties cannot contract to transfer liability for their own negligence to others; contractors and subcontractors are not obligated to cover the costs of others' negligent acts; and insurance rates more accurately reflect risk rather than contractual overreach. These principles align with the policy goals behind anti-indemnity statutes nationwide.

Promotes Competitive Bidding and Insurance Market Stability

Absent statutory constraints, broad indemnity and hold-harmless clauses can:

- Deter smaller firms from entering markets due to disproportionate liability exposure;
- Lead to inflated insurance premiums or coverage gaps; and
- Undermine confidence in predictable, fair contracts.

Enacting this law aligns Maine with the national standard, where anti-indemnity protections are common, and helps maintain a competitive, stable construction marketplace. For these reasons, the absence of a statutory framework in Maine, the clear precedent from other states, and the need to fairly allocate risk based on fault, we strongly support LD 1761 in its intent to prohibit indemnification agreements that would otherwise shield a negligent party from liability. We respectfully **urge the Committee to report this bill as ought to pass**, with clear language that promotes transparency, fairness, and economic competitiveness throughout Maine's construction industry. Thank you for your consideration. Respectfully submitted,

Kelly Flagg, Executive Director
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