

Jeffrey Harmon – Auburn  
Susan Hawes – Bangor  
Liam LaFountain – Biddeford  
Carl Sheline – Lewiston  
Mark Dion – Portland  
Adam Lachman – Rockland



Jodi MacPhail – Saco  
Becky Brink – Sanford  
Elyse Tipton – South Portland  
Michael Morris – Waterville  
David Morse – Westbrook

Supported By: Mitchell Tardy Jackson Government Affairs - 104 Sewall Street, Augusta, Maine 04330 - 207-622-1365

Maine Mayors Coalition  
Testimony in Opposition to  
LD 1761, An Act to Prohibit Indemnification Agreements  
January 12, 2026

Senator Carney, Representative Kuhn, Honorable Members of the Joint Standing Committee on Judiciary: My name is Jim Mitchell. I reside in my hometown of Waterville. I respectfully present to the Committee testimony of the Maine Mayors Coalition in opposition to LD 1761, An Act to Prohibit Indemnification Agreements.

The Maine Mayors Coalition advocates at the Legislature to protect the interests of the citizens of the municipalities of Auburn, Bangor, Biddeford, Lewiston, Portland, Rockland, Saco, Sanford, South Portland, Waterville, and Westbrook. The Mayors or their designees determine the positions of the organization.

The Coalition is opposed to LD 1761 because indemnification provisions in municipal contracts for goods and services are a common element to protect municipalities from liability. We believe there are hundreds, if not thousands, of these types of contracts with municipal parties in Maine. We recognize in Maine case law that contract indemnification requires clear, express, specific provisions under which the party has agreed to assume the duty to indemnify. The Law Court stated that indemnification clauses purporting to indemnify a party for its own negligence are looked upon with disfavor and are construed strictly against extending indemnification to include recovery by the indemnitee for its own negligence.

At the Committee public hearing, I referenced a common indemnification provision in cable company contracts with municipalities for the use of the public way in providing its service. The language is below:

## SECTION 9.2 - INDEMNIFICATION

Franchisee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Franchisee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorney's fees and costs, provided that the Franchising Authority shall give Franchisee written notice of its obligation to indemnify and defend the Franchising Authority within timely (best efforts of ten (10) business days) receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

Typically, we think of municipal contracting to hire people or organizations to do direct work for the municipality but the municipality often does not directly oversee the work performed and, therefore, the city seeks to manage risk through indemnity provisions in these direct contracts. Mayor Harmon of Auburn, in a recent email, provided an example of indirect contracting. The City is about to provide substantial funding to Alter LA, the area warming/emergency shelter. Auburn does not directly control or supervise the work nor is the activity in Auburn. The Memorandum of Understanding between the City and the agency, however, contains the following indemnity provision:

- 7.1 Indemnification. Provider shall indemnify, defend, and hold harmless the City, its departments, officers, employees, and agents from and against any and all losses, liabilities, claims, damages, actions, lawsuits, judgments, and costs arising out of or resulting from the acts or omissions of Provider, its employees, volunteers, contractors, or agents in connection with this MOU, including failure to satisfy obligations to employees/subcontractors and taxes, except to the extent caused by the City's sole negligence.
- 7.2 Waiver of Immunities. For the purposes of this indemnity, Provider waives any immunities to which it may be entitled under workers' compensation laws and assumes potential liability for actions brought by Provider or its employees.
- 7.3 Notice. Provider shall give the City immediate written notice of any legal action or suit related to this MOU or which may affect Provider's performance.

We appreciate that liberty of contract is a qualified, not an absolute, right and the Legislature must carefully balance protecting citizens from potential harm while ensuring that adequate contractual tools remain available to mitigate the costs of risk. And, we remain convinced that appropriately applied indemnity provisions on balance are of benefit to the citizens and taxpayers of Maine.

Therefore, the Maine Mayors Coalition respectfully requests the Committee vote Ought Not to Pass on LD 1761. Thank you for considering our testimony.