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April 15, 2021

VIA ONLINE FILING <https://www.mainelegislature.org/testimony/>
Senator William Diamond, Co-Chair
Representative Danny Martin, Co-Chair
Joint Standing Committee on Transportation
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Re: LD 1133, "An Act to Amend the Transportation Laws"

Dear Senator Diamond and Representative Martin:

For those who do not know, TrainRiders Northeast is a grass roots citizens' organization with hundreds of members from Maine, New England, and elsewhere. Since 1989, TrainRiders has been educating public officials and the public at large about the benefits of passenger rail service in Maine and throughout the Northeast. TrainRiders has worked, and continues to work, closely with the Maine Department of Transportation ("MDOT"), the Northern New England Passenger Rail Authority Rail Authority, Amtrak, and many others to ensure that these benefits are communicated to all. TrainRiders was the driving force behind the initiation of the Downeaster service and continues to strongly support it to this day.

TrainRiders takes no position on §§ 1, 3, and 5-10 of LD 1133, "An Act to Amend the Transportation Laws", since those sections are beyond its purview. TrainRiders is neither for nor against adoption of §§ 2 and 4 of that bill, which would require MDOT's Commissioner (the "Commissioner") to appoint between 9-15 people to serve on a council to review proposed non-rail use of all or a portion of a particular state-owned rail corridor. TrainRiders agrees that having a procedure for consideration of any such proposal is well worthwhile, and, for the aid of the Committee, makes the following comments:

Several reasons exist for TrainRiders' position:

1. "[A] viable and efficient rail transportation system is necessary to the economic well-being of the State" and the State of Maine "must take active steps to protect and promote rail transportation in order to further the general welfare." 23 M.R.S.A. § 7102. The State has not only purchased rail lines, but has also continued to support freight lines in Maine and to invest in the Downeaster passenger rail service, a service that, in the last full non-COVID year, transported 574,404 passengers. Rail

April 15, 2021

transportation, both passenger and freight remains a vital part of Maine's economy.

2. Current law provides that the State may dismantle a State owned rail line only if MDOT determines, in consultation with a regional economic planning agency and a regional transportation advisory committee, that removal of a specific length of track "will not have a negative impact on a region or on future economic opportunities for that region", a finding which must then be reviewed by this Committee before removal occurs. See 23 M.R.S.A. § 7107. LD 2124 would expand upon this by permitting the Commissioner to appoint a council to investigate and provide advice regarding any proposed change of a State owned line to non-rail use. This would help insure that interested parties are involved in the process of making a decision on any such proposal. Furthermore, the bill provides that a different council could be appointed for each such proposal, providing the Commissioner with flexibility to vary the membership of different councils to ensure that the membership of a particular council includes stakeholders for that particular proposal.

3. The bill is somewhat vague on the criteria which a council is to examine in investigating and advising the Commissioner on a particular proposal, providing that the council shall make recommendations "on the likelihood, benefits and costs of potential uses of the rail corridor" for non-rail purposes as compared with rail use. The consequences of removing track from a rail line are not always obvious. For example, it is often argued that conversion of an out of service rail line into another use is a means of preserving that line for future rail use. While in theory this is a laudable goal, in fact, the national experience is that this type of "rail banking" almost never results in reconversion of the line into rail use. In some instances, this is the natural consequence of the line's location, where market forces have resulted in no further need for rail service (the Dover-Foxcroft line, now a very successful trail, comes to mind). In many other cases, however, the removal of the rail and ballast from the line makes it cost prohibitive to renew rail service even where it might otherwise be feasible and advantageous, and, in fact, throughout the United States it is likely that less than 100 miles of rail banked rail lines have been reconverted to rail use. It is often far too easy to look only at the current lack of use of a line to make a decision to convert it to another transportation mode, without also looking forward to possible future transportation needs within the rail corridor. Once this occurs, it often becomes far too expensive to rebuild the rail line even when future needs would otherwise justify that action. Given this, TrainRiders would suggest that the bill should be amended to explicitly provide that the current and future economic impact of conversion of the line be the primary criterion for determining whether that conversion should be permitted. In making that determination, any council should keep in mind that reconverting the line to rail use may very well be prohibitive even where it might otherwise be beneficial to the State of Maine.

4. All purchases of rail lines by the State of Maine have been paid for by the issuance of bonds as approved by Maine voters. In many instances, the bond proposal was presented to the public as one for the preservation of the line for rail purposes. Most particularly, the 1990 ballot for approval of a bond issue to fund the purchase of the line between Brunswick and Augusta asked "Do you favor a \$4,500,000 bond issue for the acquisition of certain rail lines, rail

April 15, 2021

trackage rights or easements or ancillary rights and interests for the establishment preservation and operation of rail service in Maine?" (emphasis added). See [https://ballotpedia.org/Maine_Rail_Lines,_Trackage_Rights_and_Easements_Rights,_Question_No._2_\(1990\)](https://ballotpedia.org/Maine_Rail_Lines,_Trackage_Rights_and_Easements_Rights,_Question_No._2_(1990)). LD 1133 must require council consideration of the purpose of the bonding legislation, and the ability of the line to fulfill those purposes.

5. LD 1133 provides that a council may be appointed when one or more "governmental entities" that "represent" communities along the rail corridor asks MDOT to review the use of a State owned rail line. This is both too broad and too narrow. First, it is too broad because no standards are set for what type of governmental entity can request such a review, or even whether the entity needs to be located anywhere near the rail corridor, so long as it "represents" a community along the rail line. This could arguably include, for example, a federal agency, or the local animal control officer. Second, it is too narrow because the economic benefits of a rail line are not limited to communities located right along that line, but, instead, radiate out to those living elsewhere who benefit from the value of passenger rail transportation, employment, and other benefits provided by rail service on that line. TrainRiders would suggest that the bill be amended to provide that the types of agencies which can request that MDOT review the use of a State owned rail line be limited to those which are involved in transportation matters or economic development in areas benefiting from rail service over that line, or which would benefit from a proposed non-rail use of that line.

6. Determining whether a rail line should be converted to non-rail use can require consideration of complex and not necessarily obvious matters. The bill suggests that any council would include several members who would have little, if any, experience with passenger or freight rail and the economic benefits which result from their use. This could include, for example, the Commissioner of Agriculture, Conservation and Forestry, representatives of other unnamed state agencies, and advocates for trail, bicyclists, and pedestrian use. In fact, the proposed categories could easily result in the majority of members of a council having no expertise or background in the transportation, economic, and other benefits of rail use. TrainRiders would suggest that the bill be further amended to provide that any council include a majority of members with such expertise, along with those who are stakeholders in the proposed non-rail use of the line.

The most important concern here is that any decision to convert a State owned rail line to non-rail use must be taken only after a careful evaluation of future transportation needs in the corridor, keeping in mind that any removal of track, in almost all instances, results in the permanent loss of the line for rail service. LD 1133, with appropriate modifications, may be the appropriate vehicle for ensuring that interested parties with appropriate expertise are involved in determining whether such a conversion should occur.

We appreciate this opportunity to express our views on this bill, and, as always, we are available as a resource to assist this Committee with passenger rail issues.

April 15, 2021

Sincerely,

Wayne E. Davis, Chairman
TrainRiders Northeast