



Janet T. Mills  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

Testimony on L.D. 2094, An Act To Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

Senator Carpenter, Representative Bailey, members of the Joint Standing Committee on Judiciary, thank you for this opportunity to provide my perspective on L.D. 2094, *An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Act*.

I appreciate your willingness to consider the challenging issues of whether and how provisions of the Maine Implementing Act, 30 M.R.S. 6201 *et seq.* (MIA), should be amended. It is clear to me that this Legislature is committed to responsible and appropriate actions that will improve the Tribal-State relationship in Maine. I share that commitment.

Maine people and members of the Tribes are fortunate to call this beautiful land home. We are fortunate to hunt in the same woods; fish from the same rivers; drink the same water; and breathe the same air. These shared experiences bind us together, as do our shared challenges. After all, the lack of a good education; the absence of affordable, high-quality health care; and the need to strengthen and diversify our economy are all issues that impact us – and so it should be that we work together, rather than divided, to address them.

In this bill, I see several opportunities to do just that. For example, I agree that MIA should not be viewed as an untouchable accord never to be revisited. In fact, the MIA has been amended in a number of respects to address and remedy specific problems. It is appropriate to examine carefully and critically specific areas where we can forge agreement for the improvement of all. To that end, there are certain provisions within L.D. 2094, like those focused on criminal jurisdiction, that we could support. It is appropriate, for instance, to consider providing equity in the authorities granted to each Tribe and enabling Tribes to try Tribal members for minor crimes committed on Tribal reservation lands. I also see an opportunity here to pursue amendments that would provide the Maine Indian State Tribal Commission (MITSC) with more authority to act as a potential alternative dispute resolution forum. I hope that we can make progress in areas like these.

However, in reviewing the complex provisions of L.D. 2094, I am concerned about the sweeping nature of the bill, the impacts on non-Tribal citizens and communities, and the extent to which those impacts have been given due consideration and explained to the public. In fact, I am deeply concerned that if enacted in its current form, this bill would actually have the opposite of its intended effect and would lead to the degradation of the Tribal-State relationship by giving rise to disputes and disagreements over the meaning and effect of its provisions, thereby breeding confusion and extensive litigation at a time when we have finally begun to move past those.

For example, in its substance, L.D. 2094 would substantially alter the jurisdictional framework that governs the Tribal-State relationship in Maine.

1. The bill would allow Tribes to acquire land anywhere in the State, which land could then be designated as Tribal Trust land and removed from the State's jurisdiction. Section 23 of the bill



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would abdicate all authority of the Legislature over activities that occur on current and later-acquired Tribal lands, which are now subject to Maine's laws and executive agency regulations. Neither the Maine Legislature nor adjacent municipalities would have any influence over land use or similar issues on such lands, including within the newly created jurisdictional enclaves that could be created anywhere in the State. Nor could state labor laws, the Forest Practices Act, air quality standards, mining regulations or any other provisions of state law apply with the new broad and indefinite areas termed "Tribal Lands." In fact, because each of the five Tribes would be able to enact their own regulations, conceivably the state would host five different sets of laws and enforcement standards. It requires no imagination to foresee how jarring and disruptive this would be to local communities and to the state, yet few people seem aware the Legislature is considering a bill that would provide for that result.

2. Section 12 of the bill, which exempts both current and later-acquired Tribal lands from State and local taxation, would have obvious consequences for State and local revenue, as well as for small business owners who may suddenly find themselves up against tax-free competitors that need not comply with regulatory standards that apply to non-Tribal actors.
3. Title 30 MRSA 6207 2-A allows the State to regulate fishing by Indians off tribal lands "solely for conservation purposes...to the extent permitted under federal Indian law and in a manner consistent with reserved tribal treaty rights". We should ask ourselves who would determine if the law meets the three criteria (i.e. is it solely for conservation purposes AND to the extent permitted under Federal Indian law AND in a manner consistent with reserved tribal treaty rights?) and therefore applies to tribal members?
4. Recommendation 10 amends the Maine Implementing Act to restore and affirm the Tribes' rights to exercise regulation of natural resources and land use on Tribal land to the fullest extent under federal Indian law. Under this proposal Maine communities would have no influence on development projects on tribal lands regardless of their potential impact on those communities.
5. Recommendation 7 calls for stronger alignment with federal law and associated resource management oversight includes "nontribal" lands that are "usual and accustomed" fishing places. However, there is no common understanding about how that term would apply in Maine, and as such the scope of reach and potential state resource concerns cannot be assessed. At its broadest, this could mean that Tribal members could hunt or fish anywhere in Maine, without limits and without any oversight by the State.
6. It is also unclear what federal law would apply and what federal agencies would be responsible for enforcement and regulations in those areas newly described as "Tribal Lands."

Each of these recommendations would make substantial changes to the way people live and work in Maine. Each deserves careful thought and thorough public airing. I urge this Committee to take its time, to not rush this legislation to the floor, but to consult and deliberate with all affected parties to avoid the significant unintended consequences of these proposals. However well-intentioned, the potential rushed enactment of such sweeping changes should give us pause before we risk jeopardizing efforts to build a better relationship.

It is also critical to understand that this statute has a unique connection to federal law. The traditional legislative process we are accustomed to involves only Maine's Legislature and Governor. For MIA alone, any changes to the Act must also be agreed to by the Tribes, which means that if the Legislature decides in the future that any of the changes proposed in this bill have unexpected negative consequences, it will be unable to alter the law without the Tribes' consent.



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To the extent the Committee has questions about this, as I expect it will, I urge you to seek guidance from the Attorney General and to proceed with great caution and only with the most clear and complete understanding of the implications of its decisions. Changes to the Act need to be well understood and made with input from all affected parties.

In the meantime, I believe we should continue to focus on areas of agreement. I have been invited to meet with the Tribes, and I look forward to doing so in the coming months. I am committed to working together to remove disparities for Tribal citizens and contribute to a paradigm of mutual respect.

To that end, this past year the Legislature enacted bills establishing Indigenous Peoples' Day and prohibiting Native American mascots in Maine schools. We worked together to put into law historic new protections for sustenance fishing, addressing a longstanding point of contention between the Tribes and State government. Maine now has in place the strictest water quality standards in the country to protect against toxic pollutants in a set of waters of significance to Tribal communities. The collaborative and respectful process employed to develop these standards can and should be a model for how we can side-step legal disagreements to find meaningful solutions to real world problems.

My Administration is also working every day on a host of projects, from small to large, that will directly benefit Tribes and Tribal members in Maine. We are working closely with the Passamaquoddy Tribe at Pleasant Point to identify and secure a permanent supply of clean, reliable and high-quality drinking water. This project will likely take several years to complete. If successful, it will significantly and permanently improve the day-to-day lives of those who reside at Pleasant Point.

My Department of Economic and Community Development is working with the Passamaquoddy community at Pleasant Point to establish a Native Entrepreneur Center model of coworking and small business support. We are also involved with efforts to develop a model Wabanaki Uniform Commercial Code for Maine's four tribes to make contracts and other investment agreements between Tribal businesses and non-tribal members more predictable and consistent, to encourage outside investment.

My Department of Inland Fisheries and Wildlife is partnering with Tribal members on efforts to restore habitat for a suite of migratory fish including alewives, shad, and Atlantic salmon. We are also collaborating on the Northeast Deer Research Partnership, which is an international effort to determine the role of winter severity, forest management, supplemental winter feeding, and other factors affecting deer populations at the edge of their range in the northeast. We routinely share wildlife harvest data to ensure effective management of wildlife resources. And, tribal wardens go through rigorous training at MDIFW's Advanced Warden School.

These efforts show that we are working together to solve identifiable problems and advance new Tribal-State initiatives. We can, and should, do more.

Thank you for your consideration, my Administration, including my Cabinet members, stands ready to work with the Committee, the Tribes, and the Attorney General's Office as this bill moves forward.



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