

**Testimony of the Chief of the Penobscot Indian Nation Kirk Francis
in Support of Assistant House Majority Leader Rachel Talbot Ross’
Amendment to LD 585**

**“An Act to Restore to the Penobscot Nation and Passamaquoddy Tribe the
Authority to Exercise Jurisdiction under the Federal Tribal Law and Order
Act of 2010”**

February 17, 2022

Senator Carney, Representative Harnett, and Honorable Members of the Joint Standing Committee on Judiciary, thank you for this opportunity to speak in favor of Assistant Majority Leader Rachel Talbot Ross’ amendment to LD 585.

My name is Kirk Francis, and I currently serve as the elected Chief of the Penobscot Indian Nation, a position I have proudly held on behalf of Penobscot people for 15 years.

As I begin my testimony today, I want to reinforce to the Committee and others that the purpose of the amendment to LD 585 is separate from the purpose of LD 1626, which is to modernize the Settlement Act between the Wabanaki Nations and State. Today’s amendment to LD 585 is intended to improve communications between the state and Tribes, and begin to provide us with some economic opportunities that we have been shut out of for 40 years. The amendment does not restore any sovereignty back to us, and it does not make any improvements to the the 1980 settlement act.

The Penobscot Nation asked Assistant Majority Leader Ross to present the amendment to LD 585 because I am hopeful that it is the beginning of progress. The amendment is the product of more than seven months of discussions between representatives of Governor Mills, Attorney General Frey, the Penobscot Nation, the Passamaquoddy Tribe and the Houlton Band of Maliseet Indians. Those discussions focused on trying to make changes to state law that will improve communications between the Tribal nations and state, promote economic development within and around Tribal communities, and allow mobile sports wagering to be conducted by all of the Wabanaki Nations. Those discussions were productive, and I am hopeful that we can get today’s amendment through the Legislature and signed into law this session.

This amendment to LD 585 is a foundation on which the Governor, Attorney General and Wabanaki Nations can build upon. I am hopeful that our discussions

with the Governor's office and Attorney General continue, and that we will find ways to make progress on additional issues, and be back here before you during the next Legislature.

The amendment to LD 585 will help to improve dialogue between state agencies and the Wabanaki Nations, and provide the Wabanaki Nations and our citizens with tools to create economic opportunities for us and the surrounding communities.

While there are several parts to the amendment, it really seeks to address three issues:

1. Improve communication between the state and Wabanaki Nations;
2. Amend certain portions of the state's tax laws to help improve the economic welfare of the Penobscot Nation, Passamaquoddy Tribe and Houlton Band of Maliseet Indians; and
3. Allow each of the Wabanaki Nations to conduct mobile sports wagering.

Institutionalizing some form of communication between state agencies and the Wabanaki Nations is a foundational component of strengthening government-to-government relationships.

The amendment requires that certain agencies identify a Tribal liaison, so it is clear who we should be outreaching to when issues of concern come up. Also, it will be the responsibility of this person to outreach to each Wabanaki Nation and keep us informed of any actions that may "substantially and uniquely" impact us. The Federal government has taken steps to better consult with Tribes over the past 25 years, and it has proven to be very effective. More and more states are doing the same, and we think doing so here in Maine will help promote more positive relationships between us and the state.

Additionally, the amendment to LD 585 requires that the Governor meet *at least* annually with the Wabanaki Nation leaders in a Tribal-State Summit to address issues of mutual concern. Again, this strengthens the government-to-government relationship. And, it institutionalizes a Summit, so that the conversation happens regardless of who is in the Blaine House.

The amendment to LD 585 also seeks to start treating the Wabanaki Nations like other tribal governments in the country when it comes to taxation. These changes will take effect beginning on January 1, 2023, and will benefit our tribal citizens living and working within our trust and reservations lands. They will also help promote economic development within and around our communities.

Like other tribal governments in the country, there will no longer be distinguishing between when we are acting in a government capacity versus a business capacity.

Like other tribal governments in the country, we will no longer have to pay sales taxes on items purchased by our governments.

Like other tribes in the country, any sales to *tribal members or tribal entities* occurring on our trust or reservation lands will not be subject to the state's sale tax. And, the state will return to us any sales taxes collected from other people that take place on our lands.

These changes will allow us to invest more in the infrastructure on our lands, such as roads, sewer, water, cemeteries, and parks. It will also allow our government to consider developing its own tax system so we can continue to generate some revenue to reinvest back into our programs and services.

Lastly, the amendment to LD 585 will legalize sports wagering within the state. It will do so by authorizing up to seven facility sports wagering licenses to off-track betting facilities. And, it will authorize one mobile sports wagering license to each Wabanaki Nation.

The Wabanaki Nations have long been cut out of the gaming industry in Maine.

When the settlement acts were passed in 1980, the Penobscot Nation had our gaming facility shut down. We were actually conducting gaming – with slot machines – before the settlement acts. And, we did not believe that we were negotiating that right away when the settlement acts passed. But, after the settlement acts became law, state law enforcement came in and shut us down.

Eventually, the state allowed us to do high stakes bingo, but we were repeatedly denied any opportunity to open a casino.

In 2004, Hollywood Slots in Bangor was authorized to open, and eventually caused our bingo operations to close. We lost 70 jobs and vital revenue that supported our

government programs. We again came to the Legislature to seek authorization to open a casino, but were denied because we were told that the gaming market in Maine would be saturated.

We then focused on simply modernizing our bingo games through new technology, and were again denied by the state. We then watched as another commercial casino opened in Oxford.

Last year, this Legislature passed a bill that would have allowed the Wabanaki Nations to conduct gaming in the same manner as every other federally recognized tribe in the country. That bill was vetoed.

Today's amendment allows the Wabanaki Nations to finally participate in the gaming industry in a meaningful manner. States throughout the country are legalizing sports wagering, both in person and online.

This amendment allows those entities with existing facilities to conduct in person sports wagering. The Wabanaki Nations will only be allowed to conduct mobile sports wagering. We have consistently been told that we could not have a casino because it would harm the casino in Bangor. Allowing us to access the new market of online sports wagering will not impact the existing games in the Bangor casino. The Wabanaki Nations worked hard to avoid any such negative impact on any existing casino, which is why you do not have a proposal today that includes casinos for the Tribes. Nothing in this bill hurts any existing gaming casino. Online sports wagering may be a want but is not a need for them.

The existing casinos have their markets, so the Tribes will focus on the online market. And, the off-track betting facilities, which includes the Bangor casino, can focus on facility sports betting. That is fair. And, allowing the Wabanaki Nations access to the new online market is fair. Allowing out of state corporations and existing facilities to have everything is not fair. Opening the online gaming market up to only four licenses will prevent immediate market saturation. We were long told that the reasons we were not allowed to build a casino was because the state market could only support two – one in Bangor and one in Oxford. We think the online gaming market can support four licenses.

All of these changes in the amendment before you today will allow us to focus on developing more economic development opportunities that will benefit us and our surrounding communities. All of the Wabanaki Nations are located in rural parts

of Maine. We need to start working more together to develop opportunities that will benefit all of us. Today's amendment is a step in that direction.

No one is more local than the Wabanaki Nations, and any revenues we generate go back into the Maine economy.

I want to thank Assistant Majority Leader Rachel Talbot Ross, Senator Carney, Representative Harnett, for investing their time and hearts into this effort. I do not believe we would be making *any* progress without your commitment to the effort. Representative Ross is a champion.

Thank you to the Governor's Chief Legal Counsel Jerry Reid, and Attorney General Frey and his staff for your endless efforts and commitment to the discussions over the past seven months. You were all in every meeting and invested the long hours to make some progress.

I also want to thank the Maine Revenue Service, whose technical expertise helped navigate the longest portions of the negotiations.

And, I want to thank the Governor, who I am sure is getting inundated with calls from gaming industry lobbyists expressing concerns about allowing the Tribes to conduct mobile sports wagering. I appreciate the Governor standing with us on this issue.

Lastly, I want to thank the Penobscot Nation people. The amendment to LD 585 presented today is not sovereignty. We will continue our efforts to regain our sovereignty through LD 1626. But, today's amendment to LD 585 will provide some meaningful economic benefits to the Penobscot people, our communities and the local surrounding communities in which many of our people live and work. And, many of the people in the local non-tribal communities work for us. This amendment will provide some benefits to all of us.

The amendment to LD 585 before you today is not perfect. But, it is progress, and I do not want to walk away from progress. So, I ask that the Committee Members support the amendment, and let's get it over the finish line this session.