

Testimony of Gregory Sample, Brunswick, in support of LD 2007,

An Act to Advance Self-Determination for Wabanaki Nations

February 26, 2024

Senate Chair Carney, House Chair Moonen and Members of the Judiciary Committee, my name is Greg Sample. I am a retired attorney whose nearly 40 years practicing law in Maine was spent as a Maine Assistant Attorney General and later in private practice working with Indigenous tribes, predominantly Wabanaki.*

While still in Law School I began work on what was then a joint project of the Attorney General's Office and the Maine Bar Association to modernize State government work through adoption of a government-wide Maine Administrative Procedure Act (APA). Upon admission to the Maine Bar and joining Attorney General's Office, I resumed working as principal author and legislative advocate for enactment of a comprehensive State APA, which was adopted by the Legislature in stages between 1975 and 1977. As an Assistant Attorney General from 1975 - 1989, I represented numerous State agencies, notably the Department and Board of Environmental Protection, the Secretary of State's Office, and other State agencies.

After an active practice as an AAG counselling State agencies and re-orienting State agency procedures under the new APA while attending to rapid growth in the number and scope of new areas of Environmental protection, I left State government in 1989, and joined a growing law firm in Portland representing Indian tribes, mostly Wabanaki and other New England tribes. Over the course of this work (until my retirement in 2013),

- I worked extensively with the federal Maine Indian Claims Settlement Act (MICA), the State-enacted Maine Implementing Act (MIA) and the general body of federal and Maine Indian law, regularly addressing a wide range of tribal interactions with the State government and its agencies.
- I gained broad experience with State and tribal operations and laws, awareness of the vast variety of tribal-State differences, and understand that the resources of each to work through these issues are limited. It is noteworthy, however, that fewer tribal-State issues appear to arise in other states, where tribal programs must comply with federal Indian laws and regulations.
- Even when both parties are willing to discuss an issue, finding agreement can be very wasteful of resources, and take months, sometimes a year or more. I offer here two personal experiences with Maine laws that only begin to illustrate the very substantial inefficiencies attributable to the 1979 Maine Implementing Act.

Example: It is important to tribes that tribal Reservation schools teach tribal language

and culture to their students. The MIA mandates State public school teacher certification requirements – including a college degree - to teach in a tribal public school. The skills to teach Native language and culture are diminishing among Native populations. Those with the capacity to teach a Native language typically didn't have, or need, a college degree to pass their language on to another generation.

It took 2½ years for the State to change the public school teacher certification rule, have it approved by MeDptEd, State School Board, AG, and the Consolidated School Board for 3 Maine Indian Education schools, and a "wait until next year" for the new Legislature to approve the amendment of the State's teacher certification rule for public schools, a "major rule."

Ultimately, all parties agreed that the State Education Department had no means of assessing anyone's competence to teach tribal language and culture. Now, the Department of Education will grant a Maine teacher certificate to any person recommended to them by a tribal government to teach tribal language and culture in a tribal school.

- Tribal and State staff members often are the first to see, and talk about, ways programmatic differences might be resolved. On the State side, I frequently found a reluctance for agency policymakers to engage issues burdening tribes, wittingly or not, and assist in resolution. Vastly smaller tribal staffs rarely have that problem.

Example: Financing Tribal Foster Care Programs: Historically, federal funding for State and local foster care programs came exclusively to the States under the Social Security Act, which then funded local programs, which in Maine included tribal programs. The Passamaquoddy Tribe sought the efficiency of direct federal funding, which under federal law requires a Tribal-State Agreement.

Tribal staff found support for such an Agreement in both the Machias DHHS Child Welfare Office (which had a very good working relationship with Tribal CW staff at both Motahkomikuk and Sipayik), and with Child Welfare program staff at DHHS in Augusta. A proposed Tribal-State Agreement was negotiated with the State Director of Foster Care, who set out to carry it through upper managers and get the DHHS Commissioner's approval.

Months went by. Senior DHHS officials were reported to have said that DHHS had never made an agreement with a tribe (despite funding the tribal Child Welfare programs) and it needed approval from the AG's Office.

I retired in 2013, but have had no information about whether the State-Passamaquoddy Tribe Child Welfare Funding Agreement ever took effect.

I urge the Committee to endorse LD 2007 and to advocate for its enactment. Thank you.

Respectfully,
Greg Sample

- I wish to be clear that I had no involvement with either the litigation of the "Maine Indian Land Claims," so-called, or the resulting Settlement at any time before, during or after my service in the Maine Attorney General's Office.