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Testimony of the Maine Municipal Association
Neither For Nor Against

LD 2195 - *An Act to Advance Self-determination for Wabanaki Nations*

February 26, 2024

Sen. Carney, Rep. Moonen and members of the Judiciary Committee, my name is Rebecca Lambert, and I am providing testimony "neither for nor against" LD 2007 on behalf of the Maine Municipal Association's (MMA) elected 70-member Legislative Policy Committee (LPC), who provide direction to the advocacy team and establish positions on bills of municipal interest.

Municipal leaders recognize the importance of self-governance and self-determination, as our roots are deeply intertwined with the Legislature's long-standing support for home rule authority and trust that our residents have the good intentions necessary to chart their own courses. For that very reason, local officials understand the desire among members of Maine's Wabanaki Nations to acquire the same rights and privileges as those extended to Tribal Nations in other states.

While concern over the unknown can unfortunately lead to less than constructive conversations, the goal of this testimony is not only to raise the concerns of municipal leaders, but to also identify possible solutions. With respect to the provisions found in LD 2007, municipal officials are most concerned with amendments to the process used to add fee simple property into federal trust land, the potential for Maine cities, towns, and plantations to be required to address the demands and priorities of both the state and the Wabanaki Nations, particularly with respect to land use regulations, and the shifts in tax burdens among property owners that could result if LD 2007 is enacted as proposed.

Environmental Protections, Regulatory Framewok and Land Use. Absent a clear process in LD 2007 that mandates the use of a fair, evidence based and predictable process for protecting Maine's natural resources, the concern among municipal officials is that future decisions and regulations will shift additional and significant cost burdens onto communities. While municipal officials understand that the protection of the state's natural resources is an investment in our communities and economic assets, municipalities, and utility districts across the state, and subsequently property tax and fee payers, have already spent and continue to invest millions of dollars to build the infrastructure necessary to comply with existing state and federal clean air and water regulations.

For example, without further clarification in the bill, it is possible that more stringent and costly measures could be implemented that impact the operation of municipal infrastructure located upstream from trust lands. The reverse could also be true, as decisions made by tribes could make it more difficult for communities to meet established state standards. At the very least, the legislation should recognize the dual and potentially conflicting regulatory compliance requirements that may be placed on communities.

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Under the construct of existing laws, when the state flexes its regulatory authority, there are opportunities for impacted parties to offer evidence regarding the impacts proposals will have on municipalities through participation in public hearings, working with lawmakers to improve submitted measures during work sessions, and in the absence of compromise, appealing to the larger body for or against the passage of an initiative. Furthermore, to the extent that the decisions of the Legislature come at a cost to the property taxpayers, the constitution establishes a high bar for enactment. As provided in Article IX, Section 21 of Maine's constitution, the state must either reimburse communities for 90% of related costs or adopt the measure by a two-thirds votes of the members of the Legislature to relieve the state of its obligation to reimburse.

For this reason, it is of upmost importance that language is included in LD 2007 that explicitly assigns regulatory responsibilities over municipalities to the state. Should the state want to defer to the tribal governments, then they should incorporate those proposals within their own regulatory framework. It is the only way to ensure consistency in enforcement among municipal entities. Additionally, if it is determined that more rigorous regulations are necessary, municipalities will need to be provided the time to implement new requirements, and more importantly, the technical and financial assistance necessary to avoid shifting additional burdens onto the property taxpayers.

Trust Lands. As provided for in Title 30, section 6205, subsection 5, the process for moving fee simple property located within the boundaries of an organized municipality into federal tribal requires support of the local legislative body, which is either the council or town meeting. Although municipal officials recognize the need to rebalance the current power dynamic, from the municipal perspective the proposal found in LD 2007 appears to tip the scales in the opposite direction, rather landing on the point of equilibrium.

While repealing the provision requiring an affirmative vote of the local legislative body may be the desired outcome among the proponents of this initiative, municipal officials believe that a system must be put into place to answer questions surrounding land use regulations, shared debt and how public services will continue to be provided and funded. Time is also a factor in this process, as for example, property taxes are committed annually. If placing property into trust shifts additional costs onto the municipality, then communities need, at the very least, a budget cycle to respond to the change, or the state should assist in funding those new costs.

Regardless upon whom the Legislature decides to bestow final decision-making authority regarding trust lands, the final decision must be informed, which is reflected in LD 2007. As proposed, agreements for the payment of taxes, law enforcement, as well as land use ordinances, must be negotiated in advance of a transfer of property into tribal trust.

However, municipal leaders believe that other considerations are also worthy of discussion.

For that reason, in the process of working the bill, MMA strongly encourages the committee to review the statutes regulating the deorganization (Title 30-A, Chapter 302) of municipalities and plantations. Of note, this process provides for the creation of a local deorganization committee, which is

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directed to develop a plan which includes provisions for educational services, distribution of financial and tangible liabilities and assets, comprehensive land use planning and zoning, and a fiscal impact assessment.

In addition to an interest in expanding the list of issues that must be resolved before the property is transferred into federal trust, municipal officials believe ample time needs to be provided to the interested parties tasks with negations the terms of a separation agreement. Understanding the need to avoid unnecessary delays in the process, the 90 days provided to complete negotiations on the allowable issues, including payments in lieu of taxes, is insufficient. It may be the case that communities will need additional time to discuss issues, secure assistance necessary to draft agreements, and provide the notice necessary for engaging members of the public in these discussions.

In summary, the ability to discuss, recognize, and address impacts is an important part of the process of self-determination. Municipal officials encourage the inclusion of provisions in LD 2007 that facilitate conversations among all the interested parties and ensure municipalities retain the authority to conduct business within their own boundaries, address the priorities of its residents, and mitigate increases placed on property taxpayers.

Thank you for considering the municipal perspective on this important legislation. I would be happy to answer any questions you may have.