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MAINE INDIAN
TRIBAL-STATE
COMMISSION

*Maine Indian Tribal-State Commission Testimony Supporting
LD 1835 "Act to Require the State to Notify Indian Tribes and Indian Nations When New
Laws Are Enacted That Need to Be Certified"
Before the Committee on the Judiciary*

January 10, 2024

Senator Carney, Representative Moonan, and honorable members of the Committee on the Judiciary. My name is Jill Tompkins. I reside on *alenape meneha* (Indian Island), part of the *penawahpkekeyak* (Penobscot Nation) Reservation. I am the Executive Director of the Maine Indian Tribal-State Commission ("MITSC"). Thank you for this opportunity to provide this testimony on behalf of MITSC regarding LD 1835, "Act to Require the State to Notify Indian Tribes and Indian Nations When New Laws Are Enacted That Need to Be Certified." MITSC's position at this time is neither for nor against. We defer to the Wabanaki nations' position on this bill; however, we have concerns about the process it would put into place.

MITSC was created in 1980 by The Act to Implement the Maine Indian Claims Settlement Act ("Implementing Act"), 30 MRSA § 6201 et seq. MITSC is comprised of an equal number of members representing the State of Maine and the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation. Its responsibilities are to continually review the effectiveness of the Implementing Act and the social, economic, and legal relationships between the represented tribes and the State.

The federal Maine Indian Claims Settlement Act, 25 U.S.C. § 1721 et seq., reflects the settlement of Wabanaki tribal claims for lands transferred in violation of federal law, including the Trade and Intercourse Act of 1790. The Settlement Act ratified the Maine Implementing Act, which defines the relationship between the State of Maine and the Wabanaki Nations. 25 U.S.C. § 1721(b). There was a caveat limiting the power of the State to amend the Implementing Act. Section 1725 (e)(1) provides that "the consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act . . . provided that such amendment is made with the agreement of the affected tribal or nation"

Each Wabanaki nation has its own form of government, laws, and decision-making methods. Some tribes have a tribal council that serves as the governing body empowered to enact tribal legislation. Others, like the Penobscot Nation, have a different structure. The Penobscot Nation is a traditional direct democracy where tribal laws and certain major decisions must be voted on by the General Meeting. The General Meeting is comprised of all adult enrolled Penobscot Nation tribal members. Except in an emergency, thirty days' notice to all adult tribal members is required to convene a General Meeting. This process, therefore, may take tribal approval or certification longer than if all that was necessary was tribal council approval.

Several bills that amended provisions of the Implementing Act were passed in the last legislative session. The tribes were required to certify their approval within 90 days of the session's close. Most of the tribes did not submit their certifications in the required time. The reason for this may be that the tribes were not aware of the certification requirement or deadline. This bill may eliminate this problem by requiring the Secretary of State to notify the designated tribal officer of the pending legislation, the need for certification, either approving or disapproving, and the deadline for certification.

The bill requires that the notice be sent to "[t]he officer designated by the governor (should be Chief) of the Penobscot Nation, the Joint Tribal Council of the Passamaquoddy Tribes, or the council of the Houlton Band of Maliseet Indians, or by the council of the Mi'kmaq Nation" Each tribal nation has a tribal clerk who is responsible for maintaining the tribe's official government records and who certifies official tribal documents. It would clarify the process if notice were given by the Secretary of State to the tribal clerk. The tribal clerk would be responsible for informing tribal leadership of the need for certification. Once the certification was completed, the tribal clerk would send that to the Secretary of State.

As noted previously, the tribal certification process where the State passed amendments to the Implementing Act has not gone smoothly. This bill would require certification of additional legislation where the tribal nation or its members are referenced. This addition may compound the problem. However, the Secretarial notice should help facilitate the certification process.

The bill is structured backward. As currently written, the State legislative process has already been completed by the time the tribal nations are required to certify a bill. Tribal-state consultation is essential; however, under the bill, it only occurs AFTER it's a done deal as far as the State is concerned. Notice should be given to the tribal nations that they may be affected upon the bill's introduction. Then, tribal consultation and collaboration should occur. Reversing these steps will prevent acrimony, avoid wasting time, and be more aligned with a respectful government-to-government relationship.

For these reasons, MITSC applauds the bill's intent and spirit, which requires Secretarial notice, but believes that the consultation process is misplaced.

Woli won (thank you) for the opportunity afforded to MITSC to provide this testimony.

Respectfully submitted,



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