

March 14, 2025

Joint Standing Committee on Judiciary
State House Station 100
Augusta, Me 04333

Testimony in Support of LD 958, “An Act to Prohibit
Eminent Domain on Tribal Lands”

Representative Faulkingham, sponsor
Senator Moore, co-sponsor with eight others

Dear Senator Carney, Representative Kuhn and Committee
Members,

My name is Stephen Ward and I am testifying in favor of LD
958 on behalf of the Committee on Indian Relations of the
Episcopal Diocese of Maine and as a private citizen residing in
Newcastle Maine.

I served for 21 years as Maine’s Public Advocate representing
consumers at the Public Utilities Commission, the Federal
Energy Regulatory Commission and the courts in many cases.
These included numerous eminent domain cases that involved
taking private property for a public use, such as a power line or a
natural gas pipeline. These were some of the most difficult cases
in which to balance private rights against the public’s interest in
new infrastructure. I came to appreciate why many members of
the public regard the exercise of eminent domain as an extreme
form of government power which a property owner is seldom
able to overcome.

LD 958 repeals a complex system of requirements for the use of

eminent domain on tribal land for the four federally-recognized tribes Maine. That system was established in state law in 1980 as part of the Act to Implement the Maine Indian Claims Settlement and requires a showing that “there is no reasonably feasible alternative to the proposed taking.” It requires a hearing at the Public Utilities Commission, with a possible appeal to Superior Court. LD 958 adopts a much simpler resolution of the use of eminent domain on tribal land. It orders that lands within the Penobscot, Passamaquoddy, Maliseet and Mi-kmaq Nations “may not be taken for public use.”

The reason that I support LD 958’s resolution of this question is that, unlike all other landowners in Maine, the four federally recognized tribes have a unique status: long before the creation of Massachusetts, long before the creation of Maine, these tribes had been in possession of tribal lands and exercised sovereignty in them. They are referred to as “Nations” for good reason. Using eminent domain to seize their property is no more just or appropriate than Maine attempting to take property by eminent domain in Quebec or New Brunswick.

The Committee on Indian Relations has been a steadfast supporter of tribal sovereignty since the inception of the Task Force Recommendation process at the 129th Legislature. This is because, unlike all other federally-recognized tribes in this country, the four Maine tribes have been kept subservient to the desires of Maine’s state government in numerous areas, eminent domain being one example.

In closing, two questions arise. Unlike the other three tribes, no written certification by the chief of the Penobscot Nation is

required; see Sections A-2, B-3 and C-2. Was this an inadvertent omission? Secondly, there is no mention of the lands acquired in 2022 by the Passamaquoddy Tribe as a result of the enactment of LD 906, securing clean drinking water for Sipayik. Does the language of LD 958 apply to these lands and to other future tribal acquisitions?

We urge an “Ought to Pass” vote from the Committee. Thank you for considering this testimony.

Respectfully,
Stephen Ward
Treasurer and Board Member,
Committee on Indian Relations