

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 20, 2021

To: Committee on Innovation, Development, Economic Advancement and Commerce

From: Samuel Senft, Legislative Analyst

### **LD 453 “An Act To Establish a Permanent Appointment of a Member of the Wabanaki Tribes to the Board of Trustees of the University of Maine System” (Newell)**

#### **SUMMARY**

This bill requires that at least one member of the Board of Trustees of the University of Maine System be a member of the Wabanaki Tribes.

#### **TESTIMONY**

##### **Proponents:**

- Need to strengthen government to government relationship of tribes and state. Related to tribe’s right to self determination is right to participate in the government of the state.
- Fostering active participation of indigenous peoples can help protect their rights.
- The Wabanaki people have been in Maine for thousands of years, long before Europeans arrived and subjugated the Wabanaki.
- Native students suffer from socioeconomic equalities and disparities that impede academic achievement.
- Opening a permanent seat for the Wabanaki tribes on the UMS Board of Trustees will help us reach for better outcomes by ensuring that the voices and perspectives of the Wabanaki are heard in UMS policy and budget decisions
- In 2015, a United Nations investigation found that “structural inequalities contribute to Maine tribal members experiencing extreme poverty, high unemployment, short life expectancy, poor health, limited educational opportunities and diminished economic development.”
- The bill will help mend the state’s relationship with Wabanaki peoples
- the federal government established land grant universities in the 1860s partly by taking land from Indigenous people that it had paid little or nothing for
- A more diverse University Board could better support racial awareness and understanding in our young teachers, young business leaders, young professional people and others who graduate from the University
- LD 453 could provide an opportunity to further evolve what is already a good-faith effort to shift perceptions, to right wrongs, to build more truthful and beneficial relationships between our state government and institutions and the governments of the Tribes of Maine State Legislature
- There hasn’t been a member on the UMaine Board of Trustees who represented the Wabanaki Tribes in several years . The first serving member on this Board was Harvard graduate, Mr. Wayne Newell of Indian Township, Maine. Mr. Newell was appointed by Gov. John Baldacci in 2007
- Participation on the UMaine System Board of Trustees by Indigenous persons and other members of color has been sporadic at best up to now. Terms of membership have been cut short for various reasons
- No Wabanaki person has had a seat on the Board since 2016
- A Wabanaki member of the Board would help focus attention on the Native American Tuition Waiver and Scholarship Program, originally designed to increase the recruitment and retention of Native students. This program has suffered from funding cuts.

- A permanent Wabanaki member could help assure that the promise of LD 291, *An Act to Require Teaching of Maine Native American History and Culture in Maine Schools* was implemented.
- A memorandum of understanding in 2018 was agreed to between the University and the Penobscot Nation regarding the care and management of Tribal-related cultural resources held by the University. Similar agreements within the UMaine System could and should be negotiated
- Representation and connection with other tribal citizens is important to the success of Wabanaki students
- By assuring the Wabanaki Community has a voice on the Board Of Trustees, this sends the message that the University is invested in Wabanaki children and concerns and successes.
- The MEA Board of Directors set promoting social and racial justice as one of its priorities this year.
- the System’s Board of Trustees, given its important role in our state, has a heightened responsibility to be inclusive and dedicated to racial equity
- Suggest the seat held by member of tribe by 15<sup>th</sup> seat.
- The University of Maine is located on Marsh Island in the ancestral homeland of the Penobscot people
- At a time when so much is being done to strengthen Tribal-State relations, the deliberate inclusion of Wabanaki voice would foster further opportunity for us to work together on matters of shared interest and importance, thus improving overall relations and providing a model for productive collaboration
- Wabanaki students have been well-served by the UMS, which waives tuition and mandatory fees for Indigenous students
- Maine’s public universities have also added several Indigenous faculty and supports numerous Wabanaki community engagement and cross-cultural learning initiatives that span PK-20
- To see a Wabanaki person like themselves, serving on the UMS BOT sends a powerful message to Native students
- There should also be a Wabanaki citizen as a member of the Maine Community College System Board of Trustee
- The current membership of the Board consists entirely of people who are visibly White. There is no one on the Board who represents the 7% of the state’s population (according to the most recent available estimate of the U.S. Bureau of the Census) who are Indigenous, Black, Hispanic, other people of color, or mixed race.
- Education acts as an equalizer

**Opponents:**

- None

**Neither For Nor Against**

- None

**INFORMATION REQUESTS:**

**1) It was asked why there as been no Wabanaki member of the board since 2016**

The Governor’s Office was unable to locate any records related the Board appointments in 2016, which took place during a prior administration.

**2) It was asked how many Native students are attending Maine community colleges**

In 2020, there were 125 students identifying as American Indian/Alaska Native enrolled across the seven community colleges (in 2020, this number was 151; the decline is in line

with enrollment declines across the system and the overall percentage of American Indian/Alaska Native students remained at 1% of the college population). In fall 2020, there were 262 students identifying as American Indian/Alaska Native in the UMaine system.

**3) It was asked how many years a Board member serves**

Board terms are 5 years.

**4) It was asked how affirmative action is currently implemented**

The Governor's Office responded as follows:

*This law's direction that the Governor "consider affirmative action criteria" is consistent with the approach she takes to appointments generally. For this Board and others, the Governor seeks candidates who will diversify the current membership and bring fresh new perspectives. She wants the make-up of Maine's boards and commissions to reflect the broader population, including as to race, ethnicity, gender, sexual orientation, socio-economic background, and life experience. This goal cannot be achieved by relying on interested parties applying to fill vacancies, so the Governor routinely instructs her staff to engage in outreach to identify and recruit the best candidates with these criteria in mind. The Governor also welcomes recommendations from legislators who have ideas about strong candidates for appointment to the State's boards and commissions.*

**5) It was asked if statute can direct how the governor excises the appointment power (this relates to the proposed amendment).**

The proposed amendment language reads as follows:

*The appointment of the member of the Wabanaki tribes shall be based on the recommendation of the tribal governments of the Wabanaki Tribes, including the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Motahmikuk, the Passamaquoddy Tribe at Sipayik and the Penobscot Nation. In recommending the appointment of the member who is a member of the Wabanaki Tribes, the tribal governments of the Wabanaki Tribes shall establish a process that provides for the membership to rotate among the tribal governments.*

The questions posed is whether there is a separation of powers issue; in other words, is the language so proscriptive as to impinge upon the powers of appointment bestowed by the state constitution upon the governor?

A review of the lanaguge of the state constitution suggests that the proposed lanaguge is allowable. It is clear that the legislature has the power to direct the Governor to make an appointment. The legislature can also specify the bounds of that appointment. While the state constitution describes the appointment powers of the Governor generally, it also allows for appointments as "otherwise provided" by law<sup>1</sup>. This lanaguge would appear to fall under that category of appointments.

**ADDITIONAL INFORMATION:**

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<sup>1</sup> Me. Const. art. V, pt. 1, § 8.  
Office of Policy and Legal Analysis

- The bill is [here](#).
- Representative Newell offered an amendment, which is attached.
- The original bill is from 1865 and can be found [here](#).
- The 1983 amendment can be found [here](#).
- The Board of Trustees website is [here](#).

**FISCAL IMPACT:** The [preliminary fiscal note](#) indicates no fiscal impact.