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GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
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AUGUSTA, MAINE
04333-0001

June 30, 2023

The 131st Legislature of the State of Maine
State House
Augusta, Maine

Dear Honorable Members of the 131st Legislature:

By the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 2004, *An Act To Restore Access to Federal Laws Beneficial to the Wabanaki Nations*.

Like many Maine people, I do not want to see the Wabanaki Nations unfairly excluded from benefits that are generally available to Federally recognized Tribes. I believe the interest we share to do right by the Wabanaki Nations and Maine people must be accomplished through legislation that is clear, thoroughly vetted, and well understood by all parties. Unfortunately, I do not believe that LD 2004 achieves these important standards, and I fear it would result in years, if not decades, of new, painful litigation that would exacerbate our government-to-government relationship and only further divide the state and our people.

That said, I strongly believe that the stated goals of LD 2004 – to ensure the Wabanaki Nations are fairly benefitting from Federal law – can and should be achieved by other simple measures that do not cause confusion and litigation.

In considering the idea behind this legislation, I believe it is important to understand the underpinnings of the *Maine Indian Claims Settlement Act* (MICSA). The settlement – painstakingly negotiated – was mutually beneficial in many ways:

1. It provided \$81.5 million (today's equivalent of more than \$290 million) in Federal funds to the Tribes and the authority to acquire up to 300,000 acres of land around the state from willing private landowners, in addition to their existing reservation lands. Following the enactment of MICSA, the Tribes used this funding and authority to acquire land across the State of Maine and, today, the Passamaquoddy Tribe and Penobscot Nation have greater land holdings than almost any other Tribe east of the Mississippi, with the ability to continue to acquire more land.



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2. In exchange for the ability to acquire land across Maine, the Tribes agreed that State law would apply in this Tribal Territory, in order to maintain a stable and consistent legal and regulatory framework, as opposed to a potentially confusing patchwork of “jurisdictional enclaves” across Maine. In this way, MICSA did something that had never been done anywhere in the country, and something that has never been replicated: it provided a way for the Tribes to reacquire extensive lands from non-tribal owners while avoiding the disruptive effects that would result from displacing State law on those parcels as they acquired them in disparate places across Maine in the decades to follow. This explains why State law applies to lands belonging to the Tribes in Maine. Maine also is not unique in this respect. State laws in Rhode Island and Massachusetts, for example, also apply to Federally recognized tribes in those states.
3. It guaranteed that the Tribes receive Federal benefits and services on the same terms as their counterparts around the country, except for only a handful of statutes that would conflict with State law. It also made the Tribes in Maine eligible for many streams of State funding, including education funding and revenue sharing, which is beneficial because other Federally recognized Tribes around the country generally do not receive such state funding.

LD 2004 focuses on the third provision addressed above. On that point, in December 2019, Suffolk University Boston prepared a report for the State of Maine Task Force on Changes to the Maine Indian Claims Settlement Act. The report identified 151 Federal laws that were enacted after the implementation of MICSA “related to or which may benefit Indians and Indian nations.”

However, this does not mean that the Tribes do not receive the benefits of these 151 laws. In fact, importantly, the same report also notes that it “did not attempt to answer the question whether a law was ‘for the benefit of Indians [or] Indian nations’ and ‘which would affect or preempt the application of the laws of the State of Maine.’”

In evaluating the 151 laws identified by the report at the request of the Judiciary Committee, my Office has determined that *nearly all these Federal laws do apply to the Tribes in Maine*. Only a handful of Federal laws – such as the Stafford Act, the Indian Healthcare Improvement Act, and the Clean Water Act – do not apply.

Therefore, the Wabanaki Nations benefit from nearly every Federal law from which every other Federally recognized Tribe benefits. This is why the Wabanaki Nations have collectively received \$423.6 million in Federal funding since 2019, according to public records.

I will now turn to LD 2004 and the serious substantive flaws with this legislation:

State Law Cannot Override Federal Law

The bill attempts to override a Federal law in MICSA that governs how Federal legislation applies in Maine. As a matter of Constitutional law, State laws cannot override – or preempt – Federal laws. This means that, while LD 2004 purports to make those few Federal laws that are not



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applicable to Tribes in Maine applicable, in actuality, it would not. As Attorney General Aaron Frey noted in his testimony, “the bill may not be effective at achieving its stated intent.”

Imprecise Language Would Lead to Litigation

While the bill cannot override Federal law, the language in LD 2004 would impact State law – and it would impact it in serious ways that would result in widespread confusion about how and where Maine law applied.

This is because LD 2004 “modifies”, or would effectively repeal, a broad swath of Maine laws governing public health, safety, and welfare in all Wabanaki Nations Territory, presently held and later acquired – territory that is scattered across the state and that was acquired pursuant to the agreement that they would remain subject to State laws in perpetuity to avoid the very problem that LD 2004 would create. Those laws could cover fish and game regulations, water quality and land use regulations, Forest Practices Act provisions, air quality standards, labor laws, fire safety and building standards, nondiscrimination laws, school funding and education requirements, subdivision laws, health care regulations, and the probate code, among others. The bill does not identify exactly which State laws would be “modified”, which is a serious problem.

This would create great uncertainty. How are Maine people, businesses, and municipalities to know what laws are in effect where and under what circumstances? And when these inevitable questions arise, I fear they would only be solved through contentious lawsuits decided over the course of years, if not decades. After all, we have to acknowledge that the Tribes and the State have been on opposing sides in court over much clearer legal language – let alone the repeal of a host of unspecified laws – and some of those lawsuits took the better part of a decade for multiple courts to decide.

As the Town Manager for Lincoln put it:

“This bill is of significant concern to us because of the lack of clarity with respect to what it may mean in terms of state and municipal jurisdiction. It’s impossible to evaluate the practical impact of this bill as drafted, particularly with so little time. We may not be opposed to having additional federal laws apply in Maine, but we want to know what they are, so that we can understand the consequences.”

These same concerns were also expressed by the Towns of Baileyville, Carrabasset Valley, Dover-Foxcroft, East Millinocket, Howland, Mattawamkeag, and Millinocket, as well as the City of Calais, and the Guilford-Sangerville Sanitary District and the Veazie Sewer District.

I know that during the work session on this bill, lawmakers attempted to address some of these concerns through an amendment, which some have referred to as “environmental carve-out” provisions. These carve outs were apparently intended to exempt several Federal environmental laws from the scope of the bill, but LD 2004’s actual language does not accomplish that result. This is because the carve-outs only apply to statutes that “directly or indirectly extend the jurisdiction” of the Wabanaki Nations beyond their Indian Territory. But no Federal statute directly



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or indirectly extends tribal jurisdiction beyond Indian Territory – they only apply within Indian Territory. So, the carve outs do not actually apply to any Federal statutes.

Maine's Fight with the Federal Government Over Our Lobster Fishery is a Cautionary Tale

I believe it is also important to keep in mind that there are other potentially serious ramifications to removing the nearly 300,000 acres of land now held in Trust by the Tribes, and any new lands acquired by the Tribes in the future, from any State or local regulation. LD 2004 would transfer the State's regulatory authority in that area to the Federal government. Federal law also invites Federal involvement which can lead to Federal meddling. The turmoil that the Federal government just put Maine lobstermen through with its vast overreach, scientifically baseless, and tremendously burdensome Right Whale regulations should give us pause and serve as a cautionary tale of the unintended consequences that Maine people could suffer under such an agreement.

Unintended Consequences Are Effectively Irreversible

To make this worse, these unintended consequences would be very difficult to fix.

If the language of this bill leads to unintended consequences (as I believe it would), then the Maine Legislature, under the terms of the *Maine Implementing Act* (MIA), would be powerless to solve the problems created by the bill without the express agreement of each of the four Wabanaki Nations.

This means that this bill would operate like a binding contract, and these changes would be effectively irreversible.

This is an incredibly high stakes proposition for the 1.3 million citizens of Maine, as well as for future generations, which is why I continue to emphasize the need for a well-vetted bill that includes specific and detailed language that is well-understood and agreed upon by all parties involved.

Lack of Public Process

I believe the problems I have outlined with this bill are in part the direct result of a lack of a comprehensive public process.

LD 2004 was printed and referred to the Legislature's Judiciary Committee on May 30, the same day legislative committees were expected to conclude their regular work for the session. The bill was then scheduled for a public hearing at nine o'clock the following morning, which did not allow the public a meaningful opportunity to be heard on this highly consequential legislation.

The Judiciary Committee held a work session on June 6, during which proponents offered a complex, substantially rewritten draft of the bill that had not previously been made public.



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Following a second work session on June 15, a divided Committee voted to approve that re-written draft, with an oral amendment intended to address two of the errors that had been identified within it. The final language of this bill was not printed and available to the public – or the even the Legislature itself – until June 20, the same day it was voted on in both the House and Senate.

It does not have to be this way.

State-Tribal Collaboration Produces Positive Results

When the State and Tribes work together deliberately and respectfully, we can make significant progress. For example, last year, after constructive dialogue, I signed into law LD 906 to address drinking water issues at Pleasant Point Reservation. And following months of negotiations between my Administration and the Tribes, I signed into law LD 585 – a law that: 1) delivers important tax benefits to Tribal communities, and, among other things; 2) gives the Tribes the opportunity to benefit from online sports wagering, an industry from which they have historically been excluded.

This year, my Administration worked closely with the Mi'kmaq Nation and the Attorney General's Office to draft LD 1620, *An Act to Amend Laws Relating to the Mi'kmaq Nation and to Provide Parity to the Wabanaki Nations*. This important, 30-page bill amends both MIA as well as the Mi'kmaq and Maliseet Settlement Acts, and it will result in significant, beneficial reform for the Mi'kmaq Nation. I am truly looking forward to signing this historic legislation into law.

I continue to strongly believe that these bills are examples of how a collaborative process – consisting of respectful negotiation, careful drafting, and thorough review – can produce good legislation, benefit the Tribes, and improve the State-Tribal relationship. To me, these bills and the process that led to them are a model for how we can and should make continued progress. Unfortunately, that is the exact opposite of what happened with LD 2004.

Ready to Negotiate to Make Progress

I do not believe that MICSA is sacrosanct and should not be changed. In fact, I recognize that it is a 40-year-old document, and I believe that, working together, we should consider amendments to address unanticipated circumstances or identified problems. To that end, I strongly believe that the stated goals of LD 2004 – to ensure the Wabanaki Nations are fairly benefitting from Federal law – can and should be achieved through clear and direct legislation that creates no confusion or risk of litigation.

As I noted above, there are only a limited handful of Federal laws that do not apply to Tribes in Maine. Proponents of LD 2004, both in the Judiciary Committee and on the House floor, have often cited two of these laws as potentially offering real and meaningful benefits: the Stafford Act and the Indian Healthcare Improvement Act.



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I stand ready to work with the Tribes and with Maine's Congressional Delegation today to develop and support Federal legislation to make those laws apply to the Wabanaki Nations immediately – and I know that U.S. Senator Angus King stands ready to assist.

Conclusion: Collaboration, Not Litigation

My overarching goal is to foster a relationship between the State and the Tribes that is defined by collaboration, not conflict and litigation.

When we have worked together over the last four years, we have accomplished great things – amending Maine law to allow Tribal prosecutions of certain domestic violence offenses; putting in place the strictest water quality standards in the country to protect sustenance fishing; enacting a first-in-the-nation statute requiring Tribal collaboration in State agency decision-making; delivering tax benefits for Tribal members and their businesses; providing the exclusive opportunity to engage in mobile sports wagering operations; adopting a state Indian Child Welfare Act; and – now – reforming our laws to dramatically expand the authorities of the Mi'kmaq Nation and Houlton Band of Maliseet Indians, among many others.

This is more progress in four years than any governor has made in the past 40 years. None of these achievements were easy. They were the result of deliberate and respectful dialogue and negotiation. I truly believe we can accomplish the intended goals of LD 2004 by following this same collaborative, respectful approach that led to these successes and ultimately deliver on the promise of greater benefits for Tribal communities while avoiding the confusion and litigation that would clearly result from LD 2004.

I care for the health, welfare, opportunity, prosperity, and future of the Wabanaki people, just as I care for every Maine person. We all call this beautiful place that we know as Maine home, and I remain committed to collaborating with the Tribes, the Legislature, the Attorney General, and Maine's Congressional Delegation to improve the lives and livelihoods of all people in Maine, tribal and non-tribal alike.

Sincerely,



Janet T. Mills
Governor



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