

**Testimony of John Dieffenbacher-Krall, Executive Director, Maine Indian Tribal-State Commission (MITSC), Concerning the Appropriation Proposed for MITSC in FYs 2012 and 2013 contained in LD 1043, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013
March 15, 2011**

Senator Rosen, Representative Flood, and honorable members of the Joint Standing Committee on Appropriations and Financial Affairs; and Senator Hastings, Representative Nass, and honorable members of the Joint Standing Committee on Judiciary; my name is John Dieffenbacher-Krall. I serve as the Executive Director of the Maine Indian Tribal-State Commission (MITSC). I appear before you today to address the State appropriation to MITSC for fiscal years 2012 and 2013 as proposed in LD 1043.

For Committee members who are unaware, MITSC is a creation of the Maine Implementing Act found in Title 30, §6201 et. seq. The Maine Implementing Act represents Maine's codification of the legal settlement it reached in 1980 with the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Indian Nation. This settlement resolved a land claim initiated by the Passamaquoddy Tribe and Penobscot Nation in 1972 and later joined by the Houlton Band of Maliseet Indians. The Federal Government funded the settlement of \$81.5 million with the condition that the State and the Tribes reach agreement on jurisdictional issues. The Maine Implementing Act delineates that jurisdictional agreement.

MITSC exists to "continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State." The settlement negotiators recognized that despite years of extensive talks gray areas remained in the final agreement. They also anticipated issues of interpretation would arise in the future. MITSC was created to serve as the balanced body with equal representation from the Tribes and the State to examine questions related to the Maine Implementing Act and offer suggested resolution of contested matters to the signatories.

MITSC plays a critical role in facilitating tribal-state relations. We fulfill many of the functions typically performed by a state office of Indian affairs. Signatories to the Settlement Act regularly turn to MITSC for contact information and diplomatic assistance. MITSC also staffs initiatives related to Wabanaki-Maine relations. From 2006 to 2008, MITSC staffed the Tribal-State Work Group, initially begun under an executive order, and later as a legislative creation via LD 1263, Resolve, To Continue the Tribal-State Work Group. MITSC also assists its Indian constituents with scheduling and organizing periodic Wabanaki Leaders meetings.

Though members of the Judiciary Committee have already received it, attached to my testimony you will find "Maine Indian Tribal-State Commission (MITSC) Accomplishments 2006 – 2011." This document is not exhaustive but it does list many of MITSC's more significant achievements during the last five years, including LD 445, An Act To Improve Tribal-State Relations.

One of the four sections of LD 445 added requirements to Maine law concerning how the MITSC budget is addressed. MITSC raised concerns about the handling of the Commission's budget in testimony to these two committees in 2009 and 2010. MITSC applauds the work of the Judiciary Committee last session to address an unequal budget process that did not reflect the equality of the sovereign signatories party to the settlement.

To review, among the changes instituted by LD 445 include an amendment to 30 MRSA §6212 (6) that requires the "Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee" of the Tribes "to produce a proposed biennial budget for the commission and to discuss any adjustments to funding." Timing issues have primarily conspired to prevent a meeting between the signatories to take place. MITSC has been in communication with Dan Billings, Governor LePage's Chief Legal Counsel, to schedule the necessary meeting and any associated follow-up to produce a budget figure acceptable to the Wabanaki and the State in time for Governor LePage's change package to be submitted to the Legislature next month.

At the MITSC meeting held July 1, 2010, Commissioners directed me with the encouragement of the Governor's Chief Legal Counsel at the time to prepare a budget that includes a full-time executive director. During the last six years, the executive director position has fluctuated between 25 to 35 hours per week. The budget figures that you have recommend funding MITSC at \$78,000 per year for FYs 2012 and 2013. For MITSC to have a full-time executive director position, the Commission will need approximately \$122,850 in FY 2012 and \$126,900 in FY 2013.

The possibility exists that the Tribes may make contributions to support MITSC operations. No law requires the Tribes to support MITSC operations. In fact, Tribal negotiators to the settlement agreement contend that the State accepted responsibility to fund MITSC operations. In the past, Tribal Governments have voluntarily contributed to MITSC operations in order for the Commission to better meet its responsibilities and complete the work that the signatories asked it to perform. Three years ago the Wabanaki signatories suspended their voluntary contributions to MITSC to protest in their view the inequitable handling of the MITSC budget by the State of Maine. Last year MITSC was able to end the year with a small surplus thanks to a \$5,000 infusion from the Tribes that reflected a positive response to the enactment of LD 445.

At one time, the State of Maine was required to fund MITSC operations. That provision was later rescinded. From MITSC's perspective, the most important aspect of the MITSC budget setting process is that it be consensual with no signatory dictating to any other signatory what MITSC will do. The process should also produce an agreed upon allocation of contributions from the signatories.

Governor LePage and his staff have taken a number of steps to improve Wabanaki-Maine relations. The Tribes have expressed cautious optimism about the actions of the LePage Administration to date. MITSC believes that the State and the Wabanaki Tribal Governments are acting in good faith. We need to ensure appropriate consultation and deliberation takes place as required under the amendment to 30 MRSA §6212 (6). With everyone continuing to operate in good faith and a spirit of cooperation, MITSC believes it can get done.