Testimony on LD 651 "An Act to Improve Tribal-State Relations"

Good afternoon Senator Hastings, Representative Nass and members of the Joint Standing Committee on Judiciary, I thank you for the opportunity to address you on LD 651, "An Act to Improve Tribal-State Relations."

The issue that this proposed legislation references is a very important issue. I thank Representative Charles Priest for the work he has done to advance Tribal-State Relations. As Chair of the Maine Indian Tribal State Commission, I will restrict my comments to the impact the proposed legislation would have on the Maine Implementing Act and recommendations toward development of policy involving the interpretation of the comparative municipality language and the area of sovereign jurisdiction under "internal Tribal matters." This section of the Maine Implementing Act (MIA) has been the most controversial aspect of the settlement.

Today, I want it to be clear that I am here only to offer cautions in my capacity as Chair of MITSC. I have not had an opportunity to discuss LD 651 with the Tribal Chiefs. I know they are deeply concerned about this issue, but I do not know what their position is on this specific piece of legislation.

I ask that LD 651 be placed on a two-year schedule to allow time to develop the legislation with full consultation of all signatories. I ask this because LD 651, as written, is in conflict with both the MIA and the Court's interpretation of MIA.

Firstly, in Great Northern Paper v Penobscot Nation, the Court interpreted the MIA and decided that certain Tribal meetings, and meeting minutes are protected from scrutiny under the FOAA:

> *We conclude that the Act does not apply to the Tribes when they act in their municipal capacities with respect to internal Tribal matters.*

The proposed legislation waives the applicability of the State FOAA contingent on the Tribes "adopting a freedom of access ordinance certified by the Secretary of State to be to be equivalent to Title 1, Chapter 13 with ***respect to the bands meetings and documents***." The Band's meetings and documents, in statute and through Court interpretation of that statute, are in most instances, protected.

Additionally, a statute "equivalent to Title 1, Chapter 13," would place undue burden on the Tribes who are already struggling under heavy economic burdens. The Tribes do not have the same level of resources as State, county or municipal governments to address these requests. As a point of fact, the Tribes are only similar to municipalities and have unique responsibilities distinct from any other government in that they have a primary responsibility to protect and enhance the culture of a People. Therefore a statute "equivalent to Title 1, Chapter 13" may not be the best vehicle to address the issues embedded within the "internal tribal matters" language.

Finally, LD 651, as drafted, would constitute an amendment to the MIA. The federal, Maine Indian Claims Settlement Act or MICSA clearly outlines the procedures for amending the MIA. I would contend that these procedures have not been followed.

I have argued before you that the "internal Tribal matters" section of the MIA should be clarified. LD 651 might be a good vehicle to advance that clarification, but it must be modified so that that it is not in conflict with the MIA, it does not place an undue burden on the Tribes and it preserves the Tribes role as protector of culture. Resolving the "internal Tribal matters" language is one area of the MIA that MITSC is currently studying. I ask that you take a step back and allow the process outlined in the MICSA to unfold.

LD 651 should be placed on a 2-year track so that the law carefully outlined in the MICSA can be followed. If consensus among the signatories cannot be reached on a solution, the law must be withdrawn.