

**House Speaker Sara Gideon, Senate President Troy Jackson, Penobscot Nation Chief Kirk Francis, Former Penobscot Chief and Elder Barry Dana speak at the legislative Judiciary Committee's public hearing for LD 2094: "An Act To Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act". February 14, 2020.**

**Chair of Judiciary, Senator Mike Carpenter (Houlton -D- Senate District 2):**

Without any further ado, the chair would recognize the speaker of the house, the Honorable Sarah Gideon.

**Speaker of the House, Rep. Sarah Gideon (Freeport - D- House District: 48) :**

Thank you very much. Good morning, Senator Carpenter, Representative Bailey and honorable members of the Judiciary Committee. I'm Sarah Gideon from Freeport. I'm Speaker of the House of Representatives and today I'm honored to be here before you to speak in favor of LD 2094, an act to implement the recommendations of the Task Force on changes to the Maine Indian Claims Settlement Implementing Act. The bill before you touches on complex policy questions and areas ranging from criminal justice to taxation, to environmental regulation, and beyond. But while those specific issues are certainly important, this bill's significance is even greater than words on a page. That's because this bill represents an opportunity to turn the page on an era of Tribal-State relations in Maine that began with the passage of a law, which has unfairly deprived Tribal members of their rights for far too long. The language of the joint order that established the Task Force that led to the bill before you, read.

We, the members of the 129th legislature, now assembled in the first regular session, on behalf of the people we represent, take this opportunity to recognize that the Maine Tribes should enjoy the same rights, privileges, powers, and immunities as other federally recognized Indian Tribes within the United States. As the members of this committee understand, these recommendations are significant. They represent five months of the rigorous work that many of you did in evaluation and discussion among the Tribes, a group of bipartisan legislators, the office of the Attorney General, the office of the Governor, and the Maine Indian Tribal-State Commission.

Today, the discussion broadens, as you the honorable members of the Judiciary Committee welcome others to gather information necessary to explore these proposals and their implications thoroughly. Ahead of you, we all know are hours of discussion with the other committees of jurisdiction, and with the interested stakeholders that include representatives of the Tribal Nations, the Attorney General's office, the governor's administration, and MITSC.

As you work through this process together, I humbly ask that you look to the aforementioned language as a guide. The Tribal and non-Tribal peoples of Maine all deserve a process that allows us to modernize our relationship, so that the Maine Tribes do enjoy the same rights,

privileges, powers, and immunities as the other federally-recognized Indian Tribes within the United States. I'm confident that all of us who have been involved and will be involved in this process, can and will continue to conduct it with civility and transparency and respect, and that the end result will be a product that deserves to earn the approval of both the state legislative process and that of the Tribes.

Before I close and leave you to begin your considerable work, I want to just take a moment to thank all the people who made it possible for us to reach this point. That must begin with Chief Dana, Chief Francis, Chief Nicholas, Chief Peter Paul, Chief Sabattis, Ambassador Dana, along with the other members of tribal leadership and their counsel, who are willing to put their faith in me and the Senate President, and Senator Carpenter and Representative Bailey and all the members of the legislature, when we ask them to begin a process aimed at improving Tribal-State relations, to the benefit of all of our people.

Thank you to the numerous legislators who played important roles in that process, both who participated in early planning meetings and those who worked diligently and thoughtfully on the Task Force that grew out of them. Thank you to Attorney General Fry and the members of his staff who have provided their considerable expertise and guidance and thank you to Governor Mills and the members of her administration, for their thoughtful counsel and leadership. After all of these months of work and after all of these years, I am truly hopeful that every one of us shares the same goals. And I know that the people in this room are willing and able to help us achieve them. Thank you so much.

**Chair, Senator Carpenter:**

Thank you. Madam Speaker, are there questions of the speaker? If not, thank you very much. The chair next recognizes Senate President, Senator Troy Jackson.

**Senate President, Senator Troy Jackson (Allagash-D- Senate District 1):**

Senator Carpenter, Representative Bailey, and members of the Joint Standing Committee of the Judiciary, It's great to see you here in this great big room. My name is Troy Jackson. I have the honor of serving as President of Maine Senate representing Northern Aroostook County. I'm here today to lend my full support to LD 2094, an Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act. To begin, I'd like to not only recognize the amazing work that the Task Force has undertaken and accomplished, but also recognize the group that made the Task Force a reality. The Task Force was officially created last June by Joint Order, but it was conceived by the work of dedicated group of stakeholders early in the first session. These stakeholders which include the Tribal leaders, legislators, administrators, and policy and legal representatives met many times and work cooperative to lay the groundwork for the Task Force.

This original group added focus, parameters, and direction to ensure the Task Force had the time, and support staff necessary to write this important legislation. The Task Force met diligently throughout the Summer months and even into this session working through complex

multi-faceted issues that impact both the Tribal and non-Tribal citizens of the state. Much like the original task stakeholder group, the Task Force included Maine Tribal leaders, state lawmakers, and representatives from the governor's office, Attorney General's office, and the Maine Indian Tribal-State Commission. The public hearings work sessions lasted for hours and because of the commitment of those present, the Task Force was able to put forth a meaningful and comprehensive bill. Task Force accomplishments LD 2094 cannot be overstated. With this proposed legislation, there was a real opportunity to right past wrongs, establish a viable working relationship based on mutual understanding between the state and the Tribes and to avoid future controversies.

**Senate President, Senator Troy Jackson:**

This legislation was carefully crafted and ensure our Maine Tribal Nations are treated with the dignity and respect that they deserve. I recognize there will be many who follow me, who can share the specifics of the bill with more accuracy and authority than me. But I wanted to take a moment to recognize the incredible work and commitment of the Task Force. We are better because of your dedication to a successful outcome, and your willingness to reach common ground.

I only want to say, because I know there's lot of people want to speak on this, but for me this is obviously a huge issue and most things I bring back to personal experiences and the main reason why I served in legislature is because of things that I certainly felt were wrong with the way that the system worked. And often laws that I see that are so clearly written in a way that should benefit the people I care about, that are consistently not put forward in a way that they are written and the frustration and anger that I feel at times, I can only imagine what it had been like for our Tribal members.

Could not put myself in their place, but I certainly understand a little bit of how things could be constantly turned in a way that is just completely unfair, unreasonable, and flies in the face of what good government should be, so I wanted to come and tell them that I certainly appreciate and hope that we can make changes that they have so long waited for. I certainly wanted to thank the members of the Task Force for their hard work and I certainly want to thank this committee for what they're going to go forward with in the rest of the session. It's important things. Hopefully we can do meaningful stuff and make real changes that are, I believe are so needed. With that I'll certainly take any questions but more than anything I want to thank you and look forward to the great work this committee is going to do.

**Senator Carpenter:**

Thank you Mr. President. Are there questions for President Jackson?

No, thank you very much.

Chair next would recognized Representative of the Office of Governor Mills, Mr. Abello. I would also point out as he's making his way up there, if you have testimony, prepared testimony our incredibly capable committee clerk, Susan Pinette is over here. If you would just make sure that

you hold it up in your right hand and wave at her or whatever, she'll come grab it and distribute it to us. Good morning Mr. Abello.

**Mr. Tom Abello, Senior Policy Advisor/Legislative Affairs, Office of Governor Mills :**

Good morning Senator Carpenter, Representative Bailey, and members of the Joint Standing Committee on Judiciary. My name is Tom Abello. I represent Governor Janet Mills. I wanted to provide written comments into the record this morning. I won't be reading those, those comments into the record, but just wanted to leave those with you. And then as the administration and the governor digging into all the details of the bill, we are closely monitoring today's session, but also looking forward to the work sessions where the cabinet members, other relevant staff can participate with you all in the committees of jurisdiction as you drill into these recommendations as you drill into the details of the bill.

I just wanted to come provide those written doc...testimony, but then talk about the work session moving forward and how we might be able to participate. I really appreciate all the work of the Task Force. It was a thorough job over the Summer and Fall. Appreciate the work of you all in the committees of jurisdiction and then we look forward to working with you as this bill moves forward. With that, I'm happy to answer any questions but that's where we are at this point. Thank you.

**Senator Carpenter:**

Thank you. Mr. Abello, are there any questions from members of the committee of Mr. Abello? Thank you. Representative Bailey has a question.

**Chair, Rep. Donna Bailey (Saco- D- House District 14):**

I'm sorry, only because we don't have your written comments, can you just summarize? [crosstalk] I don't know what it says.

**Mr. Tom Abello, Office of the Governor:**

So I think you know, generally speaking um the governor is um... She's read the bill several times.

I think where we are at this point is one of wanting to drill down more into what the implications of all the recommendations would be. We are extremely interested in a partnership and building that partnership with all the Tribes. There are certain pieces of the recommendations that the governor supports, those pieces potentially around criminal jurisdiction. She does want to know more about each of those recommendations and how they might move forward. And then there are certain pieces that we still have a lot of questions about in terms of implementation, how they might work with communities, municipalities, and current state rules and regulations. That's essentially where we are at this point.

**Senator Mike Carpenter:**

Thank you. Mr Abello. Representative DeVeau.

**Representative John DeVeau (Caribou - R - House District 149):**

Thank you Mr. Speaker. Just quickly, could you tell me what are some of the concerns that the governor has about, you'd mentioned that she's [crosstalk]

**Mr. Tom Abello:**

Yeah, I think, and again we still need to drill down a little bit into those, but certainly some concerns around the taxation pieces of the bill section 23 as well with around some of the civil jurisdiction. I think that's a place where we have some additional questions. Those are, those would be two examples.

**Senator Carpenter:**

Thank you Mr. Abello. At this point we're scheduled to move to Tribal Elders. However, my understanding that Chief Francis, from Penobscot Nation has to leave for an out-of-state engagement, although he may also qualify as an Elder. [laughter] I am going to call on him first. Chair would recognize the Chief of the Penobscot Nation and warn the Chief, you're the first one that'll be on the clock. We have a button up here that if you stray too far over, we just push the button. You've probably seen the Ellen show. Sorry, you might be late. You might be late for your meeting. Good morning, Chief.

**Chief Kirk Francis, Penobscot Nation:**

Good morning, everyone and thank you for getting me in trouble with Tribal Elders already this morning and I do feel about 105 after 14 years of doing this job, but I would like to thank the Senator, and Representative Bailey and members of the committee for allowing me to provide some comments today.

Penobscot Nation participated fully in the Task Force to develop this bill and we support the recommendations. I would argue because of our participation, Senator, this is a very perfect bill, but I would also say that it's the most unified effort. I think among all the Tribes that I've seen in a long time. The Tribal leaders have been meeting every Wednesday and throughout the last eight or nine months, we've had constant conversation, and work through all of these recommendations together. I want to start just by maybe correcting a few misunderstandings about the Settlement Act and Tribal Nations in Maine. First, our sovereign authority over our lands and resources did not come into existence in 1980 with the Settlement Act. It was quite the contrary as the US Supreme Court said, our sovereignty predates the Republic and we have exercised it since time immemorial. Second by the terms of the US constitution, Maine could never obtain power over our lands and natural resources unless Congress granted it.

Congress did grant Maine significant powers through the federal Settlement Act. While Penobscot understood and agreed with the provisions of the Settlement Acts that resolved the land claims, we did not understand that Maine would presume power to treat us as wards. Further provisions were changed without our knowledge or consent in a manner similar to the deceptive practices that led us to the Settlement Act and over the illegal takings of our land to

begin with. The Settlement Act undermines our ability to provide services to our people or create an economy that benefits our community and those around us. Uncertainties and ambiguities have led to costly litigation and continuing conflicts between the Tribes and the state. Lastly, provisions of the Settlement Act exclude us from federal laws that would help us and nearby communities. Since 2013, when then Attorney General challenged the application of the federal Violence Against Women Act to the Maine Tribes, our Tribe has lost over \$3 million in federal funding and the ability to adequately protect Native women from acts of violence.

Other Tribes across the country faced no such obstacles. At the urging, again of another member of our delegation, unlike other Tribes across the country, we were specifically the only Tribe in America. The only Tribes in America left out of the Federal Stafford Act, which simply would have allowed us to declare emergencies on our land for federal assistance. It is clear that the restrictions contained in the Settlement Act that tried to make us wards of the state have been an utter failure. If you look at other Tribal Nations throughout the country, you will see that when they would thrive, so do the surrounding non-Indian communities. When there are good relationships between Tribal and state governments, both find a way to develop mutually-beneficial opportunities. The Penobscot Nation and other Maine Tribes care about this state and these lands and natural resources far more than anyone else, I would argue.

Our ancestors are buried here. We will be buried here and our children will be buried here. The Tribal Nations are very different from corporations that come into the state and leave when profit is no longer easy to obtain. We are the original inhabitants of Maine and we're simply not going anywhere, so any success we are able to achieve will be reinvested back into the state. We truly believe the work of the Task Force and in work of the Task Force and believe it's time to stop treating the Tribes fairly and equitably as they are all across this country. Thank you.

**Senator Carpenter:**

Thank you. Chief Francis. Are there any questions for Chief Francis? Representative Deveau?

**Representative John DeVeau:**

Thank you, Mr. Chair. Chief, thank you for coming and I understand that you're not quite the Elder yet. My question is: Some people are misinformed about the changes that legislation, this changed legislation will do.

There's a misconception that if we pass this legislation, there may not be any oversight over the Tribes, the Tribes in Maine. Some of the comments have been that the Tribes in Maine will do whatever they want whenever they want on their lands. Can you provide a brief example of any current federal law that would pertain to your Tribe even if we make changes to the Maine Settlement Act?

**Chief Kirk Francis, Penobscot Nation:**

Yeah, so that is, thank you for the question. It is a huge misunderstanding that you know, Tribes under total federal authority and with autonomous sovereignty somehow turns those territories

into the Wild West. It's a highly-regulated system. Our lands are managed by the Department of Interior, development on Tribal lands go through rigorous reviews. There are all of the environmental protections, reviews, NEPAs has all of those things required. There is tons of federal oversight and I know the Task Force is aware of this because we went through it ad nauseum for the last seven months.

But I think it's a great question because there is a misperception that somehow if the state releases oversight that there's nothing going on and that's just not true at all.

**Senator Carpenter:**

Senator Keim, you have a question.

**Senator Lisa Keim, (Oxford- R - Senate District 18):**

Thank you. Thank you for being here, Chief. My question was, you mentioned that there are provisions that were changed without knowledge or consent. I don't know if this answer happens to be long, maybe you could just provide it for our work session, but I was just curious what those were.

**Chief Kirk Francis:**

Sure. I'll provide the broadest example. You all debated the Violence Against Women Act, yesterday. The reason we're having that debate is because of a provision that was added to the Federal Act in the 11th hour while it was in Congress and inserted, that said the Tribes of Maine would not benefit from congressional acts specifically for the benefit of Indians unless we were specifically mentioned in those bills.

That's why VAWA doesn't apply here without us having that conversation. That's one thing that has crippled the Tribes of Maine on dozens of Acts, from the Clean Water Act to the Stafford Act, as I've mentioned, to Tribal Law and Order Act. All of those things have been prohibited from being implemented here because of that language that was added with no knowledge of the Tribe.

**Senator Lisa Keim:**

So you're saying the original Settlement Act, but not changes afterwards. You're saying the original Settlement Act.

**Chief Francis:**

No, there have been no changes to the Act that I'm aware of since 1980.

**Senator Carpenter:**

Representative Rachel Talbot Ross, do you have a question?

**Representative Rachel Talbot Ross (Portland - D - House District 40):**

Thank you, Mr. Chair. No, I think the question has been asked unless there's anything other that you'd like to add around the ways in which it's prohibited you from economically growing.

**Chief Kirk Francis, Penobscot Nation:**

Yeah, so just briefly, you know the Tribe, the Penobscot Nation has representation.

Our legislative counsel is a former staff director with the United States Senate and has been in tons of these hearings. The biggest inhibitor to economic development in Indian Country is jurisdictional fights. And so over the years we've worked to try to develop alternative energy for an example, we've been through four different companies that have come in and looked at that on behalf of the Tribe and whether our Tribe decides to do that or not, it's still a question, but this is a \$200 million project and getting into the weeds on who gets to permit, we got to do a Tribal permit and a state permit. There's Tribal fees and estate taxes, there's all, and so it just turns off investment and so Tribes that don't, that are set in their own schemes and structures in terms of how they're going to deal with business and entities have been far more successful.

**Representative Rachel Talbot Ross:**

Thank you. I just want to add a note of thanks as well to all the work that you've done on behalf of the other Chiefs. I hope we'll hear from each of them today and the presentation that you gave to the Judiciary Committee on the bill a couple of weeks ago. Thank you very, very much for being here.

**Chief Kirk Francis:**

Thank you Representative.

**Senator Carpenter, Chair:**

Are there questions of Chief Francis? If not, thank you very much.

**Chief Kirk Francis:**

Thank you.

**Senator Carpenter:**

At this point we're going to turn back to the list of Elders that I've been provided and we'll come back to the Chiefs, the other Chiefs in a few minutes. The next person that I'm looking to have speak is former Chief of Penobscot, Barry Dana.

**Barry Dana, Former Chief of Penobscot Nation, Elder:**

Thank you very much for this opportunity Senator Carpenter, and Representative Bailey, and the entire committee. I was asked recently to attend this session and give some perspective on what it's like to be a Native Elder, to be a Native Sagama and to highlight what Tribal sovereignty really means to us, not from a legal standpoint. I'll just give a disclaimer right now. I



haven't followed my script yet, cause I always feel that when you stand before a particular group of people, you're resonating with them at that precise moment.

When you're writing a speech, you don't know who you're encountering. You don't know that the mood of the room or the Spirit that's moving through that to that circle. I'll do my best to stick to script, but I don't have much time. I want to just say that this is a Sacred obligation for me to attend here because I not only represent my people who have never relinquished Tribal sovereignty, but I represent the Ancestors who died protecting our Tribal sovereignty. What my testimony is about is, not about the words in the Settlement Act. It's about the intent of my people in my Tribe in return, in regards to Tribal sovereignty. It dates back 12,000 years and when you live in an area for 12,000 years, you are your own people. No federal government, no state government can define you and it can't define your sovereignty. We define that.

To give you a real perspective, where I came from, I'll just give you the words of my grandmother back in the 70s when we were going for federal recognition, it was, tried to explain to her what that meant and her words were, and I was there at the meeting. "I'll have no federal government determining whether or not I'm Indian." They had to explain to her that "no Bebe, it's us telling them we're Indian." I guess that appeased her to some extent. I got so many good stuff there. I just keep forgetting it now.

The problem here is the concept of colonization. We are forced as Native people to think in terms of words and laws. That's not how we operate. We have to operate that today, but in terms of how things are worded, we don't necessarily operate that from our heart. It's a very important. One last comment: Justice Saufley gave to me a message when I was Chief, when we refused under Tribal sovereignty to offer the state our papers, she said "Reasonable people act in a reasonable manner." I took that to heart, so instead of complying with the law as written, we gave the papers by way of a Protest March to Augusta. I'm here now asking you as reasonable people to do the reasonable thing and recognize Tribal sovereignty, what it is. Thank you very much.

**Senator Carpenter:**

Thank you, Chief Dana. Are there questions of Mr. Dana?

Thank you very much. Oh, I'm sorry. Representative Haggan, I missed your hand.

**Representative David Haggan (Hampden R - House District 101):**

Thank you Mr. Chair. It's so nice to see you again. Chief Dana, could you just explain sovereignty as it pertains to your definition in more detail?

**Barry Dana, Former Chief of Penobscot Nation, Elder:**

Thank you. As I look at sovereignty in that as I was raised in the culture, you know with my mother, my grandmother, and other Elders, sovereignty stems from your connection to your land. Now, as I said, we've been here for 12,000 years and when you build upon 12,000 years

of living within a particular area, you create your own network, your own society, your own economy, your own everything. This is what defines us, so to have a colonizing European concept on how we are to see ourselves is totally foreign and it's not well understood. Therefore, you get treaties, therefore you get Settlement Acts that are written by those who have it their way and it's not our way. There's the conflict. The conflict is like oil and water, we can try to mix them, but in reality they don't mix. It's unacceptable to be colonized yet it's part of our survival, today. We had to accept certain components, but they were misunderstood and as the Chief said, they were changed at the last minute.

**Senator Carpenter:**

Other questions for Mr. Dana? Thank you very much, Sir.

**Former Chief Barry Dana:**

Thank you.

**Senator Carpenter:**

Now looking for Mark Chavaree, Tribal Elder.