

Presentation Task Force morning Audio 1-14-2020 pt_3

Sen. Michael Carpenter, Co-Chair of the Task Force:

Okay with that, enough of the pithy little stories for the day. Are there questions from members of the committee, before we go forward? Representative Babbidge.

Rep. Chris Babbidge:

Thank you, Mr. Chairman. Thank you for enlightening, very brief summary compared to all that you've done, but thank you so much. I guess I'll ask Chief Francis, can you help to explain to me what the relationship is of the Tribes with the federal government right now?

Sen. Carpenter:

In 25 words or less.

Chief Francis:

So an easy one. So I, I appreciate the question. I think you know the, when you look at Tribes all across America, including the Tribes of Maine, we spend a lot of time, and I'll get to your question, but we spend a lot of time nationally. We wear a lot of hats, with a lot of different organizations. We spend a lot of time developing national policy, doing a lot of work in Congress.

We have representatives here today that speak for us in the United States Congress. And so we do a lot to build our relationship with the federal government. But our relationship today with them is, is a trust fiduciary relationship. So as far as the federal government's concerned, the Tribe, Tribes of Maine have all the same rights, privileges, and they have all the responsibilities they would have to anyone else, when it comes to the Tribes of Maine.

So our relationship with the federal government is a strong one. Over at Penobscot, we run over 110 federal programs. We employ over 255 people or so, between full and part-time, and all of that, and consultants too, to run those programs. We manage close to a couple of hundred-thousand acres of land that is done in conjunction with Department of Interior, Bureau of Indian Affairs, and a whole host of government agencies in doing that.

So, I would say the Tribes of Maine it's not perfect, and no government-to-government relationship ever is, but, but it's certainly a strong one that I will say is just is based on the foundational principles that we're talking about in this report.

Rep. Babbidge:

So thank you for that. And, I guess as I look at the construction of the, of the Task Force really strongly represented by different, by different groups, but if, and the, and the Task Force was created by this legislature. So that's partially answering my question. But the reason we don't have a representative of the federal courts, or of the Department of the Interior on the Task Force, would be because of the diminished role of the federal government because of the Maine Implementing Act. Do you think?

I mean, did that diminish the, is it more of a state and Native relationship which has in fact reduced the federal role or not?

Chief Francis:

Yeah, I mean the Implementing Act has reduced certainly federal, the federal role in terms of authority, in terms of how the United States district attorney for example, can prosecute cases coming from Indian Country in Maine and all of that. So the Implementing Act has certainly restricted a lot. Some of that federal authority and oversight in terms of, especially around the criminal-based stuff. But so yeah, there has been a diminishment of that relationship in that aspect as a result of The Implementing Act.

The reason why those folks weren't represented on the committee though, I don't think was grounded in that. I think they would have been valuable in that process. I just don't.. you know... Trying to get somebody from the Department of Interior, to seven months worth of meetings here in Maine I think would have been difficult. Hard to get a meeting with them in DC, but I think the, so I can't answer as to why they were, weren't on the Task Force. I just don't think it really ever came up.

Sen. Carpenter:

Thank you Representative Babbidge. Representative Evangelos.

Rep. Jeffrey Evangelos:

Thank you Mr. Chair. I just wanted everyone to know and for those folks listening on page 33, as Representative Bailey went down the consensus recommendations, there's a record of the vote taken on each one, and they were either unanimous or near unanimous. So it's a very strong consensus. I just wanted to get that on the record. Thank you.

Sen. Carpenter:

And before we go any further with questions, I would call on my Co-Chair, Representative Bailey, just to explain to the audience how we plan to proceed from here.

Rep. Donna Bailey, Co-Chair of the Task Force:

Thank you Mr. Chair. So the legislation that formed the Task Force authorized the Judiciary Committee to vote out legislation. So that would be our thought is that today we would vote to ask Peggy, in conjunction with Sam and Janet, to put together a bill that would incorporate the Task Force's recommendations. Now we know that there, that's going to be a huge bill, obviously. There's a lot of different subject areas. So our thought is to hold all-day, or even if we need two days, but at least an all-day public hearing, and do that in the AFA room, so that we can invite the other committees of jurisdiction to join us, stagger it, and do criminal justice, criminal jurisdiction at nine o'clock. Invite the Criminal Justice Committee to join us. Do taxation at 11 o'clock. Invite the Taxation Committee to join us, so that they can help us ask the relevant questions, and also just assist us in those areas that we don't necessarily have as much expertise.

And so that would be the plan. So for today, we just need to vote and, and authorize legislation to be drafted. But that would be the plan going forward. We're tentatively looking at February 14th, although I don't think that's been firmed up. [crosstalk] I did put in a plug at chairs this morning with, at least the House Chair of AFA, and he indicated it would be his Valentine's gift to me letting us use his room. So, at least it's on his radar. But that's the tentative date. If people just want to keep that in mind. We are going to try to do it on a Friday, just because that seems to be a day that the AFA room is likely to be available.

Sen. Carpenter:

No, I'm not sure if Senator Jackson was planning to give me a present, a Valentine's present or not, but I'll ask. So that's where we, excuse me, how we intend to proceed. Representative Harnett, another, a member of the legislature who was all, not on the Task Force, attended every meeting. Yes sir.

Rep. Thom Harnett:

Thank you. Mr. Chair. Chair Bailey, do you envision one single piece of legislation coming out with all of the recommendations bundled as one?

Rep. Bailey:

We do. Although we are aware that, that as we go through the process, that there may be a need or desire to break off certain pieces if that is necessary, or that's something that the committee feels they want to do. We can certainly do that. We have a number of carried-over bills. If you remember, there were a number of carryover bills having to do with Tribal issues, so we have a number of vehicles to do that if we need to. But at the beginning we are envisioning one bill.

Rep. Harnett:

Just a follow up.

Sen. Carpenter:

Yes.

Rep. Harnett:

Was there any discussion about breaking off recommendation number one, about the dispute resolution process from your jurisdictional issues, which is really the remaining recommendations.

Rep. Bailey:

Right. And again, we haven't firmed that up yet. We're going to meet after we get done here with stakeholders, and you're welcome to join us. Anyone is welcome to join us. Because we didn't really firm up exactly what shape that ADR process, I call it an ADR process, would look like. But yes, that's certainly possible.

Rep. Harnett:

Thank you.

Sen. Carpenter:

Other comments, or questions, or thoughts, they want it. Senator Keim.

Senator Lisa Keim:

Thank you. So, is LD 766 going to be folded into this?

Rep. Bailey:

No, I mean it could be but, but that's not the plan and that was not the recommendation. The recommendation was simply to support LD 766. Now, having said that, if LD 766 doesn't get passed, and or, it looks like it's going to fail, or then we would roll it. And we don't want to lose what's in 766, but at the same time the Task Force didn't want to interfere with the negotiations that were going on, and the changes that were being made to that legislation. We wanted that process to kind of work its way through.

Sen. Carpenter:

Do you have follow-up? Yeah.

Senator Keim:

My further comment just to the committees, I guess we're going to be voting on this, is that right? Voting on creating a bill?

Sen. Carpenter:

I'm sorry. Ask the question again.

Senator Keim:

We're voting on creating a bill, is that correct?

Sen. Carpenter:

Yes.

Senator Keim:

So my further comment would just be that the amount of time we spent on 766 was pretty significant, and now we're looking at a bill that's massive. I think in, in changes that we're supposed to tackle in this short session. It seems a really large amount of work to be able to do well in a short amount of time. So I have, I have a lot of concerns about, about being able to do this well. About diving in, and being able to do it well, with a time constraint that we're going to be on.

Sen. Carpenter:

Well I think Representative Bailey and I both recognize, it's, it's, it's a big task. There's no question about it. And whether we can get it all done or not. I mean I, I don't want to presuppose that we can't get it all done. We'll see where we are at the end of the process. But I think rather than break the bill up into its component parts, we thought that probably recognizing that we are stepping on some interests throughout this bill, that we might have a better chance of passing something comprehensive if we kept it. Now, that's not to say that we might not reach a point where we thought we, we may be better off and break this piece out, and send it on its way on a separate piece of legislation, rather than jeopardize the whole thing. But at this point, it's our intent to file, send the whole, except with the possibility of Representative Harnett raised, of the first piece, the first recommendation was regards to the going forward with some sort of a process, which we're still working on. Questions or comments? Representative DeVeau.

Rep. DeVeau:

Thank you Mr. Chair. So I'm understanding when you talk about becoming more of a nationally, or nationally or a federally-recognized Tribe, does that mean that your laws, that you're going to enforce, the courts are going to enforce, you're going to be going to the federal law, or are you going to be staying with the state law in criminal, when it comes to criminal jurisdiction.

Chief Francis:

I didn't know if you had your own court, so. So I think with our, so the Tribe develops its, we develop our own laws now.

Rep. DeVeau:

Right.

Chief Francis:

So we, we enforce those laws within the Tribal court system, and we have, I think it's a \$5,000 fine when you're in prison, threshold. So we have a lot of misdemeanor authority right now in the court, and also on, through our Tribal ordinances, et cetera. So some of the recommendations here, like the, so no, we wouldn't be adopting federal law, but we would operate with an authority under federal law. So under Tribal Law and Order Act for example, I think it's three years, \$15,000 is the threshold. So you would get that enhanced authority under the federal law that doesn't exist right now.

So it doesn't have so much to do with bringing in the United States code into Tribal courts. It's more about the ability of Tribes to meet their local needs, and how they develop the courts and, and develop our local laws, and also have those enhanced with our jurisdictional things, for things like the disparities and violence against women. The authority over Indians in that case, and why that's so critical. But also with the opioid epidemic, and all of those things we're seeing all over the state. Those enhanced sentences would be really important for that.

So, to answer your question, we wouldn't be bringing a federal code of laws to apply those in Maine. As a matter of fact, our law books now predominantly just mirror state law, that had been adopted as Tribal law.

Rep. DeVeau:

So, okay.

Chief Francis:

Does that make any, you can see, we struggled with this for months as well, the Task Force, but I think it's-

Rep. DeVeau:

And, that's what I was trying to figure out.

Chief Francis:

And maybe somebody here can more eloquently answer that, but I don't see a scenario where we're going to bring in federal laws, and then just start enacting them into the Tribal community in terms of, so it's about the authorities we would get under that federal access.

Rep. DeVeau:

Okay. So if I understand it, and it hasn't changed a whole lot. You guys are following the Maine State law for your law, your law enforcement officers, your police officers on, on Tribes. 17A and 29A are typically to the books that we use in law enforcement. You're not looking at getting an SLEC, a Special Law Enforcement Commission from the Bureau of Indian Affairs, to be able to enforce federal law on the Tribe, Tribal lands?

Chief Francis:

No. So as it stands right now, our law enforcement officers have to be trained and certified, just like every other law enforcement officer in the state.

Rep. DeVeau:

Right.

Chief Francis:

And so that certification comes with the same responsibilities as any other police officer. And so a lot of those titles that you're quoting have simply just been adopted as Tribal law. So they, they mirror what's going on everywhere else.

Sen. Carpenter:

Want to follow up? Go ahead.

Rep. Babbidge:

Are you doing any, because some of the Tribes over in New Brunswick, they've got Tribal codes. So individuals, well one of the big ones in Tobique [First Nation] is the opioid abuse. Individuals who are caught and convicted of selling drugs, then they're banned from reservation land. Now is that something that you're looking at implementing and how?

Chief Francis:

We have currently, have our own Tribal codes and actually currently have our own banishment and removal laws within the Tribe, that we've had for a very long time.

Rep. Babbidge:

Thank you.

Sen. Carpenter:

Representative Cardone.

Rep. Cardone:

Just in terms of my perspective, I have not seen this before anybody else has. At first blush, I think there are things in here that I could get behind, and things in here that I may not be able to get behind. I would prefer to see us consider separate pieces of legislation, rather than have to vote on one comprehensive piece of legislation. Part of which I may agree with, part of which I may disagree with, and I have to weigh the, do I want this to get this or just how we vote. That would be my preference.

Sen. Carpenter:

Thank you. Representative Babbidge.

Rep. Babbidge:

I have a comment for the committee. I mean I think that's an interesting discussion because, when you have one omnibus bill, it can either benefit or, or, or hurt people unintentionally. But it's, it's a strategy to move forward. I do recall being part of a two-year process, where we decided to leave something in a major package and at, it was defeated. And it ended two years of work that that never got implemented.

So I mean, it can work for you, and it can work against you by having something that has, that does not have carve-outs. I just offer that. But regarding the hearings, there are a half a dozen legislative committees that have relevance to, to this bill. And I realize we have a very short calendar, but I also worry about not giving those committees access on the inner circle in AFA

or, or allowing them to participate in such a segmented 12-hour public hearing, that it diminishes the attention span of all of us too effectively. So I'm thinking, might it not be a good idea as we schedule, to consider two Fridays, and let all of those committees participate in this process? I would think it would also help allies in the end to move forward, if we find that common ground. Just a concern.

Sen. Carpenter:

I certainly never, never pretend to speak for Representative Bailey, but in this case I will. We certainly don't have any interest in moving more quickly than people are comfortable with. So if it takes more than one day, I absolutely. Number two, back to Representative Cardone's concern, I hear them. I hear concern, and I think that may be a decision we can defer for a little bit. My hope today would be to get a vote from the committee to report out legislation, and then make a decision fairly quickly.

And I haven't talked this over with Representative Bailey, but as to whether or not we move forward with one bill, I anticipate that some of this won't be, maybe I'm optimistic, too controversial and some will be very controversial. And I don't want to jeopardize, I hear, I hear you loud and clear. And this is something Representative Bailey and I talked about. I don't want to jeopardy, jeopardize the, the good for the stuff that people are going to attack. So let's absolutely look at that going, we've talked about it, but let's look at it as a committee going forward. Senator Bellows.

Senator Shenna Bellows:

This is a question for Representative Bailey, and I just want to say to all the members of the commission, this is an impressive body of work. And I take some comfort, and some excitement or inspiration, and how many meetings have gone into all of this, and the depth of research and preparation that's here in this book. And so my question Representative Bailey is, I was looking at the draft legislation, proposed by the Tribal attorneys in August. Is the language for these recommendations, has that been drafted as well. Is some of that pieces of what we read as we go through the August, 2019 proposal? How do those intersect or not intersect?

Rep. Bailey:

I'm not aware that any legislation has been drafted, other than as you mentioned, the Tribal attorneys did put forth initially where they would like to end up. I assume, but really this is more a question for Peggy, Sam and Janet, but I assume that they're going to use the Tribal attorney's draft as their starting point, and then amend it as necessary, to reflect the recommendations from the Task Force. But again, I would defer to the legal analysts that are going to be working-

Senator Bellows:

So we see some nodding heads over in the corner.

Rep. Bailey:

I mean that's what I would do if I was them, is at least use that as a, as a starting point, and amend it as necessary.

Sen. Carpenter:

And I think we are proceeding on the assumption that our staff will have access to the attorneys. Our purposes of helping the drafting process. They're hoping to. Representative Talbot Ross.

Rep. Rachel Talbot Ross:

Thank you. I just had a technical question. Is there anything that's contained in here that would connect a recommendation to already existing LD being worked on? Do we have that side-by-side?

Sen. Carpenter:

Probably in bits and pieces, yes, containing some legislation, some of the holder, and it's our intention is to use some of those LDs as vehicles, if we need to break things out for example.

Rep. Talbot Ross:

I just think it might help us when thinking about either the totality, or splitting it up to see how many of these actually have a corresponding bill that's being worked on right now.

Sen. Carpenter:

And I anticipate, again, Representative Bailey and I haven't had a lot of time to talk, but I anticipate that before we start, because I think the task, the non-legislative Task Force members, primarily the representatives to the Tribes. We had talked about how we hope to proceed with this in terms of a larger omnibus bill. I would hope that we could, again, that as we go forward and make decisions about whether or not to break things out, that we'd have access to the Tribal Chiefs to talk about, "Okay, how do you want to go forward here? Do we think this issue is in trouble? How do you want to go forward? Do you break it out by itself. We need to go forward with a larger." And I know it is not going to be an easy process, and today is just the very first, so bear with us. We're feeling our way along here to some degree. Representative Talbot, Yeah?

Rep. Talbot Ross:

Just to follow up, is it possible to get that information?

Sen. Carpenter:

Get what information?

Rep. Talbot Ross:

The corresponding, some of this has corresponding-

Sen. Carpenter:

In current LD I, I think that will be a very challenging task to ask the staff to pull it out. Representative [inaudible].

Sen. Carpenter:

You've been sitting next to Representative Reckitt for too long.

Rep. Lois Reckitt:

I've learned to behave. What?

Sen. Carpenter:

Oh, hold on one second. Lois, would you hold one second? Donna [Bailey] wanted to chime in.

Rep. Bailey:

In response to Talbot Ross. I mean, certainly the one place to look would be the carry-over bills, and see what those are. And that, Peggy could certainly get you a list of. And then I think you have one bill this session that you introduced. So those are the ones off the top of my head that I'm aware of. I don't know if there are others in other committees. I'm not aware of any. But certainly the carry-over bills are easily accessible.

Rep. Reckitt:

And, if I may.

Sen. Carpenter:

Yes.

Rep. Reckitt:

Yeah. I thought. It was a fairly easy exercise too. No disrespect meant, but we did have a list of some of those bills, and just out of both respect for the Task Force process, but for those legislators who want to help move their bills forward, it just makes sense for us to make a corresponding document that articulates where they're being found right now.

Sen. Carpenter:

Okay.