



Strauch

Maine Forest Products Council

The voice of Maine's forest economy

Companies represented on the MFPC Board

American Forest Mgmt.
Baskahegan Co.
BBC Lands LLC
Cross Insurance
Family Forestry
Farm Credit East
Fontaine Inc.
Hancock Lumber
H.C. Haynes
Huber Resources
Innovative Natural
Resource Solutions
J.D. Irving
Katahdin Forest Mgmt.
Key Bank
LandVest Inc.
Limington Lumber
Louisiana Pacific
Maibec Logging
Nicols Brothers
Pingree Associates
Pleasant River Lumber
Prentiss & Carlisle
ReEnergy
Richard Wing & Son
Robbins Lumber
Sappi North America
Southern Maine Forestry
Stead Timberlands
TD Bank
Timber Resource Group
Timberstate G.
Verso Paper
Wadsworth Woodlands
W.T. Gardner & Sons
Wagner Forest Mgt.
Weyerhaeuser

Date: February 27, 2020

To: Senator Carson, Representative Tucker and members of the Environment and Natural Resources Committee

From: Patrick Strauch, Executive Director

RE: LD 2094 An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Act

The Maine Forest Products Council believes this legislation has major implications for our manufacturing facilities, especially pulp mills, and more than 8 million acres of commercial forestland.

As we stated in our original testimony (attached), "In the management of forestlands, the interests of the Council members and Tribes are intertwined. They have worked cooperatively to better manage this wonderful natural resource and its surrounding environment of which they – the Council members and the Tribes – are stewards." With regards to the shared uses of water resources there have been successes with the restoration of the Penobscot River, and recent resolution of the Health and Human water quality regulations that balance tribal and manufacturing interests.

However, the land use and natural resource environmental provisions in LD 2094 are of great concern to our members. Specifically, we agree with the Governor that Section 23 of the bill would "*abdicate all authority of the Legislature over activities that occur on current and later acquired Tribal lands, which are now subject to Maine's laws and executive agency regulations.*" The predictability of regulatory authority on the landscape and in environmental regulatory authority is critical to our industry continuing to make vital investments in our recovering forest economy. The potential exists to create a regulatory quagmire for permits affected by both federal and state regulations.

Similarly, we share the perspective described by the Attorney General Frey that "*L.D. 2094 would give the Tribes exclusive authority to regulate tribal lands and natural resources within those lands (and, potentially resources outside of tribal lands).*" Congress has authorized Indian Tribes, through "treatment as state" provisions, to administer standards under the Clean Water Act and the Clean Air Act.

As further stated by the AG: "*In the Clean Water Act context, federal courts have held that discharges upstream from a tribe (and not within tribal land) may be required to comply with the tribe's water quality standards.*" This authority concerns neighboring landowners using Maine DEP standards in forest and road building operation that could be required to meet a different downstream Tribal riparian rites standard.

Historic disputes on water quality between the Tribes and the State have occurred through time on the Penobscot River as mills have applied for water discharge permits.

I don't believe it is the intent of the Tribes to undermine Maine's forest economy, but the language proposed in the LD 2094 reflects a significant expansion of regulatory complexity and authority that could destabilize the regulatory landscape for Maine forest products facilities, landowners and rural communities.

The Council remains interested in continuing the discussion on these important issues.



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Testimony of Timothy C. Woodcock on behalf of the Maine Forest Products Council on L.D. 2094, "An Act To Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act"

My name is Timothy Woodcock, I am an attorney with Eaton Peabody, P.A., and I am offering testimony on L.D. 2094, "At Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Implementing Act."

The Maine Forest Products Council represents the forest industry with over 30,000 direct and indirect jobs in the forest management and wood manufacturing business, with 8 million acres of forestland land in the state of Maine. In many areas of Maine, the Tribes are neighbors of Council members and fellow landowners.

Over the last several decades, Council members have developed close relationships with the Tribes, sharing roads, fighting fires, combatting insect infestation, and, protecting the environment. In the management of forest lands, the interests of Council members and the Tribes are intertwined. They have worked cooperatively to better manage this wonderful natural resource and its surrounding environment of which they — the Council members and the Tribes — are stewards.

It is with great reluctance, therefore, that the Council has reached the conclusion that it must oppose L.D. 2094 in its current form.

L.D. 2094 would eliminate the current jurisdictional structure over land and natural resources. This is a system that has been in place for nearly 40 years. The rules governing these resources are, for the most part, issued by departments of the State of Maine. The State places high demands on the landowners and the Tribes in the management of these resources. The consistency and expertise of these officials provides a measure of predictability to our efforts which, in turn, allows us to grow the resource as well as our businesses and provide livelihoods for our employees, their families, and the communities in which they live.

L.D. 2094 would remove that system and replace it with one governed by "federal Indian law" — a term that would appear to lack clear meaning and may, itself, become the subject of dispute. This new and radically different regulatory system would bring uncertainty and additional expense to the forest products industry. It could result in conflicting regulations — state, federal, and tribal — and raise questions as to which controls. For example, if differing water quality standards are established in a common watershed, which standards would prevail? And, how many years of litigation would it take to get the answer.

In addition to greatly expanding Tribal jurisdiction, L.D. 2094 would allow the Tribes to acquire land in trust anywhere in the state. Neither the State nor the affected municipality would be able to prevent the government from taking land in trust, as they now can. As soon as the land took on "Tribal Land" status, it would also take on the new and uncertain jurisdiction structure that L.D. 2094 would make possible. It would place a cloud of uncertainty over our ability to replace lost woods markets and hamper our ability to attract modern, high-quality natural resource businesses to Maine.

Of still further concern is our understanding that, under the terms of the federal portion of the settlement act, if the Legislature were to amend the Maine Indian Claims Settlement Implementing Act, which it can only

do with the consent of the Tribes, and were later to conclude that some or all of the changes were not working, it could not remedy those deficiencies without the consent of the Tribes. The State could find itself locked into statutory consequences it never intended.

We understand that the Tribes have serious concerns about the jurisdictional and regulatory laws under the settlement acts. The Council is more than willing to work with the Tribes and the Legislature to address those concerns.

We would be willing to participate in an inclusive and searching review of the settlement acts as they now stand, listen in good faith to the Tribes' concerns, and, work with all concerned towards changes in the Maine Implementing Act that work for the Tribes and for us all.

I appreciate your consideration of these remarks.

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