

Chief Kirk Francis, Penobscot Indian Nation
House Interior Appropriations Subcommittee (03/25/15)

My name is Kirk Francis, and I am the Chief of the Penobscot Indian Nation (Nation). The Nation has approximately 2,400 members and over 86,000 acres of trust land with our seat of government located at Indian Island on the Penobscot River in Maine. My testimony will focus on a few important programs of the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) including: (1) BIA Social Services, Law Enforcement, and Tribal Courts; (2) IHS Behavioral Health and Purchased/Referred Care programs; (3) Contract Support Costs for both BIA and IHS; as well as a matter of critical importance to the Nation, (4) the challenges to our sovereignty as a tribal government by the State of Maine's narrow interpretation of the Maine Indian Claims Settlement Act.

BUREAU OF INDIAN AFFAIRS (BIA)

The Nation supports the \$323M increase to the overall BIA budget for a total of \$2.9B as requested in the President's FY 2016 Budget for a total of \$2.9B. Some key funding initiatives included in the requested increase are:

Law Enforcement and Tribal Courts: The Nation supports increases of \$4.0 million for Law Enforcement and \$5.0 million for Tribal Courts as requested by the BIA. These increases could help to enhance the Nation's ability to provide the necessary protection and overall wellness for our community. The Penobscot Nation has been very proactive in developing numerous programs that are designed to protect and assist our people, such as domestic violence, child protection, and child support enforcement programs. To operate these programs the Nation must have both a strong Law Enforcement Department and Tribal Court that is capable of enforcing and adjudicating not only the laws and ordinances applicable to these programs, but all other criminal and civil laws.

Over the last few years, in an effort to address our communities' substance abuse problems, the Nation has developed a "Drug Court", which we commonly refer to as our "Wellness Court". Within its 2 years of operation, we are starting to see great success from this approach. The number of participants is increasing; we are experiencing self-referrals; monthly drug educational sessions are being held; and most importantly, the majority of participants have moved on to productive lives, either through enrolling in higher education or being employed. Our Wellness Court has been able to offer drug treatment opportunities, counseling, and other supportive services that are essential for the success of the participants. Unfortunately, the Wellness Court was funded under a 3-year grant that is expiring shortly. The Nation will not have the required resources to continue with this successful initiative on its own, nor will we be able to replicate its success with a much-needed Juvenile Wellness Court that the Nation would like to start.

Further, with the passage of the Tribal Law and Order Act and the tribal amendments to the Violence Against Women Act (VAWA), law enforcement and courts in Indian country need increased resources to adequately implement these important provisions. At Penobscot, we are investing heavily into our tribal court system in order to be able extend tribal jurisdiction to better serve our community.

REQUEST: *The Nation asks that the Subcommittee support the proposed increases of \$4M (\$335M total) for Law Enforcement and \$5M (\$28.2M total) for Tribal Court programs that are not only essential for providing public safety but also for providing alternatives to address our community needs holistically.*

Social Services: The Nation supports an increase of \$6.0 million for Social Services as requested in the President's FY16 Budget Request to support the Tiwahe Initiative. The Tiwahe Initiative's goal is to empower individuals and families through health promotion, family stability, and the strengthening of tribal communities as whole.

Currently, most tribal social services programs have very limited staff and supportive resources. Generally, these programs only have the capacity to respond to day-to-day emergency needs and have little time to work with families in achieving long-term goals that will improve their overall quality of life and reduce their dependency on welfare assistance. The proposed additional funding of \$6.0 million will provide tribes with additional resources to develop a more comprehensive service delivery approach, including the hiring of additional social workers who will be able to focus on families as a whole and provide assistance in attaining education, job training, child welfare and family services, child care, and housing.

REQUEST: *The Nation requests that the Subcommittee increase funding for the BLA's Social Services Program by at least \$6M (\$47.2M total) to assist our social services programs to be able to proactively support the needs of our people.*

INDIAN HEALTH SERVICE

The Penobscot Nation supports the President's FY16 Budget Request for IHS that provides \$6.4 billion, \$486 million above the FY 2015 enacted level. Specifically, the Nation supports proposed funding increases of \$147 million for direct and tribally provided health care services to cover increased costs relating to population growth, pay cost increases, and medical inflation; a \$70.3 million increase for the Purchase/Referred Care Program; and \$25 million for a new Tribal Behavioral Health Initiative for Native American Youth. These proposed increases, and all other Indian Health Services increases, are vital to the health of the Penobscot Nation's members.

In 2010, the Penobscot Nation conducted a health assessment of our people, and the results provided some astounding findings pertaining to the health status of the Penobscot. For instance, Penobscot people are 2.3 times more likely to be diagnosed with diabetes, 1.4 times more likely to have high blood pressure, and 1.7 times more likely to have angina or coronary heart disease. Sadly, health disparities such as these not only exist within Penobscot Nation, but throughout all Indian Country.

Currently, our health clinic only provides on-site services. Due to lack of funding, outside referrals are basically limited to situations involving loss of life or limb. All other outside referrals that cost over \$12,000 are put on the deferred maintenance list. In the meantime, patients are often prescribed pain medication that some will become

dependent upon, exacerbating the prescription drug abuse problem we are already battling. Increased funding for the Purchased/Referred Care program is essential for Penobscot's health program to be able to provide the proper medical care for our patients.

In addition, the new Tribal Behavioral Health Initiative is a much-needed program throughout Indian Country. Recent research shows that suicide is the second leading cause of death, 2.5 times the national rate, for Native American youth. Native American children are 70% more likely to be identified in school as students with an emotional disturbance. An estimated 38.7% of Native adolescents ages 12 to 17 have a lifetime prevalence of illicit drug use. The Initiative looks to provide 200 health programs with a dedicated behavioral health provider focused on our youth.

REQUEST: *The Nation requests that the Subcommittee increase funding for the Indian Health Service (+\$486M), including \$70.3M (\$984.5M total) for the Purchased/Referred Care program, \$25M for the Tribal Behavioral Health program, and an increase of \$147.3M to meet the needs of medical inflation for current services.*

CONTRACT SUPPORT COSTS

The full funding of Contract Support Costs (CSC) has been an ongoing issue for too long and needs to be finally and fully resolved. The FY16 Budget Request proposes to fully fund CSC for FY16 with a \$26 million increase for BIA and a \$55 million increase for IHS. The Budget Request includes a proposal to fund BIA and IHS contract support costs as mandatory funding, rather than discretionary, beginning in FY 2017. Stabilizing this funding will ensure that direct program dollars are being used to fulfill program objectives, rather than on-going contract support shortfalls.

REQUEST: *The Penobscot Nation requests that the Subcommittee fully fund CSC in FY16 (\$272M for BIA and \$718M for IHS) and asks for your support in reclassifying contract support costs as mandatory beginning in FY 2017.*

CHALLENGES OF THE MAINE INDIAN CLAIMS SETTLEMENT ACT

As important as these programs are to the Penobscot, the single most important challenge the Nation faces comes from attacks on our sovereignty from the State of Maine (State). The State, through its elected officials, courts, Attorney General, and governmental administrators, has consistently sought to diminish the Nation's authority through a narrow interpretation of the Maine Indian Claims Settlement Act (Settlement Act).

Congress passed the Settlement Act in 1980 to resolve the significant land claims of the Penobscot Indian Nation and the Passamaquoddy Tribe. The Settlement Act provided funding for the tribes of Maine to reacquire lands, but also contained provisions about how the State and tribes would interact. While the Settlement Act did limit certain aspects of the Nation's authority, it affirmed the inherent self-governing authority of the Nation to govern internal tribal matters, free from any State authority, in keeping with long-standing protections recognized in federal law. However, the State has used a narrow interpretation of a provision in the Settlement Act to essentially prevent any

federal beneficial act for tribes that it believes affects state law. The State's interpretation of this provision clouds the Nation's ability to provide important services to our people.

For example, in 2013, Congress passed the tribal amendments to the Stafford Act to clarify that tribes may directly request from the President a declaration of emergency or disaster. However, the Maine Attorney General's office has asserted that this amendment does not apply to the tribes in Maine because the tribes are not specifically listed in the legislation even though the legislation does not take any authority away from the State to request a declaration but simply adds authority to a tribal government.

Of even greater concern, the Attorney General of Maine has publicly stated that the tribal amendments to VAWA allowing for tribal court jurisdiction over non-Indians in cases of domestic violence do not apply to the Maine tribes, again because the tribes are not specifically listed in the legislation despite establishing a full faith and credit court under the Act, being one of six tribes nationally to meet all the requirements for the VAWA pilot project, and now full implementation across the country. However, the tribal amendments to VAWA do not remove state jurisdiction from these cases but instead provide for concurrent jurisdiction. The Nation has worked hard to develop its justice system in order to meet the requirements of the VAWA tribal amendments and address the needs of our community. Our community is affected by domestic violence at similar rates as other tribal communities around the country, including nearly 80% of the perpetrators of domestic violence being non-Indians. Like any community, it is essential that we be able to address these issues holistically.

We do not believe that Congress intends to exclude certain tribes when it passes general legislation for the benefit of tribes. However, this is what is happening as a result of the State of Maine's interpretation of the Settlement Act.

Not only has the State challenged the Nation's authority to implement federal laws, but it is now also asserting that the Nation has no authority within the Penobscot River, even though the River has always been central to our territory, culture and very existence; the Settlement Act reaffirms the Nation's sustenance fishing rights; and the state has acknowledged the Nation's authority in prior Attorney General opinions. Unfortunately, the Nation has been forced to file suit in federal court to protect its connection to the River as a result of the State changing this view and redefining our reservation in 2012. The United States has also intervened and agrees with the Nation on this matter.

This has been an all too frequent outcome of interactions between the Nation and the State. Since the Settlement Act was passed in 1980, the Nation and the State have been in some form of litigation for at least half of those years. This can't be what Congress intended when the Settlement Act was passed. It certainly was not the belief of the Penobscot when they approved the Settlement Act that the State of Maine gets to decide what federal laws apply to the tribe and which ones do not.

REQUEST: *As a party to this Settlement, the Nation requests that Congress take an oversight role and investigate the effects of the Settlement Act upon the tribes of Maine.*