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An Act To Implement the Recommendations of the Tribal-State Work Group

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30 MRSA §6205-A, as enacted by PL 1981, c. 675, §§2 and 8, is repealed.

Sec. 2. 30 MRSA §6206-A, as enacted by PL 1981, c. 675, §§3 and 8, is repealed.

Sec. 3. 30 MRSA §6208-A, as enacted by PL 1981, c. 675, §§7 and 8, is repealed.

Sec. 4. 30 MRSA §6212, as amended by PL 1993, c. 600, Pt. A, §24 and affected by §25, is further amended to read:

§ 6212. Maine Indian Tribal-State Commission

1. Commission created. The Maine Indian Tribal-State Commission is established. The commission consists of 917 members, 48 to be appointed by the Governor, subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation, 2 to be appointed by the Aroostook Band of Micmacs, 2 to be appointed by the Houlton Band of Maliseet Indians and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term.

2. Chair. The commission, by a majority vote of its 816 members, shall select an individual who is a resident of the State to act as chair. When 816 members of the commission by majority vote are unable to select a chair within 120 days of the first meeting of the commission, the Governor, after consulting with the governors of the Penobscot Nation and, the Passamaquoddy Tribe, the Aroostook Band of Micmacs and the Houlton Band of Maliseets, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. In the event of the death, resignation or disability of the chair, the commission may select, by a majority vote of its 816 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation or disability, the Governor, after consulting with the governors of the Penobscot Nation and, the Passamaquoddy Tribe, the Aroostook Band of Micmacs and the Houlton Band of Maliseets, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.

3. Responsibilities. In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act, The Micmac Settlement Act and the Omnibus Tribal Sovereignty Act and the social, economic and legal relationship between the Passamaquoddy Tribe and, the Penobscot Nation, the Aroostook Band of Micmacs and the Houlton Band of Maliseet

Indians and the State and shall make such reports a report and recommendations to the Legislature, the Passamaquoddy Tribe and, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs by January 31st of every other year, beginning in 2009, or more often as it determines appropriate. The commission may propose to the Legislature, at the start of each session, legislation necessary to implement its recommendations.

SevenEleven members constitute a quorum of the commission and a decision or action of the commission is not valid unless 59 members vote in favor of the action or decision.

4. Personnel, fees, expenses of commissioners. The commission may employ personnel as it considers necessary and desirable in order to effectively discharge its duties and responsibilities. These employees are not subject to state personnel laws or rules.

The commission members are entitled to receive \$75 per day for their services and to reimbursement for reasonable expenses, including travel.

5. Interagency cooperation. In order to facilitate the work of the commission, all other agencies of the State shall cooperate with the commission and make available to it without charge information and data relevant to the responsibilities of the commission.

6. Funding. The commission may receive and accept, from any source, allocations, appropriations, loans, grants and contributions of money or other things of value to be held, used or applied to carry out this chapter, subject to the conditions upon which the loans, grants and contributions may be made, including, but not limited to, appropriations, allocations, loans, grants or gifts from a private source, federal agency or governmental subdivision of the State or its agencies. Notwithstanding Title 5, chapter 149, upon receipt of a written request from the commission, the State Controller shall pay the commission's full state allotment for each fiscal year to meet the estimated annual disbursement requirements of the commission.

7. Mandatory, nonbinding mediation. Before the State or any of its political subdivisions may commence litigation or an administrative action involving interpretation of this Act, The Micmac Settlement Act or the Omnibus Tribal Sovereignty Act, it must submit the dispute to the commission for mediation. The commission shall mediate the dispute between the parties or shall designate a neutral 3rd party to conduct the process. All parties to mediation before the commission or its designated neutral 3rd party must make a good faith effort to inform the commission and the other parties regarding the nature of the dispute and to resolve the dispute prior to commencement of litigation or administrative action. Unless the parties otherwise agree, reasonable fees and expenses incurred by the commission in connection with any mediation must be apportioned and paid in equal shares by each party. Unless the commission consents to an extension, all mediations must be commenced within 60 days, and completed within 90 days, of the commission's receipt of notice of dispute. At the conclusion of the mediation, the commission shall indicate in writing whether the parties have resolved all or parts of the dispute and shall describe the terms of the resolution. If no resolution is reached, the commission shall indicate that fact in writing. Notwithstanding any law to the contrary, any statute of limitations applicable to the issues

included in the dispute is tolled until the commission issues a written determination. The commission may adopt rules to carry out this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 30 MRSA §6215 is enacted to read:

§ 6215. Legislative, regulatory and policy changes by the State

A state agency shall provide for a timely and meaningful consultation with an Indian tribe, nation or band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Indian tribe, nation or band.

Sec. 6. 30 MRSA §7204, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

Sec. 7. 30 MRSA §7205, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

Sec. 8. 30 MRSA §7206, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

Sec. 9. 30 MRSA §7207, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

Sec. 10. 30 MRSA c. 605 is enacted to read:

CHAPTER 605

omnibus tribal sovereignty act of 2008

§ 7501. Short title

This chapter may be known and cited as "the Omnibus Tribal Sovereignty Act."

§ 7502. Legislative finding and declaration of policy

The Legislature finds and declares the following.

In 1980 the State enacted AN ACT to Implement the Maine Indian Claims Settlement, referred to in this section as "the implementing act." The implementing act included an agreement reached with the Passamaquoddy Tribe and the Penobscot Indian Nation that settled a land claim asserted by the Indians.

State and federal courts have since interpreted the language of the implementing act as removing the tribal sovereignty of the Passamaquoddy Tribe and the Penobscot Indian Nation. It was not the intent of the State to remove the tribal sovereignty of these tribal governments. While the implementing act confers state municipal status upon the Passamaquoddy Tribe and the Penobscot Indian Nation, this status was intended to limit, not terminate, the tribes' own inherent sovereign authorities.

The agreement entered into between the State and the Passamaquoddy Tribe and the Penobscot Indian Nation also recognizes the ongoing relationship between the Passamaquoddy Tribe and the Penobscot Indian Nation and the Federal Government, and the implementing act should not be interpreted to interfere with or terminate that trust relationship.

The Houlton Band of Maliseet Indians in 1980 and the Aroostook Band of Micmacs in 1991 also settled land claims with the State. However, while the State agreed to support federal recognition for both of these tribes, neither tribe was provided the same jurisdictional authority over its lands that the

Passamaquoddy Tribe and the Penobscot Indian Nation have. The Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians have functioning governments and land in trust for the benefit of their members; it is therefore fair and just, pursuant to the authority granted by Congress in 25 United States Code, Section 1725(e)(2) and the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171, Section 6(d), 105 Stat. 1143, 1148 (1991), to afford both of these tribes the same jurisdictional settlement provided to the Passamaquoddy Tribe and the Penobscot Indian Nation and to recognize their inherent sovereign authority.

In the years since the enactment of the implementing act, the tribes have developed tribal governments that provide a substantial range of services to thousands of tribal members. Also during that time considerable state and tribal resources have been expended in legal disputes over the legal status of the tribes under the implementing act and The Micmac Settlement Act. These disputes have caused a substantial economic and social hardship for the tribes.

This chapter represents a good faith effort on the part of the Legislature to reevaluate the effectiveness of the implementing act and The Micmac Settlement Act and provide fair and just revisions. Determining the effectiveness of the implementing act and The Micmac Settlement Act will require continuous and ongoing review. The revisions made to the implementing act and The Micmac Settlement Act by the Second Regular Session of the 123rd Legislature should not be construed as conclusive of any rights or obligations of either the State or the tribes.

It is the purpose of this Act to clarify the sovereignty of the tribal governments.

§ 7503. Powers, privileges and immunities

1. Applicable law. The following provisions of AN ACT to Implement the Maine Indian Claims Settlement apply to the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs and their respective trust lands:

- A. Section 6206;
- B. Section 6207;
- C. Section 6209-B;
- D. Section 6210;
- E. Section 6211; and
- F. Section 6214.

2. Freedom of access law. Title 1, chapter 13 does not apply to the Passamaquoddy Tribe, the Penobscot Indian Nation, the Aroostook Band of Micmacs or the Houlton Band of Maliseet Indians.

Sec. 11. Construction. The revisions made in this Act to AN ACT to Implement the Maine Indian Claims Settlement in the Maine Revised Statutes, Title 30, chapter 601 and The Micmac Settlement Act in Title 30, chapter 603 may not be construed as conclusive of any rights or obligations of either the State or the Passamaquoddy Tribe, the Penobscot Indian Nation, the Houlton Band of Maliseet Indians or the Aroostook Band of Micmacs.

Sec. 12. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 30, in the Title headnote, the words "municipalities and counties" are amended to read "municipalities, counties and Indian tribes" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 13. Contingent effective date. This Act does not take effect unless, within 90 days after the adjournment of the Second Regular Session of the 123rd Legislature, the Secretary of State receives written certification from the Houlton Band Tribal Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of this Act, written certification from the Tribal Council of the Aroostook Band of Micmacs that the band has agreed to the provisions of this Act, written certification by the chief and council of the Penobscot Indian Nation that the nation has agreed to the provisions of this Act and written certification by the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes, except that in no event may this Act take effect until 120 days after adjournment of the Second Regular Session of the 123rd Legislature.

SUMMARY

This bill contains statutory recommendations of the Tribal-State Work Group, established by Executive Order 19 FY 06/07 and continued and expanded by Resolve 2007, chapter 142.

This bill revises the headnote of the Maine Revised Statutes, Title 30 to reflect the inclusion of laws that apply to Indian tribes in Maine.

This bill provides for jurisdictional parity among the 4 Indian tribes in Maine: the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Indian Nation, based on the powers, privileges and immunities outlined in AN ACT to Implement the Maine Indian Claims Settlement, enacted in 1980. This bill enacts the Omnibus Tribal Sovereignty Act, which provides a statement of legislative intent and findings and cross-references the powers, privileges and immunities to apply to the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians. This bill repeals sections of AN ACT to Implement the Maine Indian Claims Settlement and The Micmac Settlement Act that provide different powers, privileges and immunities for the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs or that are not consistent with federal law.

This bill expands the membership of the Maine Indian Tribal-State Commission to include 2 representatives of the Aroostook Band of Micmacs and 2 representatives of the Houlton Band of Maliseet Indians, as well as 4 additional representatives of the State. It expands the duties of the commission to include a continual review of the effectiveness of AN ACT to Implement the Maine Indian Claims Settlement, The Micmac Settlement Act and the Omnibus Tribal Sovereignty Act. It authorizes the

commission to submit legislation directly to the Legislature. It also requires that before the State or any political subdivision commences a court or administrative action involving interpretation of AN ACT to Implement the Maine Indian Claims Settlement, The Micmac Settlement Act or the Omnibus Tribal Sovereignty Act, the dispute must first be presented to the commission for mediation. The mediation provisions are based on current Maine Rules of Civil Procedure concerning mediation.

This bill requires every state agency to provide for a timely and meaningful consultation with each Indian tribe, nation or band before proposing, adopting or implementing legislation or administrative measures that may materially affect the Indian tribe, nation or band.

This bill provides that the laws governing freedom of access do not apply to the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Indian Nation.

This bill includes a contingent date section to provide that it does not take effect unless approved by the Houlton Band of Maliseet Indians, the Aroostook Band of Micmacs, the Penobscot Indian Nation and the Passamaquoddy Tribe within 90 days after the adjournment of the Second Regular Session of the 123rd Legislature. If the bill is approved as required it will take effect 120 days after adjournment of the Second Regular Session of the 123rd Legislature.