An Act to Restore Access to Federal Laws Beneficial to the Wabanaki Nations

Reference to the Committee on Judiciary suggested and ordered printed.

Presented by Speaker TALBOT ROSS of Portland.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §6302-A, sub-§2, as amended by PL 2013, c. 254, §2, is further amended by amending the first blocked paragraph to read:

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within Passamaquoddy Indian territory, as defined in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30, section 6205, subsection 2, Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2, or Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A 2-B, or at any location within the State by a tribal member, by a tribal member's immediate family or within a tribal member's household. The term "sustenance use" does not include the sale of marine organisms.

Sec. 2. 30 MRSA §6202, sub-§1 is enacted to read:

1. Application of statutes and regulations of the United States. The purpose of the amendments to this Act enacted in 2023 is to adjust the jurisdiction of and the application of the laws of this State with respect to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and their Indian territory or trust land in order to confirm, establish and remove any doubt that the statutes and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this State.

Sections 6(h) and 16(b) of United States Public Law 96-420 provide generally that the laws and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this State unless such law or regulation affects or preempts the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws of this State relating to land use or environmental matters. The purpose of the amendments to this Act enacted in 2023 is to modify and withdraw the jurisdiction of and the application of the laws of this State to the limited extent that such laws otherwise would be affected or preempted by the application of the statutes and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians.

By modifying the jurisdiction of and the application of the laws of this State in this limited manner, the State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians agree and intend pursuant to United States Public Law 96-420 to confirm, establish, enable, facilitate and adopt the operation and application in this State of the statutes and regulations of the United States that are generally applicable to Indians, Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians, including such statutes and regulations enacted for the benefit of Indians, Indian nations or tribes or bands of Indians and statutes and regulations that accord a special status or right to or that relate to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land or other natural resources held in trust for Indians.
Sec. 3. 30 MRSA §6203, sub-§2-A, as enacted by PL 1981, c. 675, §§1 and 8, is repealed.

Sec. 4. 30 MRSA §6203, sub-§2-B is enacted to read:

2-B. Houlton Band Trust Land. "Houlton Band Trust Land" means land or other natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians pursuant to the federal Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986 or pursuant to any other applicable federal Indian law.

Sec. 5. 30 MRSA §6203, sub-§2-C is enacted to read:

2-C. Indian territory or trust land. "Indian territory or trust land" means:

A. With respect to the Passamaquoddy Tribe, the Passamaquoddy Indian territory;
B. With respect to the Penobscot Nation, the Penobscot Indian territory; and
C. With respect to the Houlton Band of Maliseet Indians, Houlton Band Trust Land.

Sec. 6. 30 MRSA §6215 is enacted to read:

§6215. Federal statutes and regulations apply; gaming activities

Notwithstanding any provision of this Act to the contrary, the State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians agree and intend pursuant to United States Public Law 96-420 that any law of this State, including, without limitation, laws of this State relating to land use or environmental matters, that is contrary to or that would be affected or preempted by the operation of or the application of any statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians does not apply, except for laws of this State applicable to the crimes and juvenile crimes described in this Act. Except for statutes and regulations of the United States that conflict with or affect or preempt the jurisdiction of this State over crimes and juvenile crimes described in this Act and except for federal laws identified in Section 6(c) of United States Public Law 96-420, the State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians further agree and intend pursuant to United States Public Law 96-420 that any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians is applicable within this State, without regard to any effect on the jurisdiction of or the application of the laws of this State.

Notwithstanding any provision of this Act to the contrary, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians may conduct gaming activities only in accordance with the laws of this State and may not conduct gaming activities under the authority of the federal Indian Gaming Regulatory Act or under any regulations promulgated under the federal Indian Gaming Regulatory Act by the chair of the National Indian Gaming Commission or its successor organization.

Sec. 7. 30 MRSA §6216 is enacted to read:

§6216. Powers of Indian tribes relating to federal statutes and regulations
Notwithstanding any provision of law to the contrary, the State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians agree and intend pursuant to United States Public Law 96-420 that each tribe, nation or band has the power to enact laws and ordinances relating to the operation, application and implementation of any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians.

Sec. 8. 30 MRSA c. 605 is enacted to read:

CHAPTER 605

MI'KMAQ NATION

§7301.  Federal statutes and regulations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Mi'kmaq Nation" means the sole successor to the Mi'kmaq Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Mi'kmaq Nation is represented, as of the date of enactment of this paragraph, as to land within the United States by the Mi'kmaq Nation Tribal Council.

B. "Mi'kmaq Nation Trust Land" means land or other natural resources acquired by the secretary in trust for the Mi'kmaq Nation pursuant to federal legislation concerning the Mi'kmaq Nation. "Mi'kmaq Nation Trust Land" has the same meaning as in Section 3(4) of the federal Aroostook Band of Micmacs Settlement Act.

C. "Secretary" means the Secretary of the Interior of the United States.

2. Application of statutes and regulations of the United States. The purpose of this section is to adjust the jurisdiction of and the application of the laws of this State with respect to the Mi'kmaq Nation and Mi'kmaq Nation Trust Land in order to confirm and establish that the statutes and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this State.

Sections 6(h) and 16(b) of United States Public Law 96-420 provide generally that the laws and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this State unless such law or regulation affects or preempts the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws of this State relating to land use or environmental matters. The purpose of this section is to modify and withdraw the jurisdiction of and the application of the laws of this State to the limited extent that such laws otherwise would be affected or preempted by the application of the statutes and regulations of the United States that are generally applicable.
to or enacted for the benefit of Indians or relate to a special status or right of Indian nations
or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations
or tribes or bands of Indians.

By modifying the jurisdiction of and the application of the laws of this State in this limited
manner, the State and the Mi'kmaq Nation agree and intend pursuant to United States Public
Law 102-171 to confirm, establish, enable, facilitate and adopt the operation and
application in this State of the statutes and regulations of the United States that are generally
applicable to Indians, Indian nations or tribes or bands of Indians or to lands owned by or
held in trust for Indians, Indian nations or tribes or bands of Indians, including such statutes
and regulations enacted for the benefit of Indians, Indian nations or tribes or bands of
Indians and statutes and regulations that accord a special status or right to or that relate to
a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands,
Indian reservations, Indian country, Indian territory or land or other natural resources held
in trust for Indians.

3. Federal statutes and regulations apply; gaming activities. Notwithstanding any
provision of this section to the contrary, the State and the Mi'kmaq Nation agree and intend
pursuant to United States Public Law 102-171 that any law of this State, including, without
limitation, laws of this State relating to land use or environmental matters, that is contrary
to or that would be affected or preempted by the operation of or the application of any
statute or regulation of the United States that accords a special status or right to or relates
to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian
lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians
does not apply, except for laws of this State applicable to the crimes and juvenile crimes
described in An Act to Implement the Maine Indian Claims Settlement. Except for statutes
and regulations of the United States that conflict with or affect or preempt the jurisdiction
of this State over crimes and juvenile crimes described in An Act to Implement the Maine
Indian Claims Settlement and except for federal laws identified in Section 6(c) of United
States Public Law 96-420, the State and the Mi'kmaq Nation further agree and intend
pursuant to United States Public Law 102-171 that any statute or regulation of the United
States enacted before, on or after October 10, 1980 that accords a special status or right to
or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians,
Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for
Indians is applicable within this State, without regard to any effect on the jurisdiction of or
the application of the laws of this State.

Notwithstanding any provision of this section to the contrary, the Mi'kmaq Nation may
conduct gaming activities only in accordance with the laws of this State and may not
conduct gaming activities under the authority of the federal Indian Gaming Regulatory Act
or under any regulations promulgated under the federal Indian Gaming Regulatory Act by
the chair of the National Indian Gaming Commission or its successor organization.

4. Powers of Indian tribes relating to federal statutes and regulations.
Notwithstanding any provision of law to the contrary, the State and the Mi'kmaq Nation
agree and intend pursuant to United States Public Law 102-171 that the Mi'kmaq Nation
has the power to enact laws and ordinances relating to the operation, application and
implementation of any statute or regulation of the United States enacted before, on or after
October 10, 1980 that accords a special status or right to or relates to a special status or
right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
reservations, Indian country, Indian territory or land held in trust for Indians.

Sec. 9. Contingent effective date. This Act takes effect 120 days after adjournment of the First Special Session of the 131st Legislature only if, within 90 days after adjournment of the First Special Session of the 131st Legislature, the Secretary of State receives written certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act; from the Governor and the Council of the Penobscot Nation that the nation has agreed to the provisions of this Act; from the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of this Act; and from the Mi'kmaq Nation Tribal Council that the nation has agreed to the provisions of this Act, 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. Upon such written certification by the Houlton Band Council of the Houlton Band of Maliseet Indians, each section of this Act regarding or affecting the Houlton Band of Maliseet Indians and its lands constitutes a jurisdictional agreement for purposes of the federal Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420, Section 6(e)(2). Such written certification by the Houlton Band Council of the Houlton Band of Maliseet Indians does not constitute an agreement that the contingencies in Public Law 1981, chapter 675 were met or that the provisions of Public Law 1981, chapter 675 ever took effect. Upon such written certification by the Mi'kmaq Nation Tribal Council, each section of this Act regarding or affecting the Mi'kmaq Nation and its lands constitutes a jurisdictional agreement for purposes of the Aroostook Band of Micmac Settlement Act, United States Public Law 102-171, Section 6(d). Such written certification by the Mi'kmaq Nation Tribal Council does not constitute an agreement that the contingencies in Public Law 1989, chapter 148 were met or that the provisions of Public Law 1989, chapter 148 ever took effect.

SUMMARY

This bill provides that the State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians agree and intend pursuant to United States Public Law 96-420 and the State and the Mi'kmaq Nation agree and intend pursuant to United States Public Law 102-171 that any law of this State, including, without limitation, laws of this State relating to land use or environmental matters, that is contrary to or that would be affected or preempted by the operation of or the application of any statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians does not apply, except for laws of this State applicable to certain crimes and juvenile crimes. Except for statutes and regulations of the United States that conflict with or affect or preempt the jurisdiction of this State over certain enumerated crimes and juvenile crimes and except for federal laws identified in Section 6(c) of United States Public Law 96-420, the State, the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation further agree and intend pursuant to United States Public Law 96-420 and to United States Public Law 102-171, as applicable, that any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held
in trust for Indians is applicable within this State, without regard to any effect on the
jurisdiction of or the application of the laws of this State.

The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet
Indians and the Mi'kmaq Nation may conduct gaming activities only in accordance with
the laws of this State and may not conduct gaming activities under the authority of the
federal Indian Gaming Regulatory Act or under any regulations promulgated under the
federal Indian Gaming Regulatory Act by the chair of the National Indian Gaming
Commission or its successor organization.

The State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of
Maliseet Indians agree and intend pursuant to United States Public Law 96-420, and the
State and the Mi'kmaq Nation agree and intend pursuant to United States Public Law 102-
171, that each tribe, nation or band has the power to enact laws and ordinances relating to
the operation, application and implementation of any statute or regulation of the United
States enacted before, on or after October 10, 1980 that accords a special status or right to
or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians,
Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for
Indians.