State of Maine
129th Legislature, First Regular Session

Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

January 2020

Office of Policy and Legal Analysis

STATE OF MAINE
129th LEGISLATURE
FIRST REGULAR SESSION

Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

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EXECUTIVE SUMMARY

In 1980, the State of Maine, the federal government, and the Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians negotiated a settlement in response to litigation asserting that the Passamaquoddy Tribe and Penobscot Nation had legal claims under federal law to a large amount of the land in Maine. The Maine Indian Claims Settlement Act of 1980[1] ("Settlement Act"), was enacted by Congress and signed into law on October 10, 1980. The corresponding Act to Implement the Maine Indian Claims Settlement[2] ("Maine Implementing Act") became effective upon ratification by the federal government.

In the nearly 40 years since the enactment of the Settlement Act and Maine Implementing Act, the Tribes and the State have been at odds and have engaged in litigation over various provisions of these laws. The common factor in these disputes has been disagreements over essential issues of Tribal self-determination and sovereignty.

The Task Force on Changes to the Maine Indian Claims Settlement Implementing Act (the "Task Force") was established in the First Regular Session of the 129th Legislature by House Paper 1307, *Joint Order, Establishing the Task Force on Changes to the Maine Indian Claims Settlement Act*. The Joint Order was developed after the Legislature passed a *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising from the Interpretation of An Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980* in June 2019. The Task Force was comprised of 13 members, 10 of whom were voting members and three of whom were ex officio, non-voting members.

The Joint Order directed the Task Force to review the Settlement Act and the corresponding Micmac Settlement Act and to make consensus recommendations to the Legislature regarding any suggested changes to the Acts. The Joint Order defined a "consensus" recommendation as a recommendation supported by "representatives on the task force of the Tribe or Tribes affected by the suggested changes and a majority of the other voting members of the task force."

The Joint Order further charged the Task Force with submitting a report to the Joint Standing Committee on Judiciary, to include its findings, consensus-based recommendations and suggested legislation, for introduction to the Second Regular Session of the 129th Legislature. Although the Joint Order directed the Task Force to submit its report "[n]o later than December 4, 2019," the Legislative Council extended the reporting deadline to December 15, 2019 pursuant to Joint Rule 353(7). In addition, all recommendations considered but not adopted by the Task Force must be documented in the report. Under the Joint Order, the Joint Standing Committee on Judiciary shall report out legislation based on the Task Force's recommendations; any law enacted by the Legislature pursuant to the Task Force's recommendations and that affects the Act to Implement the Maine Indian Claims Settlement Act or the Micmac Settlement Act must be approved by the affected Tribe or Tribes through their own governmental processes.

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[1] Pub. L. No. 96-420, 94 Stat. 1785 (Oct 10, 1980).

[2] P.L. 1979, ch. 732.

The Task Force presents the following consensus recommendations, which are grouped by subject area.

Task Force Consensus Recommendations

Alternative Dispute Resolution and Tribal-State Collaboration and Consultation

Consensus Recommendation #1: Amend the Maine Implementing Act to establish an enhanced process for tribal-state collaboration and consultation as well as a process for alternative dispute resolution. Allow stakeholders to meet in January to delineate the contours of the Task Force's general recommendation on these issues.

Criminal Jurisdiction

Consensus Recommendation #2: Amend the Maine Implementing Act to recognize the jurisdiction of the Passamaquoddy Tribal Court, Penobscot Nation Tribal Court and the Houlton Band of Maliseet Indians Tribal Court over certain criminal and juvenile offenses committed on the following Tribal lands: any land held now or in the future by the Secretary of Interior in trust for the relevant Tribe and any restricted-fee land held now or in the future by the relevant Tribe.

Consensus Recommendation #3: Amend the Maine Implementing Act to:

Part 1: Equate the exclusive criminal jurisdiction of the Passamaquoddy Tribal Court and the Houlton Band of Maliseet Indians Tribal Court with the exclusive criminal jurisdiction of the Penobscot Nation Tribal Court over offenses committed by Indian defendants.

Part 2: Recognize the authority of Tribal Courts in Maine to impose the maximum penalties other Tribal Courts are authorized to impose under the federal Tribal Law and Order Act of 2010, as long as the due process protections required by that Act are observed.

Consensus Recommendation #4: Enact and implement L.D. 766, *An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013*, as it is ultimately amended by agreement of the Tribes and the State, to amend the Maine Implementing Act to grant Tribal courts jurisdiction over certain domestic violence criminal offenses committed by non-Indian defendants on Tribal lands against Indian victims.

Consensus Recommendation #5: Amend the Maine Implementing Act to recognize the concurrent jurisdiction of Tribal courts over offenses committed on Tribal lands by Indian defendants against non-Indian victims, subject to the maximum penalty provisions and due process requirements of the Tribal Law and Order Act of 2010.

Consensus Recommendation #6: Amend the Maine Implementing Act to recognize each Tribal government's authority to define all crimes and juvenile offenses committed

on its Tribal lands over which its Tribal court has exclusive or concurrent criminal jurisdiction, but retain the authority of the State to define all crimes and juvenile offenses committed on Tribal lands over which state courts have exclusive or concurrent jurisdiction.

Fish and Game

Consensus Recommendation #7: Amend the Maine Implementing Act to recognize federal law regarding the exclusive jurisdiction of Tribes to regulate fishing and hunting by Tribal citizens of all federally recognized Tribes on Tribal lands, using the expanded definition of Tribal lands described in consensus recommendation #2.

Consensus Recommendation #8: Amend the Maine Implementing Act to restore and affirm the exclusive jurisdiction of Tribes to regulate fishing and hunting by non-Tribal citizens on Tribal lands, using the expanded definition of Tribal lands described in consensus recommendation #2, but do not cede any of the Maine Indian Tribal-State Commission (MITSC)'s authority to regulate hunting and fishing under current law to the State.

Consensus Recommendation #9: Amend the Maine Implementing Act to relinquish the State of Maine's jurisdiction with respect to the regulation of fishing and hunting by both Tribal and non-Tribal citizens on Tribal lands, except that, solely for conservation purposes, the State of Maine may regulate Tribal members engaged in such activities off Tribal lands to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved Tribal treaty rights.

Land Use and Natural Resources

Consensus Recommendation #10: Amend the Maine Implementing Act to restore and affirm the Tribes' rights to exercise regulation of natural resources and land use on Tribal land to the fullest extent under federal Indian law.

Taxing Authority

Consensus Recommendation #11: Amend the Maine Implementing Act to recognize federal law providing that Tribes have exclusive jurisdiction to tax Tribal members and Tribal entities on Tribal lands, including entities owned by a Tribe or Tribal member, using the definition of Tribal lands described in consensus recommendation #2.

Consensus Recommendation #12*:* Amend the Maine Implementing Act to recognize federal law providing that Tribes, Tribal members and Tribal entities are not subject to state and local sales taxation on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2.

Consensus Recommendation #13 Amend the Maine Implementing Act to recognize federal law providing that Tribal members who live on Tribal lands are not subject to state income

tax for income earned on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2.

Consensus Recommendation #14: Amend the Maine Implementing Act to recognize federal law providing that Tribal lands are not subject to state and local real property tax, using the definition of Tribal lands described in consensus recommendation #2.

Consensus Recommendation #15: Amend the Maine Implementing Act to recognize federal law providing that Tribes have concurrent jurisdiction to tax non-members on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2.

Consensus Recommendation #16: Amend the Maine Implementing Act to recognize federal law providing that state and local governments have concurrent jurisdiction to tax non-members on Tribal lands unless their jurisdiction is preempted under a fact-specific, federal common law balancing test.

Gaming

Consensus Recommendation #17: Amend the Maine Implementing Act to render the federal Indian Gaming Regulatory Act applicable in Maine.

Civil Jurisdiction

Consensus Recommendation #18: Amend the Maine Implementing Act to restore to the Tribal nations the exclusive authority to exercise civil legislative jurisdiction over Indians and non-Indians on Tribal land. To the extent that a Tribal nation does not exercise, or terminates its exercise of exclusive civil legislative jurisdiction, the State has exclusive jurisdiction over those matters.

Consensus Recommendation #19: Amend the Maine Implementing Act to restore to the Tribal nations the exclusive authority to exercise civil adjudicatory jurisdiction over Indians and non-Indians on Tribal land. To the extent that a Tribal nation does not exercise, or terminates its exercise of exclusive civil adjudicatory jurisdiction, the State has exclusive jurisdiction over those matters.

Federal Law Provisions

Consensus Recommendation #20: Amend the Maine Implementing Act to specify that, for the purposes of §6(h) and §16(b) of the federal Settlement Act, federal laws enacted for the benefit of Indian country do not affect or preempt the laws of the State of Maine.

Trust Land Acquisition

Consensus Recommendation #21: Amend the Maine Implementing Act to recognize the ability of all Maine Tribes to acquire trust land in accordance with their settlement acts and federal laws like the Indian Reorganization Act and its implementing regulations.

Consensus Recommendation #22: Amend the Maine Implementing Act so that, consistent with federal law, state and local governments do not have veto power over trust acquisitions and eliminate time constraints on trust land acquisitions, as included in the Maine Implementing Act.

I. INTRODUCTION

The Task Force on Changes to the Maine Indian Claims Settlement Implementing Act (the "Task Force") was established in the First Regular Session of the 129th Legislature by House Paper 1307, *Joint Order, Establishing the Task Force on Changes to the Maine Indian Claims Settlement Act.* A copy of H.P. 1307 is included as **Appendix A.**

Pursuant to the related *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising from the Interpretation of An Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980,* the Legislature had previously resolved as follows:

> That We, the Members of the One Hundred and Twenty-ninth Legislature now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity to recognize that the Maine tribes should enjoy the same rights, privileges, powers, and immunities as other federally recognized Indian tribes within the United States; [and]
>
> That the Legislature supports a collaborative process to develop amendments to An Act to Implement the Maine Indian Claims Settlement and the federal Maine Indian Claims Settlement Act of 1980 that would clarify that the Maine tribes enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States.

A copy of the Joint Resolution is included as **Appendix B.**

The Task Force was comprised of 13 members, 10 of whom were voting members and three of whom were ex officio, non-voting members. The appointed, voting members included two members of the Maine Senate and three members of the Maine House of Representatives. In addition, the Joint Order directed the President of the Senate and the Speaker of the House to invite the following individuals to participate as voting members of the Task Force:

- The Chief of the Aroostook Band of Micmacs (or designee);
- The Chief of the Houlton Band of Maliseet Indians (or designee);
- The Chief of the Passamaquoddy Tribe at Pleasant Point (or designee);
- The Chief of the Passamaquoddy Tribe at Indian Township (or designee); and
- The Chief of the Penobscot Nation (or designee)

The Joint Order further authorized the President and Speaker to invite the following individuals to participate as *ex-officio*, non-voting members of the Task Force:

- The Governor (or designee);

- The Attorney General (or designee); and

- The Managing Director of the Maine Indian-Tribal State Commission

A list of Task Force members can be found in **Appendix C**.

The Joint Order directed the Task Force to review both An Act to Implement the Maine Indian Claims Settlement Act and the Micmac Settlement Act and to make consensus recommendations to the Legislature regarding any suggested changes to the Acts. The Joint Order defined a "consensus" recommendation as a recommendation supported by "representatives on the task force of the Tribe or Tribes affected by the suggested changes and a majority of the other voting members of the task force."

The Joint Order further charged the Task Force with submitting a report to the Joint Standing Committee on Judiciary, to include its findings, consensus-based recommendations and suggested legislation, for introduction to the Second Regular Session of the 129th Legislature.[3] In addition, all recommendations considered but not adopted by the Task Force must be documented in the report. Under the Joint Order, the Joint Standing Committee on Judiciary shall report out legislation based on the Task Force's consensus recommendations; any law enacted by the Legislature pursuant to the Task Force's consensus recommendations and that affects the Act to Implement the Maine Indian Claims Settlement Act or the Micmac Settlement Act must be approved by the affected Tribes or Tribes through their own governmental processes.

It should be noted that at the outset of the Task Force process, Task Force members agreed that neither the Joint Order or the Joint Resolution intended any review or disturbance of the portions of the settlement acts that relate to the resolution of land claims or extinguishment of aboriginal title.

II. BACKGROUND

While the Task Force was not charged with compiling a comprehensive history of either the relationship between the State and the Penobscot Nation, Passamaquoddy Tribe, Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs or the events leading to the enactment of the federal Maine Indian Claims Settlement Act of 1980, the Maine Implementing Act and Micmac Settlement Act, a basic understanding of the events leading to the settlement and implementing acts is necessary to understand the work of the Task Force.

Maine currently has four federally recognized Indian Tribes. These are:

- The Aroostook Band of Micmacs;
- The Houlton Band of Maliseet Indians;

[3] Although the Joint Order directed the Task Force to submit its report "[n]o later than December 4, 2019," the Legislative Council extended the reporting deadline to December 15, 2019 pursuant to Joint Rule 353(7).

- The Passamaquoddy Tribe; and
- The Penobscot Nation.

In the 1970s, the Passamaquoddy Tribe and the Penobscot Nation asked the United States to assert legal claims on their behalf to a large amount of land in Maine. The claims were based on the position that because Congress never ratified any treaties between the Tribes and the State (or its predecessor, Massachusetts), as required by the Indian Non-Intercourse Act, any land transactions that occurred as a result of the treaties were invalid. The Tribes argued that they retained legal title to these lands and sought damages for use of the lands by the State. Following the First Circuit's decision in *Joint Tribal Council of the Passamaquoddy Tribe v. Morton*,[4] these claims gained traction.[5] The federal government, which had filed litigation in 1972 on behalf of the Tribes in order to meet a statute of limitation deadline, but had not acted further, pending the outcome of *Morton*, began seriously considering the claims. The resulting negotiations led to enactment of the Settlement Act and the associated Maine Implementing Act.

For additional information regarding the history of the events preceding the Settlement Act and Maine Implementing Act, please see the following sources.

1. **Appendix D**: Presentation by Paul Thibeault on September 13, 2019, *Historical Context of the Maine Indian Land Claims Settlement* and *Timeline Leading Up to the Maine Indian Land Claims Settlement.*
2. *Roundtable to Review the Maine Indian Claims Settlement Act* (September 16, 2016), *available at* http://legislature.maine.gov/doc/3087.
3. *Final Report Of the Tribal-State Work Group Created by Resolve 2007, Chapter 142, 123rd Maine State Legislature* (Jan. 2008), *available at* http://legislature.maine.gov/doc/3086.
4. Friederichs et al., Suffolk University Law School, *The Drafting and Enactment of the Maine Indian Claims Settlement Act* (Feb. 2017), *available at* http://legislature.maine.gov/doc/3003.
5. *Proposed Settlement of Maine Indian Land Claims: Hearings Before the Senate Select Committee on Indian Affairs, 96th Cong., 2nd sess.,* S. 2829, Vol. 1, Washington, DC: U.S. Government Printing Office (1980): 28, *available at* http://hdl.handle.net/2027/umn.31951p00324196j.

A. An Act to Implement the Maine Indian Claims Settlement

The Maine Legislature passed An Act to Implement the Maine Indian Claims Settlement in 1980 ("Maine Implementing Act") prior to enactment of the federal Settlement Act, but it became effective only upon ratification by the federal government as described in Part II.B.[6] The current

[4] 528 F.2d 370 (1st Cir. 1975).
[5] The First Circuit Court of Appeals addressed the issue of federal recognition of the Passamaquoddy Tribe in *Morton*. The Court affirmed the District Court's decision that, although the Tribe was not formally federally recognized as such, the Non-Intercourse Act (which precludes conveyance of Tribal land without federal approval) applied to the Passamaquoddy Tribe and that a trust relationship existed between the United States and the Tribe.
[6] *See* P.L. 1979, ch.732, §31.

language of the Maine Implementing Act, which has been amended on several occasions, is set forth in **Appendix E.**

Broadly speaking, the currently effective language of the Maine Implementing Act:

- Defines the lands—either previously held by the Penobscot Nation or Passamaquoddy Tribe or acquired by the federal government (using federal land acquisition funds) to be held in trust on behalf of each of these tribes—considered "Indian territory" under state law and a subset of those lands denominated the "Penobscot Indian Reservation" and "Passamaquoddy Indian Reservation." It further establishes a procedure for the taking of such lands for public uses and acquisition of substitute land by the relevant Tribe;[7]
- Establishes a process for the federal government to acquire land on behalf of the Houlton Band of Maliseet Indians (using federal land acquisition funds) and for that land to obtain the status of "Houlton Band Trust Land" under State law. Houlton Band Trust Land may only be transferred in certain, enumerated circumstances and is subject to a taking for public use to the same extent as privately-owned land;[8]
- Establishes that, except as otherwise provided in the Maine Implementing Act, the Passamaquoddy Tribe and Penobscot Nation and all lands held by or in trust for the Tribe or Nation are subject to the laws of the State and civil and criminal jurisdiction of state courts;[9]
- Provides that the Passamaquoddy Tribe and Penobscot Nation shall:
    - Enjoy the same rights, privileges, powers and immunities as well as the duties, obligations, liabilities and limitations of a municipality, subject to the laws of the State, with respect to their respective Indian territories; however, the State and not the relevant Tribe has jurisdiction to enforce violations of Tribal ordinances committed by individuals who are not members of either Tribe;[10]
    - Have sole authority over "internal Tribal matters," which are not subject to regulation by the State;[11]
    - Subject to specific supervisory powers of the Commissioner of Inland Fisheries and Wildlife, have exclusive authority to promulgate nondiscriminatory hunting, trapping and certain fishing ordinances within their respective Indian territories; Tribal members also have the right to sustenance fishing within their reservations;[12]
    - Have the authority to enact and collect taxes to the same extent as any other municipality of the State within their Indian territories; however, while state taxes

[7] 30 M.R.S.A. §6205 (defining Indian territories and the acquisition process); §6203(5), (8) (defining "Passamaquoddy Indian Reservation" and "Penobscot Indian Reservation"); §6205(3) (takings).
[8] 30 M.R.S.A. §6205-A(1) (acquisition of Houlton Band Trust Land); §6205-A(2) (takings); §6205-A(3) (restraints on alienation).
[9] 30 M.R.S.A. §6204.
[10] 30 M.R.S.A. §6206 (municipal powers); §6206(3) (State has exclusive jurisdiction over non-member violations of Tribal ordinances).
[11] 30 M.R.S.A. §6206(1).
[12] 30 M.R.S.A. §6207(1), (2), (5) (Tribal authority to regulate takings of wildlife); §6207(4) (sustenance fishing).

may not be imposed on the Tribes' settlement funds or distributions, (i) the Passamaquoddy Tribe and Penobscot Nation must make payments in lieu of taxes on all real and personal property within their respective Indian territories, except that property owned by or in trust for the Tribes and used predominately for governmental purposes is except from taxation to the same extent as municipally owned property under State law; and (ii) the Passamaquoddy Tribe and Penobscot Nation and their members are liable for payment of all other taxes and fees to the same extent as any other person or entity in the State, except that when these Tribes act in their governmental capacity, they are exempt from taxes to the same extent as a municipality;[13]

- Have established Tribal courts with exclusive jurisdiction over:

  (i) criminal and juvenile offenses, generally as defined by state law, that are punishable by less than a year of imprisonment and a maximum potential fine of $5,000; committed on the relevant Tribe's reservation by certain Indian defendants; and either committed against certain Indian victims or where there are no victims; and

  (ii) specified civil actions between Indian parties arising on the reservation of the relevant Tribal court;[14] and

- Have (i) exclusive law enforcement authority to enforce Tribal ordinances and criminal, civil or domestic relations laws over which the Tribal courts have exclusive jurisdiction and (ii) joint law enforcement authority with state and county law enforcement officers to enforce all other laws or regulations applicable in their respective Indian territories and reservations;[15]

- Establishes a general rule[16] that all lands held by or in trust for the Houlton Band of Maliseet Indians are subject to the laws of the State and civil and criminal jurisdiction of State courts, except that the Houlton Band of Maliseet Indians:

  - While required to make payments in lieu of taxes on Houlton Band Trust Land, which payments may be made from the Houlton Band Tax Fund, the Houlton Band of Maliseet Indians and its members are nevertheless liable for payment of all other taxes and fees to the same extent as any other person or entity in the State;[17]

  - May establish a Tribal court with exclusive jurisdiction over:

    (i) criminal and juvenile offenses, generally as defined by state law, that are punishable by less than a year of imprisonment and a maximum fine of

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[13] 30 M.R.S.A. §6206(1) (authority to enact ordinances and collect taxes to the same extent as a municipality); §6208(1) (settlement funds and distributions exempt from taxation); §6208(2) (payments in lieu of real and personal property taxes); §6208(3) (Tribes and Tribal members subject to all other taxes and fees).

[14] 30 M.R.S.A. §6209-A (Passamaquoddy Tribal Court jurisdiction); §6209-B (Penobscot Nation Tribal Court jurisdiction).

[15] 30 M.R.S.A. §6210(1) (exclusive authority); §6210(2) (joint authority).

[16] 30 M.R.S.A. §6204 (general rule); *see also* 30 M.R.S.A. §6206-A (no municipal-like authority).

[17] 30 M.R.S.A. §6208(2), (2-A) (payments in lieu of taxes); §6208(3) (Tribe and Tribal members subject to all other taxes and fees); §6208-A (Houlton Band Tax Fund).

$5,000; committed on the Houlton Band Jurisdiction Land by certain Indian defendants; and either committed against certain Indian victims or where there are no victims; and

(ii) specified civil actions between Indian parties arising on Houlton Band Jurisdiction Land;[18]

- Affirms that the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians are entitled to receive benefits from State programs that provide financial assistance to all municipalities as a matter of right, except that specified proportions of federal funds received by a Tribe for a purpose substantially similar to the purposes of the state program may be deducted from the Tribe's state benefits in specified circumstances;[19] and
- Establishes the Maine Indian Tribal-State Commission ("MITSC"), with authority:
  - To continually review both the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the State and the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians;
  - To make reports and recommendations to the Tribes and the Legislature that it deems appropriate; and
  - To enact nondiscriminatory fishing regulations on certain ponds and sections of rivers or streams within the Penobscot Indian Territory and Passamaquoddy Indian territory.[20]

B. Maine Indian Claims Settlement Act of 1980

The Maine Indian Claims Settlement Act of 1980[21] ("Settlement Act"), was enacted by Congress and signed into law on October 10, 1980, in response to litigation asserting that the Passamaquoddy Tribe and Penobscot Nation had legal claims under federal law to a large amount of land in Maine. The full text of the Settlement Act is set forth in **Appendix F.**

Very broadly, under the Settlement Act, the following occurred:

- Congress affirmatively approved all prior transfers of land or natural resources within the State of Maine by or on behalf of any Indian, Indian nation, Tribe or band, including the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians, as well as the extinguishment of aboriginal title to any lands so transferred;[22]
- Congress approved, ratified and rendered effective previously enacted state legislation (*i.e.,* the Maine Implementing Act, discussed in Part II.A);[23]

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[18] 30 M.R.S.A. §6206-B (Houlton Band of Maliseet Indians Tribal Court jurisdiction and definition of "Houlton Band Jurisdiction Land").
[19] 30 M.R.S.A. §6211(1), (3), (4) (eligibility for funds); §6211(2) (treatment of federal funds received by Tribes).
[20] 30 M.R.S.A. §6212 (MITSC establishment and general duties); §6207(3), (3-A), (8) (duties related to fishing).
[21] Pub. L. No. 96-420, 94 Stat. 1785 (Oct. 10, 1980).
[22] §4, 94 Stat. at 1787-88 (formerly codified at 25 U.S.C. §1723).
[23] *See, e.g.*, §2(b)(3), 94 Stat. at 1788 (formerly codified at 25 U.S.C. §1721(b)(3)).

- Congress appropriated $27 million total in general settlement funds to be held in trust by the federal government on behalf of the Passamaquoddy Tribe and Penobscot Nation and $26.8 million per Tribe in land acquisition settlement funds to be held in trust by the federal government on behalf of each Tribe. The first 150,000 acres of land purchased with the land acquisition settlement funds within the area described in the Maine Implementing Act by each of these Tribes would be held in trust by the United States for the benefit of the respective Tribe but could be condemned for public purposes by the State upon payment of just compensation;[24]
- Congress appropriated $900,000 in land acquisition funds to be held in trust by the federal government on behalf of the Houlton Band of Maliseet Indians. Lands acquired with the funds would be held in trust by the United States for the benefit of the Tribe if prior state legislation was enacted to approve the acquisition of trust land;[25]
- Congress approved, ratified, and rendered effective the allocation of State jurisdiction over the Penobscot Nation and Passamaquoddy Tribe "to the extent and in the manner provided in the Maine Implementing Act,"[26] and gave its advance consent to the State, the Penobscot Nation and the Passamaquoddy Tribe to amend the Maine Implementing Act regarding: (a) the enforcement or application of state or Tribal civil, criminal and regulatory laws within their respective jurisdictions, (b) the allocation of state and Tribal governmental responsibility over specified subject matters or geographical areas and (c) the allocation of jurisdiction between state and Tribal courts;[27]
- The Houlton Band of Maliseet Indians and its members became subject to the jurisdiction of the State of Maine "to the same extent as any other person or land therein,"[28] with advance federal consent given to the State and the Houlton Band of Maliseet Indians to execute agreements regarding state jurisdiction over lands held in trust for the Tribe;[29]
- The federal government waived its criminal jurisdiction under enumerated federal statutes pertaining to crimes committed in Indian country, to the extent the relevant lands were located within the State of Maine;[30]
- As federally recognized Tribes, the Penobscot Nation, Passamaquoddy Tribe and Houlton Band of Maliseet Indians retained eligibility for all federal financial benefits provided to Indians;[31] however, any federal law or regulation existing at the time of the Settlement Act that afforded special status or rights to any Indian, tribe, Indian lands or land held in trust for Indians and that affected or preempted the civil, criminal, or regulatory

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[24] §5, 94 Stat. at 1788-90 (formerly codified at 25 U.S.C. §1724); §14, 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1733).

[25] *Id.*

[26] §6(b)(1), (d)(1), (f), 94 Stat. at 1793-94 (formerly codified at 25 U.S.C. §1725(b)(1), (d)(1), (f)).

[27] §6(e)(1), 94 Stat. at 1794 (formerly codified at 25 U.S.C. §1725(e)(1)).

[28] §6(a), (d)(1), 94 Stat. at 1793-94 (formerly codified at 25 U.S.C. §1725(a), (d)(1)).

[29] §6(e)(2), 94 Stat. at 1794 (formerly codified at 25 U.S.C. §1725(e)(2)).

[30] §6(c), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(c)).

[31] §6(i), 94 Stat. at 1794 (formerly codified at 25 U.S.C. §1725(i)).

jurisdiction of the State of Maine, including laws relating to land use or environmental matters, would not apply within the State;[32] and

- Any federal law for the benefit of Indians or Indian Tribes enacted after the effective date of the Settlement Act and which would affect or preempt the application of the laws of the State of Maine would not apply within the State unless "such subsequently enacted Federal law is specifically made applicable within the State of Maine."[33]

In 1986, the Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986[34] was passed; this legislation provided that lands purchased by the Band would be granted federal trust status.

C. Aroostook Band of Micmacs Settlement Act

The status and rights of the Aroostook Band of Micmacs were not specifically described in either the federal Settlement Act or the Maine Implementing Act.[35] Congress subsequently enacted the Aroostook Band of Micmacs Settlement Act in 1991 to address the status of the Band.[36] The full text of this federal legislation is set forth in **Appendix G.**

Through the Aroostook Band of Micmacs Settlement Act, Congress:

- Ratified previously enacted State legislation defining the relationship between the State of Maine and the Aroostook Band of Micmacs (*i.e.*, the Micmac Settlement Act, discussed in Part II.D);[37]
- Appropriated $900,000 in land acquisition funds to be held in trust by the federal government on behalf of the Aroostook Band of Micmacs. Land acquired with these funds would be held by the federal government in trust for the benefit of the Aroostook Band of Micmacs, but could be condemned for public purposes upon conditions set forth in the Micmac Settlement Act;[38]
- Formally recognized the Aroostook Band of Micmacs, establishing Band members' eligibility for all federal programs and services provided to Indians, but subjecting the Aroostook Band of Micmacs and all its lands to "the same status as other tribes and their lands . . . under the terms of the Maine Indian Claims Settlement Act of 1980";[39] and

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[32] §6(h), 94 Stat. at 1794 (formerly codified at 25 U.S.C. §1725(h)).
[33] §16(b), 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1735(b)).
[34] *See* Pub. L. No. 99-566, 100 Stat. 3184 (1986).
[35] *See, e.g.*, Aroostook Band of Micmacs Settlement Act, Pub. L. No. 102-171, §2(a)(2), 105 Stat. 1143 (Nov. 26, 1991).
[36] Pub. L. No. 102-171, 105 Stat. 1143 (1991).
[37] §2(b), 105 Stat at 1144.
[38] §4(a), 105 Stat. at 1144 (establishing fund); §5(a), (d), 105 Stat. at 1145-46 (use of fund to purchase trust land); §5(c), 105 Stat. at 1146 (takings).
[39] §6(a), 105 Stat. at 1148 (federal recognition); §6(b), 105 Stat. at 1148 (same status as Tribes under Maine Indian Claims Settlement Act of 1980); §6(c), 105 Stat. at 1148 (Band member eligibility for federal services).

- Consented in advance to amendments of the Micmac Settlement Act agreed to by the State of Maine and the Aroostook Band of Micmacs regarding State jurisdiction over lands held by or in trust for the benefit of the Band.[40]

D. The Micmac Settlement Act

The Maine Legislature enacted The Micmac Settlement Act[41] in 1989, prior to enactment of the federal Aroostook Band of Micmacs Settlement Act, but its effectiveness was expressly conditioned upon the occurrence of two events: first, enactment of federal legislation ratifying the Act and providing advance federal consent to future amendments of the Act by agreement of the State and the Aroostook Band of Micmacs and, second, written certification by the Council of the Aroostook Band of Micmacs indicating that the Band agreed to the terms of the State Act.[42] Although the first condition was satisfied by enactment of the federal Aroostook Band of Micmacs Settlement Act, the second condition does not appear to have been met. The full text of the Micmac Settlement Act is set forth in **Appendix H.**

As enacted by the Maine Legislature and ratified by Congress, the Micmac Settlement Act, viewed broadly, would have established the following:

- A process for the federal government to acquire land on behalf of the Aroostook Band of Micmacs (using federal land acquisition funds) and for that land to obtain the status of "Aroostook Band Trust Land" under State law. Aroostook Band Trust Land may only be transferred in certain, enumerated circumstances and is subject to a taking for public use to the same extent as privately-owned land; and[43]
- The general rule[44] that the Aroostook Band of Micmacs and all lands held by or on behalf of Band are subject to the laws of the State and the civil and criminal jurisdiction of State courts, except that while the Aroostook Band of Micmacs is not required to pay property taxes on Aroostook Band Trust Land, it must nevertheless make payments in lieu of municipal, county, district and State taxes on all real and personal property on Aroostook Band Trust Land.[45]

III. TASK FORCE PROCESS

The task force held six meetings from July through December 2019 at the Maine State House in Augusta. All meetings were open to the public and broadcast by audio transmission over the Internet. Meeting agendas and archived audio recordings of each meeting can be found online at: http://legislature.maine.gov/maine-indian-claims-tf.

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[40] §6(d), 105 Stat. at 1148.
[41] 30 M.R.S.A. §§7210 to 7207.
[42] *See* P.L. 1989, ch. 148, §4.
[43] 30 M.R.S.A. §7204(1) (acquisition of Aroostook Band Trust Land); §7204(2) (takings); §7204(3) (restraints on alienation).
[44] 30 M.R.S.A. §7203.
[45] 30 M.R.S.A. §7206 (payments in lieu of taxes); *see also* §7207 (Aroostook Band Tax Fund).

A. First meeting - July 22, 2019

The Task Force convened on July 22, 2019.[46] After calling the meeting to order and inviting members to introduce themselves, Task Force Chairs Carpenter and Bailey individually expressed their appreciation in advance for the participation of all Task Force members and their desire that the Task Force serve as the first step in the long process of resolving the difficulties present in the current relationships between the State and the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs. The Chairs then invited each Tribal Chief to present his or her goals and priorities for the Task Force.

Chief Edward Peter Paul of the Aroostook Band of Micmacs observed that his Tribe has struggled for a long time under existing Maine law. He expressed a desire for a new legal regime in which the Micmacs are afforded the opportunity to enact laws and exercise jurisdiction over their land, leading to expanded Tribal economic and social growth and prosperity.

Chief Clarissa Sabattis of the Houlton Band of Maliseet Indians emphasized the importance of Tribal self-determination, which, if implemented, will benefit not only the Tribes but also the State. In her view, it is vital for Task Force Members to understand the extent to which the Maine Implementing Act and Micmac Settlement Act create barriers to Tribal economic development, making it difficult for Tribal governments to raise the socioeconomic status of their members. In addition, Chief Sabattis requested that the Task Force examine the status of the Houlton Band of Maliseet Indians, which is not afforded the same rights and benefits as the Penobscot Nation and the Passamaquoddy Tribe under the Maine Implementing Act.

Chief Kirk Francis of the Penobscot Nation observed that the Maine Implementing Act was originally created in 1980, when the Tribes had been treated as wards of the State for more than a century. Today, the Penobscot Nation Tribal government operates more than 100 programs, employs approximately 200 people and manages more than 200,000 acres of land. Despite the advances in Tribal governance made over the past four decades, the Maine Implementing Act has remained a static document and can therefore be considered a failed experiment. Chief Francis expressed a desire that the Task Force remove disparities in education, health care and public safety among Tribal and non-Tribal citizens of the State, expand Tribal jurisdiction and develop a new paradigm of mutual respect between sovereigns.

Vice-Chief Elizabeth Dana of the Passamaquoddy Tribe at Pleasant Point explained that the Maine Implementing Act was intended to address the situation that existed in the State at the time the Act was enacted, with the understanding that it would be amended as necessary over time. Vice-Chief Dana emphasized that the current relationship between the Tribes and the State is ineffective, with insufficient consultation between the State and the Tribes before the Legislature passes laws that affect the Tribes. Although there are many issues that she believed should be addressed by the Task Force, Vice-Chief Dana primarily requested an increase in Tribal self-governance, which will allow the Tribes to flourish.

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[46] As authorized by Joint Order H.P. 1307, Chief Marla Dana designated Vice-Chief Elizabeth Dana to represent the Passamaquoddy Tribe at Pleasant Point.

Chief William J. Nicholas, Sr. of the Passamaquoddy Tribe at Indian Township stressed that the State must recognize the inherent sovereignty of all four Tribes. The Tribes desire the authority to exercise self-governance in all areas, which will resolve many of the existing disputes between the Tribes and the State, including those involving hunting and fishing rights and economic development. Chief Nicholas further observed that the Maine Implementing Act and Micmac Settlement Act should not afford different benefits and authority to the Penobscot Nation and Passamaquoddy Tribe than are afforded to the Aroostook Band of Micmacs or the Houlton Band of Maliseet Indians.

Chief Peter-Paul noted that much of the Maine Implementing Act could be repealed, with the exception of the language regarding land claims. What the tribes are interested in focusing on is tribal jurisdiction.

Task Force members then engaged in an extended discussion regarding the most effective and efficient method for developing consensus recommendations for amending the Maine Implementing Act and Micmac Settlement Act and how to prioritize the many issues facing the Tribes under the acts. Ultimately, Chair Carpenter requested that the Tribal members of the Task Force work with their legal counsel to propose amendments to the Maine Implementing Act that would achieve their goals, including increased Tribal sovereignty and self-determination, for discussion at the next Task Force meeting. Craig Sanborn, legal counsel to the Aroostook Band of Micmacs, observed the Maine Implementing Act governs the relationship of the State to only the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians. The rights and duties of the Aroostook Band of Micmacs are addressed separately through The Micmac Settlement Act, the effectiveness and legal validity of which is currently in dispute. For this reason, Mr. Sanborn noted that proposals regarding the Maine Implementing Act would not affect the Aroostook Band of Micmacs.

The Task Force determined that its next meeting would be held on August 9. The Tribal members of the Task Force agreed to submit their proposed amendments to the Maine Implementing Act electronically in advance of that meeting.

The Task Force next received a presentation on the fundamentals of federal Indian law and its application to Maine from Professor Matthew Fletcher, Esq., citizen of the Grand Traverse Band of Ottawa Indians and founder of the Indigenous Law Clinic at Michigan State University. Professor Fletcher identified and briefly discussed the following five overarching principals of federal Indian law:

1. *The federal government has plenary power over Indian affairs.*

   The supremacy of federal law in Indian affairs is underpinned by the dual grants of authority to Congress in the United States Constitution to regulate commerce with Indian Tribes and to the President to enter into treaties with Indian Tribes.[47]

2. *State governments do not have authority over Indian affairs unless that authority is expressly granted by Congress.*

[47] U.S. Const. art. I, §8, cl.3; art. II, §2, cl.2.

Because the Constitution explicitly grants Congress power to regulate commerce with and the President to enter treaties with Indian Tribes, those authorities are vested exclusively in the federal government. Under the "Marshall trilogy" of U.S. Supreme Court cases,[48] state law has no force in Indian country.

3. *Tribes have inherent sovereignty.*

   The United States acknowledged the sovereignty of Indian Tribes in the Constitution and through the approximately 400 treaties it has entered into with Indian Tribes. The U.S. Supreme Court has thus referred to Tribes as domestic sovereigns. Nevertheless, as part of its plenary power over Indian affairs, Congress has the authority to restrict aspects of Tribal sovereignty and has done so, for example, through the Indian Civil Rights Act.[49]

4. *The federal government has a trust duty to Indian Tribes and members of federally recognized Tribes.*

   The United States assumed a duty of protection toward the Tribes when Congress agreed to take the Tribes under its protection through numerous treaties. Prior to the 1970s, the federal government exercised this duty by exerting a great deal of control over reservations and jointly administering the reservations. Our modern understanding of the federal government's general trust responsibility recognizes Indian self-determination and the authority of Tribes to administer their own governments. The exceptions to this rule arise in places like Maine, where settlement acts grant state governments greater authority over Tribes, diminishing their capacity to engage in self-governance.

5. *"Clear Statement Rule"- When Congress limits the rights or powers of Indian peoples through legislation or treaties, it must do so explicitly.*

   Historically, when Congress entered treaties with Indian Tribes, the Tribes' inherent sovereignty was understood. Treaties are based on this proposition and interpreted in this manner by the courts. In addition, although Congress has plenary power to limit Tribal sovereignty, courts should not interpret treaties or statutes as limiting sovereignty without a clear statement to that effect. This "rule" has been adopted, in part, in recognition of the fact that treaty rights are property interests; limitation of those rights by Congress may subject the United States to takings claims and suits for monetary damages.

In response to several questions from Task Force members, Professor Fletcher explained that the lack of clarity regarding jurisdiction over reservations is one of the major barriers to economic development on those lands. Non-Indian businesses are often wary of negotiating with Tribes or expanding their businesses on reservation land due to uncertainty over what law will govern contract disputes, zoning matters and related issues. Tribes that enjoy greater governmental capacity and authority—including by establishing Tribal transportation departments, environmental agencies, education systems and court systems—have fared better economically. For this reason, Professor Fletcher posited that the Tribes located in Maine would benefit from a

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[48] The Marshall trilogy consists of the following cases: *Johnson v. M'Intosh,* 21 U.S. (8 Wheat.) 543 (1823), *Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1 (1831), and *Worcester v. Georgia,* 31 U.S. (6 Pet.) 515 (1832). Chief Justice John Marshall wrote all three opinions, which established the foundations of Indian law in the United States.
[49] 25 U.S.C. §§1301-1304.

renegotiation of the Maine Implementing Act, which was created with limited Tribal authority to address the state of Indian affairs in Maine in 1980. The Act recognizes the possibility of a need to amend the agreement over time as the situation changes. Other "settlement act states," like Michigan, have engaged in difficult renegotiations affecting the relationship between the State and the Tribes over time, successfully addressing thorny issues including reciprocal recognition of state and Tribal court judgments and Tribal authority to conduct gaming.

B. Second meeting - August 9, 2019

The second meeting of the Task Force was held on August 9, 2019.[50] After Task Force members and their designees introduced themselves, Chair Carpenter invited the Tribes to present their proposal for amending the Maine Implementing Act. The full text of the Tribes' proposed amendments to the Maine Implementing Act and the accompanying cover letter is set forth in **Appendix I**.

Kaighn Smith, Jr., counsel to the Penobscot Nation, began the presentation by observing that the Tribes have struggled for many years due to numerous ambiguities in the language of the Maine Implementing Act. For example, the Passamaquoddy Tribe and Penobscot Nation have exclusive jurisdiction over "internal tribal matters" under the Act and there has been an extraordinary amount of litigation and uncertainty regarding the meaning of this phrase. Some of these disputes include whether this language grants the Passamaquoddy Tribe and Penobscot Nation authority to raise funds through bingo and gaming and the scope of the Penobscot Tribe's authority to regulate discharges into the Penobscot River. Attorney Smith explained that the Tribes' proposed amendments to the Maine Implementing Act are designed in part to move beyond the uncertainty of the past 40 years.

Michael Corey Francis Hinton, counsel to the Passamaquoddy Tribe, recounted that Tribal leaders clearly articulated three major legislative principles and goals during the negotiations that led to the establishment of the Task Force. Specifically, Tribal leaders indicated that they did not believe the Task Force would be successful absent a commitment to amend the Maine Implementing Act and Micmac Settlement Act to:

1. Establish that the laws of the State do not apply to the Tribes or their respective lands, except as agreed by the State and the Tribes or as provided by federal law;
2. Confirm that the Tribes enjoy the same rights, privileges, and immunities as other federally-recognized Indian Tribes, except as agreed by the State and the Tribes; and
3. Confirm that Acts of Congress intended to benefit federally-recognized Indian Tribes in general apply to the Tribes and their lands, except as agreed by the State and the Tribes.[51]

He explained that the Tribal proposal is designed to accomplish these goals.

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[50] As authorized by Joint Order H.P. 1307, the following individuals were designated to attend the meeting:
- Vice-Chief Elizabeth Dana represented Chief Marla Dana of the Passamaquoddy Tribe at Pleasant Point; and
- Vice-Chief Darrell Newell represented Chief William Nicholas of the Passamaquoddy Tribe at Indian Township.

[51] These proposals were originally set forth in a letter dated 5/9/2019 from Chief Francis, Chief Sabattis, Chief Peter-Paul, Chief Nicholas and Chief Dana to Speaker Gideon and President Jackson, the full text of which can be found in **Appendix J**.

Attorney Hinton then provided a brief, section-by-section analysis of the Tribes' proposed amendments to the Maine Implementing Act, which would affect the rights and status of the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians and their lands in Maine. Mr. Hinton offered the following interpretation of the proposal:[52]

- §6202: clarify language affirming settlement of the pre-1980 Indian land claims;
- §6203: clarify, but not change the substance of, definitions used in the Maine Implementing Act to describe Tribal lands in the State;
- Repeal §6204 of the Maine Implementing Act: this amendment is designed to prevent State law from applying to Tribal lands under established principles of federal Indian law;
- §6205 and §6205-A: grant Tribes the authority to add land to their respective Indian territories without requiring State consent and eliminate the State's authority to take Tribal lands for public uses through public condemnation proceedings; the latter change was designed to allow principles of federal Indian law to control takings of Tribal land;
- §6206 and §6206-A: affirmatively recognize that the Tribes have and may exercise and enjoy the same rights, privileges, powers and immunities as other federally recognized Indian Tribes and allow all federal laws enacted for the benefit of Indian Tribes either before or after the effective date of the Maine Implementing Act to apply in Maine;
- §6206-B: vastly expand the consultation and cooperation process that exists in a limited fashion in the Maine Implementing Act by authorizing the Tribes and the State to enter into law enforcement cross-deputization agreements and to authorize the Tribes and the State or local governments to enter into cooperative agreements to avoid litigation;
- Repeal the majority of §6207, which currently restricts Tribal authority to regulate the natural resources on the Tribes' lands, and instead allow the Tribes to regulate the natural resources on their lands to the same extent as other Tribes across the country;
- §6208 and §6208-A: strike the portions of these statutes that subject the Tribes in Maine, unlike other Tribes across the country, to taxation by their neighbors;
- §6209-A, §6209-B and §6209-C: remove all language limiting the jurisdiction of Tribal courts, thus allowing federal Indian law to control Tribal court jurisdiction; further, retain language that allows the expansion of reservation land subject to Tribal court jurisdiction, without requiring State approval for this expanded geographical jurisdiction;
- Strike §6210 as superfluous given the proposed amendments to §§6204 and 6207, which restore the rights of the Tribes to enact legislation regulating their land and resources;
- §6211: clarify that Tribal members are state citizens and enjoy the benefits of that citizenship; further, require that the State coordinate with the Tribes to ensure tribal citizens realize the benefits of federal funds received by the State in part based on its population of Tribal members;
- §6212: retain the Maine Indian Tribal-State Commission (MITSC), but require the Legislature to consider reports and recommendations submitted by MITSC in the future;

[52] The Tribal proposal did not include amendments to The Micmac Settlement Act. *See* **Appendix I.**

- §6213: retain this provision of law to prevent altering the status of pre-1980 land transfers;
- Strike §6214, which governs Tribal school communities, as unnecessary under the basic federal Indian law principle of Tribal self-determination; and
- Enact new §6215, which would require the State to obtain the consent of the affected Tribes before taking any action that directly affects Tribal rights or resources and would require the State to consult with the relevant Tribal government before it takes other actions, including initiating litigation against a Tribe.

Attorneys Smith and Hinton then responded to questions from several Task Force members regarding the details of the Tribes' proposal. The essence of the Tribes' proposal was identified during the ensuing discussion: the current rubric of the Maine Implementing Act, in which State laws generally apply in Maine's Indian territories would be replaced with the rubric of federal Indian law, in which State laws generally do not apply in Indian country and in which Maine's Tribes enjoy the same rights, privileges and sovereign status afforded most other Tribes across the country.

Chris Taub expressed his concern that, while the Task Force has the authority to propose legislation to amend the Maine Implementing Act, the federal Settlement Act may prevent full implementation of several of the Tribes' proposals. For example, in their draft amendment to section 6206, the Tribes propose that any federal legislation enacted either before or after 1980 for the benefit of Indian Tribes applies to the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians. Yet, the applicability of federal laws to Maine's Indian Tribes is expressly limited by the federal Settlement Act.[53] Chair Carpenter explained that, to the extent that any changes ultimately agreed-to by the Task Force cannot be implemented without amendments to the federal Settlement Act, the Task Force may choose to request that Maine's Congressional delegation press for federal legislation authorizing those changes.

Several Task Force members, including the legislative members present at the meeting, expressed a desire for further education regarding the principles of federal Indian law that would apply in Maine's Indian territories under the Tribes' proposal. Attorney Smith and Chris Taub explained that federal Indian law is complicated and the subject of several treatises, including *Cohen's Handbook of Federal Indian Law*[54] and *American Indian Law in a Nutshell* by William Canby, Jr.[55] After a lengthy debate regarding the best approach to increasing Task Force members' understanding of federal Indian law without unduly delaying the Task Force process, the Tribal members of the Task Force offered to produce several brief documents, prepared by their legal counsel, addressing the specific topics of federal Indian law identified by Task Force members as most critical to understanding the Tribes' proposal. These topics included taxation, health care, education, criminal and civil jurisdiction, regulation of natural resources and gaming law. Chair Bailey also promised to examine whether it was possible to purchase the *American Indian Law in a Nutshell* treatise for all Task Force members.

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[53] *See* §6(h) & §16(b), 94 Stat. at 1794, 1797 (formerly codified at 25 U.S.C. §1725(h) and §1735(b)).

[54] Cohen's Handbook of Federal Indian Law (Nell Jessup Newton ed., 2012).

[55] William C. Canby, Jr., American Indian Law in a Nutshell (6th ed. 2015).

The Task Force additionally requested that the Maine Indian Tribal-State Commission provide a summary at the next Task Force meeting of the history of the legal status, rights and duties of the Tribes located in Maine both before and after enactment of the settlement and implementing acts. After the Task Force determined that its next meeting would be held on September 13 at the Maine State House, Chair Carpenter proposed that Task Force members explore the possibility of holding at least one future Task Force meeting on Tribal land.

C. Third meeting - September 13, 2019

The third meeting of the Task Force was held on September 13, 2019.[56]

At the outset of the meeting, Vice-Chief Dana introduced Donald Soctomah, Historic Preservation Officer for the Passamaquoddy Tribe at Pleasant Point and former Tribal Representative to the Maine House of Representatives. Mr. Soctomah recounted his past participation as a legislator in efforts to renegotiate the settlement and implementing acts and expressed his hope that the Task Force will make tangible progress toward achieving this important goal. He then introduced Representative Rena Newell, who currently represents the Passamaquoddy Tribe in the Maine House of Representatives, to read an excerpt of a speech delivered by her great-grandfather Representative Lewis Mitchell to the Maine Legislature in 1887. A copy of the speech excerpt, which recounts part of the history of the relationship between the people of the State of Maine and the Passamaquoddy Tribe, particularly the genesis of the Indian land claims, is set forth in **Appendix K**. Following Representative Newell's recitation, Dwayne Tomah, citizen of the Passamaquoddy Tribe, read the speech to the Task Force in Passamaquoddy.

Paul Thibeault, *ex officio* Task Force member and Managing Director of the Maine Indian Tribal-State Commission (MITSC), was then invited to provide the Task Force with information regarding the "Historical Context of the Maine Indian Land Claims Settlement." The complete text of Mr. Thibeault's presentation is set forth in **Appendix D** and is not summarized here.

After the presentation, Chair Carpenter inquired wither Mr. Thibeault knew the impetus for "section 1735(b)" of the Settlement Act, which provides as follows:

> The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.[57]

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[56] As authorized by the Joint Order, the following individuals were designated to attend the meeting:

- Vice-Chief Elizabeth Dana represented Chief Marla Dana of the Passamaquoddy Tribe at Pleasant Point;
- Vice-Chief Darrell Newell represented Chief William Nicholas of the Passamaquoddy Tribe at Indian Township; and
- Vice-Chief Richard Silliboy represented Chief Peter-Paul of the Aroostook Band of Micmacs.

[57] *See* Settlement Act, §16(b), 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1735(b)).

According to Mr. Thibeault, the origins of section 1735(b) have never been clear. MITSC commissioned the Indigenous Peoples Rights Clinic of Suffolk University Law School to conduct research on this topic in February 2017, but the Clinic was unable to discern why section 1735(b) was included in the final language of the Settlement Act.[58] Chief Francis added that the Maine Tribes object to the rule set forth in section 1735(b).

The Task Force next received a presentation outlining the general rules of federal Indian law on several of the specific topics identified as crucial by the Task Force from Kaighn Smith, Jr. and Allison Binney, Counsel to the Penobscot Nation; Michael Corey Francis Hinton, Counsel to the Passamaquoddy Tribe; and Mark A. Chavaree, Staff Attorney to the Penobscot Nation.

- *Default Rules of Civil Jurisdiction & Land Use in Indian Country,* presented by Attorney Smith

At the outset of the presentation, Attorney Smith asserted that federal Indian law is fundamentally unjust. For example, under the Discovery Doctrine, colonizing Europeans obtained title to land occupied by the Indians based on a belief in the Europeans' inherent superiority. Since that time, the policies underlying federal Indian law have vacillated. The federal government has at various times espoused policies of Tribal termination and extinguishment or Tribal assimilation into the dominant culture. Currently, however, the federal government is deeply committed to Tribal self-determination and self-government. Attorney Smith opined that the situation that currently exists in Maine does not align with this federal policy of self-determination, because Maine's Tribes are made subordinate to the State by law.

Attorney Smith next reminded the Task Force of two fundamental principles of federal Indian law. First, Congress has exclusive authority over Tribal relations under Article I, Section 8, clause 3 of the U.S. Constitution. As a result, state governments generally lack jurisdiction over Tribes and Tribal relations. Second, the federal government has a trust responsibility toward Tribes. Attorney Smith informed the Task Force that Judge William Canby, Jr., author of the *American Indian law in Nutshell* treatise, has explained that this trust responsibility arose primarily from the historic responsibility of the federal government to protect the Tribes from encroachment by the states.

Attorney Smith next discussed three U.S. Supreme Court cases that, he asserted, demonstrate important moments in the history of federal Indian law. The first case, *Worcester v. Georgia,*[59] was written by Chief Justice John Marshall in 1832. It is considered by many scholars to be the most important decision in federal Indian law, particularly with respect to Tribal-state relations. The case arose when a missionary sought habeas corpus relief from imprisonment by the State of Georgia for violating a Georgia law requiring all non-Indians seeking to enter Indian territory to obtain a state license. The Court announced that the laws of the State of Georgia have no force or effect on Tribal lands and that citizens of the State have no right to enter Tribal lands absent Tribal consent.

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[58] *See* Nichole Friederichs et al., The Drafting and Enactment of the Maine Indian Claims Settlement Act: Report on Research Findings and Initial Observations (Feb. 2017), *available at* https://maineindianclaims.omeka.net/collections/browse (last visited Dec. 4, 2019).
[59] 31 U.S. (6 Pet.) 515 (1832).

Another important federal Indian law case, Attorney Smith asserted, is *Williams v. Lee*.[60] It involved a civil suit in Arizona state court by a non-Indian grocery store owner on the Navajo reservation to collect a debt owed by Navajo citizens. The U.S. Supreme Court held that jurisdiction over this dispute—involving actions by Tribal members on Tribal land—rested solely with the Navajo Nation. The plaintiff's non-Indian status was immaterial, the Court held, because state court jurisdiction would infringe on the Tribe's right to self-governance and would undermine Tribal authority over reservation affairs.

Attorney Smith next summarized *White Mountain Apache Tribe v. Bracker,*[61] a more recent case involving state authority over a non-Indian's activities on reservation land. The case arose from Arizona's attempt to impose motor vehicle and fuel taxes on a timbering operation conducted on reservation land on behalf of the White Mountain Apache Tribe. When on-reservation conduct involves only Indians, the Court observed, state law is generally inapplicable because state interests are likely to be minimal and the federal interest in self-determination is likely to be at its strongest. More difficult questions arise, however, when states assert authority over the activities of non-Indians on Indian lands. According to Attorney Smith, the Court employed two tests to determine whether state authority was appropriate in these circumstances. The "infringement" test, from *Williams v. Lee*, examines whether the imposition of state authority infringes on the right of Tribes to make their own laws and be governed by these laws. The second test, the *Bracker* "preemption test," determines whether the state interests are sufficient, when weighed against the federal and Tribal interests, to justify assertion of state authority. Ultimately, because the revenues from timber operations of the White Mountain Apache Tribe were critical to the support of the Tribal government and Tribal economic development, the state tax was deemed preempted.

After providing this historical context, Attorney Smith invited Task Force members to review the information set forth in the written chart entitled "*Default Rules of Civil Jurisdiction & Land Use in Indian Country*" prepared by Tribal Counsel and reproduced in **Appendix L.**

- *Civil Jurisdiction Example: Raising Governmental Revenue through Gaming*, presented by Attorney Hinton

Attorney Hinton next guided the Task Force through the written materials prepared by Tribal Counsel summarizing federal Indian gaming law and the status of Tribal gaming in Maine. Because these materials are reproduced in full in **Appendix L**, they are not summarized here.

After this portion of the presentation, Chief Francis observed that Maine's Tribes have lost a large portion of their high-stakes bingo gaming revenue to the two non-Tribally run casinos in Maine. Chair Carpenter inquired whether the Tribes' potential authority to conduct Class III gaming under the federal Indian Gaming Regulatory Act ("IGRA"),[62] including casino gaming, is precluded by section 1735(b) of the Settlement Act. According to Attorney Hinton, while there has been litigation on this issue and at least one court decision has suggested that section

[60] 358 U.S. 217, 223 (1959).
[61] 448 U.S. 136 (1980).
[62] Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988) (codified at 25 U.S.C. §2701 to §2721).

1735(b) may prevent IGRA from applying to Maine,[63] this is not a settled question of law. This uncertainty over IGRA's applicability as well as similar civil jurisdictional uncertainties under the Settlement Act and Maine Implementing Act, Chief Francis observed, have stymied investment in Indian lands in Maine.

- *Default Rules of Criminal Jurisdiction & Law Enforcement in Indian Country*, presented by Attorney Binney

Rather than reading directly from the *Default Rules of Criminal Jurisdiction & Law Enforcement in Indian Country* chart provided to the Task Force and reproduced in **Appendix L**, Attorney Binney provided an historical overview of criminal jurisdiction in Indian Country. Before the United States was formed, Attorney Binney noted, the situation was simple: as sovereigns, Tribal nations possessed exclusive criminal jurisdiction over all people on their lands. In 1790, Congress passed the General Crimes Act,[64] which granted the federal government jurisdiction over all crimes occurring on Indian lands except: (1) Indian versus Indian crime, which remained solely within the jurisdiction of the Tribal governments; (2) crimes committed by an Indian against a non-Indian, if the Indian defendant was prosecuted by the Tribe; and (3) crimes committed in a state or specific location where a treaty governed the allocation of criminal jurisdiction between the federal government and a Tribe. In 1885, based on the federal government's dissatisfaction with the way that the Tribal court system had handled a murder committed by one Indian against another Indian on Tribal lands, Congress enacted the Indian Major Crimes Act.[65] This law granted the federal government jurisdiction over the commission of major crimes on Indian lands by all Indian defendants. According to Attorney Binney, the Major Crimes Act did not abrogate the Tribes' concurrent jurisdiction over these offenses, however.

In 1953, through Public Law 280,[66] Congress delegated its criminal jurisdiction over Indian Country to six specific states and authorized the remaining states to voluntarily obtain the federal government's jurisdiction over crimes committed in Indian country located within that state. This law was enacted during an era when the federal government was also seeking to terminate Tribes and assimilate Indians into non-Indian culture. Subsequently, in the 1970s, federal policy transformed from termination and assimilation into a greater respect for Indian self-determination.

In 1990, the U.S. Supreme Court issued a decision in *Duro v. Reina*,[67] in which it held that the Tribes were implicitly stripped of their criminal jurisdiction over non-member Indians when they became domestic dependent nations. Tribes could therefore only exercise criminal jurisdiction over their own Tribal citizens. Congress disagreed, quickly passing "*Duro*-fix" legislation reaffirming Tribal inherent authority to exercise criminal jurisdiction over any Indian who commits an offense within the relevant Tribe's territories.

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[63] *Passamaquoddy Tribe v. State of Maine*, 75 F.3d 784 (1st Cir. 2017).
[64] Codified at 18 U.S.C. §1152.
[65] Codified at 18 U.S.C. §1153.
[66] Codified at 18 U.S.C. §1162, 28 U.S.C. §1360, and 25 U.S.C. §§1321–1326.
[67] 495 U.S. 676 (1990).

In 2007, Amnesty International issued a report revealing the starkly high level of dating and domestic violence crimes committed against Indian women and the lack of sufficient federal law enforcement response. As of 2007, indigenous women were 2.5 times more likely to be raped or sexually assaulted than non-indigenous women. Of these rape and sexual assault crimes, 86% were committed by non-Indian defendants. Congress responded by passing the Tribal Law and Order Act of 2010 ("TLOA").[68] Before TLOA, Tribal courts were only authorized to impose criminal sentences on Indian defendants of up to one year of prison and a $5,000 fine. TLOA granted Tribal courts expanded authority to sentence offenders to a maximum of three years in prison and a $15,000 fine if certain due process protections were observed, but did not extend Tribal jurisdiction to non-Indian defendants.

Based on the success of TLOA jurisdiction, Attorney Binney explained, Congress subsequently created a pilot project of the Violence Against Women Reauthorization Act of 2013 ("VAWA")[69], authorizing certain Tribal courts to exert jurisdiction over some dating and domestic violence crimes committed by non-Indians on Tribal lands. The pilot project was successful and, in 2015, Tribes throughout the United States became eligible to assume Tribal special criminal domestic violence jurisdiction over non-Indian defendants in Indian country. The constitutional rights of non-Indian defendants in VAWA-jurisdiction cases are protected under federal law. In addition, these defendants have both the right to appeal Tribal judgments and to seek habeas corpus relief in federal courts. Although the jurisdictional authority granted in VAWA was originally accompanied by federal funding to assist Tribal courts in implementing this jurisdiction, that funding has expired. Congress is currently considering whether to reauthorize VAWA funding, Attorney Binney reported, as well as whether to expand the types of crimes for which Tribal courts may exert jurisdiction over non-Indian defendants under VAWA.

Attorney Binney further conveyed that the question of whether VAWA applies in Maine has been the subject of some debate. The issue arose when the Penobscot Nation Tribal Court applied to be a part of the pilot project under the VAWA Reauthorization Act of 2013. The Settlement Act's prohibition on the application of new federal Indian legislation to Maine, under section 1735(b), was viewed as a barrier to application of VAWA to the Maine Tribes. Attorney Binney posited that this position should not have prevailed, because VAWA itself indicates that it applies "notwithstanding any other federal law" - a statement that she asserted should have included the federal Settlement Act.

Nevertheless, recent state legislative efforts have been undertaken to authorize the Penobscot Nation and the Passamaquoddy Tribe to exert VAWA jurisdiction. A bill passed in the First Regular Session of the 129th Maine Legislature[70] would allow these Tribes to exert criminal jurisdiction over non-Indian defendants for a subset of VAWA crimes. However, the Tribal courts would not be afforded the same degree of sentencing authority as other Tribes are afforded under VAWA. Chief Francis later clarified that this bill, L.D. 766, includes a legislative commitment to work on expanding Tribal court sentencing authority, consistent with TLOA, during the Second Regular Session. In addition, he explained that L.D. 766 was made applicable only to the Penobscot Nation and Passamaquoddy Tribe, not out of disrespect for the other

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[68] Pub L. No. 111-211, 124 Stat. 2258, 2261 (2010) (codified in numerous sections of the United States Code).
[69] Codified at 42 U.S.C §§13701-14040.
[70] L.D. 766 was passed by both chambers of the Maine Legislature but has not yet been acted upon by the Governor.

Tribes, but instead because the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs currently lack the institutional framework to exercise criminal adjudicatory jurisdiction.

After recounting this history, Attorney Binney clarified for the Task Force the intent of the Tribal proposal for amending the Maine Implementing Act in the context of criminal jurisdiction. The Tribes propose to repeal most of the statutory language regarding court jurisdiction in an effort to afford the Tribes in Maine the same jurisdiction afforded other Tribes across the country under federal Indian law. Chris Taub expressed a concern that the Tribal proposal will not be effective in causing the default rules of federal Indian law to apply in Maine. Through section 6(c) of the Settlement Act,[71] Mr. Taub observed, the federal government relinquished its jurisdiction over most criminal cases committed on Indian lands in Maine and does not believe it is possible to amend the Maine Implementing Act in a manner that would alter this statement of federal law. Attorney Binney agreed that it will be necessary to thoroughly examine this issue to achieve the Tribes' goal.

Chair Bailey inquired whether a Tribe's authority over an "Indian" defendant under federal law depends on the defendant's membership in a federally recognized Indian Tribe. Attorney Binney responded that, while the definition of "Indian" in federal law is somewhat complicated and differs in different contexts, problems rarely arise because Tribal courts generally do not attempt to exert jurisdiction over defendants unless the courts view the defendants as "Indians." Whenever a particular defendant's status is unclear, a Tribal court will consult the relevant local, state and federal governments to determine which government should prosecute the defendant.

- *Civil Jurisdiction Example: The Regulation of Natural Resources (General Principles)*, presented by Attorney Smith

Attorney Smith then provided an overview of the general principles of federal Indian law controlling the regulation of natural resources in Indian country. He explained that this area of law involves sovereign authority to control the exploitation of natural resources in Indian country, including both the extraction of and the pollution regulation of these natural resources. Attorney Smith noted that the written materials prepared by Tribal counsel, reproduced in full in **Appendix L**, provide information not only on these general principles of federal Indian law but also contrasts these principles with the history of the regulation of natural resources on Tribal lands in Maine.

The written materials set forth the exploitation of the Penobscot River as one example illustrating the challenges Tribes face under Maine law in their efforts to preserve natural resources on the lands and accompanying waterways they have occupied from time immemorial. Attorney Smith orally supplemented that written information with historical context that, he stated, is essential for the Task Force to understand the critical importance of this issue to the Tribes. As Attorney Smith explained, "the Penobscot Nation is the river." The origin stories for the Penobscot Nation are all centered on the Penobscot River, the names of Penobscot Families are derived from the Penobscot River and the resources from the river have sustained Tribal members not only

[71] Settlement Act, §6(c), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(c)).

physically but culturally. Attorney Smith then recounted the history of pollution and severe contamination of the river, which is set forth in the written materials and not restated here.

Attorney Smith next reviewed Tribal counsel's written summary of the general principles of federal Indian law attendant to natural resource regulation. He informed the Task Force that there is a perception that section 1735(b) of the Settlement Act prevents the Tribes from taking advantage of many of the opportunities to exert regulatory authority over their natural resources that exist under several federal laws. For example, the Tribes have had difficulty obtaining "Treatment as a State" status under the Clean Air Act[72] and Clean Water Act,[73] which would allow them to assume primary regulatory control over the administration of air and water quality standards in their territories as outlined in the written materials.

Recently, under the Mills Administration, there have been positive developments including the State's enactment of heightened water safety standards designed to protect Tribal sustenance fishing rights. Attorney Smith reported that the Tribes are in some ways delighted with this development. Nevertheless, he observed, these standards are the result of state action and, therefore, their enactment harms the Tribes' dignity by continuing to deny the Tribes' right to regulate themselves in this area.

- *Civil Jurisdiction Example: The Regulation of Natural Resources (Hunting, Trapping, and Fishing)*, presented by Attorney Chavaree

Following this discussion of general principles, Attorney Chavaree walked Task Force members through the written materials provided by Tribal Counsel outlining the regulation of hunting, trapping and fishing rights under general principles of federal Indian law as compared to the rubric of the Settlement Act and Maine Implementing Act. Because these materials are reproduced in full in **Appendix L,** they are not summarized here.

Upon conclusion of the presentations by Tribal counsel, Chair Carpenter sought input from Task Force members regarding the best method for accomplishing the Task Force's duties under Joint Order H.P. 1307. The following concerns were raised during the ensuing discussion: multiple past efforts to renegotiate the Maine Implementing Act have been unsuccessful and, if the Task Force is similarly unsuccessful, it could cause a further breakdown of the relationship between the Tribes and the State; to date, the Tribes have invested significant time and monetary resources in preparing their proposal to amend the Maine Implementing Act and in educating Task Force members on principles of federal Indian law; the State of Maine has not yet taken a position regarding the Tribal proposal, potentially because Task Members lack clarity regarding what entity may assert the position of the State with respect to potential amendments to the Maine Implementing Act - *i.e.,* whether the State's position is properly asserted by the Governor or the Legislature, in consultation with the Attorney General's Office; and, even if these issues are resolved, the process of developing recommendations for amending the Maine Implementing Act regarding each of the disparate areas of law identified during the meeting held on August 9th was likely to require more than the one remaining meeting originally authorized by the Legislative Council.

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[72] 42 U.S.C. §§7401 et seq.
[73] 33 U.S.C. §§1251 et seq.

After lengthy discussion and a short break, the Task Force ultimately agreed to proceed as follows:

- Chairs Carpenter and Bailey would request permission from the Legislative Council for the Task Force to conduct additional meetings, one of which would be held at the Wabanaki Center in Orono, Maine.[74]
- Representative Perry would coordinate work by staff from the Office of Policy and Legal Analysis and the Office of the Attorney General to prepare side-by-side charts comparing principles of federal Indian law and the law currently applicable in Maine under the settlement and implementing acts on each topic of interest to the Task Force, with an additional column set aside for Task Force members to record their consensus recommendations. The topics, identified during the prior Task Force meeting, include: taxation, health care, education, court criminal and civil jurisdiction, regulation of natural resources and gaming law. The Task Force would then use these charts to structure the discussions at future meetings.
- The Task Force unanimously voted to request assistance from Suffolk University Law School's Human Rights and Indigenous Peoples Clinic in researching and identify the federal laws that are potentially inapplicable in Maine under section 1735(b) of the Settlement Act. Attorney Hinton indicated that Tribal counsel had already begun compiling this information and would share that research with the Clinic.

D. Fourth meeting - October 21, 2019

The fourth meeting of the Task Force was held on October 21, 2019.[75] After introductions, Chair Carpenter invited opening comments from Task Force members.

Chief Francis thanked the Task Force Chairs for coordinating with the Tribes in setting the day's agenda, given the urgent need for the Task Force to begin making concrete recommendations regarding the Maine Implementing Act and Micmac Settlement Act in order to complete its work by the fast-approaching December 4th reporting deadline set forth in Joint Order H.P. 1307. Initially, he was not optimistic about the Task Force's success, given the outcome of several past efforts to modernize these acts. This Task Force may be more successful than those past efforts, however, because it was initiated by the Maine Legislature. Chief Francis further reminded Task Force members that the 1980 Settlement Act acknowledged and accepted the existence of Tribal governments. Yet, those acts were negotiated 40 years ago, when the capacity of Tribal governments was more limited. Since that time, many federal laws affecting Tribal nations have

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[74] The Legislative Council granted the Task Force's requests to hold a total of up to 8 meetings and to conduct one of those meetings at the Wabanaki Center at the University of Maine at Orono in November. Unfortunately, unavoidable scheduling conflicts prevented the Task Force from convening at the Wabanaki Center in November.

[75] As authorized by the Joint Order, the following individuals were designated to attend the meeting:

- Vice-Chief Elizabeth Dana represented Chief Marla Dana of the Passamaquoddy Tribe at Pleasant Point; and
- Vice-Chief Darrell Newell represented Chief William Nicholas of the Passamaquoddy Tribe at Indian Township.

In addition, Jamie Bissonette-Lewey, chairperson of the Maine Indian Tribal-State Commission (MITSC), attended the meeting on behalf of MITSC managing director Paul Thibeault.

been enacted and many court cases have been decided. It is therefore the view of the Penobscot Nation that the settlement acts must be modernized to recognize the growing capacity of Tribal governments. These acts must also be revised to accommodate the continued growth of Tribal governments in the future and not be stagnant and set in stone. In Chief Francis's view, these goals can best be accomplished by amending the settlement acts to eliminate any restrictions on the inherent sovereignty of the Tribal governments.

While also optimistic, Vice-Chief Dana observed that the Task Force has spent a lot of time obtaining background information and educating itself on the status of Indian law. She urged the Task Force to begin making its recommendations as it reviewed the topics on the day's agenda. She advised that the settlement and implementing acts must be updated to allow the Tribes to protect their lands and their people by holding criminals accountable in Tribal courts. Under existing law, confusion exists regarding where Tribal members can file for protection orders - county court or Tribal court - and whether to call Tribal police or state police to report a crime, depending on the identity of the victim and the perpetrator. This confusion derives from the limited jurisdiction the Tribes were forced to accept under the Settlement Act, based on the assumption that only state law would achieve safety and security on Tribal lands. This was not the situation prior to enactment of the Settlement Act and has created an unhealthy reliance on the state criminal justice system. The Passamaquoddy Tribe wishes to grow its court capacity and improve its criminal justice system under Passamaquoddy law, not Maine law. Put simply, the Passamaquoddy Tribe desires the opportunity to be treated the same as other Tribes across the country.

Vice-Chief Newell expressed his hopeful excitement with the Task Force Process. He reminded Task Force members of a suggestion made at the end of the first Task Force meeting to tear up the Maine Implementing Act and begin drafting it again from scratch, which he believes would be the best approach to pursue. Wrong after wrong has been committed against Native people throughout the history of this country. Some of these wrongs cannot be made right, but this Task Force has the opportunity to right the wrongs imposed through the Settlement Act.

Chief Sabattis acknowledged that the Houlton Band of Maliseet Indians, unlike the Penobscot Nation and Passamaquoddy Tribe, does not yet have its own law enforcement agency or court system. The Maine Implementing Act grants the Houlton Band of Maliseet Indians some authority to create these entities, but that authority differs from the authority granted the other Tribes under the Act. Chief Sabattis informed the Task Force that the Houlton Band of Maliseet Indians is committed to developing its capacity in these areas in the future.

The Task Force then turned to a discussion regarding the authority of Tribal governments, the State government and the Federal government over crimes committed on Indian lands. Task Force staff presented the *Criminal Jurisdiction* side-by-side chart,[76] reproduced in **Appendix M**, which describes the differences between the allocation of jurisdiction between these governments under default principles of federal Indian law on the one hand and the Settlement

[76] The purpose of the charts reproduced in **Appendix** M was to structure the discussions of the Task Force. The charts are not intended as complete or definitive descriptions of Federal Indian law or of Maine law. Neither the Task Force nor the Tribes adopted the content of the charts, with the exception of the Consensus Recommendations appearing in the right-hand column of each chart.

Act, Maine Implementing Act and Micmac Settlement Act on the other hand. Members proposed, discussed and voted on several recommendations for amending the Maine Implementing Act in a manner that would restore the Tribes' criminal jurisdiction over their lands. The consensus recommendations adopted by the Task Force, as well as several Task Force proposals for future consideration by the Legislature and the Tribes, are set forth in Part IV of this report.

During the criminal jurisdiction discussion, several questions were raised regarding the precise location of Tribal lands in the State. Tribal counsel offered to provide the Task Force with maps detailing the Tribes' reservations, trust lands and lands held in fee at the next meeting.

After the Task Force completed its review of criminal jurisdiction over tribal lands, Task Force members requested that staff distribute and present a side-by-side chart outlining civil jurisdiction over Tribal lands. This chart, which compares the civil authority of Tribal governments, state governments and the federal government over Indian lands under federal Indian law and current Maine law is reproduced in **Appendix M.** The Task Force ultimately chose not to discuss potential recommendations for amending the Maine Implementing Act and Micmac Settlement Act in the civil jurisdiction arena until its next meeting.

Before adjourning, the Task Force agreed to hold its next meeting at the Wabanaki Center in Orono on November 8th, followed by three meetings on December 5th, 6th and 13th at the State House in Augusta. Chair Carpenter requested that, before those meetings, Task Force members contemplate potential mechanisms for sustaining the momentum of their work to improve the relationship between the State and the Tribes. Specifically, he suggested that members consider whether, for example, a panel composed of Tribal and state government members should be created to engage in mediation prior to the initiation of litigation between the Tribes and the State.

Representative Dillingham inquired how the Task Force's proposed recommendations would be considered by the Maine Legislature. Chair Carpenter and Representative Bailey reminded members that the Joint Order establishing the Task Force requires it to present a report to the Joint Standing Committee on Judiciary, which has authority to report out legislation. No decision has yet been made whether all of the Task Force's proposals will be combined in a single legislative instrument to be considered by the Judiciary Committee or whether a series of distinct bills will be proposed for review by legislative committees with relevant subject matter jurisdiction.

E. Fifth meeting - December 5, 2019[77]

The fifth meeting of the Task Force was held on December 5, 2019.[78] Following introductions of Task Force members, Chair Carpenter invited opening comments from Task Force members.

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[77] Due to unavoidable scheduling conflicts, the Task Force was unable to hold the anticipated November meeting at the Wabanaki Center.

[78] As authorized by the Joint Order, the following individuals were designated to attend the meeting:

- Vice-Chief Elizabeth Dana represented Chief Marla Dana of the Passamaquoddy Tribe at Pleasant Point;

Chief Francis indicated that he will be unable to attend the Task Force meeting previously scheduled for December 6th, because the oldest living female member of the Penobscot Nation passed away and her funeral was scheduled for that date. Representative Dillingham indicated that she had a Legislative Council meeting on December 6th and would be in and out of the meeting. After discussion, Chair Carpenter took Vice-Chief Darrell Newell's request to postpone the meeting out of respect to the funeral under advisement while he examined options for rescheduling the meeting at a later date.

In her opening remarks, Vice-Chief Dana noted that all of the issues on the agenda represent rights that her Passamaquoddy Tribal ancestors fought and died for over many generations. The treaty of 1794 identified specific lands where the Tribe could reside, including land located on salt and fresh water, and where Tribal members could survive with sustenance fishing, hunting and trapping. These lands supported the Tribe's ability to survive all seasons and feed their families throughout the year. The Treaty of 1794 guaranteed the Passamaquoddy Tribe the right to fish both branches of the St. Croix/Skutik River unmolested forever. The Settlement Act eroded those rights and the water has become polluted. The Settlement Act further prevents the Tribe from acquiring the land necessary to feed its population and remediate the river's pollution. Additionally, the fish that formerly sustained the Tribe no longer exist in sufficient numbers due to blocked fish passage, overfishing and pollution. Vice-Chief Dana hoped that the Task Force would recognize and protect these rights.

Vice-Chief Darrell Newell explained that he attends the Task Force as a representative of a sovereign Tribe and hopes that the Task Force respects his Tribe's sovereignty and that the State approaches the Task Force process as a government-to-government exchange.

The Task Force then turned to reviewing the consensus recommendations made at the meeting of October 21st regarding criminal jurisdiction. Task Force staff presented an updated version of the *Criminal Jurisdiction* side-by-side chart that included draft consensus recommendations. Task Force staff noted several changes to the consensus recommendation language suggested by Tribal attorneys, copies of which were distributed to Task Force members.[79] The Task Force discussed the draft and suggestions, ultimately adopting the language included in the version of the *Criminal Jurisdiction* chart that is reproduced in **Appendix M**. Task Force members also raised several concerns regarding the interplay of the different consensus recommendations regarding Criminal Jurisdiction; these concerns are set forth in Part IV of this report.

After the criminal jurisdiction discussion, the Task Force requested that staff review the general tenants of civil jurisdiction of Tribal governments, the State government and the federal government under federal Indian law and under current Maine law set forth in the *Civil*

- Vice-Chief Darrell Newell represented Chief William Nicholas of the Passamaquoddy Tribe at Indian Township; and
- Vice-Chief Richard Silliboy represented Chief Peter-Paul of the Aroostook Band of Micmacs.

[79] The draft language of the consensus recommendations regarding Criminal Jurisdiction prepared by Task Force staff, as well as Tribal counsel's suggested amendments to that draft language, are posted on the Task Force website at the following link: http://legislature.maine.gov/maine-indian-claims-tf.

Jurisdiction side-by-side chart, which is reproduced in **Appendix M**. After initial discussion, Vice-Chief Dana made the following motion regarding civil legislative jurisdiction:

> *To restore and reaffirm the Tribes' right to exercise civil legislative authority, with respect to Tribal citizens on Tribal lands, to the fullest extent enjoyed elsewhere in Indian Country in accordance with federal law.*

Task Force members discussed and debated this motion at length. Attorney Smith informed the Task Force that proposed language for the soon-to-be-published *Restatement of the Law of American Indians* declares that Tribes have exclusive jurisdiction over Tribal citizens in Indian Country, with very narrow exceptions. Ultimately, Representative Perry suggested tabling the motion because it would render moot any additional discussions regarding the other subject matters—including land use, gaming and taxation—that the Task Force planned to review at this and future meetings. Chair Carpenter seconded the tabling motion and the Task Force voted unanimously (10-0) in favor of the tabling motion.

After the Task Force turned to a discussion of civil adjudicatory jurisdiction, Representative Perry made the following motion:

> *Tribal courts be granted exclusive adjudicatory jurisdiction over matters concerning conduct by Tribal citizens on Tribal land; in the event a Tribal court has jurisdiction over a member of its own Tribe, it also has jurisdiction over a member of any federally recognized Tribe within their territories.*

Chief Francis seconded this motion involving tribal civil adjudicatory jurisdiction. After a lengthy discussion, Representative Perry moved to table all motions related to general civil jurisdiction to allow the Task Force time to work through all of the discrete topics of law identified by the Task Force as important at earlier meetings before revisiting these issues. Senator Moore seconded the motion and it passed by a 6-2 vote.[80]

Vice-Chief Newell expressed concern that by tabling these motions the Task Force may be viewed as indecisive. He suggested that the Task Force take a general position in favor of recognizing the sovereignty of Maine's Indian Tribes. Attorney Smith supported Vice-Chief Newell's position, characterizing Tribal authority over Tribal citizens' activities on Tribal lands as the simplest of all issues in federal Indian law.

The Task Force then requested that staff outline the authority of Tribes, the State and the Federal government to regulate fishing and hunting with respect to Tribal lands. Task Force staff presented the *Fish & Game* side-by-side chart, reproduced **in Appendix M**, which describes the allocation of jurisdiction between these governments under default principles of federal Indian law and current Maine law. Task Force members, proposed, discussed, and voted on several recommendations for amending the Maine Implementing Act to expand the Tribes' jurisdiction to regulate hunting and fishing on and off Tribal lands. The consensus recommendations adopted

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[80] Representative Bailey, Vice-Chief Dana, Vice-Chief Silliboy, Vice-Chief Newell, Representative Perry and Senator Moore voted in favor of the tabling motion. Chief Francis and Chief Sabattis opposed the motion. Representative Dillingham and Senator Carpenter were absent at the time of the vote.

by the Task Force are set forth in the *Fish and Game* side-by-side chart, reproduced in **Appendix M**, and are discussed in more detail in Part IV of this report.

Following the discussion of hunting and fishing, the Task Force requested staff review the authority of Tribes, the State and the Federal government to regulate land use and natural resources with respect to Tribal lands. Task Force staff presented the *Land Use* side-by-side chart, reproduced in **Appendix M**, which describes the differences between land use and natural resource regulation under federal Indian law and the laws currently applicable in Maine. Members proposed, discussed, and voted on several recommendations for amending the Maine Implementing Act to expand Tribes' jurisdiction to regulate land use and natural resources on and off Tribal lands. The consensus recommendations adopted by the Task Force, as well as several important issues for the Legislature and the Tribes to consider as legislation to implement these recommendations is developed, are set forth in Part IV of this report.

At this point in the meeting, Chair Carpenter explained that he and Chair Bailey would request permission from the Legislative Council to postpone the meeting that was previously scheduled to occur on December 6th to December 18th, to allow Task Force members to attend the funeral of the Penobscot elder.

Because Corey Albright, counsel to the Houlton Band of Maliseet Indians, had flown to Maine from Washington to attend the meeting on December 6th, Chair Carpenter invited him to address the issues of taxation and gaming, which were originally on the agenda for the now-postponed meeting. After staff distributed the *Taxing Authority* side-by-side chart, which is reproduced in **Appendix M,** Attorney Albright gave a brief overview of taxation on Tribal lands. He emphasized that the following general rules underlie federal Indian law regarding taxation.

- First, when Tribal members and governments engage in activities outside of reservations or trust lands, they are subject to the same state taxes as non-Indians.
- Second, when Tribes' and Tribal members' activities occur on the relevant Tribe's reservation or trust land, those activities are not subject to state taxes. According to Attorney Albright, Maine is the only state that imposes taxes on Tribal members or Tribes in this situation.
- Third, Tribes have authority under federal Indian law to tax their members and their members' businesses on Tribal lands.
- Fourth, when a non-member engages in activities on Tribal lands, the state and the Tribe have concurrent jurisdiction to tax those activities. In many jurisdictions, the states and the Tribes have entered into tax compacts to share revenue and avoid double taxation of businesses located in Indian territory because it is not in the Tribes' best interest to allow higher tax rates to exist in their territories.
- Fifth, if a Tribal member lives and works in that member's Tribe's Indian country, the member's income is not subject to state income tax. However, if the Tribal member either lives outside of Indian country or works outside of Indian country, the member's income is subject to state income tax.

Finally, Attorney Albright observed that preventing states from taxing Indians in Indian country does have a marginal impact on state tax revenue. Yet, he argued, limiting state taxes in Indian

country has a huge economic impact on affected tribes. Revenues not subject to state taxes are reinvested locally, alleviating the burden on surrounding communities to provide services to individuals in Indian country.

Before adjourning for the day, the Task Force began a short discussion of gaming law. Chair Carpenter noted that in Maine any new casino-style gaming enterprise must first be authorized by statewide referendum, which puts Tribes at a disadvantage. In contrast, Attorney Albright observed, if a state allows casino-style gaming in any form, that state cannot deny a Tribe's ability to undertake casino-style gaming under the federal Indian Gaming Regulatory Act ("IGRA").[81] If a state does not allow casino-style gaming at all, however, Tribes within that state do not have the right to engage in casino-style gaming under IGRA.

Vice-Chief Newell and Attorney Hinton agreed that that Settlement Act's prohibition on the application of federal laws in Maine has been used to prevent tribes from opening casinos in Maine, contributing to a very difficult history of gaming for the Tribes of Maine. Attorney Hinton recounted that, because gaming is subject to referendum in the State, non-Tribal gaming and Tribal gaming have appeared on the same ballot in the past. Non-Tribal gaming was approved by the voters but Tribal gaming was not. As a result, Attorney Hinton noted, Maine Tribes have lost the benefits of IGRA, which has generated more than $25 billion a year in money for Tribes across the country. Under IGRA, that money is kept in Tribal communities. He reiterated that the Tribes in Maine simply desire the benefit of federal laws, like IGRA, that Tribes elsewhere enjoy. Paul Thibeault observed that, when it researched the matter, the Suffolk University Law School could not find a clear explanation for the inclusion of Section 1735(b) in the Settlement Act, although it was clear that this section was added to the act at "the last minute."[82]

Chair Carpenter asked what a repeal of Section 1735(b) of the Settlement Act would mean for Maine. Attorney Hinton explained that some federal laws for the benefit of Indians and Indian Tribes that do not apply in the State would immediately become effective in Maine - *e.g.*, the amendment to the Stafford Act that allows Tribes to immediately engage with FEMA for disaster aid.[83] Although Chris Taub observed that, by its terms, Section 1735(b) only prevents application of laws that conflict with Maine law, Attorney Albright responded that the language of Section 1735(b) is quite vague and can easily be interpreted by the State to apply in many situations.

F. Sixth meeting - December 18, 2019[84]

The sixth meeting of the Task Force was held on December 18, 2019.[85] Chair Carpenter opened the meeting and Vice-Chief Silliboy offered a prayer in Passamaquoddy. Members then introduced themselves.

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[81] Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988) (codified at 25 U.S.C. §2701 to §2721).
[82] *See* Friederichs et al., Suffolk University Law School, The Drafting and Enactment of the Maine Indian Claims Settlement Act (Feb. 2007), *available at* http://legislature.maine.gov/doc/3003.
[83] *See* Disaster Relief Appropriations Act, Pub. L. 113-2, 127 Stat. 4 (Jan. 29, 2013) (amending the Robert T. Stafford Disaster Relief and Emergency Assistance Act).
[84] Although the Task Force scheduled a meeting for Friday, December 13, 2019, that meeting was cancelled to allow several Task Force members to attend the funeral of a Passamaquoddy tribal elder.
[85] As authorized by the Joint Order, the following individuals were designated to attend the meeting:

The Task Force began by discussing next steps and the plan for the legislative session. Chair Carpenter requested that Representative Bailey and Senator Moore, along with a Tribal leader designated by the Tribal members of the Task Force, present the work of the Task Force to the Judiciary Committee on either January 14 or January 16, 2020. He noted that the Judiciary Committee will likely report out a single bill including all Task Force consensus recommendations, but that, as necessary, the Judiciary Committee can split certain topics into different bills. After drafting, the Committee will likely hold a day-long public hearing to accept comments on various topics and will invite members of the other relevant joint standing committees of jurisdiction to attend the hearing and ask questions during discussions of various sections of the bill.

Chair Carpenter then invited Task Force members to make opening comments. Vice-Chief Dana thanked the Task Force for canceling last Friday's meeting out of respect for the funerals of two Passamaquoddy members, one of whom was a Tribal elder. She further noted that in June of this year, the Maine Legislature passed a resolution[86] supporting three goals: (1) that Maine Tribes not be subject to the criminal and civil jurisdiction of the state; (2) that Maine Tribes enjoy the same powers and rights that other Tribes enjoy across the country; and (3) that Maine Tribes no longer be deprived of the benefits of federal laws enacted for the benefit of Indians.

Vice-Chief Dana also expressed concern that the Task Force may not finish the day's agenda and suggested that the Task Force be allowed to continue its work into January, as members have developed great expertise in Indian law. Chair Carpenter stated that the Task Force is constrained in its ability to hold future meetings but that will try to find a way to continue this important work during the Second Regular Session of the 129th Legislature.

The Task Force then received a brief presentation, via telephone, from Professor Friederichs of the Suffolk University School of Law's Human Rights and Indigenous Peoples Clinic regarding her clinic's report on Section 1735(b) of the Settlement Act. This report is set forth in **Appendix N**. Professor Friederichs reviewed the research processes utilized by the Clinic in compiling the report, which lists the federal laws enacted after October 1980 that appear to benefit Indian nations and Indian citizens. She also presented a one-page slide providing a graphic grouping of the subject matters of those laws and offered to provide the Task Force with a list of the federal laws for the benefit of Indian nations and Indian citizens enacted after October 1980 that fall within each of these subject-matter areas.[87]

Representative Perry and Representative Bailey each expressed their appreciation and thanked Professor Friederichs and her students for their work. Professor Friederichs offered to correct the

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- Vice-Chief Elizabeth Dana represented Chief Marla Dana of the Passamaquoddy Tribe at Pleasant Point;
- Vice-Chief Darrell Newell represented Chief William Nicholas of the Passamaquoddy Tribe at Indian Township; and
- Vice-Chief Richard Silliboy represented Chief Peter-Paul of the Aroostook Band of Micmacs.

[86] S.P. 622, *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising from the Interpretation of An Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980* (129th Maine Legislature, 2019).

[87] This color slide is posted on the Task Force website at the following link: http://legislature.maine.gov/maine-indian-claims-tf.

report if any errors are discovered and further observed that the Clinic is happy to act as a resource in the future to the Task Force and Tribes.

The Task Force then requested that staff outline the authority of Tribes and the State to tax Tribal and non-Tribal citizens both on and off of tribal lands, which is described in the *Taxing Authority* side-by-side chart that is reproduced in **Appendix M**. Members, proposed, discussed, and voted on several recommendations for amending the Maine Implementing Act to expand Tribes' jurisdiction to tax Tribal and non-Tribal citizens on Tribal land and to limit the State's authority to tax Tribal citizens. The consensus recommendations adopted by the Task Force are set forth in Part IV of this report and included in the *Taxing Authority* side-by-side chart in **Appendix M**.

The Task Force next turned to the authority of Tribes to conduct gaming operations in Maine. Task Force staff distributed the *Gaming* side-by-side chart, reproduced in **Appendix M**. Members proposed, discussed, and voted on a recommendation for amending the Maine Implementing Act to expand the Tribes' ability to conduct gaming operations. The consensus recommendation related to gaming that was adopted by the Task Force is discussed in Part IV of this report and included in the *Gaming* side-by-side chart in **Appendix M**.

The Task Force then returned to the topic of the general civil legislative and adjudicatory jurisdiction of Tribal governments, the State government and the federal government on Indian lands that had been tabled at the meeting held on December 5th. The Task Force first discussed whether it was necessary to include overarching recommendations regarding civil jurisdiction, given the recommendations already made by the Task Force. Attorney Hinton opined that it was necessary to include general civil jurisdiction recommendations because there are areas of law that fall outside of those covered in the more discrete topics previously discussed by the Task Force. Chris Taub agreed that the scope of general civil jurisdiction language was broader than the consensus recommendations previously adopted by the Task Force, primarily due to the doctrine of Tribal sovereign immunity, which might limit the state's ability to enforce laws against the Tribes.

After significant discussion, members proposed, discussed, and voted on several recommendations to expand the authority of Tribes to exercise both legislative and adjudicatory authority over both Tribal and non-Tribal citizens on Tribal land. The consensus recommendations adopted by the Task Force are set forth in Part IV of this report and are included in the *Civil Jurisdiction* side-by-side chart, reproduced in **Appendix M**.

The Task Force agreed that the topic of sovereign immunity warranted further consideration, but neither voted on nor adopted a recommendation on this topic. Additional details regarding the discussion of Tribal sovereign immunity, as it relates to the general civil legislative and adjudicatory authority of the Tribes, can be found in Part IV of this report.

The Task Force then turned its attention to the topic of alternative dispute resolution. Recognizing that the Task Force did not have time to address this topic fully, Chair Carpenter invited Representative Perry to present her proposal for enhancing Tribal and State communication and for avoiding future litigation between the parties. Representative Perry suggested that the Task Force consider recommending that the following steps be taken:

1. Establish an Office of Native American Relations within the Office of the Governor;
2. Establish a body (potentially *ad hoc*) responsible for alternative dispute resolution and require alternative dispute resolution prior to the filing of litigation either by the State against one or more of the Tribes or by one or more of the Tribes against the State. Require that the membership of the alternative dispute resolution body be negotiated by the Tribes and the State; and
3. Establish an advisory council (either MITSC or a different entity) consisting of representatives of the Tribes and the State, including state legislators. Grant this advisory council authority not only to submit regular reports but also to submit legislation to the Legislature.

Paul Thibeault noted that, although it lacks specific legislative authority for this role, MITSC has a long institutional history of attempting to resolve disputes between the State and the Tribes. MITSC has researched how tribal-state relations are handled in other jurisdictions, and Mr. Thibeault offered to share this information with other members of the Task Force. Mr. Thibeault cautioned, however, that requiring Tribes to submit to alternative dispute resolution before initiating litigation might itself be considered an invasion of Tribal sovereignty. Attorney Hinton added that there are many examples of alternative dispute resolution between states and Tribes, particularly in gaming compacts. He noted that such agreements typically include the right of the State and Tribes either to appeal or to enforce an arbitration decision in federal court.

The Task Force voted to adopt a consensus recommendation for the further development of an alternative dispute resolution mechanism early next year. This consensus recommendation is set forth in Part IV of this report.

As its final topic of discussion, the Task force turned to the impact of sections 1725(h) and 1735(b) of the Settlement Act,[88] which generally prevent federal laws enacted for the benefit of Indians and Indian Tribes from applying in the State of Maine if those laws either affect or preempt the application of state law. After significant discussion, members proposed, discussed, and adopted a consensus recommendation designed to ensure that federal laws for the benefit of Indian country apply within the State of Maine. Details regarding the Task Force's consensus recommendation can be found in Part IV of this report.

The last topic discussed by the Task Force involved the process by which the Tribes in Maine acquire new trust lands in the State. After a brief discussion, the Task Force adopted a consensus recommendation to remove many of the limitations imposed on Maine tribes regarding trust land acquisition under the Maine Implementing Act; that consensus recommendation is set forth in Part IV of this report.

Before adjourning, the issues of education and healthcare and social services, which had been identified as areas of potential concern early in the Task Force process, were briefly discussed. Members observed that Tribal authority over these matters already exists and is therefore not a major area of concern for the Tribes. Moreover, the Task Force agreed that the consensus

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[88] Settlement Act, §6(h), 94 Stat. at 1794 (formerly codified at 25 U.S.C. §1725(h)); *id.* §16(b), 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1735(b)).

recommendations previously adopted by the Task Force would rectify any gaps between the authority that Tribes in Maine currently enjoy as compared to the authority of other Tribes across the country regarding these subject matters.

V. CONSENSUS RECOMMENDATIONS

Following are summaries of each Consensus Recommendation made by the Task Force. It should be noted that throughout these recommendations, the term "Tribal Land" is intended to encompass all land included in the definition established in Consensus Recommendation #2. Additionally, the term "federal Indian law" and similar phrases, are intended to refer to the entirety of federal Indian law, including federal statutes and regulations, common law, case law, as well as the rules and principles applied by the courts in resolving disputes between Tribes, states and the federal government. The Task Force intends that federal Indian law be understood as a continually evolving body of law concerning the ongoing relationships between sovereign governments. The Task Force does not intend to adopt or imply that there exists or has ever existed a static version of federal Indian law on any specific date. Finally, numerous statutory citations can be found in footnotes throughout the report. These citations may be consulted for more detailed information.

A. Alternative Dispute Resolution and Tribal-State Collaboration and Consultation

Consensus Recommendation #1: Amend the Maine Implementing Act to establish an enhanced process for tribal-state collaboration and consultation as well as a process for alternative dispute resolution. Allow stakeholders to meet in January to delineate the contours of the Task Force's general recommendation on these issues. (Vote 9-0)[89]

Task Force members agree that a mechanism is needed to ensure better communication between the Tribes and the State and to avoid litigation. The Task Force is not yet prepared to outline the most advantageous processes for ensuring tribal-state collaboration and true consultation occur, as well as to attempt to resolve disputes prior to the initiation of litigation. Therefore, through Consensus Recommendation #1 the Task Force recommends that stakeholders, including Task Force members, meet in January to draft a more specific plan to amend the Maine Implementing Act to address these issues.

B. Criminal Jurisdiction

Consensus Recommendation #2: Amend the Maine Implementing Act to recognize the jurisdiction of the Passamaquoddy Tribal Court, Penobscot Nation Tribal Court and the Houlton Band of Maliseet Indians Tribal Court over certain criminal and juvenile offenses committed on the following Tribal lands: any land held now or in the future by the Secretary of Interior in trust for the relevant Tribe and any restricted-fee land held now or in the future by the relevant Tribe. *(Vote: 9-1)*[90]

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[89] Representative Dillingham was absent for this vote.
[90] Representative Dillingham opposed this recommendation.

The Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians currently enjoy criminal jurisdiction over only a narrow subset of their respective lands compared to the scope of lands over which Tribes governed by default principles of federal Indian law enjoy criminal jurisdiction.[91] Sections 6209-A(1)(A), (B) and 6209-B(1)(A), (B) of the Maine Implementing Act recognize the Passamaquoddy Tribal Court's and the Penobscot Nation Tribal Court's criminal jurisdiction over certain offenses only if those offenses are committed on the relevant Tribe's reservation lands. The Passamaquoddy and Penobscot Tribal courts are not afforded criminal jurisdiction over offenses committed on lands in Maine that have been acquired by the Secretary of Interior and held in trust for the Passamaquoddy Tribe or the Penobscot Nation, however. Similarly, if the Houlton Band of Maliseet Indians establishes a Tribal court, the Maine Implementing Act recognizes its authority to exert jurisdiction over certain offenses committed on "Houlton Band Jurisdiction Land." This phrase is defined in section 6209-C(5) of the Maine Implementing Act to include only a subset of the lands in Maine acquired by the Secretary of the Interior and held in trust for the Houlton Band of Maliseet Indians.

A majority of the Task Force recommends that the Maine Implementing Act be amended to recognize the criminal jurisdiction of the Passamaquoddy Tribal Court, Penobscot Nation Tribal Court and the Houlton Band of Maliseet Indians Tribal Court, if a Maliseet court is established, over all lands held either now or in the future by the Secretary of the Interior in trust for the relevant Tribe. In addition, the Task Force recommends that the Maine Implementing Act be amended to recognize the criminal jurisdiction of these Tribal courts over restricted-fee land held now or in the future by the relevant Tribe. As Tribal counsel has explained, "restricted-fee land" is land owned directly by a Tribe, usually as a result of a treaty, land claim settlement or other Act of Congress, that is subject to restrictions on its sale, lease, transfer or encumbrance. In Maine, restricted-fee lands include those portions of the Passamaquoddy Indian Reservation and Penobscot Indian Reservation that are directly owned by the relevant Tribe and not held in trust by the Secretary of the Interior on behalf of the relevant Tribe.

It is important to note that the lands that qualify for the exercise of criminal jurisdiction by the Passamaquoddy Tribe, Penobscot Nation and the Houlton Band of Maliseet Indians under Consensus Recommendation #2, *i.e.,* each Tribe's reservation land, if any, and the lands held by the Secretary of Interior in trust for that particular Tribe, are scattered across the State.[92] Chris Taub expressed concern that the noncontiguous nature of these lands may cause confusion for the public and the criminal justice system. He asked, for example, how a member of the public can be certain which laws apply to remote lands? If a member of the public calls 911 to report an offense, how can the dispatch center be certain whether Tribal law enforcement or State troopers have jurisdiction? Although he acknowledged that these issues are not insurmountable,

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[91] In the context of criminal jurisdiction, the "default principles of federal Indian law" include the federal statutes and common law governing criminal jurisdiction over Tribal lands that apply in states or portions of states that are not subject to a contradictory treaty provision, subject to a contradictory federal statute (for example, a land claims settlement statute) or subject to Public Law 280. *See* Pub. L. No. 83-280, §2, 67 Stat. 588 (codified in part at 18 U.S.C. §1162) (1953).

[92] The maps of Tribal land submitted to the Task Force by the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and presented at the December 5, 2019 meeting are *available at* http://legislature.maine.gov/maine-indian-claims-tf.

Mr. Taub nevertheless suggested that these and similar issues should be considered by the Legislature and Tribes as they develop legislation implementing this consensus recommendation. Attorney Binney noted that there are several instances across the country where tribes own and exercise criminal jurisdiction over noncontiguous lands, and these instances can be considered during the drafting of legislation implementing the Task Force recommendations.

In addition, it was determined that offenses labeled "civil violations" or "traffic infractions" under state or tribal law should be treated the same as crimes or juvenile crimes for purposes of interpreting the criminal jurisdiction of tribal courts and state courts under the Maine Implementing Act.

Consensus Recommendation #3: Amend the Maine Implementing Act to:

Part 1: Equate the exclusive criminal jurisdiction of the Passamaquoddy Tribal Court and the Houlton Band of Maliseet Indians Tribal Court with the exclusive criminal jurisdiction of the Penobscot Nation Tribal Court over offenses committed by Indian defendants.

Part 2: Recognize the authority of Tribal Courts in Maine to impose the maximum penalties other Tribal Courts are authorized to impose under the federal Tribal Law and Order Act of 2010, as long as the due process protections required by that Act are observed.

(Vote: 10-0)

Part 1: Task Force members unanimously agree that the Passamaquoddy Tribal Court, the Penobscot Nation Tribal Court and the Houlton Band of Maliseet Indians Tribal Court should be treated equally under the Maine Implementing Act. As it is currently drafted, the Maine Implementing Act grants each of these Tribal courts exclusive criminal jurisdiction over victimless offenses committed by Indian defendants as well as offenses committed by Indian defendants against Indian victims, provided that these offenses are committed on specified Tribal lands[93] and are punishable by no more than a year of imprisonment and no more than a $5,000. Yet, as Table 1 demonstrates, the individuals who qualify as an "Indian" defendant or "Indian" victim sufficient to confer jurisdiction on the court differ for each Tribal court under the Maine Implementing Act.

[93] *See* Consensus Recommendation #2.

Table 1: Individuals subject to the exclusive criminal jurisdiction of Tribal courts under the Maine Implementing Act

Tribal Court	Defendant must be:	Either there is no victim or the victim is:
Passamaquoddy Tribal Court (§6209-A(1)(A))	➢ a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation	➢ a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation
Penobscot Nation Tribal Court (§6209-B(1)(A))	➢ a member of any federally recognized Indian Tribe, nation, band or other group	➢ a member of any federally recognized Indian Tribe, nation, band or other group
Houlton Band of Maliseet Indians Tribal Court (§6209-C(1)(A); (1-A)(A); (1-B)(A))	➢ a member of the Houlton Band of Maliseet Indians, the Penobscot Nation or the Passamaquoddy Tribe[94]	➢ a member of the Houlton Band of Maliseet Indians, the Penobscot Nation or the Passamaquoddy Tribe[94]

The Task Force therefore unanimously recommends expanding the category of "Indian" defendants and victims over whom the Passamaquoddy Tribal Court and the Houlton Band of Maliseet Indians Tribal Court have exclusive criminal jurisdiction under the Maine Implementing Act to include members "of any federally recognized Indian Tribe, nation, band or other group," consistent with the existing exclusive criminal jurisdiction of the Penobscot Nation Tribal Court under section 6209-A(1)(A) of the Maine Implementing Act.

Part 2: Beyond ensuring that Tribal courts are treated equally under the Maine Implementing Act, Task Force members unanimously agree that Tribal courts should have jurisdiction to impose the maximum criminal penalties that other Tribal Courts are authorized to impose under certain circumstances pursuant to the federal Tribal Law and Order Act of 2010 ("TLOA"). Under the Maine Implementing Act, Tribal courts have jurisdiction over victimless offenses committed by Indian defendants and offenses committed by Indian defendants against Indian victims,[95] when those offenses are committed on specified Tribal lands[96] and when "the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $5,000."[97] These maximum penalties match the penalties that TLOA authorizes Tribal courts that observe certain minimum due process standards to impose on convicted offenders.[98]

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[94] Under a literal reading of the Maine Implementing Act, the exclusive jurisdiction of the Houlton Band of Maliseet Indians may be limited to offenses committed by members of the Houlton Band of Maliseet Indians, the Penobscot Nation or the Passamaquoddy Tribe against other members of their Tribe. More information on the complexities of interpreting this statute, 30 M.R.S.A. §6209-C, can be found in the *Criminal Jurisdiction* chart set forth in **Appendix M**.

[95] *See* Consensus Recommendation #3, part 1.

[96] *See* Consensus Recommendation #2.

[97] 30 M.R.S.A. §6209-A(1)(A), §6209-B(1)(A), §6209-C(1)(A), (1-A)(A), (1-B)(A).

[98] 25 U.S.C. §1302(a)(7)(B); *see also* §1302(a)(1)-(6) (requiring Tribal governments and criminal courts to observe the following minimum due process protections: the rights set forth in the First and Fourth Amendments to the U.S. Constitution; the rights to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against one, to compulsory process for obtaining witnesses, to the assistance of counsel at one's

Unlike the Maine Implementing Act, however, TLOA affirmatively provides Tribal courts with authority to impose multiple sentences on a single defendant, as long as the "total penalty or punishment" imposed in a single proceeding does not exceed "a term of 9 years."[99] In addition, TLOA affords Tribal courts expanded sentencing authority to "impose for conviction of any 1 offense" a maximum penalty of "imprisonment for a term of 3 years or a fine of $15,000, or both." This expanded sentencing authority may only be exercised by a Tribal Court when the defendant has previously been convicted of a comparable offense or the offense charged would be punishable by more than 1 year of imprisonment under federal law or the law of any state.[100] Moreover, to impose an expanded sentence, the Tribal court must:

> (1) Provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;
>
> (2) At the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
>
> (3) Require that the judge presiding over the criminal proceeding:
>
> (A) has sufficient legal training to preside over criminal proceedings; and
>
> (B) is licensed to practice law by any jurisdiction in the United States;
>
> (4) Prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and
>
> (5) Maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.[101]

As long as the requisite due process protections are satisfied and the defendant has previously been convicted of a similar offense or is sentenced for a crime punishable by more than a year of imprisonment under federal law or the law of any state, the Task Force believes that the Passamaquoddy Tribal Court, the Penobscot Nation Tribal Court and the Houlton Band of Maliseet Indians Tribal Court should have the same authority enjoyed by other Tribal courts under TLOA to impose a criminal sentence for a single offense of up to 3 years of imprisonment and a $15,000 fine. Similarly, the Task Force recommends that the Maine Implementing Act explicitly recognize the authority of Tribal courts to impose multiple sentences against a single defendant, as long as the total term of imprisonment imposed in a single criminal proceeding

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own expense, to equal protection of the laws and to a trial by jury of not less than 6 persons if one is charged with an offense punishable by imprisonment; and the rights not to be subject to double jeopardy, not to be compelled to be a witness against oneself in a criminal proceeding, not to be subject to a taking without just compensation, not to be subject to excessive bail, excessive fines or cruel and unusual punishment, not to be deprived of liberty or property without due process of law and not to be subject to a bill of attainder or ex post facto law).

[99] 25 U.S.C. §1302(a)(7)(D).

[100] 25 U.S.C. §1302(b).

[101] 25 U.S.C. §1302(c).

does not exceed 9 years, the maximum total sentence other Tribal courts may impose in a criminal proceeding under TLOA.

The Task Force acknowledges that further consideration must be given to the location where offenders sentenced by Tribal courts to terms of imprisonment that exceed one year will be housed if Consensus Recommendation #3 is adopted in full. The Task Force understands that the Tribes have entered agreements with county jails for the incarceration of defendants sentenced by Tribal courts to terms of imprisonment under existing law. However, Maine law generally prohibits state courts from specifying a county jail as the place of imprisonment for individuals who have been sentenced to a term of imprisonment of more than 9 months.[102] This issue must therefore be addressed during the process of developing legislation to implement Consensus Recommendation #3.

> **Consensus Recommendation #4**: Enact and implement L.D. 766, *An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013*, as it is ultimately amended by agreement of the Tribes and the State, to amend the Maine Implementing Act to grant Tribal courts jurisdiction over certain domestic violence criminal offenses committed by non-Indian defendants on Tribal lands against Indian victims. *(Vote: 10-0)*

The Maine Implementing Act does not recognize Tribal court criminal jurisdiction over any offenses committed by non-Indian defendants on Tribal lands. By contrast, Tribal courts in jurisdictions where the federal Violence Against Women Reauthorization Act of 2013[103] ("VAWA") applies may elect to exercise "special domestic violence criminal jurisdiction" over non-Indian defendants who have specified ties to the relevant Indian Tribe, when those defendants are accused of committing domestic violence, dating violence or protection-order-violation offenses against Indian defendants.[104] In addition to guaranteeing defendants all of the due process protections required by TLOA, Tribal courts that elect to exercise special domestic violence criminal jurisdiction must afford defendants the right to a trial by a representative, impartial jury and "all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the . . . tribe to exercise special domestic violence criminal jurisdiction over the defendant."[105]

During the First Regular Session of the 129th Legislature, the Legislature passed L.D. 766, *An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013* to be enacted.[106] As passed, L.D. 766 would permit the Penobscot Nation and Passamaquoddy Tribe to elect to exercise jurisdiction, concurrent with the State, over certain Class D domestic violence and protection-order-violation crimes

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[102] 17-A M.R.S.A. §1610(2). *But see* §1610(1) (authorizing state courts to specify a county jail as the place of imprisonment for individuals convicted of a Class D crime, which is punishable by up to 364 days' imprisonment).
[103] Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, §904, 127 Stat. 54, 120-125 (effective March 7, 2015).
[104] 25 U.S.C. §1304. *See also* summary of VAWA jurisdiction in the *Criminal Jurisdiction* chart in **Appendix M**.
[105] 25 U.S.C. §1304(d).
[106] *See* **Appendix O.**

committed on the relevant Tribe's reservation against a member of a federally recognized Indian Tribe, nation band or other group, as long as "the maximum term of imprisonment does not exceed one year and the potential fine does not exceed $2,000." If either Tribe elects to exercise this concurrent jurisdiction, it must not deny a defendant's rights to a representative 12-member jury and a unanimous jury verdict. In addition, L.D. 766 empowers the Joint Standing Committee on Judiciary to report out a bill to the Second Regular Session of the 129th Legislature addressing the Penobscot Nation's and Passamaquoddy Tribe's authority to exert criminal jurisdiction over non-Class D or Class E crimes "consistent with [VAWA] and [TLOA]."

The Legislature adjourned *sine die* before L.D. 766 was either signed by the Governor or returned with the Governor's veto. The Task Force understands that the Tribes and the State are currently negotiating amendments to L.D. 766, in part to extend the bill's provisions to the Houlton Band of Maliseet Indians. The Task Force unanimously supports enactment of L.D. 766 as it is amended by these negotiations of the parties.

> **Consensus Recommendation #5**: Amend the Maine Implementing Act to recognize the concurrent jurisdiction of Tribal courts over offenses committed on Tribal lands by Indian defendants against non-Indian victims, subject to the maximum penalty provisions and due process requirements of the Tribal Law and Order Act of 2010. *(Vote: 10-0)*

The Maine Implementing Act does not recognize Tribal court jurisdiction over crimes and juvenile offenses committed on Tribal lands by Indian defendants against non-Indian victims. By contrast, under federal Indian law Tribes generally have jurisdiction concurrent with federal courts over these crimes and juvenile offenses, subject to the due process and maximum penalty requirements of TLOA.[107] The Task Force unanimously recommends recognizing the concurrent jurisdiction of Tribal courts over offenses committed on Tribal lands by Indian defendants against non-Indian victims to the same extent as federal Indian law. Because the federal government relinquished much of its criminal jurisdiction over offenses committed in Indian country in Section 6(c) of the Settlement Act,[108] however, the state courts and not the federal courts will share concurrent jurisdiction over these offenses if this consensus recommendation is adopted.

Consensus Recommendations #4 and #5 would each afford Tribal courts jurisdiction concurrent with state courts over certain categories of offenses. Chris Taub urged the Legislature and the Tribes to consider several issues inherent to the existence of concurrent criminal jurisdiction during the development of legislation to implement these recommendations. First, a mechanism should be established to ensure that the State is informed whenever an individual is convicted in Tribal court of an offense that either requires the individual to register under the Sex Offender Registration and Notification Act of 1999,[109] or forms the predicate for preventing the individual

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[107] *See* summary of Tribal, state and federal jurisdiction over offenses by Indian defendants against non-Indian victims in the *Criminal Jurisdiction* chart in **Appendix M** and sources cited therein.
[108] Settlement Act, §6(c), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(c)) (abrogating federal jurisdiction over offenses in Indian country under the General Crimes Act, 18 U.S.C. §1152, and the Major Crimes Act, 18 U.S.C. §1153, in the State of Maine); *see Criminal Jurisdiction* chart in **Appendix M.**
[109] *See, e.g.*, 34-A M.R.S.A. §11202(2)(C).

from possessing a firearm under state law.[110] Second, under the dual sovereignty doctrine, consecutive prosecutions by the Tribes and the State do not violate the double jeopardy clause of the Fifth Amendment to the U.S. Constitution.[111] It therefore might be advisable to consider, Mr. Taub suggested, the answer to several questions: If a particular individual is convicted and sentenced to 2 years of imprisonment by a Tribal court and 4 years of imprisonment by a state court for the same offense, what term of imprisonment applies? Should the individual serve 2 years, 4 years or 6 years?

> **Consensus Recommendation #6**: Amend the Maine Implementing Act to recognize each Tribal government's authority to define all crimes and juvenile offenses committed on its Tribal lands over which its Tribal court has exclusive or concurrent criminal jurisdiction, but retain the authority of the State to define all crimes and juvenile offenses committed on Tribal lands over which state courts have exclusive or concurrent jurisdiction. *(Vote: 9-1)* [112]

Although the Penobscot Nation Tribal Court, the Passamaquoddy Tribal Court and the Houlton Band of Maliseet Indians are "deemed to be enforcing . . . tribal law"[113] when they exercise criminal jurisdiction under the Maine Implementing Act, the Act further directs that

> The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which [the Tribal Courts have] exclusive jurisdiction under [the Maine Implementing Act] are governed by the laws of the State.[114]

This allocation of legislative authority to define criminal and juvenile offenses diverges from default federal Indian law. Under federal Indian law, Tribal governments possess inherent legislative authority to adopt Tribal codes establishing and defining the criminal and juvenile offenses over which a Tribal court has concurrent or exclusive jurisdiction.[115]

A consensus of the Task Force recommends amending the Maine Implementing Act to mirror federal Indian law by recognizing the legislative authority of the Penobscot Nation, the Passamaquoddy Tribe and the Houlton Band of Maliseet Indians to establish and to define all criminal and juvenile offenses over which the Tribe exercises either concurrent or exclusive jurisdiction under the Act. If the other Task Force consensus recommendations are adopted, these offenses would include: all offenses committed on Tribal Lands by an Indian defendant for which the penalties do not exceed the TLOA maximums as well as the offenses committed on Tribal Lands by a non-Indian defendant that are described in L.D. 766. As part of this consensus

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[110] *See, e.g.,* 15 M.R.S.A. §393(1)(A-1)(5)(5). Sections B-2 and C-2 of L.D. 766 as it was passed by the Legislature would require Tribal courts to submit abstracts at the conclusions of prosecutions for certain criminal offenses to the Department of Public Safety, State Bureau of Identification, and may provide a model for addressing this issue. *See* **Appendix O**.

[111] *See, e.g.,* Cohen's Handbook of Federal Indian Law, §9.05 at 770 (Nell Jessup Newton ed., 2012).

[112] Representative Dillingham opposed this recommendation.

[113] 30 M.R.S.A. §6209-A(2); §6209-B(2); §6209-C(2).

[114] *Id.* But see discussion in *Criminal Jurisdiction* chart in **Appendix M** regarding the authority of the Penobscot Nation and Passamaquoddy Tribe to enact hunting and fishing ordinances under §6207(1) of the Maine Implementing Act.

[115] *See Criminal Jurisdiction* chart in **Appendix M** and sources cited therein.

recommendation, the State should retain legislative authority to establish and to define all crimes and juvenile offenses committed on Tribal lands over which the State exercises either concurrent or exclusive jurisdiction.

The Task Force is aware that authorizing the Tribes to define the criminal and juvenile offenses within their jurisdiction generates several issues for further consideration during the legislative process. Federal Indian law does not circumscribe the *types of crimes* that may be established and defined by a Tribal criminal code when an offense is committed by an Indian defendant in Indian country. Instead, under TLOA, a Tribe's authority to impose certain *penalties* for those offenses is circumscribed. As Chris Taub explained, Tribes may theoretically prosecute an Indian defendant for a murder committed on Tribal land under federal law, as long as the penalty imposed for that murder does not exceed 3 years' incarceration and a $15,000 fine. If the Maine Implementing Act is amended both to mirror the penalty provisions of TLOA and to authorize the Tribes to establish Tribal criminal codes defining all offenses within their exclusive or concurrent jurisdiction, a Tribal court in Maine could similarly prosecute an Indian defendant under a Tribal criminal code for a murder committed on Tribal land, as long as the penalty imposed for that murder does not exceed 3 years' incarceration and a $15,000 fine. If the murder victim and defendant are both Indians, this offense would fall within the exclusive jurisdiction of the Tribal court under the Maine Implementing Act and the State could not impose any further penalty.[116] However, if the murder victim was a non-Indian, then the State would have concurrent jurisdiction to prosecute the Indian defendant in a subsequent proceeding and impose an enhanced penalty.[117] Attorney Binney noted that she is not aware of any instance in the country where a tribe has prosecuted a defendant for murder since the late 1800s, and suggested that the Legislature could consider requesting Congress to re-instate the Indian Major Crimes Act to tribal lands in Maine, which would provide the federal government jurisdiction to prosecute murders committed by Indians against Indian victims, if there was concern about Indian-on-Indian murder crimes.

One alternative to adopting this federal model, Mr. Taub noted, would be to define the crimes over which the Tribes have concurrent or exclusive jurisdiction as those offenses where the maximum potential penalty under State law does not exceed the TLOA maximums.[118] Under this approach, a Tribal court would lack jurisdiction over any offense *punishable under State law* by more than 3 years' imprisonment and a $15,000 fine. Difficulties arise under this approach, however, because the 3-year imprisonment and $15,000 fine penalties do not match the general categories of offenses under Maine law.[119] In addition, Tribal Task Force members were not supportive of limiting Tribal authority in this manner.

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[116] *See* Consensus Recommendation #3, parts 1 & 2 (recommending that Tribal Courts have exclusive jurisdiction over criminal offenses committed by an Indian defendant against an Indian victim).
[117] Under the dual sovereignty doctrine, successive prosecutions by a Tribe and the State for the same conduct do not violate the Fifth Amendment to the U.S. Constitution. *See supra* note 111.
[118] *See Criminal Jurisdiction* chart in **Appendix M**.
[119] *See* 17-A M.R.S.A. §1604(1) (setting the maximum term of imprisonment for Class D crimes as "less than one year" and the maximum term of imprisonment for Class C crimes as "5 years").

Criminal Jurisdiction Topics Identified by the Task Force for Future Consideration:

The Task Force discussed the following additional potential amendments to the Maine Implementing Act, but declined to take a position on these issues at this time:

- Whether to recommend establishment of a Micmac Tribal Court;
- Whether to adopt the broader, federal definition of "Indian",[120] which may not be limited to members of federally recognized Indian Tribes, to define the "Indian" defendants and "Indian" victims over which Tribal courts have criminal jurisdiction; and
- Whether to further expand the definition of "Indian" to include members of the Micmac and Maliseet Tribes in Canada, to define the "Indian" defendants and "Indian" victims over which Tribal courts have criminal jurisdiction.

C. Fish and Game

Consensus Recommendation #7: Amend the Maine Implementing Act to recognize federal law regarding the exclusive jurisdiction of Tribes to regulate fishing and hunting by Tribal citizens of all federally recognized Tribes on Tribal lands, using the expanded definition of Tribal lands described in consensus recommendation #2. *(Vote: 9-0)*[121]

The Task Force recognizes that Indian Tribes in the United States enjoy aboriginal hunting and fishing rights, which can only be extinguished or otherwise abrogated by treaty, abandonment or federal law.[122] Under default federal Indian law, Tribes have the exclusive authority to regulate hunting and fishing by Tribal members on Tribal lands.[123]

In Maine, the Passamaquoddy Tribe and Penobscot Nation enjoy exclusive authority within their respective Indian territories to promulgate ordinances regulating hunting on Tribal land.[124] The Passamaquoddy Tribe and the Penobscot Nation also have exclusive authority to regulate fishing on any pond that is less than ten acres in surface area and is entirely within the respective Tribe's Indian territory.[125] Tribal members also may practice sustenance fishing on Tribal reservations.[126] By contrast, the Settlement Act provides neither the Houlton Band of Maliseet Indians nor the Aroostook Band of Micmacs the authority to regulate hunting or fishing on their lands.

Consensus recommendation #7 would restore to all Maine Tribes the exclusive jurisdiction to regulate hunting and fishing by Tribal members on Tribal land. The Task Force agreed that the

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[120] *See* Cohen's Handbook of Federal Indian Law, §9.02[1][d] at 746-47 (Nell Jessup Newton ed., 2012).
[121] Representative Dillingham was absent for this vote.
[122] *See* Cohen's Handbook of Federal Indian Law, §18.01 at 1155 (Nell Jessup Newton ed., 2012) (citing *Mitchel v. United States,* 34 U.S. (9 Pet.) 711, 746 (1835) and *United States v. Santa Fe P.R. Co.,* 314 U.S. 339, 347 (1941)).
[123] *See* Cohen's Handbook of Federal Indian Law, §18.03[2][a] at 1160 (Nell Jessup Newton ed., 2012) (citing *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 330 (1983) and *State v. McClure,* 268 P.2d 629, 635 (Mont. 1954)).
[124] 30 M.R.S.A. §6207(1).
[125] 30 M.R.S.A. §6207(1).
[126] 30 M.R.S.A. §6207(4).

recommendation would apply to Tribal lands as defined by the expanded definition of Tribal lands described in consensus recommendation #2.

> **Consensus Recommendation #8**: Amend the Maine Implementing Act to restore and affirm the exclusive jurisdiction of Tribes to regulate fishing and hunting by non-Tribal citizens on Tribal lands, using the expanded definition of Tribal lands described in consensus recommendation #2, but do not cede any of MITSC's authority to regulate hunting and fishing under current law to the State. *(Vote: 9-0)*[127]

Under the principles of default federal Indian law, Tribes have the exclusive authority to regulate all hunting and fishing by non-Tribal members on Tribal land.[128] Tribes may also specifically restrict the hunting or fishing activities of non-Tribal members on Tribal lands, including by completely excluding non-Tribal members from hunting and fishing on these lands.[129] In Maine, by contrast, the Maine Implementing Act requires that any ordinances enacted by the Passamaquoddy Tribe or the Penobscot Nation regarding hunting and fishing on Tribal land not discriminate between Tribal members and nonmembers.[130]

In addition, as is described above with reference to Consensus Recommendation #7, the Maine Implementing Act does not provide the Houlton Band of Maliseet Indians the authority to enact any hunting and fishing regulations applicable within Houlton Band Trust Land. Further, the Maine Implementing Act restricts the authority of the Passamaquoddy Tribe and Penobscot Nation over fishing within their Indian territories by affording MITSC the exclusive authority to promulgate fishing rules over areas that are commonly thought of as "boundary waters" between Indian and non-Indian territory.[131] These waters include ponds within the Indian territories of the Passamaquoddy Tribe or Penobscot Nation if 50% or more of the pond's linear shoreline is within Indian territory; any section of river or stream, both sides of which are within Indian territory; and any section of a river or stream, one side of which is within Indian territory for a continuous length of a half mile or more.[132] MITSC also has the authority to regulate the use of motors on water less than 200 acres in surface area and within the Indian territory of the Penobscot Nation and the Passamaquoddy Tribe.[133]

Through Consensus Recommendation #8, the Task Force recommends that the Maine Implementing Act be amended to restore to each of the four federally recognized Tribes in Maine the exclusive jurisdiction to regulate hunting and fishing by non-Tribal members on Tribal land. Through this recommendation, Task Force members emphasize that they do not

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[127] Representative Dillingham was absent for this vote.
[128] *See* Cohen's Handbook of Federal Indian Law, §18.06[1] at 1185 (Nell Jessup Newton ed., 2012); *see Lower Brule Sioux Tribe v. State of South Dakota*, 104 F.3d 1017, 1022 (8th Cir. 1997).
[129] *See* Cohen's Handbook of Federal Indian Law §18.03[2] at 1160 and §18.06[1] at 1185 (Nell Jessup Newton ed., 2012). *See also New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983) ("A tribe's power to exclude nonmembers entirely or to condition their presence on the reservation is equally well established."); *Quechan Tribe of Indians v. Rowe,* 531 F.2d 408, 410 (9th Cir. 1976) ("In the absence of treaty provisions or congressional pronouncements to the contrary, the tribe has the inherent power to exclude non-members from the reservation.").
[130] 30 M.R.S.A. §6207(1).
[131] 30 M.R.S.A. §6207(3).
[132] 30 M.R.S.A. §6207(3).
[133] 30 M.R.S.A. §6207(3-A).

intend to cede to the State any authority currently held by MITSC to regulate fishing on boundary waters.

> **Consensus Recommendation #9**: Amend the Maine Implementing Act to relinquish the State of Maine's jurisdiction with respect to the regulation of fishing and hunting by both Tribal and non-Tribal citizens on Tribal lands, except that, solely for conservation purposes, the State of Maine may regulate Tribal members engaged in such activities off Tribal lands to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved Tribal treaty rights. *(Vote: 8-0)*[134]

Under default federal Indian law, states do not generally have the authority to regulate hunting and fishing by Tribal members on Tribal lands.[135] Moreover, states enjoy limited authority to regulate hunting and fishing by Tribal members off of Tribal lands under federal Indian law only to the extent necessary for conservation; such regulations must apply to Indians and non-Indians in a nondiscriminatory manner.[136]

Under the Maine Implementing Act, by contrast, the Commissioner of Inland Fisheries and Wildlife has the authority to conduct fish and wildlife surveys on the Indian territory of the Penobscot Nation and the Passamaquoddy Tribe and may impose measures upon these Tribal lands intended to protect fish and wildlife stocks outside of Indian territory.[137] The State further appears to enjoy plenary authority to regulate hunting and fishing on the lands of the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs under the Maine Implementing Act and the Micmac Settlement Act. Finally, the State enjoys the authority to regulate hunting and fishing by all Tribal citizens off of tribal land.

Tribal Task Force representatives emphasized that Tribal members have always relied on fishing for sustenance and asked that the Task Force protect these rights, which are essential to Tribal life. Tribes have faced many challenges in exercising their sustenance rights, including smaller or absent fish runs, overfishing, blocked waterways, loss of habitat and poor environmental conditions. While co-management with the State might be possible, Tribal Task Force members emphasized that situations where sustenance fisheries can be unilaterally blocked (for example, to serve the interests of sport fishing) must be avoided.

In the process of discussing this issue, Task Force members discussed at length whether and to what extent Tribal members are engaged in the exercise of their reserved rights under historic treaties when they engage in hunting or fishing both on and off of their Tribal lands. Task Force members did not have time to fully examine the extent of those reserved treaty rights and identified this as one area for further exploration and discussion between the Tribes and the State.

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[134] Chair Carpenter and Representative Dillingham were absent for this vote.
[135] *See* Cohen's Handbook of Federal Indian Law, §18.06[2] at 1187 (Nell Jessup Newton ed., 2012).
[136] *See* Cohen's Handbook of Federal Indian Law, §18.04[3][b] at 1179-82 (Nell Jessup Newton ed., 2012); *see Dep't of Game v. Puyallup Tribe*, 414 U.S. 44 (1973).
[137] 30 M.R.S.A. §6207(6).

Through Consensus Recommendation #9, the Task Force suggests amending the Maine Implementing Act to remove the State's jurisdiction to regulate hunting and fishing on Tribal lands. In addition, the Task Force recommends that, although the State of Maine generally may not regulate Tribal members engaged in such activities off of Tribal lands if hunting or fishing rights are protected by treaty or other agreement, it may do so for conservation purposes and only to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved Tribal treaty rights.

Fish and Game Topics Identified by the Task Force for Future Consideration:

- How to ensure that the Tribes and the State engage in meaningful collaboration and consultation regarding the rights of Tribal members to engage in hunting and fishing when they are not on Tribal lands.

D. Land Use and Natural Resources

Consensus Recommendation #10: Amend the Maine Implementing Act to restore and affirm the Tribes' rights to exercise regulation of natural resources and land use on Tribal land to the fullest extent under federal Indian law. *(Vote: 9-0)*[138]

Under the default principles of federal Indian law, Tribes retain exclusive jurisdiction over land use and natural resources on Tribal land.[139] These rights can only be extinguished or otherwise abrogated by treaty language or by federal statute.[140] Under default principles of federal Indian law, a Tribal member building a structure on Tribal land generally is not subject to county or municipal government ordinances or regulations, though limited exceptions exist if, for example, the land use proposed by the Tribal member would have a significant negative impact on surrounding non-Tribal lands. Federal Indian law further recognizes the authority of Tribes to enact Tribal land use and zoning ordinances governing Indian country. Tribes also have authority, in certain circumstances, to intervene if a non-Tribal member proposes a land use that would have a significant negative impact on Tribal lands.[141]

Federal environmental laws often delegate regulatory authority to the states. However, states themselves are not typically authorized to apply environmental laws and standards to Tribal land. Instead, Congress has specifically authorized Indian Tribes to act as states for the purpose of implementing many federal environmental laws and programs, including the Clean Air Act,[142] the Clean Water Act [143] and the Safe Drinking Water Act.[144] Tribes must proactively seek such authorization, which is known as "treatment as a state" or TAS, status. To obtain TAS status, Tribes must demonstrate to the EPA their capability to administer air and water quality standards

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[138] Representative Dillingham was absent for this vote.
[139] *See* Cohen's Handbook of Federal Indian Law, §17.01 at 1106 (Nell Jessup Newton ed., 2012).
[140] *Id.*
[141] See *Montana v. United States,* 450 U.S. 544, 565-66 (1981) (allowing a Tribe to exert civil jurisdiction over a nonmember if either (1) the nonmember in question has entered a consensual relationship with the Tribe or its members that is related to the conduct at issue or (2) the conduct in question threatens the Tribe's political integrity, economic security or health or welfare).
[142] Pub. L. No. 88-206, 77 Stat. 392 (Dec. 17, 1963) (codified at 42 U.S.C. §§7401 et seq.).
[143] Pub. L. No. 92-500, 86 Stat. 816 (Oct. 18, 1972) (codified at 33 U.S.C. §§1251 et seq.).
[144] Pub. L. No. 93-523, 88 Stat. 1660 (Dec. 16, 1974) (codified at 42 U.S.C. §§300f to 300j).

in accordance with scientific standards. In the absence of Tribal TAS status, the federal government has the authority to adopt regulations imposing environmental standards for Tribal lands.

In Maine, the ability of Tribes to regulate land use and natural resources on Tribal land is curtailed. The state holds most regulatory authority, including authority to regulate activities by Tribal citizens on Tribal land. Under current interpretations of sections 6(h) and 16(b) of the Settlement Act, the Tribes lack the authority to obtain TAS status and attendant federal funding.

Through Consensus Recommendation #10, the Task Force seeks to restore jurisdiction over environmental regulation of Tribal lands to the Tribes to the fullest extent authorized under federal Indian law. If this recommendation is adopted, the Tribes would, for example, obtain the opportunity to seek TAS status from the federal government to assume direct authority over federal environmental standards on Tribal lands.

E. Taxing Authority

> **Consensus Recommendation #11**: Amend the Maine Implementing Act to recognize federal Indian law providing that Tribes have exclusive jurisdiction to tax Tribal members and Tribal entities on Tribal lands, including entities owned by a Tribe or Tribal member, using the definition of Tribal lands described in consensus recommendation #2. *(Vote 9-0)*[145]

Under default federal Indian law, Tribes have the inherent authority to impose taxes within their own jurisdictions. In Maine, the Penobscot Nation and the Passamaquoddy Tribe have the authority to enact and collect taxes within their respective Indian territories to the same extent as municipalities under State law. Municipalities generally are prohibited from imposing income and sales taxes, but may impose real property taxes, personal property taxes and other types of fees (for example, dog licensing fees and sewer fees) on their citizens. By contrast, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs lack the powers or privileges of a municipality, including this limited power of taxation.

If adopted, Consensus Recommendation #11 would grant each of the four federally recognized Tribes in Maine the exclusive authority to tax their respective Tribal members and Tribal entities on their respective Tribal lands.

> **Consensus Recommendation #12**: Amend the Maine Implementing Act to recognize federal law providing that Tribes, Tribal members and Tribal entities are not subject to state and local sales taxation on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2. *(Vote 8-0)*[146]

> **Consensus Recommendation #13**: Amend the Maine Implementing Act to recognize federal law providing that Tribal members who live on Tribal lands are not subject to state income

[145] Representative Dillingham was absent for this vote.
[146] Chair Carpenter and Representative Dillingham were absent for this vote.

tax for income earned on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2. *(Vote 8-0)*[147]

Consensus Recommendation #14: Amend the Maine Implementing Act to recognize federal law providing that Tribal lands are not subject to state and local real property tax, using the definition of Tribal lands described in consensus recommendation #2. *(Vote 8-0)*[148]

Under default principles of federal Indian law, states and local governmental entities are categorically prohibited from taxing Tribes and Tribal members for activities occurring on Tribal lands. Federal common law has recognized this restriction in the context of myriad types of taxes, including but not limited to sales taxes, fuel taxes, vehicle excise taxes, income taxes and both personal and real property taxes. To determine whether a particular tax is categorically barred, one must examine whether the legal incidence, as opposed to the economic incidence, of the tax falls on the Tribe or its members.[149]

In Maine, by contrast, the State has the authority to impose non-property taxes on Tribal members in the same manner as it taxes non-members with only few exceptions. Specifically, when the Penobscot Nation or the Passamaquoddy Tribe acts in a governmental capacity, it is exempt from taxation to the same extent that a municipality would be exempt from taxation under state law.[150] Neither the Houlton Band of Maliseet Indians nor the Aroostook Band of Micmacs has the powers or privileges of a municipality under current state law, however, and therefore they lack an equivalent "governmental capacity" exemption from state taxes.

In the property tax realm, the Penobscot Nation and the Passamaquoddy Tribe are required to make payments in lieu of taxes ("PILOTs") on all real and personal property within their respective Indian territories in an amount equal to the amount that would otherwise be imposed by the State, county, district or other taxing authority, except that any "real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominately for governmental purposes" is exempt from PILOT payments to the same extent that municipal property would be exempt from the relevant property taxes under State law.[151] The Houlton Band of Maliseet Indians is similarly required to make PILOTs on Houlton Band Trust Land in an amount equal to the that would otherwise be imposed by the State, municipality, county, district or other taxing authority.[152] But, because the Houlton Band of Maliseet Indians does not enjoy any of the rights or privileges of a municipality under the Maine Implementing Act, it does not qualify for a "governmental purposes" exemption from PILOT payments.

Through Consensus Recommendations #12, 13 and 14, the Task Force suggests that the Maine Implementing Act be amended to apply the categorical bar from federal Indian law that prevents Tribal members and Tribal entities from being subjected to state and local property taxes on

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[147] Chair Carpenter and Representative Dillingham were absent for this vote.
[148] Chair Carpenter and Representative Dillingham were absent for this vote.
[149] For more information on the legal incidence test and its application to State authority to tax Tribe's and Tribal member's activities on Tribal lands, *see* the *Taxation* chart in **Appendix M** and the sources cited therein.
[150] *See* 30 M.R.S.A. §6206(1); §6208(3).
[151] 30 M.R.S.A. §6208(2).
[152] 30 M.R.S.A. §6208(2).

Tribal lands as well as state and local sales or income taxes for activities occurring on Tribal lands. Although the Task Force recognizes that legislation to implement these recommendations will likely be accompanied by a fiscal note representing potential lost state tax revenues, the Tribal members of the Task Force urged the Maine Legislature to remember that the Tribes have been deprived of the taxing authority they would have otherwise enjoyed under federal law for the past 40 years. In addition, by clarifying the respective authorities of the Tribes and the State to impose taxes on member activity on Tribal lands, these recommendations will remove currently existing barriers to economic growth and development on Tribal lands.

> **Consensus Recommendation #15:** Amend the Maine Implementing Act to recognize federal law providing that Tribes have concurrent jurisdiction to tax non-members on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2. (*Vote 9-0)*[153]

> **Consensus Recommendation #16:** Amend the Maine Implementing Act to recognize federal law providing that state and local governments have concurrent jurisdiction to tax non-members on Tribal lands unless their jurisdiction is preempted under a fact-specific, federal common law balancing test. (*Vote 9-0)*[154]

Under default federal Indian law, while Tribes have the clearest authority to impose taxes on their own citizens for activities occurring on Tribal lands, Tribes do enjoy authority to impose taxes on nonmember Indians and non-Indians for activities that take place on the Tribal lands if one of the following criteria from the test announced by the U.S. Supreme Court in *Montana v. United States*,[155] is satisfied:

- The Tribe is taxing the activity of a nonmember who has entered into a consensual relationship with the Tribe or its members through commercial dealings, contracts, leases or other arrangements; or
- The nonmember's activity threatens or has some direct effect on the Tribe's political integrity, economic security or the health and welfare of the Tribe.

In addition to the Tribes, states also have the authority to impose taxes on nonmember activities on Tribal lands in certain, limited circumstances. The federal Indian law surrounding the states' taxation authority over nonmember activities on Tribal lands is too complex to summarize here, but generally requires a determination whether a state's exercise of taxing authority is preempted by federal law. The applicable preemption test requires an examination and balancing of a state's specific, legitimate regulatory interest in the activity that is being taxed compared to the interests of the federal government and the Tribal government regarding that activity, including the federal interest in promoting Tribal independence and authority over activities occurring within the Tribe's territories.[156]

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[153] Representative Dillingham was absent for this vote.
[154] Representative Dillingham was absent for this vote.
[155] 450 U.S. 544 (1981).
[156] *See* Cohen's Handbook of Federal Indian Law, §8.03[1][d] at 706-09 (Nell Jessup Newton ed., 2012); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).

Accordingly, if Consensus Recommendation #15 is adopted, the authority of the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs under federal Indian law to tax non-member activities on their respective Tribal lands will be restored. As recognized by Consensus Recommendation #16, in some cases this taxation authority will be concurrent with State authority to tax the same nonmember activity on Tribal lands under federal Indian law. In these situations, the Task Force believes it will be crucial for the State and the Tribes to engage in extensive communication and coordination to prevent dual taxation of nonmember activities on Tribal lands, which could disincentivize nonmember investment in Tribal lands and hamper vitally important Tribal economic development initiatives.

In addition to adopting consensus recommendations for amending the Maine Implementing Act to apply principles of federal Indian taxation law in Maine, the Task Force also voted[157] to include the following language in this report:

> Recognize that state and local efforts to compel Tribal entities to collect and remit state and local taxes on nonmembers create conflict between states and Tribes, prevent Tribes from imposing Tribal taxes on nonmembers at Tribal entities, and impair Tribes' ability to generate tax revenue to provide government services to members and nonmembers in their communities.

Taxation Topic Identified by the Task Force for Future Consideration:

- Given the challenges attendant to dual taxation of businesses that are outlined briefly above, the State and the Tribes should engage in discussions regarding the concurrent imposition of taxes on various entities located on Tribal lands. [158]

F. Gaming

Consensus Recommendation #17: Amend the Maine Implementing Act to render the federal Indian Gaming Regulatory Act applicable in Maine. (*Vote 9-0*)[159]

In its 1987 landmark decision in *California v. Cabazon Band of Mission Indians*, the United States Supreme Court held that Indian tribes have inherent sovereign authority to engage in gaming on tribal lands to generate revenues to support tribal governmental services and that states have no authority to regulate that activity when they do not prohibit such gaming as a matter of criminal law or public policy.

One year later, Congress enacted the sweeping Indian Gaming Regulatory Act of 1988 ("IGRA")[160] to regulate the field of Indian gaming and provide a limited role for states to

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[157] The vote was 9-0, with Representative Dillingham absent.
[158] Although formal votes were not taken regarding other topics identified by the Task Force for future discussion, the Task Force expressly voted 9-0, with Representative Dillingham absent, in favor of flagging this issue for future consideration.
[159] Representative Dillingham was absent for this vote.
[160] Pub. L. No. 100-497, 102 Stat. 2467 (Oct. 17, 1988) (codified at 25 U.S.C. §2701 to §2721).

negotiate how certain gaming activities on Indian lands will be regulated. IGRA provides the following:

1. *Class I Gaming:* Class I gaming includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations."[161] Tribes have exclusive jurisdiction to operate Class I gaming on tribal land;

2. *Class II Gaming:* Class II gaming includes bingo (including electronic bingo) and card games conducted in accordance with state laws regarding hours and prize limits. Class II gaming does not include banked card games where players play against the house or electronic facsimiles of games of chance or slot machines.[162] Tribes, overseen by the National Indian Gaming Commission, may license and regulate Class II gaming on Indian land if the state "permits such gaming for any purpose by any person, organization or entity;"[163] and

3. *Class III Gaming:* Class III gaming includes "all forms of gaming that are not Class I gaming or Class II gaming,"[164] including banked-card games like blackjack as well as other table games and slot machines. If a state "permits such gaming for any purpose by any person, organization, or entity" then Class III gaming may be conducted in conformance with a Tribal-State compact that is approved by the Secretary of the Interior.[165]

In 1983, three years before the *Cabazon* decision, the Maine Supreme Judicial Court held that, under principles of federal Indian law, the Penobscot Nation did not possess inherent sovereign authority, free from state regulation, to conduct reservation bingo games to generate governmental revenues and, in any event, by the terms of the Maine Implementing Act, Maine could regulate that activity. In 1996, the U.S. Court of Appeals for the First Circuit held that the Passamaquoddy Tribe could not invoke IGRA to force the State of Maine to negotiate a compact for Class III gaming. The Court said that Section 16(b) of the Settlement Act,[166] which prevents federal laws enacted for the benefit of Indians or Indian Tribes after October 1980 that affect or preempt the application of the laws of the State of Maine from applying within the State, unless they are made specifically applicable to Maine by Congress, prevented the Tribe from benefitting from IGRA. Maine legislation currently provides for Tribes to operate limited high-stakes beano or high-stakes bingo.[167]

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[161] 25 U.S.C. §2703(6).
[162] William C. Canby, Jr., American Indian Law in a nutshell 348-49 (6th ed. 2015) (interpreting definition in 25 U.S.C. §2703(7)).
[163] 25 U.S.C. §2710(b)(1)(A).
[164] William C. Canby, Jr., American Indian Law in a nutshell 348-49 (6th ed. 2015) (interpreting definition in 25 U.S.C. §2703(8)).
[165] 25 U.S.C. §2710(d)(1)(B), (d)(1)(C), (d)(3)(B).
[166] Settlement Act, §16(b), 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1735(b)).
[167] *See* 17 M.R.S.A. §314-A. For a more complete discussion of Tribal authority to conduct high-stakes beano or high-stakes bingo in Maine, *see* the *Gaming* chart in **Appendix M.**

The voting members of the Task Force believe that, if the State enacts legislation specifically providing that IGRA applies in Maine as a matter of State law, it will prevent Section 16(b) of the Settlement Act from precluding application of IGRA in the State. Put simply, if Maine law recognizes the applicability of IGRA, then application of IGRA will not "affect or preempt the application of the laws of the State of Maine." Accordingly, if Consensus Recommendation #17 is adopted, the Tribes will have the authority, under IGRA, to conduct Class III gaming in the State under a compact that must be negotiated between the Tribes and the State and then approved by the Secretary of the Interior.

G. Civil Jurisdiction

Consensus Recommendation #18: Amend the Maine Implementing Act to restore to the Tribal nations the exclusive authority to exercise civil legislative jurisdiction over Indians and non-Indians on Tribal land. To the extent that a Tribal nation does not exercise, or terminates its exercise of, exclusive civil legislative jurisdiction, the State has exclusive jurisdiction over those matters. (*Vote 9-0)*[168]

Consensus Recommendation #19: Amend the Maine Implementing Act to restore to the Tribal nations the exclusive authority to exercise civil adjudicatory jurisdiction over Indians and non-Indians on Tribal land. To the extent that a Tribal nation does not exercise, or terminates its exercise of, exclusive civil adjudicatory jurisdiction, the State has exclusive jurisdiction over those matters. (*Vote 9-0)*[169]

Under default federal Indian law, Tribes have exclusive legislative and adjudicatory jurisdiction over matters concerning conduct by Tribal citizens on Tribal land.[170] The law regarding conducts by non-Tribal members on Tribal land is complex.[171] Under *Montana v. United States*,[172] Tribes have legislative jurisdiction over non-members on non-member-held fee land in two circumstances: (1) where non-members enter into consensual relationships with the Tribe or its members through commercial dealing, contracts, leases or other arrangement, or (2) where conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe.[173] The ownership status of the lands (that is, whether the land is tribally owned, held in fee by a tribal citizen or held in fee by a non-citizen) may only be one

[168] Representative Dillingham was absent for this vote.
[169] Representative Dillingham was absent for this vote.
[170] *See* Cohen's Handbook of Federal Indian Law §7.02[1][a] at 599 (Nell Jessup Newton ed., 2012) ("There is no general federal statute limiting tribal jurisdiction over tribal members, and federal law acknowledges this jurisdiction") (citation omitted); *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 332 (1983) ("A tribe's power to prescribe the conduct of tribal members has never been doubted.")
[171] *See* Cohen's Handbook of Federal Indian Law, §7.02[1][a] at 600 (Nell Jessup Newton ed., 2012).
[172] 450 U.S. 544 (1981).
[173] *Id.* at 565-66.

factor in determining the legitimacy of a regulation.[174] The Ninth Circuit, however, has held that the *Montana* test is limited to cases involving non-Indian held tribal land.[175]

In terms of adjudicatory jurisdiction over non-members, a Tribe will have jurisdiction if it has personal and subject-matter jurisdiction.[176] A Tribal court must have legislative or regulatory jurisdiction over non-members in matters in question in order to have subject-matter jurisdiction in a case involving those non-members.[177] Tribal courts will have personal jurisdiction over a non-member if the conduct occurs on Tribal land or on Tribal-citizen-owned fee land or if the conduct involves at least "minimum contacts" with the Tribe.[178]

In Maine, the Implementing Act limits the legislative jurisdiction of the Passamaquoddy Tribe and the Penobscot Nation to the power to enact ordinances and collect taxes "subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State" and to regulate "internal tribal matters".[179] The Houlton Band of Maliseet Indians is not provided with the powers of a municipality "prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers."[180]

The Maine Implementing Act also limits the adjudicatory jurisdiction of the Tribes. The Passamaquoddy Tribal Court has exclusive jurisdiction over:

- "Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation"[181];

- "Indian child custody proceedings to the extent authorized by applicable federal law"[182]; and

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[174] Smith, Jane, *Tribal Jurisdiction over Nonmembers: A Legal Overview*, Congressional Research Service. 7-5700, pgs. 5-6 (Nov. 26, 2013) (citing *Nevada v. Hicks*, 533 U.S. 353, 360 (2001) ("The ownership status of land, in other words, is only one factor to consider in determining whether the regulation of the activities of nonmember is 'necessary to protect tribal self-government or to control internal relations.' It may sometimes be a dispositive factor.")). The ability of Tribes to regulate activities of nonmembers on Tribal-citizen-owned fee land is not entirely clear.
[175] *Water Wheel Camp Recreational Area, Inc. v. LaRance,* 642 F.3d 802 (9th Cir. 2011).
[176] *See* Cohen's Handbook of Federal Indian Law, §7.01 pg. 597 (Nell Jessup Newton ed., 2012).
[177] *See* Cohen's Handbook of Federal Indian Law, §7.01 pg. 598 (Nell Jessup Newton ed., 2012) (citing *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997) ("[as] to nonmembers, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction.")).
[178] *See* Cohen's Handbook of Federal Indian Law, §7.02[2] at 604 (Nell Jessup Newton ed., 2012) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)); *see also Williams v. Lee,* 358 U.S. 217 (1959).
[179] 30 M.R.S.A. §6206(1).
[180] 30 M.R.S.A. §6206-A.
[181] 30 M.R.S.A. §6209-A(1)(C).
[182] 30 M.R.S.A. §6209-A(1)(D).

- "Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe."[183]

In the event the Passamaquoddy Tribe chooses not to exercise its jurisdiction, the state has jurisdiction.[184]

The Penobscot Nation Tribal Court has exclusive jurisdiction over:

- "Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation"[185];

- Indian child custody proceedings to the extent authorized by applicable federal law"[186]; and

- "Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation."[187]

In the event the Penobscot Nation chooses not to exercise its jurisdiction, the state has jurisdiction.[188]

The Houlton Band of Maliseet Indians Tribal Court has exclusive jurisdiction over:

- "Civil actions between members of the Houlton Band of Maliseet Indians arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians"[189];

- Indian child custody proceedings to the extent authorized by applicable federal law"[190];

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[183] 30 M.R.S.A. §6209-A(1)(E).
[184] 30 M.R.S.A. §6209-A(1) (final, unnumbered paragraph)
[185] 30 M.R.S.A. §6209-B(1)(C).
[186] 30 M.R.S.A. §6209-B(1)(D).
[187] 30 M.R.S.A. §6209-B(1)(E).
[188] 30 M.R.S.A. §6209-B(1) (final, unnumbered paragraph)
[189] 30 M.R.S.A. §6209-C(1)(C).
[190] 30 M.R.S.A. §6209-C(1)(D); §6209-C(1-A)(d); §6209-C(1-B)(D).

- "Other domestic relations matters, including marriage, divorce and support, between members of the Houlton Band of Maliseet Indians, both of whom reside within the Houlton Band Jurisdiction Land"[191];

- "Civil actions between a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-A)] and members of the Penobscot Nation arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Penobscot Nation under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation"[192];

- "Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-A)] or the Penobscot Nation, both of whom reside on the Houlton Band Jurisdiction Land"[193];

- "Civil actions between a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-B)] and members of the Passamaquoddy Tribe arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Passamaquoddy Tribe under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Passamaquoddy Tribe"[194]; and

- "Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-B)] or the Passamaquoddy Tribe, both of whom reside on the Houlton Band Jurisdiction Land."[195]

The state has jurisdiction until the Houlton Band of Maliseet Indians chooses to exercise its jurisdiction.[196]

It should be noted that the Maine Implementing Act contains specific provisions regarding Tribal regulation of hunting and fishing, which are discussed in the relevant sections of this report.

Consensus Recommendations #18 and #19 restore exclusive Tribal legislative and adjudicatory authority over Indians and non-Indians on Tribal land. These recommendations also include

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[191] 30 M.R.S.A. §6209-C(1)(E).
[192] 30 M.R.S.A. §6209-C(1-A)(C).
[193] 30 M.R.S.A. §6209-C(1-A)(E).
[194] 30 M.R.S.A. §6209-C(1-B)(C).
[195] 30 M.R.S.A. §6209-C(1-B)(E).
[196] 30 M.R.S.A. §6209-C(1)(final, unnumbered paragraph)

language stating that, in the event a Tribal nation does not exercise or terminates its exercise of exclusive civil legislative jurisdiction, the State has exclusive jurisdiction over those matters. This language was added in response to a concern expressed by some Task Force members that, should a Tribe choose not to legislate in a specific area and the federal government was also silent in that area, there would be an absence of legislation. In the event a Tribe does legislate and its laws are in conflict with State laws, Tribal law would prevail.

Task Force members did flag as a potential issue the question of notice. Specifically, there was concern among some Task Force members that it may be unclear at times which entity's laws (the Tribe's or the State's) apply. Task Force members suggest that the issue of notice regarding applicable laws be addressed during the development of legislation to implement these recommendations.

The Task Force also discussed the issue of sovereign immunity at length. Due to the complex nature of this issue, the Task Force chose to defer making any recommendations. Take Force members noted that in many jurisdictions, the issue of sovereign immunity is addressed through interjurisdictional agreements.

H. Federal Law Provisions

> **Consensuses Recommendation #20:** Amend the Maine Implementing Act to specify that, for the purposes of §6(h) and §16(b) of the federal Settlement Act, federal laws enacted for the benefit of Indian country do not affect or preempt the laws of the State of Maine. (*Vote 9-0)*[197]

The federal Settlement Act contains two distinct previsions that preempt certain federal laws enacted for the benefit of Indian country from applying to Maine Tribes. First, Section 6(h) of the Settlement Act precludes certain federal laws and regulations from applying within the State:

> Except as other wise provided in this Act, the laws and regulations of the United States which 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 shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.[198]

Section 16(b) of the Settlement Act similarly restricts the applicability of federal laws enacted for the benefit of Indian country after October 1980, the effective date of the Settlement Act, within the State:

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[197] Representative Dillingham was absent for this vote.

[198] Settlement Act, §6(h), 94 Stat. at 1794 (formerly codified at 25 U.S.C. §1725(h)).

> The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or band of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.[199]

Given the broad nature of these provisions, any law for the benefit of Indian country that in any way "affects" Maine law may be rendered inapplicable in Maine. For example, it is theoretically possible that provisions within each of the laws enumerated in the report submitted by the Suffolk University Law School Clinic to the Task Force, which is included in **Appendix N**, may be rendered inapplicable in Maine if those provisions conflict with state law to some degree.[200]

Outright elimination of these sections of the federal Settlement Act requires Congressional action. Nevertheless, the voting members of the Task Force believe that it may be possible to render Sections 6(h) and 16(b) of the federal Settlement Act inoperable by enacting legislation that affirmatively provides, as a matter of state policy, that federal laws enacted for the benefit of Indian country do not affect or preempt the laws of the State of Maine. In theory, such legislation would eliminate the argument that application of any federal law enacted for the benefit of Indian country either affects or preempts state law, because state law would specifically condone application of that federal law within the State. The Task Force recognizes that adoption of Consensus Recommendation #20 may require further consideration and careful drafting, but nevertheless suggests that implementation of this suggestion will go a long way toward allowing Maine's tribes to "enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States."[201]

I. Trust Land Acquisition

> **Consensuses Recommendation #21**: Amend the Maine Implementing Act to recognize the ability of all Maine Tribes to be able to acquire trust land in accordance with their settlement acts and federal laws like the Indian Reorganization Act and its implementing regulations. *(Vote 9-0)*[202]

The Maine Implementing Act and Settlement Act include specific limitations and timelines for the acquisition of trust land.[203] Land trust acquisition timeframes have been previously extended

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[199] Settlement Act, §16(b), 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1735(b)).

[200] See **Appendix N**, *Report on Federal Laws Enacted After October 10, 1980 for the Benefit of Indians or Indian Nations,* prepared by the Human Rights and Indigenous Peoples Clinic, of Suffolk University Law School, for an overview of federal laws potentially precluded from application to Maine Tribes by section 16(b) of the Settlement Act.

[201] S.P. 622, *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising from the Interpretation of An Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980* (129th Maine Legislature, 2019).

[202] Representative Dillingham was absent for this vote.

[203] 30 M.R.S.A. §6205.

through state legislation.[204] However, Task Force members report that the restrictions on land acquisition have prevented Tribes from acquiring land essential to Tribal self-determination, including, in the case of the Passamaquoddy Tribe, the ability to acquire land that will ensure Tribal members' access to clean drinking water.

Federal law allows tribes to acquire trust land as approved by the federal government and in accordance with the requirements of the Indian Reorganization Act[205] and its associated regulations.[206] The Secretary of the Department of the Interior must approve Tribal trust land acquisitions.[207] The process of land acquisition is detailed, and includes notice to interested parties.[208]

Consensus Recommendation #21 would allow Tribes located in Maine to more easily acquire land in accordance with the federal trust land acquisition process in a manner equivalent to that enjoyed by other Tribes.

> **Consensus Recommendation #22:** Amend the Maine Implementing Act so that, consistent with federal law, state and local governments do not have veto power over trust acquisitions and eliminate time constraints on trust land acquisitions, as included in the Maine Implementing Act.

Consensus Recommendation #22 is intended to align trust acquisition with default federal Indian law, which does not require state or local consent. This recommendation also eliminates the time constraints on trust land acquisitions that exist in the Maine Implementing Act.

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[204] See, *e.g, An Act to Extend the Time for Acquiring those Areas which have been Designated Potential Passamaquoddy Indian Territory*, P.L. 1983, ch. 493; *An Act Relating to Penobscot Nation Trust Land Designation*, P.L. 1983, ch. 494; *An Act Relating to Penobscot Nation Trust Land Designation*, P.L. 1983, ch. 676; *An Act Relating to the Time of Passamaquoddy Tribe Trust Land Designation*, P.L. 1983, ch. 660; *An Act Relating to the Time of Penobscot Nation Trust Land Acquisition*, P.L. 1985, ch. 69; *An Act Relating to the Time of Passamaquoddy Tribe Trust Land Designation*, P.L. 1985, ch. 637; *An Act Relating to the Passamaquoddy Tribe Reservation*, P.L. 1985, ch. 747; *An Act to Extend the Trust Land Designation of the Penobscot Nation*, P.L. 1985, ch. 639; *An Act to Extend the Time for Trust Land Designation*, P.L. 1987, ch. 153; *An Act Concerning Passamaquoddy Indian Territory*, P.L. 1991, ch. 720; *An Act Concerning Penobscot Nation Trust Land Designation* P.L. 1991, ch. 721; *An Act Relating to the Definition of Passamaquoddy Indian Territory*, P.L. 1993, ch. 713; *An Act Concerning the Date by Which Land Must be Acquired by the Penobscot Nation*, P.L. 1999, ch. 625; *An Act Regarding Passamaquoddy Land in Township 19, M.D.*, P.L. 2001, ch. 251; *An Act To Place Land in Centerville in Trust*, P.L. 2007, ch. 221; *An Act To Place Land in Township 21 in Trust*, P.L. 2007, ch. 223; *An Act To Place Land in Centerville in Trust for the Passamaquoddy Tribe*, P.L. 2013, ch. 91.

[205] 73rd Cong. ch. 576, 48 Stat. 984, (June 18, 1934) (codified at 25 U.S.C. §§5108 et seq.).

[206] 25 C.F.R. § 151 et. seq.

[207] 25 C.F.R. § 151.3.

[208] 25 C.F.R. § 151.12.

APPENDIX A

Authorizing Joint Order: H.P. 1307, *Joint Order, Establishing the Task Force on Changes to the Maine Indian Claims Settlement Act.*

Representative **MORALES**: Thank you, Madam Speaker. Madam Speaker, Friends in the House, I rise in opposition to this motion.

We are all here in the House because we care about the future of our State and I believe strongly that investing in and protecting our children is top priority for Maine's future both morally and economically and LD 379, I believe, fits squarely within those goals. The safe storage of firearms is a public safety policy that protects children from harm.

I have no doubt that every one of my friends here in the chamber want to make sure that children do not accidentally harm themselves or others. We've all heard far too many stories, tragic stories of children playing with loaded guns or young people in crisis using guns they found in their home to harm themselves or others. Certainly, for those of us who are parents of young children, this is one of our greatest fears.

LD 379 sets our policy and guidance around safe storage and it's narrowly tailored toward those goals. If a child accesses a gun that was not safety stored and uses it to harm himself or herself or others and the homeowners knew that the children were there, it's a Class E civil offense, which is, admittedly, a low-level offense, because the goal of this bill is truly to set a policy to encourage folks to safely store their weapons in their homes. It's to change behavior. And we know that ownership of guns, there is regulation that is available to states to enact, reasonable regulation, although I do believe this is more of a public policy initiative. So please join me in supporting this child safety policy and voting against this motion. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 204

YEA - Alley, Andrews, Austin S, Bickford, Blier, Campbell, Cebra, Corey, Costain, Curtis, Dillingham, Doore, Drinkwater, Evangelos, Faulkingham, Fay, Fecteau J, Foster, Griffin, Haggan, Hall, Hanington, Hanley, Harrington, Head, Hepler, Hickman, Higgins, Javner, Johansen, Keschl, Kinney, Kryzak, Landry, Lockman, Lyford, Marean, Martin J, Martin R, Martin T, Mason, Maxmin, Millett, Morris, Nadeau, O'Connor, Ordway, Perkins, Pickett, Pluecker, Prescott, Reed, Rudnicki, Sampson, Sharpe, Sheats, Stanley, Stearns, Stetkis, Stewart, Strom, Swallow, Theriault, Tuell, Wadsworth, Warren, White D.

NAY - Ackley, Austin B, Babbidge, Babine, Bailey, Beebe-Center, Berry, Blume, Brennan, Caiazzo, Cardone, Carney, Cloutier, Collings, Cooper, Craven, Crockett, Daughtry, Denk, Dodge, Doudera, Farnsworth, Fecteau R, Foley, Gattine, Gramlich, Grohoski, Handy, Harnett, Hobbs, Hubbell, Hymanson, Ingwersen, Jorgensen, Kessler, Kornfield, Madigan C, Mastraccio, Matlack, McCrea, McCreight, McDonald, McLean, Melaragno, Meyer, Moonen, Morales, O'Neil, Paulhus, Pebworth, Peoples, Perry A, Pierce T, Reckitt, Riseman, Roberts-Lovell, Rykerson, Schneck, Tepler, Tipping, Tucker, White B, Zeigler, Madam Speaker.

ABSENT - Arata, Bradstreet, Bryant, Cuddy, DeVeau, Dolloff, Dunphy, Grignon, Hutchins, Perry J, Riley, Skolfield, Stover, Sylvester, Talbot Ross, Terry, Verow.

Yes, 67; No, 64; Absent, 17; Excused, 2.

67 having voted in the affirmative and 64 voted in the negative, with 17 being absent and 2 excused, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

Representative MOONEN of Portland assumed the Chair.

The House was called to order by the Speaker Pro Tem.

ORDERS

On motion of Speaker GIDEON of Freeport, the following Joint Order: (H.P. 1307)

WHEREAS, the ancestors of the members of the federally recognized tribes located in what is now the State of Maine inhabited these lands since time immemorial; and

WHEREAS, the tribal nations entered into the first treaty with the United States of America in July 1776 following its Declaration of Independence; and

WHEREAS, the United States adopted its Constitution in 1787 and the people of the State of Maine adopted their Constitution in 1819; and

WHEREAS, Indian tribes and their members have a legal political status recognized by the United States Constitution, including in Article I, Section 8, and by the Constitution of Maine, including in Article X, Section 5, and pursuant to various treaties entered into by the tribal nations and what is now the State of Maine; and

WHEREAS, in 1972, the Passamaquoddy Tribe initiated a claim against the United States government alleging that the transfer of a significant amount of tribal lands to the Commonwealth of Massachusetts, including the District of Maine, was legally invalid because such transfers were not approved by the United States government, as required by the federal Non-Intercourse Act; and

WHEREAS, in 1975, the U.S. Court of Appeals for the First Circuit in Joint Tribal Council of the Passamaquoddy Tribe v. Morton affirmed that a trust relationship, similar to that between the United States and other tribes, exists between the Maine tribal nations and the United States that would require the approval by the Federal Government of such land transfers and that the claims of the tribal nations could proceed; and

WHEREAS, the other Maine tribal nations alleged similar claims; and

WHEREAS, recognizing that protracted litigation would result in substantial economic and social hardship for large numbers of landowners, citizens and communities within the State, the tribal nations decided it was more prudent to negotiate a settlement of the land claims and other claims rather than continue litigation; and

WHEREAS, the tribal nations and Executive Branch of the United States negotiated terms of settlement that were encompassed in the February 10, 1978 Memorandum of Understanding; and

WHEREAS, the tribal nations were asked by the Maine Congressional Delegation to negotiate terms related to jurisdictional matters as a part of an overall settlement; and

WHEREAS, negotiations between the tribal nations and the State led to the passage of An Act To Implement the Maine Indian Claims Settlement in April, 1980 by the Maine Legislature, but the Act was not effective until the United States Congress in October, 1980 enacted the Maine Indian Claims Settlement Act of 1980, Public Law 96-420; and

WHEREAS, An Act To Implement the Maine Indian Claims Settlement was passed into law in 1980 and the Micmac Settlement Act was passed into law in 1989; and

WHEREAS, the tribal nations and the State have engaged in significant litigation over many issues in the intervening years; and

WHEREAS, differing interpretations of the Acts have caused disagreements between the State and the tribal nations and have negatively affected the Wabanaki communities and hindered their ability to exercise tribal sovereignty for the benefit of their people; and

WHEREAS, the relationship between the tribal nations and the State would benefit from a reduction in litigation; and

WHEREAS, the tribal nations and the State desire that all of Maine's citizenry prospers, now, therefore, be it

ORDERED, the Senate concurring, that, notwithstanding Joint Rule 353, the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, referred to in this order as "the task force," is established as follows.

1. Appointments; composition. The task force consists of the following members:

A. Two members of the Senate, appointed by the President of the Senate, including at least one member of the party holding the 2nd-largest number of seats in the Senate;

B. Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, including at least one member of the party holding the 2nd-largest number of seats in the House.

The President of the Senate and the Speaker of the House shall invite to participate as voting members of the task force the Chief of the Aroostook Band of Micmacs or the chief's designee; the Chief of the Houlton Band of Maliseet Indians or the chief's designee; the Chief of the Passamaquoddy Tribe at Indian Township or the chief's designee; the Chief of the Passamaquoddy Tribe at Pleasant Point or the chief's designee; and the Chief of the Penobscot Nation or the chief's designee;

The President of the Senate and the Speaker of the House also shall invite to participate as nonvoting ex officio members of the task force the Governor or the Governor's designee; the Attorney General or the Attorney General's designee; and the Managing Director of the Maine Indian-Tribal State Commission.

2. Chairs. The first-named Senator is the Senate chair of the task force and the first-named member of the House of Representatives is the House chair of the task force.

3. Appointments; convening. All appointments must be made no later than 15 days following passage of this order. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment and invitation of all members has been completed, the chairs of the task force shall call and convene the first meeting of the task force. If 15 days or more after the passage of this order a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the task force to meet and conduct its business.

4. Duties. The task force shall review An Act To Implement the Maine Indian Claims Settlement and the Micmac Settlement Act and make recommendations to the Legislature for legislation regarding any suggested changes to those Acts. Recommendations of the task force must be made by consensus. For the purpose of this order, "consensus" means consensus between representatives on the task force of the tribe or tribes affected by the suggested changes and a majority of the other voting members of the task force.

5. Quorum. A quorum is a majority of the voting members of the task force, as long as the quorum consists of at least 3 representatives of the tribal nations and at least 3 members of the Legislature.

6. Staffing. The Legislative Council shall provide necessary staffing services to the task force, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session.

7. Reports. No later than December 4, 2019, the task force shall submit a report to the Joint Standing Committee on Judiciary that includes its findings and consensus-based recommendations, including suggested legislation, for introduction to the Second Regular Session of the 129th Legislature. In addition, the task force shall compile an official record of its activities, which must include reports, testimony and other materials submitted to the task force, as well as documentation of all recommendations considered by the task force regardless of whether such recommendations were adopted. The Joint Standing Committee on Judiciary shall report out legislation based on the consensus-based recommendations of the task force. Any law enacted by the Legislature pursuant to this order that affects An Act To Implement the Maine Indian Claims Settlement or the Micmac Settlement Act is also subject to approval by the affected tribe or tribes through their own governmental processes.

READ.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Freeport, Speaker Gideon.

Speaker **GIDEON**: Thank you, Mr. Speaker. Mr. Speaker, this Joint Order would create a taskforce on changes to the Maine Indian Claims Settlement Implementing Act.

It was with the sincere desire to examine and to improve our state's relationship with Maine's tribal communities that Members of the Legislature have been working with the chiefs and representatives of Maine's tribes over the past months to begin to discuss how we can better understand one another, how we can better find common ground and, most importantly, how we can better improve the lives of Maine people and the people of Maine's tribes.

The Joint Order before you is the direct result of those conversations that I, but also many others, have been having. Conversations that were aimed, squarely, on resetting and improving our relationships. The time is long past due that we show Maine's tribal communities that their concerns are our concerns, that we will take action to address them together and responsibly and that we will move forward in this way. Creating this taskforce is our opportunity to do just that.

I look forward to working with what will be a diverse group of qualified members who represent different backgrounds and parts of our State to enhance our commitment to improving these relationships. We formed this taskforce with the hope and determination of moving forward, of working together to accomplish the important things for Maine's tribes and indeed for all of the people in our state. I thank you very much.

Subsequently, the Joint order was **PASSED**.

Sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

On motion of Representative TERRY of Gorham, the House adjourned at 8:11 p.m., until 10:00 a.m., Friday, June 7, 2019, and in honor and lasting tribute to Alverda Mae Beal, of

APPENDIX B

A. S.P. 622, *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising from the Interpretation of An Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980*

ONE HUNDRED TWENTY-NINTH LEGISLATURE
FIRST REGULAR SESSION
51st Legislative Day
Monday, June 10, 2019

The House met according to adjournment and was called to order by the Speaker.

Prayer by Reverend Susan Davenport, Surry Methodist Church.

National Anthem by Roxane Althouse, Woolwich.

Pledge of Allegiance.

Doctor of the day, Laura Caron, M.D., Augusta.

The Journal of Friday, June 7, 2019 was read and approved.

SENATE PAPERS

The following Joint Resolution: (S.P. 622)

JOINT RESOLUTION TO SUPPORT THE DEVELOPMENT OF MUTUALLY BENEFICIAL SOLUTIONS TO THE CONFLICTS ARISING FROM THE INTERPRETATION OF AN ACT TO IMPLEMENT THE MAINE INDIAN CLAIMS SETTLEMENT AND THE FEDERAL MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980

WHEREAS, the ancestors of the members of the federally recognized Indian tribes located in what is now the State have inhabited these lands since time immemorial; and

WHEREAS, the United States of America adopted its Constitution in 1789 and the people of the State adopted their Constitution in 1819; and

WHEREAS, Indian tribes and their members have a legal political status recognized by the United States Constitution, including in Article I, Section 8, by the Constitution of Maine, including in Article X, Section 5, and pursuant to various treaties entered into by the tribes and what is now the State; and

WHEREAS, in 1972, the Passamaquoddy Tribe initiated a claim against the United States Government alleging that the transfer of a significant amount of tribal lands to the Commonwealth of Massachusetts, including the District of Maine, was legally invalid because such transfers were not approved by the United States Government, as required by the federal Indian Nonintercourse Act; and

WHEREAS, in 1975, the United States Court of Appeals for the First Circuit in Joint Tribal Council of the Passamaquoddy Tribe v. Morton affirmed that a trust relationship similar to that between the United States Government and other tribes exists between the Maine tribes and the United States Government that would require the approval by the United States Government of such land transfers and that the claims of the Maine tribes could proceed; and

WHEREAS, other Maine tribes alleged similar claims; and

WHEREAS, recognizing that protracted litigation would result in substantial economic and social hardship for large numbers of landowners, citizens and communities within the State, the Maine tribes decided it was more prudent to negotiate a settlement of the land claims and other claims rather than continue litigation; and

WHEREAS, the Maine tribes and Federal Government negotiated terms of settlement that were encompassed in the February 10, 1978 memorandum of understanding; and

WHEREAS, the Maine tribes were asked by the Maine Congressional Delegation to negotiate terms related to jurisdictional matters as a part of an overall settlement; and

WHEREAS, negotiations between the Maine tribes and State led to the enactment of An Act to Implement the Maine Indian Claims Settlement in April 1980 by the Legislature, but that Act was not effective until the United States Congress enacted the Maine Indian Claims Settlement Act of 1980 that October; and

WHEREAS, the language of these laws has resulted in disagreements with respect to sustenance and jurisdictional rights of the Maine tribes, and such disagreements have caused protracted and long-standing litigation between the State, Maine tribes and Federal Government; and

WHEREAS, these disagreements have also resulted in the diminishment of rights, privileges, powers and immunities of the Maine tribes compared to those generally enjoyed by other federally recognized Indian tribes within the United States; and

WHEREAS, this diminishment of rights, privileges, powers and immunities of the Maine tribes has caused disenfranchisement, undue hardship and suffering of individual members of the tribes and tribal communities that have resulted in a loss of health, education and general welfare compared to the overall population of the State and the United States; and

WHEREAS, significant time and taxpayer resources have been spent litigating with the Maine tribes rather than focusing on efforts to develop mutually beneficial solutions that allow all of the State's citizenry, including its tribal citizenry, to prosper and progress; and

WHEREAS, the State does not prosper when a specific portion of its citizenry suffers, and the State's resources are better spent on developing jobs, strengthening infrastructure and improving the health, education and safety of all its citizens; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-ninth Legislature now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity to recognize that the Maine tribes should enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States; and be it further

RESOLVED: That the Legislature supports a collaborative process to develop amendments to An Act to Implement the Maine Indian Claims Settlement and the federal Maine Indian Claims Settlement Act of 1980 that would clarify that the Maine tribes enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States.

Came from the Senate, **READ** and **ADOPTED**.

READ and **ADOPTED** in concurrence.

Non-Concurrent Matter

Bill "An Act To Provide for Municipalities To Allow Grocery Stores up to 10,000 Square Feet To Open on Thanksgiving, Easter and Christmas" (EMERGENCY)
(H.P. 16) (L.D. 15)

Majority (7) **OUGHT TO PASS AS AMENDED** Report of the Committee on **INNOVATION, DEVELOPMENT, ECONOMIC ADVANCEMENT AND BUSINESS READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-463)** in the House on June 6, 2019.

APPENDIX C

Membership List, Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

MEMBERSHIP

Appointments by the President of the Senate

Senator Michael Carpenter	Senate Chair
Senator Marianne Moore	Member of the Senate

Appointments by the Speaker of the House

Representative Donna Bailey	House Chair
Representative Kathleen Dillingham	Member of the House
Representative Anne Perry	Member of the House

Tribal Members

Chief Edward Peter Paul	Aroostook Band of Micmacs
Chief Clarissa Sabattis	Houlton Band of Maliseet Indians
Chief William J. Nicholas, Sr.	Indian Township Tribal Government
Chief Marla Dana	Passamaquoddy Tribe at Sipayik
Chief Kirk Francis	Penobscot Nation

***Ex officio* Members**

Melanie Loyzim	Governor's designee
Christopher Taub	Attorney General's designee
Paul Thibeault	Maine Indian Tribal-State Commission

Staff:
Samuel Senft
Janet Stocco

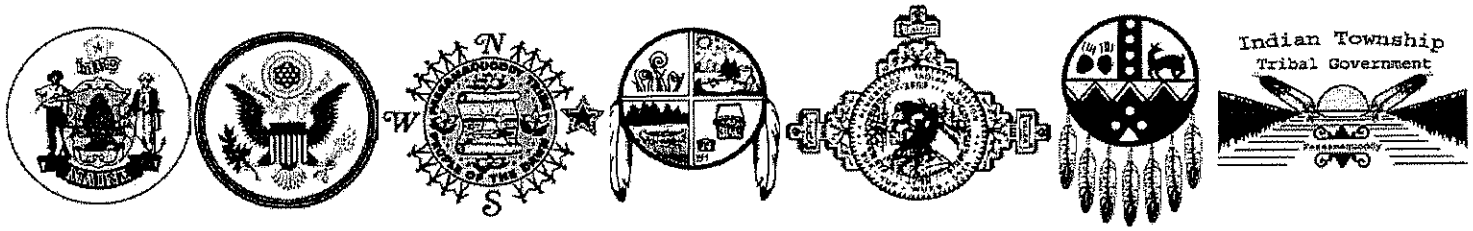
APPENDIX D

Presentation by Paul Thibeault on September 13, 2019

Historical Context of the Maine Indian Land Claims Settlement

September 13, 2019

Presenter: Paul Thibeault
Managing Director of Maine Indian Tribal-State Commission



Historic Relationship between the Tribes, the State of Maine and the U.S. Government

- The historic relationship between the federal government and the Wabanaki Tribes has been fundamentally different than the relationship between the federal government and "western" tribes.
- The United States did not exercise trust responsibility.
- Almost no federal funding.
- The State assumed it had pervasive authority over the Tribes.
- Maine Department of Indian Affairs- numerous State laws concerning Indian welfare, housing, education…etc.
- When the Wabanaki Tribes asserted land claims in the 1970s, alleging that their tribal lands had been acquired by the State in violation of the Nonintercourse Act, they first had to overcome the claim by the State that they were not really bona fide Indian tribes at all

Court Decisions Prior to the 1980 Settlement

- Indian Trade and Intercourse Act of 1790 - codified fundamental choice by Constitutional Convention that States had no role to play in Indian Country.

- Joint Tribal Council of the Passamaquoddy Tribe v. Morton (1975)- Federal government has trust responsibility to Passamaquoddy Tribe.

  The Morton decision had several significant effects on the relationship between the Tribes and the state.

  - First, pursuant to the newly recognized federal trust relationship, a fiduciary duty was imposed upon the federal government, requiring it to act on behalf of the Tribes to investigate the validity of their claims against the State of Maine.

  - Second, the continuation of Maine's jurisdiction over the Tribes began to be questioned because the Tribes could potentially invoke the application of other federal statutes on their behalf.

Subsequent Court Decisions Prior to the 1980 Settlement

- State v. Dana (1979)
  The State of Maine lacked criminal jurisdiction over crimes committed by tribal members on tribal lands.

- Bottomly v. Passamaquoddy Tribe (1979)
  Maine tribes retained the full attributes of sovereignty as defined by federal Indian Law.

What is the Federal Trust Responsibility?

- The U.S. Government has a responsibility to protect tribal resources and act in the best interests of Tribes and their members.

1820 to 1975

Me. Const. art. X, § 5

- ...Fifth. The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this Commonwealth, towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise;

State v. Newell, 24 A. 943 (Me. 1892)

- Passamaquoddy tribal member was hunting deer on the reservation and charged with violation of State hunting laws. The court stated:

  > Whatever the status of the Indian tribes in the west may be, all the Indians, of whatever tribe, remaining in Massachusetts and Maine, have always been regarded by those states and by the United States as bound by the laws of the state in which they live. Their political and civil rights can be enforced only in the courts of the state...what tribal organization they may have is for tenure of property and the holding of privileges under the laws of the state. They are as completely subject to the state as any other inhabitants can be.

Developments in Federal Indian Policy

- Termination policy ended. Public Law 280 (1953 expansion of state jurisdiction) was amended and restricted in 1968 by the Indian Civil Rights Act. Tribal consent required. PL 280 further limited by Bryan v. Itasca County decision in 1976.
- 1970 - Nixon Administration- New federal policy adopted that supports tribal self-government.
- 1970's - Congress enacts Indian Self-Determination Act and numerous other laws that support tribal self-government. Federal vacillation on Indian policy ended.
- 1980 - With the Settlement, Maine moves in the opposite direction from federal support of tribal self-determination. Former state control over Indians is largely reinstated by the Settlement.

Legal Status of the Tribes as of 1979

- Before the settlement, the state and federal courts had clarified that the tribes in Maine were already sovereign tribal nations within the United States, as defined in federal Indian law.
- The tribes already had federal recognition and were being treated accordingly by the federal government.
- The settlement was not a grant of new authority to the Tribes. It was a restriction of the jurisdiction they already possessed.

Maine Indian Claims Settlement

- Federal Component- Maine Indian Claims Settlement Act- 25 U.S.C. §§ 1721 et seq. (MICSA)

  Enacted by Congress, extinguishing the land claims, compensating the Indians for their claim, ratifying the Maine Implementing Act and limiting the application of existing and future federal laws in Maine.

- State Component- Maine Implementing Act - 30 M.R.S.A. §§ 6201 et seq. (MIA)

  An agreement between the State and the Indian Tribes that was enacted by the Maine Legislature. This outlines the laws that are applicable to Indians and Indian lands in Maine. Ratified by Congress.

MICSA Provisions on the Applicability of Federal Indian Laws in Maine

- **Section 1725(h)** Except as other wise provided in this subchapter, the laws and regulations of the United States which are generally applicable to Indians . . . . shall be applicable in the State of Maine, except that no law or regulation of the United States **(1) which accords or relates to a special status or right of or to any Indian . . . ., and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.**

- **Section 1735(b)** The provisions of **any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine**, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, **shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.**

THE SETTLEMENT ACT WAS INTENDED TO BE A FLEXIBLE DOCUMENT

"Based on the understanding which State and tribal officials now have, we fully expect that this relationship will prove to be a workable one. Furthermore, our proposed amendment to the bill would give Congress' consent to future jurisdictional agreements between the State and the Tribes. Thus, there is flexibility built into this relationship."

- Letter from Interior Secretary Andrus to
The Senate Select Committee on Indian Affairs, Aug 19, 1980

"And I recognized that the MICSA and the MIA might well just be the beginning of an ongoing relationship that might well have a considerable amount of dynamism in it and it might well be revisited from time to time to be adjusted, there was a mechanism for that to happen and I have to say in retrospect it's been a surprise to me that it really hasn't been amended at some point…"

- Tim Woodcock, addressing the Tribal State Work Group, November 19, 2007

The Maine settlements have not succeeded in creating flexible and effective relationships between the Tribes and the State.

Whatever view one has on particular issues, it is fair to say that none of the parties could have predicted that the 1980 settlement would remain essentially unmodified for all these years; that so many issues would be submitted to the courts instead of being worked out between the parties; or that the courts would interpret jurisdictional language in the particular ways that they have.

Maine Has Not Developed an Indian Policy

- The settlement and court decisions have effectively become the State's governing Indian policy.
- The Task Force presents an opportunity for the State to work with the Tribes to adjust policy to fit current circumstances.

Timeline Leading Up to the Maine Indian Land Claims Settlement

1820: Maine becomes a state and assumes all duties and obligations from Massachusetts arising from treaties and otherwise, and accepts monetary compensation for doing so.

1820-1975: Maine exercises increasingly pervasive authority over tribes, approved by Maine courts, while the Federal government fails to exercise its trust responsibility to the tribes.

1873: Maine Legislature removes treaty obligations language from printed Constitution.

1892: *State v. Newell*- Maine Law Court holds that Tribes are fully subject to State law.

1967: Maine Indians obtain the right to vote in state elections.

1968: Governor's Task Force on Human Rights documents condition of Maine Indians.

1968: Indian Civil Rights Act enacted by Congress. PL 280 amended to require tribal consent to expansion of state jurisdiction.

1970-Present: New federal policy adopted to promote tribal self-government. Indian Self-Determination Act and numerous other federal laws passed to support tribal self-government.

1972: Passamaquoddy v. Morton filed in federal court.

1974- Maine Advisory Committee to the U.S. Commission on Civil Rights reports on circumstances of Maine Indians.

1975: Passamaquoddy v. Morton holds that the Non-Intercourse Act applies to the Passamaquoddy Tribe and the Penobscot Nation and recognizes the trust relationship between the Tribes and the United States.

1976: After Morton decision becomes final, Federal government acknowledges Passamaquoddy and Penobscot tribes as federally recognized tribes.

1979: State v. Dana holds that state criminal laws are not applicable to Indians on Indian lands in Maine. "Indian Country" under Federal Indian Law.

1979: Bottomly v. Passamaquoddy Tribe holds that tribes in Maine have same tribal sovereignty as other federally recognized tribes under Federal Indian Law.

1980: MICSA/MIA signed into law. Passamaquoddy, Penobscots and Maliseets are parties. Aroostook Band of Micmacs is not a party but is subjected to state law as an "other" tribe.

APPENDIX E

An Act to Implement the Maine Indian Claims Settlement

CHAPTER 601

MAINE INDIAN CLAIMS SETTLEMENT

§6201. Short title

This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement." [PL 1979, c. 732, §§ 1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW).

§6202. Legislative findings and declaration of policy

The Legislature finds and declares the following. [PL 1979, c. 732, §§1, 31 (NEW).]

The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are asserting claims for possession of large areas of land in the State and for damages alleging that the lands in question originally were transferred in violation of the Indian Trade and Intercourse Act of 1790, 1 Stat. 137, or subsequent reenactments or versions thereof. [PL 1979, c. 732, §§1, 31 (NEW).]

Substantial economic and social hardship could be created for large numbers of landowners, citizens and communities in the State, and therefore to the State as a whole, if these claims are not resolved promptly. [PL 1979, c. 732, §§1, 31 (NEW).]

The claims also have produced disagreement between the Indian claimants and the State over the extent of the state's jurisdiction in the claimed areas. This disagreement has resulted in litigation and, if the claims are not resolved, further litigation on jurisdictional issues would be likely. [PL 1979, c. 732, §§1, 31 (NEW).]

The Indian claimants and the State, acting through the Attorney General, have reached certain agreements which represent a good faith effort on the part of all parties to achieve a fair and just resolution of those claims which, in the absence of agreement, would be pursued through the courts for many years to the ultimate detriment of the State and all its citizens, including the Indians. [PL 1979, c. 732, §§1, 31 (NEW).]

The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State. [PL 1979, c. 732, §§1, 31 (NEW).]

It is the purpose of this Act to implement in part the foregoing agreement. [PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW).

§6203. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings. [PL 1979, c. 732, §§1, 31 (NEW).]

1. Commission. "Commission" means the Maine Indian Tribal-State Commission created by section 6212.
[PL 1979, c. 732, §§1, 31 (NEW).]

2. Houlton Band of Maliseet Indians. "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.
[PL 1979, c. 732, §§1, 31 (NEW).]

2-A. Houlton Band Trust Land. "Houlton Band Trust Land" means land or natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians, in compliance with the terms of this Act and the Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420, with moneys from the original $900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724, or with proceeds from a taking of Houlton Band Trust Land for public uses pursuant to the laws of this State or the United States.
[PL 1981, c. 675, §§1, 8 (NEW).]

3. Land or other natural resources. "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.
[PL 1979, c. 732, §§1, 31 (NEW).]

4. Laws of the State. "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.
[PL 1979, c. 732, §§1, 31 (NEW).]

5. Passamaquoddy Indian Reservation. "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian Reservation. For purposes of this subsection, the lands reserved to the Passamaquoddy Tribe by the aforesaid agreement shall be limited to Indian Township in Washington County; Pine Island, sometimes referred to as Taylor's Island, located in Big Lake, in Washington County; 100 acres of land located on Nemcass Point, sometimes referred to as Governor's Point, located in Washington County and shown on a survey of John Gardner which is filed in the Maine State Archives, Executive Council Records, Report Number 264 and dated June 5, 1855; 100 acres of land located at Pleasant Point in Washington County as described in a deed to Captain John Frost from Theodore Lincoln, Attorney for Benjamin Lincoln, Thomas Russell, and John Lowell dated July 14, 1792, and recorded in the Washington County Registry of Deeds on April 27, 1801, at Book 3, Page 73; and those 15 islands in the St. Croix River in existence on September 19, 1794 and located between the head of the tide of that river and the falls below the forks of that river, both of which points are shown on a 1794 plan of Samuel Titcomb which is filed in the Maine State Archives in Maine Land Office Plan Book Number 1, page 33. The "Passamaquoddy Indian Reservation" includes those lands which have been or may be acquired by the Passamaquoddy Tribe within that portion of the Town of Perry which lies south of Route 1 on the east side of Route 190 and south of lands now owned or formerly owned by William Follis on the west side of Route 190, provided that no such lands may be included in the Passamaquoddy Indian Reservation until the Secretary of State receives certification from the treasurer of the Town of Perry that the Passamaquoddy Tribe has paid to the Town of Perry the amount of $350,000, provided that the consent of the Town of Perry would be voided unless the payment of the $350,000 is made within 120 days of the effective date of this section. Any commercial

development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages.
[PL 1985, c. 747, §1 (AMD).]

6. Passamaquoddy Indian territory. "Passamaquoddy Indian territory" means that territory defined by section 6205, subsection 1.
[PL 1979, c. 732, §§1, 31 (NEW).]

7. Passamaquoddy Tribe. "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations.
[PL 1979, c. 732, §§1, 31 (NEW).]

8. Penobscot Indian Reservation. "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land must be included within the Penobscot Indian Reservation.

The "Penobscot Indian Reservation" includes the following parcels of land that have been or may be acquired by the Penobscot Nation from Bangor Pacific Hydro Associates as compensation for flowage of reservation lands by the West Enfield dam: A parcel located on the Mattagamon Gate Road and on the East Branch of the Penobscot River in T.6 R.8 WELS, which is a portion of the "Mattagamon Lake Dam Lot" and has an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has an area of approximately one acre.

The "Penobscot Indian Reservation" also includes a certain parcel of land located in Argyle, Penobscot County consisting of approximately 714 acres known as the Argyle East Parcel and more particularly described as Parcel One in a deed from the Penobscot Indian Nation to the United States of America dated November 22, 2005 and recorded at the Penobscot County Registry of Deeds in Book 10267, Page 265.
[PL 2009, c. 636, Pt. B, §1 (AMD); PL 2009, c. 636, Pt. B, §2 (AFF).]

9. Penobscot Indian territory. "Penobscot Indian territory" means that territory defined by section 6205, subsection 2.
[PL 1979, c. 732, §§1, 31 (NEW).]

10. Penobscot Nation. "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Penobscot Reservation Tribal Council.
[PL 1979, c. 732, §§1, 31 (NEW).]

11. Secretary. "Secretary" means the Secretary of the Interior of the United States.
[PL 1979, c. 732, §§1, 31 (NEW).]

12. Settlement Fund. "Settlement Fund" means the trust fund established for the Passamaquoddy Tribe and Penobscot Nation by the United States pursuant to congressional legislation extinquishing aboriginal land claims in Maine.
[PL 1979, c. 732, §§1, 31 (NEW).]

13. Transfer. "Transfer" includes, but is not necessarily limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance

that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.
[PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1981, c. 675, §§1,8 (AMD). PL 1985, c. 747, §1 (AMD). PL 1987, c. 712, §§1,2 (AMD). PL 2009, c. 636, Pt. B, §1 (AMD). PL 2009, c. 636, Pt. B, §2 (AFF).

§6204. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein. [PL 1979, c. 732, §§ 1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW).

§6205. Indian territory

1. Passamaquoddy Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State are known as the "Passamaquoddy Indian territory:"

A. The Passamaquoddy Indian Reservation; [PL 1993, c. 713, §1 (AMD); PL 1993, c. 713, §2 (AFF).]

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, 1991, are not held in common with any other person or entity and are certified by the secretary by January 31, 1991, as held for the benefit of the Passamaquoddy Tribe:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; and the lands of the Dyer Interests in T.A.R.7 W.E.L.S., T.3 R.9 N.W.P., T.3 R.3. N.B.K.P. (Alder Brook Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4 N.B.K.P. (Pittston Academy Grant), T.2 R.3 N.B.K.P. (Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss Township), and any lands in Albany Township acquired by the Passamaquoddy Tribe before January 1, 1991; [PL 2001, c. 251, §1 (AMD); PL 2001, c. 251, §4 (AFF).]

C. Any land not exceeding 100 acres in the City of Calais acquired by the secretary for the benefit of the Passamaquoddy Tribe as long as the land is acquired by the secretary prior to January 1, 2001, is not held in common with any other person or entity and is certified by the secretary by January 31, 2001, as held for the benefit of the Passamaquoddy Tribe, if:

(1) The acquisition of the land by the tribe is approved by the legislative body of that city; and

(2) A tribal-state compact under the federal Indian Gaming Regulatory Act is agreed to by the State and the Passamaquoddy Tribe or the State is ordered by a court to negotiate such a compact; [PL 2007, c. 221, §1 (AMD); PL 2007, c. 221, §4 (AFF); PL 2007, c. 223, §1 (AMD); PL 2007, c. 223, §4 (AFF).]

D. All land acquired by the secretary for the benefit of the Passamaquoddy Tribe in T. 19, M.D. to the extent that the land is acquired by the secretary prior to January 31, 2020, is not held in common with any other person or entity and is certified by the secretary by January 31, 2020 as held for the benefit of the Passamaquoddy Tribe; [RR 2007, c. 1, §14 (COR).]

D-1. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville consisting of Parcels A, B and C conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated July 27, 1981, recorded in the Washington County Registry of Deeds in Book 1147, Page 251, to the extent that the land is acquired by the secretary prior to January 31, 2017, is not held in common with any other person or entity and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe; [PL 2013, c. 91, §1 (AMD); PL 2013, c. 91, §3 (AFF).]

D-2. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated May 4, 1982, recorded in the Washington County Registry of Deeds in Book 1178, Page 35, to the extent that the land is acquired by the secretary prior to January 31, 2023, is not held in common with any other person or entity and is certified by the secretary by January 31, 2023 as held for the benefit of the Passamaquoddy Tribe; and [PL 2013, c. 91, §2 (NEW); PL 2013, c. 91, §3 (AFF).]

E. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Township 21 consisting of Gordon Island in Big Lake, conveyed by Domtar Maine Corporation to the Passamaquoddy Tribe by corporate quitclaim deed dated April 30, 2002, recorded in the Washington County Registry of Deeds in Book 2624, Page 301, to the extent that the land is acquired by the secretary prior to January 31, 2017, is not held in common with any other person or entity and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe. [PL 2007, c. 223, §3 (NEW); PL 2007, c. 223, §4 (AFF).]

[PL 2013, c. 91, §§1, 2 (AMD); PL 2013, c. 91, §3 (AFF).]

2. Penobscot Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Penobscot Indian territory:"

A. The Penobscot Indian Reservation; and [PL 1979, c. 732, §1 (NEW).]

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, 2021, are not held in common with any other person or entity and are certified by the secretary by January 31, 2021, as held for the Penobscot Nation:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper

Company located in Argyle; any land acquired in Williamsburg T.6, R.8, N.W.P.; any 300 acres in Old Town mutually agreed upon by the City of Old Town and the Penobscot Nation Tribal Government, provided that the mutual agreement must be finalized prior to August 31, 1991; any lands in Lakeville acquired by the Penobscot Nation before January 1, 1991; and all the property acquired by the Penobscot Indian Nation from Herbert C. Haynes, Jr., Herbert C. Haynes, Inc. and Five Islands Land Corporation located in Township 1, Range 6 W.E.L.S. [PL 1999, c. 625, §1 (AMD).]

[PL 1999, c. 625, §1 (AMD).]

3. Takings under the laws of the State.

A. Prior to any taking of land for public uses within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity proposing the taking, or, in the event of a taking proposed by a public utility, the Public Utilities Commission, shall be required to find that there is no reasonably feasible alternative to the proposed taking. In making this finding, the public entity or the Public Utilities Commission shall compare the cost, technical feasibility, and environmental and social impact of the available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking. Prior to making this finding, the public entity or Public Utilities Commission, after notice to the affected tribe or nation, shall conduct a public hearing in the manner provided by the Maine Administrative Procedure Act, on the affected Indian reservation. The finding of the public entity or Public Utilities Commission may be appealed to the Maine Superior Court.

In the event of a taking of land for public uses within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity or public utility making the taking shall, at the election of the affected tribe or nation, and with respect to individually allotted lands, at the election of the affected allottee or allottees, acquire by purchase or otherwise for the respective tribe, nation, allottee or allottees a parcel or parcels of land equal in value to that taken; contiguous to the affected Indian reservation; and as nearly adjacent to the parcel taken as practicable. The land so acquired shall, upon written certification to the Secretary of State by the public entity or public utility acquiring such land describing the location and boundaries thereof, be included within the Indian Reservation of the affected tribe or nation without further approval of the State. For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation. The acquisition of land for the Passamaquoddy Tribe or the Penobscot Nation or any allottee under this subsection shall be full compensation for any such taking. If the affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the moneys received for such taking shall be reinvested in accordance with the provisions of paragraph B. [PL 1979, c. 732, §1 (NEW).]

B. If land within either the Passamaquoddy Indian Territory or the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State the money received for said land shall be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys received are so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall be included within the respective Indian territory without further approval of the State. To the extent that any moneys received are so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall designate, within 30 days of such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall be included within the respective Indian territory. No land acquired pursuant to this paragraph shall be included within either Indian Territory until the Secretary of Interior has certified, in writing, to

the Secretary of State the location and boundaries of the land acquired. [PL 1979, c. 732, §1 (NEW).]

[PL 1979, c. 732, §1 (NEW).]

4. Taking under the laws of the United States. In the event of a taking of land within the Passamaquoddy Indian territory or the Penobscot Indian territory for public uses in accordance with the laws of the United States and the reinvestment of the moneys received from such taking within 2 years of the date on which the moneys are received, the status of the lands acquired by such reinvestment shall be determined in accordance with subsection 3, paragraph B.

[PL 1979, c. 732, §§1, 31 (NEW).]

5. Limitations. No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.

[PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1983, c. 493, §1 (AMD). PL 1983, c. 494, §1 (AMD). PL 1983, c. 660, §§1,2 (AMD). PL 1983, c. 676, §§1,2 (AMD). PL 1985, c. 69, §1 (AMD). PL 1985, c. 637, §§1,2 (AMD). PL 1985, c. 639, §§1,2 (AMD). PL 1985, c. 747, §2 (AMD). PL 1987, c. 153, §§1-3 (AMD). PL 1991, c. 720, §1 (AMD). PL 1991, c. 720, §2 (AFF). PL 1991, c. 721, §1 (AMD). PL 1991, c. 721, §2 (AFF). PL 1993, c. 713, §1 (AMD). PL 1993, c. 713, §2 (AFF). PL 1995, c. 601, §1 (AMD). PL 1995, c. 601, §2 (AFF). PL 1999, c. 625, §1 (AMD). PL 2001, c. 251, §§1-3 (AMD). PL 2001, c. 251, §4 (AFF). RR 2007, c. 1, §§14, 15 (COR). PL 2007, c. 221, §§1-3 (AMD). PL 2007, c. 221, §4 (AFF). PL 2007, c. 223, §§1-3 (AMD). PL 2007, c. 223, §4 (AFF). PL 2013, c. 91, §§1, 2 (AMD). PL 2013, c. 91, §3 (AFF).

§6205-A. Acquisition of Houlton Band Trust Land

1. Approval. The State of Maine approves the acquisition, by the secretary, of Houlton Band Trust Land within the State of Maine provided as follows.

A. No land or natural resources acquired by the secretary may have the status of Houlton Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing. [PL 1981, c. 675, §§2, 8 (AMD).]

B. No land or natural resources may be acquired by the secretary for the Houlton Band of Maliseet Indians until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 6208-A, together with a letter stating that he holds not less than $100,000 in a trust account for the payment of Houlton Band of Maliseet Indians' obligations, and a copy of the claim filing procedures he has adopted. [PL 1981, c. 675, §§2, 8 (AMD).]

C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Houlton Band of Maliseet Indians without the approval of the legislative body of the city, town, village or plantation. [PL 1981, c. 675, §§2, 8 (AMD).]

[PL 1981, c. 675, §§2, 8 (AMD).]

2. Takings for public uses. Houlton Band Trust Land may be taken for public uses in accordance with the laws of the State of Maine to the same extent as privately-owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States' court of competent jurisdiction.
[PL 1981, c. 675, §§2, 8 (AMD).]

3. Restraints on alienation. Any transfer of Houlton Band Trust Land shall be void ab initio and without any validity in law or equity, except:

A. Takings for public uses pursuant to the laws of this State; [PL 1981, c. 675, §§2, 8 (AMD).]

B. Takings for public uses pursuant to the laws of the United States; [PL 1981, c. 675, §§2, 8 (AMD).]

C. Transfers of individual use assignments from one member of the Houlton Band of Maliseet Indians to another band member; [PL 1981, c. 675, §§2, 8 (AMD).]

D. Transfers authorized by United States Public Law 96-420, Section 5(g)(3), United States Code, Title 25, Section 1724(g)(3); and [PL 1981, c. 675, §§2, 8 (AMD).]

E. Transfers made pursuant to a special act of Congress. [PL 1981, c. 675, §§2, 8 (AMD).]

If the fee to the Houlton Band Trust Fund Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Houlton Band Trust Land.
[PL 1981, c. 675, §§2, 8 (AMD).]

SECTION HISTORY

PL 1981, c. 675, §§2,8 (NEW).

§6206. Powers and duties of the Indian tribes within their respective Indian territories

1. General Powers. Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.
[PL 1979, c. 732, §§ 1, 31 (NEW).]

2. Power to sue and be sued. The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the

State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.
[PL 1979, c. 732, §§ 1, 31 (NEW).]

3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.
[PL 1979, c. 732, §§ 1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW).

§6206-A. Powers of the Houlton Band of Maliseet Indians

The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.
[PL 1981, c. 675, §§3, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 675, §§3,8 (NEW).

§6206-B. Law enforcement powers of Houlton Band of Maliseet Indians

1. Appointment of tribal law enforcement officers. The Houlton Band of Maliseet Indians may appoint law enforcement officers who have the authority to enforce all the laws of the State within the Houlton Band Trust Land. This section does not limit the existing authority of tribal officers under tribal law or affect the performance of federal duties by tribal officers.
[PL 2005, c. 310, §1 (NEW); PL 2005, c. 310, §2 (AFF).]

2. Authority of state, county and local law enforcement officers. State and county law enforcement officers and law enforcement officers appointed by the Town of Houlton have the authority to enforce all laws of the State within the Houlton Band Trust Land.
[PL 2005, c. 310, §1 (NEW); PL 2005, c. 310, §2 (AFF).]

3. Agreements for cooperation and mutual aid. The Houlton Band of Maliseet Indians and any state, county or local law enforcement agency may enter into agreements for cooperation and mutual aid.
[PL 2005, c. 310, §1 (NEW); PL 2005, c. 310, §2 (AFF).]

4. Powers, duties and training requirements. Law enforcement officers appointed by the Houlton Band of Maliseet Indians pursuant to this section possess the same powers, enjoy the same immunities and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.
[PL 2005, c. 310, §1 (NEW); PL 2005, c. 310, §2 (AFF).]

5. Report to Legislature. By January 1, 2010, the Houlton Band of Maliseet Indians shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters detailing the band's experience with the exercise of law enforcement authority under this section. The

report must include observations and comments from the state and county law enforcement agencies providing law enforcement services in Aroostook County and from the Houlton Police Department. [PL 2005, c. 310, §1 (NEW); PL 2005, c. 310, §2 (AFF).]

6. Repeal.
[PL 2009, c. 384, Pt. A, §1 (RP); PL 2009, c. 384, Pt. A, §4 (AFF).]

SECTION HISTORY

PL 2005, c. 310, §1 (NEW). PL 2005, c. 310, §2 (AFF). PL 2009, c. 384, Pt. A, §1 (AMD). PL 2009, c. 384, Pt. A, §4 (AFF).

§6207. Regulation of fish and wildlife resources

1. Adoption of ordinances by tribe. Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

A. Hunting, trapping or other taking of wildlife; and [PL 1979, c. 732, §§1, 31 (NEW).]

B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area. [PL 1979, c. 732, §§1, 31 (NEW).]

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.
[PL 1979, c. 732, §§1, 31 (NEW).]

2. Registration stations. The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner. [PL 1979, c. 732, §§1, 31 (NEW).]

3. Adoption of regulations by the commission. Subject to the limitations of subsection 6, the commission shall have exclusive authority to promulgate fishing rules or regulations on:

A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory; [PL 1979, c. 732, §§1, 31 (NEW).]

B. Any section of a river or stream both sides of which are within Indian territory; and [PL 1979, c. 732, §§1, 31 (NEW).]

C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more. [PL 1979, c. 732, §§1, 31 (NEW).]

In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the

tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.

Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the Penobscot Nation. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.
[PL 1979, c. 732, §§1, 31 (NEW).]

3-A. Horsepower and use of motors. Subject to the limitations of subsection 6, the commission has exclusive authority to adopt rules to regulate the horsepower and use of motors on waters less than 200 acres in surface area and entirely within Indian territory.
[PL 1997, c. 739, §12 (NEW); PL 1997, c. 739, §§13, 14 (AFF).]

REVISOR'S NOTE: Subsection 3-A not in effect as to Passamaquoddy Tribe or Penobscot Nation because requirements of PL 1997, c. 739, §§13, 14 were not met

4. Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.
[PL 1979, c. 732, §§1, 31 (NEW).]

5. Posting. Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.
[PL 1979, c. 732, §§1, 31 (NEW).]

6. Supervision by Commissioner of Inland Fisheries and Wildlife. The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he

may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.
[PL 1979, c. 732, §§1, 31 (NEW).]

7. Transportation of game. Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation, may be transported within the State.
[PL 1979, c. 732, §§1, 31 (NEW).]

8. Fish and wildlife on non-Indian lands. The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.
[PL 1979, c. 732, §§1, 31 (NEW).]

9. Fish. As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.
[PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1997, c. 739, §12 (AMD). PL 1997, c. 739, §§13,14 (AFF).

§6208. Taxation

1. Settlement Fund income. The Settlement Fund and any portion of such funds or income therefrom distributed to the Passamaquoddy Tribe or the Penobscot Nation or the members thereof shall be exempt from taxation under the laws of the State.
[PL 1979, c. 732, §§1, 31 (NEW).]

2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy

Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.
[PL 1985, c. 672, §§2, 4 (AMD).]

2-A. Payments in lieu of taxes; authority. Any municipality in which Houlton Band Trust Land is located has the authority, at its sole discretion, to enter into agreements with the Houlton Band of Maliseet Indians to accept other funds or other things of value that are obtained by or for the Houlton Band of Maliseet Indians by reason of the trust status of the trust land as replacement for payments in lieu of taxes.

Any agreement between the Houlton Band of Maliseet Indians and the municipality must be jointly executed by persons duly authorized by the Houlton Band of Maliseet Indians and the municipality and must set forth the jointly agreed value of the funds or other things identified serving as replacement of payments in lieu of taxes and the time period over which such funds or other things may serve in lieu of the obligations of the Houlton Band of Maliseet Indians provided in this section.
[PL 2009, c. 384, Pt. A, §2 (NEW); PL 2009, c. 384, Pt. A, §4 (AFF).]

3. Other taxes. The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.
[PL 1985, c. 672, §§3, 4 (AMD).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1981, c. 675, §§4-6,8 (AMD). PL 1985, c. 672, §§2-4 (AMD). PL 2009, c. 384, Pt. A, §2 (AMD). PL 2009, c. 384, Pt. A, §4 (AFF).

§6208-A. Houlton Band Tax Fund

1. Fund. The satisfaction of obligations, described in section 6208, owed to a governmental entity by the Houlton Band of Maliseet Indians shall be assured by a trust fund to be known as the Houlton Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than $100,000. The principal shall be formed with moneys transferred from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724. Any interest earned by the Houlton Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of $25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.
[PL 1981, c. 675, §§7, 8 (NEW).]

2. Claims. The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Houlton Band of Maliseet Indians is liable pursuant to section 6208, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State of Maine. No payment of a valid claim may be satisfied with moneys from the fund unless the secretary finds, as a result of his own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Maine Commissioner of Finance and Administration and the Houlton Band of Maliseet Indians.
[PL 1981, c. 675, §§7, 8 (NEW).]

3. Distributions. If the unencumbered principal available for the payment of claims exceeds the sum of $100,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Houlton Band of Maliseet Indians. The secretary shall give 30 days' written notice to the Commissioner of Finance and Administration of a proposed transfer of excess principal to the Houlton Band of Maliseet Indians. Any distribution of excess principal to the Houlton Band of Maliseet Indians shall be exempt from taxation.
[PL 1981, c. 675, §§7, 8 (NEW).]

4. Other remedies. The existence of the Houlton Band Tax Fund as a source for the payment of Houlton Band of Maliseet Indians' obligations shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.
[PL 1981, c. 675, §§7, 8 (NEW).]

SECTION HISTORY

PL 1981, c. 675, §§7,8 (NEW).

§6209. Jurisdiction over criminal offenses, juvenile crimes, civil disputes and domestic relations (REPEALED)

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1987, c. 756, §§1,2 (AMD). PL 1989, c. 169, §§1,2 (AMD). PL 1991, c. 484, §8 (AMD). PL 1991, c. 484, §9 (AFF). PL 1991, c. 766, §1 (AMD). PL 1991, c. 766, §2 (AFF). PL 1995, c. 388, §5 (RP). PL 1995, c. 388, §8 (AFF).

§6209-A. Jurisdiction of the Passamaquoddy Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed $5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, except when committed against a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation or against the property of a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation; [PL 2009, c. 384, Pt. E, §1 (AMD); PL 2009, c. 384, Pt. E, §3 (AFF).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation on the reservation of the Passamaquoddy Tribe; [PL 2009, c. 384, Pt. E, §1 (AMD); PL 2009, c. 384, Pt. E, §3 (AFF).]

C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation; [PL 2009, c. 384, Pt. E, §1 (AMD); PL 2009, c. 384, Pt. E, §3 (AFF).]

D. Indian child custody proceedings to the extent authorized by applicable federal law; and [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe. [PL 2009, c. 384, Pt. E, §1 (AMD); PL 2009, c. 384, Pt. E, §3 (AFF).]

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Passamaquoddy Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.
[PL 2009, c. 384, Pt. E, §1 (AMD); PL 2009, c. 384, Pt. E, §3 (AFF).]

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Passamaquoddy Tribe constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

5. Future Indian communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the

Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

SECTION HISTORY

PL 1995, c. 388, §6 (NEW). PL 1995, c. 388, §8 (AFF). PL 2009, c. 93, §14 (AMD). PL 2009, c. 384, Pt. E, §1 (AMD). PL 2009, c. 384, Pt. E, §3 (AFF).

§6209-B. Jurisdiction of the Penobscot Nation Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group; [PL 1997, c. 595, §1 (AMD); PL 1997, c. 595, §2 (AFF).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation; [RR 2009, c. 1, §19 (COR).]

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation; [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

D. Indian child custody proceedings to the extent authorized by applicable federal law; and [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation. [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.
[RR 2009, c. 1, §19 (COR).]

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to

those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Penobscot Nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Penobscot Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

5. Future Indian communities. Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.
[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

SECTION HISTORY

PL 1995, c. 388, §6 (NEW). PL 1995, c. 388, §8 (AFF). PL 1997, c. 595, §1 (AMD). PL 1997, c. 595, §2 (AFF). RR 2009, c. 1, §19 (COR).

§6209-C. Jurisdiction of the Houlton Band of Maliseet Indians Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians, except when committed against a person who is not a member of the Houlton Band of Maliseet Indians or against the property of a person who is not a member of the Houlton Band of Maliseet Indians; [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Houlton Band of Maliseet Indians on the Houlton Band Jurisdiction Land; [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

C. Civil actions between members of the Houlton Band of Maliseet Indians arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians; [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

D. Indian child custody proceedings to the extent authorized by applicable federal law; and [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of the Houlton Band of Maliseet Indians, both of whom reside within the Houlton Band Jurisdiction Land. [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

The governing body of the Houlton Band of Maliseet Indians shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. The decision to exercise, to terminate the exercise of or to reassert the exercise of jurisdiction under each of the subject areas described by paragraphs A to E may be made separately. Until the Houlton Band of Maliseet Indians notifies the Attorney General that the band has decided to exercise exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to exercise or chooses to terminate its exercise of exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters until the Houlton Band of Maliseet Indians chooses to exercise its exclusive jurisdiction. When the Houlton Band of Maliseet Indians chooses to reassert the exercise of exclusive jurisdiction over any or all of the areas of the exclusive jurisdiction authorized by this subsection it must first provide 30 days' notice to the Attorney General. Except as provided in subsections 2 and 3, all laws of the State relating to criminal offenses and juvenile crimes apply within the Houlton Band Trust Land and the State has exclusive jurisdiction over those offenses and crimes. [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

1-A. Exclusive jurisdiction over Penobscot Nation members. The Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation against a member or property of a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection, and by a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection against a member or the property of a member of the Penobscot Nation; [PL 2009, c. 384, Pt. D, §1 (NEW); PL 2009, c. 384, Pt. D, §2 (AFF).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Penobscot Nation on the Houlton Band Jurisdiction Land; [PL 2009, c. 384, Pt. D, §1 (NEW); PL 2009, c. 384, Pt. D, §2 (AFF).]

C. Civil actions between a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection and members of the Penobscot Nation arising on the Houlton Band Jurisdiction Land and cognizable

as small claims under the laws of the State and civil actions against a member of the Penobscot Nation under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation; [PL 2009, c. 384, Pt. D, §1 (NEW); PL 2009, c. 384, Pt. D, §2 (AFF).]

D. Indian child custody proceedings to the extent authorized by applicable federal law; and [PL 2009, c. 384, Pt. D, §1 (NEW); PL 2009, c. 384, Pt. D, §2 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection or the Penobscot Nation, both of whom reside on the Houlton Band Jurisdiction Land. [PL 2009, c. 384, Pt. D, §1 (NEW); PL 2009, c. 384, Pt. D, §2 (AFF).]

The Houlton Band of Maliseet Indians may assert, terminate or reassert exclusive jurisdiction over these areas as described in subsection 1.
[PL 2009, c. 384, Pt. D, §1 (NEW); PL 2009, c. 384, Pt. D, §2 (AFF).]

REVISOR'S NOTE: (Subsection 1-A as enacted by PL 2009, c. 384, Pt. E, §2 and affected by §3 is REALLOCATED TO TITLE 30, SECTION 6209-C, SUBSECTION 1-B)

1-B. (REALLOCATED FROM T. 30, §6209-C, sub-§1-A) Exclusive jurisdiction over Passamaquoddy Tribe members. The Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Passamaquoddy Tribe against a member or property of a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection, and by a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection against a member or the property of a member of the Passamaquoddy Tribe; [RR 2011, c. 1, §45 (RAL).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe on the Houlton Band Jurisdiction Land; [RR 2011, c. 1, §45 (RAL).]

C. Civil actions between a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection and members of the Passamaquoddy Tribe arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Passamaquoddy Tribe under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Passamaquoddy Tribe; [RR 2011, c. 1, §45 (RAL).]

D. Indian child custody proceedings to the extent authorized by applicable federal law; and [RR 2011, c. 1, §45 (RAL).]

E. Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection or the Passamaquoddy Tribe, both of whom reside on the Houlton Band Jurisdiction Land. [RR 2011, c. 1, §45 (RAL).]

The Houlton Band of Maliseet Indians may assert, terminate or reassert exclusive jurisdiction over these areas as described in subsection 1.

[RR 2011, c. 1, §45 (RAL).]

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.
[PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Houlton Band of Maliseet Indians constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.
[PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

4. Double jeopardy; collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime arising out of the same conduct over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime arising out of the same conduct over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.
[PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

5. Houlton Band Jurisdiction Land. For the purposes of this section, "Houlton Band Jurisdiction Land" means only the Houlton Band Trust Land described as follows:

A. Lands transferred from Ralph E. Longstaff and Justina Longstaff to the United States of America in trust for the Houlton Band of Maliseet Indians, located in Houlton, Aroostook County and recorded in the Aroostook County South Registry of Deeds in Book 2144, Page 198; and [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

B. Lands transferred from F. Douglas Lowrey to the United States of America in trust for the Houlton Band of Maliseet Indians, located in Houlton and Littleton, Aroostook County and recorded in the Aroostook County South Registry of Deeds in Book 2847, Page 114. [PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

The designation of Houlton Band Jurisdiction Land in this subsection in no way affects the acquisition of additional Houlton Band Trust Land pursuant to applicable federal and state law, nor limits the Houlton Band of Maliseet Indians from making additional requests that portions of the trust land be included in this subsection.
[PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

6. Effective date; full faith and credit. This section takes effect only if the State, the Passamaquoddy Tribe and the Penobscot Nation agree to give full faith and credit to the judicial proceedings of the Houlton Band of Maliseet Indians and the Houlton Band of Maliseet Indians agrees

to give full faith and credit to the judicial proceedings of the State, the Passamaquoddy Tribe and the Penobscot Nation.
[PL 2009, c. 384, Pt. B, §1 (NEW); PL 2009, c. 384, Pt. B, §2 (AFF).]

SECTION HISTORY

PL 2009, c. 384, Pt. B, §1 (NEW). PL 2009, c. 384, Pt. B, §2 (AFF). PL 2009, c. 384, Pt. D, §1 (AMD). PL 2009, c. 384, Pt. D, §2 (AFF). PL 2009, c. 384, Pt. E, §2 (AMD). PL 2009, c. 384, Pt. E, §3 (AFF). RR 2011, c. 1, §45 (COR).

§6209-D. Full faith and credit

The Passamaquoddy Tribe, the Penobscot Nation and the State shall give full faith and credit to the judicial proceedings of the Houlton Band of Maliseet Indians. [PL 2009, c. 384, Pt. C, §1 (NEW); PL 2009, c. 384, Pt. C, §2 (AFF).]

The Houlton Band of Maliseet Indians shall give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe, the Penobscot Nation and the State. [PL 2009, c. 384, Pt. C, §1 (NEW); PL 2009, c. 384, Pt. C, §2 (AFF).]

SECTION HISTORY

PL 2009, c. 384, Pt. C, §1 (NEW). PL 2009, c. 384, Pt. C, §2 (AFF).

§6210. Law enforcement on Indian reservations and within Indian territory

1. Exclusive authority of tribal law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.
[PL 1995, c. 388, §7 (AMD); PL 1995, c. 388, §8 (AFF).]

2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the authority within their respective Indian territories and state and county law enforcement officers have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.
[PL 1995, c. 388, §7 (AMD); PL 1995, c. 388, §8 (AFF).]

3. Agreements for cooperation and mutual aid. This section does not prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.
[PL 1995, c. 388, §7 (AMD); PL 1995, c. 388, §8 (AFF).]

4. Powers and training requirements. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation possess the same powers and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.
[PL 1995, c. 388, §7 (AMD); PL 1995, c. 388, §8 (AFF).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1983, c. 498, §1 (AMD). PL 1995, c. 388, §7 (AMD). PL 1995, c. 388, §8 (AFF).

§6211. Eligibility of Indian tribes and state funding

1. Eligibility generally. The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians may be raised through any source of revenue available to the respective tribe, nation or band, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of money employs a factor for the municipal real property tax rate, and in the absence of such tax within the Indian territory, the formula applicable to such Indian territory must be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of money employs a factor representing municipal valuation, the valuation applicable to such Indian territory must be determined by the State Tax Assessor in the manner generally provided by the laws of the State as long as property owned by or held in trust for a tribe, nation or band and used for governmental purposes is treated for purposes of valuation as like property owned by a municipality.
[PL 2009, c. 384, Pt. A, §3 (AMD); PL 2009, c. 384, Pt. A, §4 (AFF).]

2. Limitation on eligibility. In computing the extent to which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds under subsection 1, other than funds in support of education, any money received by the respective tribe, nation or band from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, must be deducted in computing any payment to be made to the respective tribe, nation or band by the State. Unless otherwise provided by federal law, in computing the extent to which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds for education under subsection 1, the state payment must be reduced by 15% of the amount of federal funds for school operations received by the respective tribe, nation or band within substantially the same period for which state funds are provided, and in excess of any local share ordinarily required by state law as a condition of state funding. A reduction in state funding for secondary education may not be made under this section except as a result of federal funds received within substantially the same period and allocated or allocable to secondary education.
[PL 2009, c. 384, Pt. A, §3 (AMD); PL 2009, c. 384, Pt. A, §4 (AFF).]

2-A. Limitation on eligibility.

[PL 1997, c. 626, §2 (RP); PL 1997, c. 626, §3 (AFF).]

3. Eligibility for discretionary funds. The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.
[PL 2009, c. 384, Pt. A, §3 (AMD); PL 2009, c. 384, Pt. A, §4 (AFF).]

4. Eligibility of individuals for state funds. Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State as long as in computing the extent to which any person is entitled to receive any such funds any money received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State is deducted in computing any payment to be made by the State.

[PL 2009, c. 384, Pt. A, §3 (AMD); PL 2009, c. 384, Pt. A, §4 (AFF).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1991, c. 705, §§1,2 (AMD). PL 1991, c. 705, §§4,5 (AFF). PL 1997, c. 626, §§1,2 (AMD). PL 1997, c. 626, §3 (AFF). PL 2009, c. 384, Pt. A, §3 (AMD). PL 2009, c. 384, Pt. A, §4 (AFF).

§6212. Maine Indian Tribal-State Commission

1. Commission created. The Maine Indian Tribal-State Commission is established. The commission consists of 13 members, 6 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 Houlton Band of Maliseet Indians, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation 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.
[PL 2009, c. 384, Pt. F, §1 (AMD); PL 2009, c. 384, Pt. F, §4 (AFF).]

2. Chair. The commission, by a majority vote of its 12 members, shall select an individual who is a resident of the State to act as chair. In the event of the death, resignation, replacement or disability of the chair, the commission may select, by a majority vote of its 12 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation, replacement or disability, the Governor, after consulting with the chiefs of the Houlton Band of Maliseet Indians, the Penobscot Nation and the Passamaquoddy Tribe, 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.
[PL 2009, c. 384, Pt. F, §2 (AMD); PL 2009, c. 384, Pt. F, §4 (AFF).]

3. Responsibilities. In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

Nine members constitute a quorum of the commission and a decision or action of the commission is not valid unless 7 members vote in favor of the action or decision.
[PL 2009, c. 384, Pt. F, §3 (AMD); PL 2009, c. 384, Pt. F, §4 (AFF).]

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.
[PL 1993, c. 600, Pt. A, §24 (AMD); PL 1993, c. 600, Pt. A, §25 (AFF).]

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.
[PL 1993, c. 600, Pt. A, §24 (AMD); PL 1993, c. 600, Pt. A, §25 (AFF).]

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.

The Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee of the following tribes shall communicate to produce a proposed biennial budget for the commission and to discuss any adjustments to funding:

A. The Houlton Band of Maliseet Indians; [PL 2009, c. 636, Pt. C, §3 (NEW); PL 2009, c. 636, Pt. C, §4 (AFF).]

B. The Passamaquoddy Tribe; and [PL 2009, c. 636, Pt. C, §3 (NEW); PL 2009, c. 636, Pt. C, §4 (AFF).]

C. The Penobscot Nation. [PL 2009, c. 636, Pt. C, §3 (NEW); PL 2009, c. 636, Pt. C, §4 (AFF).]

[PL 2013, c. 81, §§4, 5 (AMD); PL 2013, c. 81, §6 (AFF).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW). PL 1983, c. 492, §1 (AMD). PL 1983, c. 812, §§186,187 (AMD). PL 1985, c. 295, §§46,47 (AMD). PL 1993, c. 600, §A24 (AMD). PL 1993, c. 600, §A25 (AFF). PL 2001, c. 173, §1 (AMD). PL 2001, c. 173, §2 (AFF). PL 2009, c. 384, Pt. F, §§1-3 (AMD). PL 2009, c. 384, Pt. F, §4 (AFF). PL 2009, c. 636, Pt. C, §3 (AMD). PL 2009, c. 636, Pt. C, §4 (AFF). PL 2013, c. 81, §§1-5 (AMD). PL 2013, c. 81, §6 (AFF).

§6213. Approval of prior transfers

1. Approval of tribal transfers. Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of any Indian nation, or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any state, which transfer occurred prior to the effective date of this Act, shall be deemed to have been made in accordance with the laws of the State.

[PL 1979, c. 732, §§1, 31 (NEW).]

2. Approval of certain individual transfers. Any transfer of land or other natural resources located anywhere within the State, from, by or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, shall be deemed to have been made in accordance with the laws of the State.

[PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW).

§6214. Tribal school committees

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section. [PL 1979, c. 732, §§1, 31 (NEW).]

SECTION HISTORY

PL 1979, c. 732, §§1,31 (NEW).

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APPENDIX F

Maine Indian Claims Settlement Act of 1980

Public Law 96-420
96th Congress

An Act

To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

Oct. 10, 1980
[H.R. 7919]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

Maine Indian Claims Settlement Act of 1980.
25 USC 1721 note.

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

25 USC 1721.

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this Act by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this Act by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens, and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This Act represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians with a fair and

just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

(9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe, and the Penobscot Nation, and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

DEFINITIONS

25 USC 1722.

SEC. 3. For purposes of this Act, the term—

(a) "Houlton Band of Maliseet Indians" means the sole successor to the Maliseet Tribe of Indians as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Houlton Band of Maliseet Indians is represented, as of the date of the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(c) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under section 5(c) of this Act;

(d) "laws of the State" means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof;

(e) "Maine Implementing Act" means section 1, section 30, and section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter 732 of the public laws of 1979;

(f) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act;

(g) "Passamaquoddy Indian Territory" means those lands as defined in the Maine Implementing Act;

(h) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe is represented, as of the date of the enactment of this Act, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations;

(i) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act;

(j) "Penobscot Indian Territory" means those lands as defined in the Maine Implementing Act;

(k) "Penobscot Nation" means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of the date of enactment of this Act, by the Penobscot Nation Governor and Council;

(l) "Secretary" means the Secretary of the Interior;

(m) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under section 5(a) of this Act; and

(n) "transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF INDIAN TITLE AND CLAIMS OF THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, THE HOULTON BAND OF MALISEET INDIANS, AND ANY OTHER INDIANS, INDIAN NATION, OR TRIBE OR BAND OF INDIANS WITHIN THE STATE OF MAINE

SEC. 4. (a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: *Provided however,* That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

25 USC 1723.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation, or tribe or band of Indians any claim under the laws of the State of Maine arising before the date of this Act and arising from any transfer of land or natural resources by any Indian, Indian nation, or tribe or band of Indians, located anywhere within the State of Maine, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, on the grounds that such transfer was not made in accordance with the laws of the State of Maine.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State.

(b) To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

Effective date.

(d) The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of section 5 of this Act. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

Publication in Federal Register.

ESTABLISHMENT OF FUNDS

Maine Indian Claims Settlement Fund.
25 USC 1724.

SEC. 5. (a) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which $27,000,000 shall be deposited following the appropriation of sums authorized by section 14 of this Act.

(b)(1) One-half of the principal of the settlement fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the settlement fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the settlement fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: *Provided*, That the Secretary may not agree to terms which provide for investment of the settlement fund in a manner not in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037), unless the respective tribe or

Waiver.

25 USC 162a.

nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: *Provided, further,* That until such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the settlement fund as to which there is no agreement.

(2) Under no circumstances shall any part of the principal of the settlement fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either tribe or nation: *Provided, however,* That nothing herein shall prevent the Secretary from investing the principal of said fund in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in subsection 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the settlement fund allocated to the respective tribe or nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the settlement fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the tribe or nation, the United States shall have no further trust responsibility to the tribe or nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

Maine Indian Claims Land Acquisition Fund, establishment.

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which $54,500,000 shall be deposited following the appropriation of sums authorized by section 14 of this Act.

(d) The principal of the land acquisition fund shall be apportioned as follows:

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and

(3) $26,800,000 to be held in trust for the Penobscot Nation.

Land or natural resources, acquisition.

The Secretary is authorized and directed to expend, at the request of the affected tribe, nation or band, the principal and any income accruing to the respective portions of the land acquisition fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective tribe or nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area by purchase, gift, or exchange by such tribe or nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective tribe or nation, and the United States shall have no further trust responsibility with respect thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the band: *Provided,* That

no land or natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseet Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition: *Provided further,* That the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

State of Maine and Houlton Band of Maliseet Indians, negotiations.

(4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by section 5(d)(3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this Act and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation;

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this Act and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the band, except that the band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act;

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the band.

(D) provisions on the location of these lands.

Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application of the laws of the State of Maine. Within one year of the date of enactment of this Act, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the status of these negotiations.

Report to congressional committees.

(e) Notwithstanding the provisions of section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and section 1 of the Act of

February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

40 USC 258a.

(f) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective tribe, nation, or band have executed appropriate documents relinquishing all claims to the extent provided by sections 4, 11, and 12 of this Act and by section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g)(1) The provisions of section 2116 of the Revised Statutes shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2), such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

25 USC 177.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective tribe, nation, or band, be—

Land or natural resources held in trust.

(A) leased in accordance with the Act of August 9, 1955 (69 Stat. 539), as amended;

25 USC 415-415d, 396.

(B) leased in accordance with the Act of May 11, 1938 (52 Stat. 347), as amended;

25 USC 396a-396f and notes.

(C) sold in accordance with section 7 of the Act of June 25, 1910 (36 Stat. 857), as amended;

25 USC 407.

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (62 Stat. 17);

25 USC 323-328 and note.

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the affected

tribe, nation, or band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the tribe, nation, or band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

Land or natural resources, administration.

(h) Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2206), or other existing law.

25 USC 450f.

(i)(1) Trust or restricted land or natural resources within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the Maine Implementing Act and upon notification to the Secretary of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the land acquisition fund established by section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective tribe or nation shall designate, with the approval of the United States, and within thirty days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective tribe or nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

Condemnation proceedings.

(3) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings.

State jurisdiction, U.S. judicial review.

After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

(j) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i)(2) of this section.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as provided in section 8(e) and section 5(d)(4), all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

State civil and criminal jurisdiction. 25 USC 1725.

(b)(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and State funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and State funding in other States.

Report to congressional committees.

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of sections 1152, 1153, 1154, 1155, 1156, 1160, 1161, and 1165 of title 18 of the United States Code. This provision shall not be effective until sixty days after the publication of notice in the Federal Register as required by subsection 4(d) of this Act.

State criminal jurisdiction, effective date.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and section 1362 of title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: *Provided, however,* That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to

31 USC 203.

receive income out of the next quarterly payment from the settlement fund established pursuant to section 5(a) of this Act and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: *Provided*, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the band or its members.

Separate jurisdiction.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) Except as other wise provided in this Act, the laws and regulations of the United States which 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 shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State.

Certain Indian tribes, financial benefits and tax treatment.

(i) As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective tribe, nation, or band subject to a restriction against alienation or which are held in trust for the benefit of the respective tribe, nation, or band shall be considered Federal Indian reservations for purposes of Federal taxation.

TRIBAL ORGANIZATION

SEC. 7. (a) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the tribe, nation, or band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendments thereto. 25 USC 1726.

(b) For purposes of benefits under this Act and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of the date of this Act, are enrolled members on the band's existing membership roll, and direct lineal descendants of such members. Membership in the band shall be subject to such further qualifications as may be provided by the band in its organic governing document or amendments thereto subject to the approval of the Secretary. Houlton Band of Maliseet Indians, membership.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by sections 108(a)-(c) of said Act. Indian child custody proceedings, tribal jurisdiction. 25 USC 1727. 25 USC 1901 note. 25 USC 1918.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with sections 108 (b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are "reservations" within section 4(10) of the Act. Reservations.

(e) For the purposes of this section, the Houlton Band of Maliseet Indians is an "Indian tribe" within section 4(8) of the Act, provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in subsection 6(e)(2) of this Act. Indian tribe.

(f) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that tribe or nation. Indian child custody proceedings, jurisdiction.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 9. (a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet 25 USC 1728.

Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

(c) The availability of funds or distribution of funds pursuant to section 5 of this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be eligible or entitled.

DEFERRAL OF CAPITAL GAINS

25 USC 1729.

SEC. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the land acquisition fund whether in the name of the United States or of the respective tribe, nation or band shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, as amended.

26 USC 1033.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

25 USC 1730.

SEC. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the settlement fund allocated to that tribe or nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

25 USC 1731.

SEC. 12. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and

all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation, or tribe or band of Indians or the United States as trustee therefor, including those actions now pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966-ND and 1969-ND).

LIMITATION OF ACTIONS

SEC. 13. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act. 25 USC 1732.

AUTHORIZATION

SEC. 14. There is hereby authorized to be appropriated $81,500,000 for the fiscal year beginning October 1, 1980, for transfer to the funds established by section 5 of this Act. 25 USC 1733.

INSEPARABILITY

SEC. 15. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect. 25 USC 1734.

CONSTRUCTION

SEC. 16. (a) In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this Act should emerge, the provisions of this Act shall govern. 25 USC 1735.

(b) The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

Approved October 10, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1353 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 96-957 accompanying S. 2829 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Sept. 22, considered and passed House.
Sept. 23, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 42:
Oct. 11, Presidential statement.

APPENDIX G

Aroostook Band of Micmacs Settlement Act

Public Law 102-171
102d Congress

An Act

To settle all claims of the Aroostook Band of Micmacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes.

Nov. 26, 1991
[S. 374]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Aroostook Band of Micmacs Settlement Act. 25 USC 1721 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Aroostook Band of Micmacs Settlement Act".

25 USC 1721 note.

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS AND POLICY.—Congress hereby finds and declares that:

(1) The Aroostook Band of Micmacs, as represented as of the time of passage of this Act by the Aroostook Micmac Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Micmac Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(2) The Band was not referred to in the Maine Indian Claims Settlement Act of 1980 because historical documentation of the Micmac presence in Maine was not available at that time.

(3) This documentation does establish the historical presence of Micmacs in Maine and the existence of aboriginal lands in Maine jointly used by the Micmacs and other tribes to which the Micmacs could have asserted aboriginal title but for the extinguishment of all such claims by the Maine Indian Claims Settlement Act of 1980.

(4) The Aroostook Band of Micmacs, in both its history and its presence in Maine, is similar to the Houlton Band of Maliseet Indians and would have received similar treatment under the Maine Indian Claims Settlement Act of 1980 if the information available today had been available to Congress and the parties at that time.

(5) It is now fair and just to afford the Aroostook Band of Micmacs the same settlement provided to the Houlton Band of Maliseet Indians for the settlement of that Band's claims, to the extent they would have benefited from inclusion in the Maine Indian Claims Settlement Act of 1980.

(6) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Aroostook Band of Micmacs. During this same period, the United States provided few special services to the Band and repeatedly denied that it had jurisdiction over or responsibility for the Indian groups in Maine. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it

is the intent of Congress that the State of Maine not be required further to contribute directly to this settlement.

(b) PURPOSE.—It is the purpose of this Act to—

(1) provide Federal recognition of the Band;

(2) provide to the members of the Band the services which the United States provides to Indians because of their status as Indians; and

(3) place $900,000 in a land acquisition fund and property tax fund for the future use of the Aroostook Band of Micmacs; and

(4) ratify the Micmac Settlement Act, which defines the relationship between the State of Maine and the Aroostook Band of Micmacs.

25 USC 1721 note.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) The term "Band" means the Aroostook Band of Micmacs, the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Aroostook Band of Micmacs is represented, as of the date of enactment of this Act, as to lands within the United States, by the Aroostook Micmac Council.

(2) The term "Band Tax Fund" means the fund established under section 4(b) of this Act.

(3) The term "Band Trust Land" means land or natural resources acquired by the Secretary of the Interior and held in trust by the United States for the benefit of the Band.

(4) The term "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including (but not limited to) minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(5) The term "Land Acquisition Fund" means the fund established under section 4(a) of this Act.

(6) The term "laws of the State" means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof.

(7) The term "Maine Implementing Act" means the Act entitled "Act to Implement the Maine Indian Claims Settlement" that was enacted by the State of Maine in chapter 732 of the Maine Public Laws of 1979, as amended by chapter 675 of the Maine Public Laws of 1981 and chapter 672 of the Maine Public Laws of 1985, and all subsequent amendments thereto.

(8) The term "Micmac Settlement Act" means the Act entitled "Act to implement the Aroostook Band of Micmacs Settlement Act" that was enacted by the State of Maine in chapter 148 of the Maine Public Laws of 1989, and all subsequent amendments thereto.

(9) The term "Secretary" means the Secretary of the Interior.

25 USC 1721 note.

SEC. 4. AROOSTOOK BAND OF MICMACS LAND ACQUISITION AND PROPERTY TAX FUNDS.

(a) LAND ACQUISITION FUND.—There is hereby established in the Treasury of the United States a fund to be known as the Aroostook Band of Micmacs Land Acquisition Fund, into which $900,000 shall

be deposited by the Secretary following the appropriation of sums authorized by section 10.

(b) BAND TAX FUND.—(1) There is hereby established in the Treasury of the United States a fund to be known as the Aroostook Band of Micmacs Tax Fund, into which shall be deposited $50,000 in accordance with the provisions of this Act.

(2) Income accrued on the Land Acquisition Fund shall be transferred to the Band Tax Fund until a total of $50,000 has been transferred to the Band Tax Fund under this paragraph. No transfer shall be made under this subsection if such transfer would diminish the Land Acquisition Fund to a balance of less than $900,000.

(3) Whenever funds are transferred to the Band Tax Fund under paragraph (2), the Secretary shall publish notice of such transfer in the Federal Register. Such notice shall specify when the total amount of $50,000 has been transferred to the Band Tax Fund.

Federal Register, publication.

(4) The Secretary shall manage the Band Tax Fund in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a), and shall utilize the principal and interest of the Band Tax Fund only as provided in paragraph (5) and section 5(d) and for no other purpose.

(5) Notwithstanding the provisions of title 31, United States Code, the Secretary shall pay out of the Band Tax Fund, all valid claims for taxes, payments in lieu of property taxes, and fees, together with any interest and penalties thereon—

(A) for which the Band is determined to be liable;

(B) which are final and not subject to further administrative or judicial review; and

(C) which have been certified by the Commissioner of Finance in the State of Maine as valid claims that meet the requirements of this paragraph.

(c) SOURCE FOR CERTAIN PAYMENTS.—Notwithstanding any other provision of law, if—

(1) the Band is liable to the State of Maine or any county, district, municipality, city, town, village, plantation, or any other political subdivision thereof for any tax, payment in lieu of property tax, or fees, together with any interest and penalties thereon, and

(2) there are insufficient funds in the Band Tax Fund to pay such tax, payment, or fee (together with any interest or penalties thereon) in full,

the deficiency shall be paid by the Band only from income-producing property owned by the Band which is not held in trust for the Band by the United States and the Band shall not be required to pay such tax, payment, or fee (or any interest or penalty thereon) from any other source.

(d) PROCEDURE FOR FILING AND PAYMENT OF CLAIMS.—The Secretary shall, after consultation with the Commissioner of Finance of the State of Maine, and the Band, prescribe written procedures governing the filing and payment of claims under this section.

SEC. 5. AROOSTOOK BAND TRUST LANDS.

25 USC 1721 note.

(a) IN GENERAL.—Subject to the provisions of section 4, the Secretary is authorized and directed to expend, at the request of the Band, the principal of, and income accruing on, the Land Acquisition Fund for the purposes of acquiring land or natural resources for the Band and for no other purposes. Land or natural resources

acquired within the State of Maine with funds expended under the authority of this subsection shall be held in trust by the United States for the benefit of the Band.

(b) ALIENATION.—(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Band may be alienated only by—

(A) takings for public use pursuant to the laws of the State of Maine as provided in subsection (c);

(B) takings for public use pursuant to the laws of the United States; or

(C) transfers made pursuant to an Act or joint resolution of Congress.

All other transfers of land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of such Band shall be void ab initio and without any validity in law or equity.

(2) The provisions of paragraph (1) shall not prohibit or limit transfers of individual use assignments of land or natural resources from one member of the Band to another member of such Band.

(3) Land or natural resources held in trust for the benefit of the Band may, at the request of the Band, be—

(A) leased in accordance with the Act of August 9, 1955 (25 U.S.C. 415 et seq.);

(B) leased in accordance with the Act of May 11, 1938 (25 U.S.C. 396a et seq.);

(C) sold in accordance with section 7 of the Act of June 25, 1910 (25 U.S.C. 407);

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (25 U.S.C. 323 et seq.);

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the Band, as the circumstances require, so long as payment does not exceed 25 percent of the total value of the interests in land to be transferred by the Band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

(c) CONDEMNATION BY STATE OF MAINE AND POLITICAL SUBDIVISIONS THEREOF.—(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Band may be condemned for public purposes by the State of Maine, or any political subdivision thereof, only upon such terms and conditions as shall be agreed upon in writing between the State and such Band after the date of enactment of this Act.

(2) The consent of the United States is hereby given to the State of Maine to further amend the Micmac Settlement Act for the purpose of embodying the agreement described in paragraph (1).

(d) ACQUISITION.—(1) Lands and natural resources may be acquired by the Secretary for the Band only if the Secretary has, at any time prior to such acquisition—

(A) transmitted a letter to the Secretary of State of the State of Maine stating that the Band Tax Fund contains $50,000; and

(B) provided the Secretary of State of the State of Maine with a copy of the procedures for filing and payment of claims prescribed under section 4(d).

(2)(A) No land or natural resources may be acquired by the Secretary for the Band until the Secretary files with the Secretary of State of the State of Maine a certified copy of the deed, contract, or other conveyance setting forth the location and boundaries of the land or natural resources to be acquired.

(B) For purposes of subparagraph (A), a filing with the Secretary of State of the State of Maine may be made by mail and, if such method of filing is used, shall be considered to be completed on the date on which the document is properly mailed to the Secretary of State of the State of Maine.

(3) Notwithstanding the provisions of the first section of the Act of August 1, 1888 (40 U.S.C. 257) and the first section of the Act of February 26, 1931 (40 U.S.C. 258a), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General of the United States, in the United States and condemn interests adverse to the ostensible owner.

(4)(A) When trust or restricted land or natural resources of the Band are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited into the Land Acquisition Fund and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the Band shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land acquired from the proceeds that is not acquired in trust shall be held in fee by the Band. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired from the proceeds.

(B) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters involved in such condemnation proceedings in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

(5) Land or natural resources acquired by the Secretary in trust for the Band shall be managed and administered in accordance with terms established by the Band and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f) or other applicable law.

25 USC 1721 note.

SEC. 6. LAWS APPLICABLE.

(a) FEDERAL RECOGNITION.—Federal recognition is hereby extended to the Aroostook Band of Micmacs. The Band shall be eligible to receive all of the financial benefits which the United States provides to Indians and Indian tribes to the same extent, and subject to the same eligibility criteria, generally applicable to other federally recognized Indians and Indian tribes.

(b) APPLICATION OF FEDERAL LAW.—For the purposes of application of Federal law, the Band and its lands shall have the same status as other tribes and their lands accorded Federal recognition under the terms of the Maine Indian Claims Settlement Act of 1980.

(c) ELIGIBILITY FOR SPECIAL SERVICES.—Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, any member of the Band in Aroostook County, Maine, shall be eligible for such services without regard to the existence of a reservation or the residence of members of the Band on or near a reservation.

(d) AGREEMENTS WITH STATE REGARDING JURISDICTION.—The State of Maine and the Band are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by, or held in trust for the benefit of, the Band or any member of the Band. The consent of the United States is hereby given to the State of Maine to amend the Micmac Settlement Act for this purpose: *Provided*, That such amendment is made with the agreement of the Aroostook Band of Micmacs.

25 USC 1721 note.

SEC. 7. TRIBAL ORGANIZATION.

(a) IN GENERAL.—The Band may organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the Band when acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act. The Band shall file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) MEMBERS.—For purposes of benefits provided by reason of this Act, only persons who are citizens of the United States may be considered members of the Band except persons who, as of the date of enactment of this Act, are enrolled members on the Band's existing membership roll, and direct lineal descendants of such members. Membership in the Band shall be subject to such further qualifications as may be provided by the Band in its organic governing document, or amendments thereto, subject to approval by the Secretary.

25 USC 1721 note.

SEC. 8. IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.

For the purposes of this section, the Band is an "Indian tribe" within the meaning of section 4(8) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(8)), except that nothing in this section shall alter or affect the jurisdiction of the State of Maine over child welfare matters as provided by the Maine Indian Claims Settlement Act of 1980.

25 USC 1721 note.

SEC. 9. FEDERAL FINANCIAL AID PROGRAMS UNAFFECTED BY PAYMENTS UNDER THIS ACT.

(a) STATE OF MAINE.—No payments to be made for the benefit of the Band pursuant to this Act shall be considered by any agency or department of the United States in determining or computing the

eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) BAND AND MEMBERS OF THE BAND.—(1) The eligibility for, or receipt of, payments from the State of Maine by the Band or any of its members shall not be considered by any department or agency of the United States in determining the eligibility of, or computing payments to, the Band or any of the members of the Band under any Federal financial aid program.

(2) To the extent that eligibility for the benefits of any Federal financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

25 USC 1721 note.

There are authorized to be appropriated $900,000 for the fiscal year 1992 for transfer to the Aroostook Band of Micmacs Land Acquisition Fund.

SEC. 11. INTERPRETATION.

25 USC 1721 note.

In the event of a conflict of interpretation between the provisions of the Maine Implementing Act, the Micmac Settlement Act, or the Maine Indian Claims Settlement Act of 1980 and this Act, the provisions of this Act shall govern.

SEC. 12. LIMITATION OF ACTIONS.

25 USC 1721 note.

No provision of this Act may be construed to confer jurisdiction to sue, or to grant implied consent to the Band to sue, the United States or any of its officers with respect to the claims extinguished by the Maine Indian Claims Settlement Act of 1980.

Approved November 26, 1991.

LEGISLATIVE HISTORY—S. 374 (H.R. 932):

HOUSE REPORTS: No. 102-229, Pts. 1 and 2, both accompanying H.R. 932 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 102-136 (Select Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 137 (1991):
Sept. 19, considered and passed Senate.
Nov. 12, H.R. 932 considered and passed House; S. 374 passed in lieu.

APPENDIX H

The Micmac Settlement Act

CHAPTER 603

MICMAC SETTLEMENT ACT

§7201. Short title

This Act shall be known and may be cited as "The Micmac Settlement Act." [PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

§7202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 148, §§3, 4 (NEW).]

1. Aroostook Band of Micmacs. "Aroostook Band of Micmacs" means the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Aroostook Band of Micmacs is represented, as of the date of enactment of this subsection, as to lands within the United States by the Aroostook Micmac Council. [PL 1989, c. 148, §§3, 4 (NEW).]

2. Aroostook Band Trust Land. "Aroostook Band Trust Land" means land or natural resources acquired by the secretary in trust for the Aroostook Band of Micmacs, in compliance with the terms of this Act, with money from the original $900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Aroostook Band of Micmacs pursuant to federal legislation concerning the Aroostook Band of Micmacs or with proceeds from a taking of Aroostook Band Trust Land for public uses pursuant to the laws of this State or the United States. [PL 1989, c. 148, §§3, 4 (NEW).]

3. Land or other natural resources. "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights. [PL 1989, c. 148, §§3, 4 (NEW).]

4. Laws of the State. "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof. [PL 1989, c. 148, §§3, 4 (NEW).]

5. Secretary. "Secretary" means the Secretary of the Interior of the United States. [PL 1989, c. 148, §§3, 4 (NEW).]

6. Transfer. "Transfer" includes, but is not limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources. [PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

§7203. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, the Aroostook Band of Micmacs and all members of the Aroostook Band of Micmacs in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein. [PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State)

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

§7204. Acquisition of Aroostook Band Trust Land

1. Approval. The State of Maine approves the acquisition by the secretary of Aroostook Band Trust Land within the State of Maine provided as follows.

A. No land or natural resources acquired by the secretary may have the status of Aroostook Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing. [PL 1989, c. 148, §§3, 4 (NEW).]

B. No land or natural resources may be acquired by the secretary for the Aroostook Band of Micmacs until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 7207, together with a letter stating that the secretary holds not less than $50,000 in a trust account for the payment of obligations of the Aroostook Band of Micmacs, and a copy of the claim filing procedures the secretary has adopted. [PL 1989, c. 148, §§3, 4 (NEW).]

C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Aroostook Band of Micmacs without the approval of the legislative body of the city, town, village or plantation. [PL 1989, c. 148, §§3, 4 (NEW).]

[PL 1989, c. 148, §§3, 4 (NEW).]

2. Takings for public uses. Aroostook Band Trust Land may be taken for public uses in accordance with the laws of the State to the same extent as privately owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States court of competent jurisdiction.

[PL 1989, c. 148, §§3, 4 (NEW).]

3. Restraints on alienation. Any transfer of Aroostook Band Trust Land shall be void ab initio and without any validity in law or equity, except:

A. Takings for public uses pursuant to the laws of this State; [PL 1989, c. 148, §§3, 4 (NEW).]

B. Takings for public uses pursuant to the laws of the United States; [PL 1989, c. 148, §§3, 4 (NEW).]

C. Transfers of individual use assignments from one member of the Aroostook Band of Micmacs to another band member; [PL 1989, c. 148, §§3, 4 (NEW).]

D. Transfers authorized by federal law ratifying and approving this Act; and [PL 1989, c. 148, §§3, 4 (NEW).]

E. Transfers made pursuant to a special act of Congress. [PL 1989, c. 148, §§3, 4 (NEW).]

If the fee to the Aroostook Band Trust Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Aroostook Band Trust Land.
[PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

§7205. Powers of the Aroostook Band of Micmacs

The Aroostook Band of Micmacs shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers. [PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

§7206. Taxation

1. Property taxes. The Aroostook Band of Micmacs shall make payments in lieu of taxes on Aroostook Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource.
[PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

§7207. Aroostook Band Tax Fund

1. Fund. The satisfaction of obligations, described in section 7206, owed to a governmental entity by the Aroostook Band of Micmacs shall be assured by a trust fund to be known as the Aroostook Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than $50,000. The principal shall be formed with money transferred from the Land Acquisition Fund established for the Aroostook Band of Micmacs pursuant to federal legislation concerning the Aroostook Band of Micmacs. Any interest earned by the Aroostook Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of $25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.
[PL 1989, c. 148, §§3, 4 (NEW).]

2. Claims. The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Aroostook Band of Micmacs is liable pursuant to section 7206, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State. No payment of a valid claim may be satisfied with money from the fund unless the secretary finds, as a result of the secretary's own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Commissioner of Finance and the Commissioner of Administration and the Aroostook Band of Micmacs.

[PL 1989, c. 148, §§3, 4 (NEW).]

3. Distributions. If the unencumbered principal available for the payment of claims exceeds the sum of $50,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Aroostook Band of Micmacs. The secretary shall give 30 days' written notice to the Commissioner of Finance and the Commissioner of Administration of a proposed transfer of excess principal to the Aroostook Band of Micmacs. Any distribution of excess principal to the Aroostook Band of Micmacs shall be exempt from taxation.
[PL 1989, c. 148, §§3, 4 (NEW).]

4. Other remedies. The existence of the Aroostook Band Tax Fund as a source for the payment of the obligations of the Aroostook Band of Micmacs shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.
[PL 1989, c. 148, §§3, 4 (NEW).]

REVISOR'S NOTE: Needs ratification by Indian tribes per Secretary of State

SECTION HISTORY

PL 1989, c. 148, §§3,4 (NEW).

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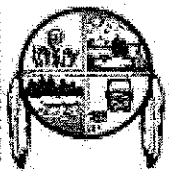
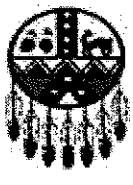
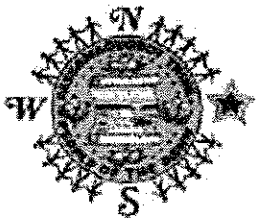
APPENDIX I

Draft Amendments to Maine Indian Claims Settlement Implementing Act Proposed on 8/5/2019 by Tribal Counsel

August 5, 2019

Via Email
Hon. Michael Carpenter
Hon. Donna Bailey
Co-Chairpersons
Task Force on Changes to the Maine Indian Claims Settlement Implementing Act
Maine State Legislature
Augusta, ME

Dear Senate Chair Carpenter and House Chair Bailey:

At the first meeting of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act ("Task Force") on July 22, 2019, you asked the Tribal Nations' representatives to provide the Task Force with suggested redline revisions to the Maine Act to Implement the Indian Land Claims Settlement ("Maine Implementing Act") to reflect changes that the Tribes would like to see.

As counsel for the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians, we are authorized to submit the attached redline revisions as you requested.

We want to emphasize that these revisions are submitted to you in furtherance of the Maine Legislature's June 10, 2019 *Joint Resolution to Support the Development of Mutually Beneficial Solutions to the Conflicts Arising From the Interpretation of an Act to Implement the Maine Indian Claims Settlement and the Federal Maine Indian Claims Settlement Act of 1980* ("Joint Resolution"), which states:

> We, the Members of the One Hundred and Twenty-ninth Legislature now assembled in the First Regular Session, on behalf of the people we represent, take this opportunity to recognize that the Maine tribes should enjoy the same rights, privileges, powers and immunities as other federally recognized Indian tribes within the United States

These revisions are also submitted to you in furtherance of the request made by House Speaker Gideon and Senate President Jackson that the Tribes' leaders articulate the

goals that should drive the Task Force. After significant deliberations, by letter dated May 9, 2019, the Tribal leaders wrote to Speaker Gideon and President Jackson as follows:

> [F]or this process to work there must be a commitment to accomplish the following as to all Tribes:
>
> 1. Amendments to section 6204 of the MIA and section 7203 of the MSA (and other sections of the Acts as necessary) to establish that the laws of the State shall not apply to the Tribes or their respective lands, except as agreed by the State and the Tribes or as provided by federal law;
>
> 2. Amendments to sections 6206 and 6206-A of the MIA and section 7205 of the MSA (and other sections of the Acts as necessary) to confirm that the Tribes shall exercise and enjoy the same rights, powers, privileges, and immunities as other federally-recognized Indian tribes, except as agreed by the State and the Tribes; and
>
> 3. Amendments to section 6206 and 6206-A of the MIA and section 7205 of the MSA (and other sections of the Acts as necessary) to confirm that Acts of Congress intended to benefit federally-recognized Indian tribes in general apply to the Tribes and their lands, except as agreed by the State and the Tribes.

The Tribal leaders have devoted considerable time and effort to preparing the attached proposed revisions consistent with both the Joint Resolution and their May 9, 2019 letter. We are delighted to provide them to you for discussion on August 9, 2019.

What follows is a summary of the revisions with some discussion of the rationale.

* * *

As Chairperson Carpenter requested, and as the Tribal leadership agrees, the starting point for these revisions is confirmation that land claims issues are fully put to rest. As he further suggested, these revisions are designed to accomplish the above-referenced mutual goals of the Tribes and the Legislature to restore the self-governing, sovereign authority of the Tribes for the betterment of all persons in their communities.

The revisions accomplish these goals by:

- Confirming transfers of land that occurred prior to October 1980 to ensure that no claims for lands may be brought by the Tribes.
- Deleting the imposition of State law upon Tribes and their lands, contrary to well-established principles of tribal sovereignty under the United States Constitution and the decisions of the Supreme Court.
- Deleting provisions that granted Maine the authority to take trust lands from the tribes, contrary to the prohibition of such takings as a matter of federal law.

- Deleting provisions that restricted the *civil* jurisdiction of the tribal governments and courts and granted *civil* jurisdiction over the Tribes' lands to the State, contrary to well-established principles of federal Indian law designed to protect tribal self-government. (Under those principles, there may be instances where it is justifiable for the State to exercise civil jurisdiction over non-Indians on tribal lands, but the extreme provisions that currently exist in the Maine Implementing Act discourage investment and economic development on the Tribes' lands.)
- Deleting the provisions that restricted the *criminal* jurisdiction of the tribal governments and courts and granted a greater level of *criminal* jurisdiction to the state government on tribally-owned lands. (The safety of people located on tribally-owned lands has been significantly compromised due the existing provisions in the Maine Implementing Act. Tribal law enforcement and courts are regularly challenged as to their jurisdiction to arrest and prosecute. Additionally, the tribal governments are unable to access federal funds to support tribal courts, and are unable to benefit from the assignment of federal law enforcement officers, such as Special Assistant United States Attorneys who can help adequately prosecute those who commit crimes on tribally-owned lands. The existing provisions of the Maine Implementing Act have incentivized non-Indians to come onto tribal lands for purposes of violating state and federal law. We are open to discussions with the Task Force about the nature and extent of State criminal jurisdiction over tribally-owned lands, but the existing provisions of the Maine Implementing Act need to be modernized. Additionally, to the extent that the State does continue to exercise criminal jurisdiction over tribally-owned lands, provisions ensuring accountability and coordination with the tribal governments need to be included. The safety of people should be the priority.)
- Adding provisions authorizing the cross deputization of State and Tribal law enforcement officers to better protect all citizens of Maine.
- Adding provisions authorizing the State, county and local governments to enter into cooperative or mutual aid agreements with the tribal governments so that there is better coordination between the governments and more effective delivery of services and use of resources.
- Deleting provisions that restated what is already well-established as a matter of federal Indian law: that the tribal governments have inherent sovereign authority to regulate fish and wildlife resources within their tribal lands.
- Adding provisions to confirm that that federal laws and regulations enacted for the general benefit of federally-recognized tribal governments also apply to the Maine tribes and tribal lands.
- Revising taxation provisions to eliminate the grant of state tax authority over the Tribes, their members, and tribal lands inconsistent with well-established principles of federal Indian law.
- Adding provisions regarding consultation between the State and tribal governments on matters that affect tribal interests that are consistent with the federal government's consultation with tribal governments, and with the United Nations Declaration on the Rights of Indigenous People, which was endorsed in 2008 by the 123rd Maine State Legislature during a special session.

The Tribal leaders, all copied here, asked us to convey their gratitude to you for asking the Tribes to take the laboring oar on these revisions to commence the Task Force's process, and they look forward to discussing those issues that may be of particular interest or concern to the State.

Sincerely

/s Mark A. Chavaree
Staff Attorney
Penobscot Nation

/s Allison Binney
Counsel
Penobscot Nation

/s Kaighn Smith Jr.
Counsel
Penobscot Nation

/s Michael Corey Francis Hinton
Counsel
Passamaquoddy Tribe

/s Cory Albright
Counsel
Houlton Band of Maliseet Indians

/s Craig Sanborn
Counsel
Aroostook Band of Micmac Indians

cc: Hon. Sara Gideon
Hon. Troy Jackson
Hon. Kirk Francis, Chief, Penobscot Nation
Hon. Marla Dana, Chief, Passamaquoddy Tribe
Hon. William Nicolas, Chief, Passamaquoddy Tribe
Hon. Clarissa Sabattis, Chief Houlton Band of Maliseet Indians
Hon. Charles Peter Paul, Chief, Aroostook Band of Micmac Indians
Tribal Council, Penobscot Nation
Joint Tribal Council, Passamaquoddy Tribe
Tribal Council, Houlton Band of Maliseet Indians
Tribal Council, Aroostook Band of Micmac Indians
Hon. Maulian Dana, Ambassador, Penobscot Nation
Hon. Rena Newell, Legislative Representative, Passamaquoddy Tribe
Paul Thibeault
Hon. Marianne Moore
Hon. Kathleen Dillingham
Hon. Anne Perry
Melanie Loyzim, Deputy Commissioner, Department of Environmental Protection
Christopher Taub, Assistant Attorney General

30 M.R.S. § 6201. Short Title

This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement."

§ 6202. Legislative findings and declaration of policy

The Legislature finds and declares the following.

The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians ~~are~~ asserted~~ing~~ claims for possession of large areas of land in the State and for damages alleging that the lands in question originally were transferred by treaty in violation of the Indian Trade and Intercourse Act of 1790, 1 Stat. 137, or subsequent reenactments or versions thereof.

At the time, the prospect that these claims would not be promptly resolved threatened to create ~~S~~substantial economic and social hardship ~~could be created~~ for large numbers of landowners, citizens and communities in the State, and therefore to the State as a whole~~, if these claims are not resolved promptly~~.

The claims also have produced disagreement between the Indian claimants and the State over the extent of the state's jurisdiction in the claimed areas. This disagreement has resulted in litigation and, if the claims are not resolved, further litigation on jurisdictional issues would be likely. In the late 1970s, the~~The~~ Indian claimants and the State, acting through the Attorney General, ~~have~~ reached certain agreements which represented a good faith effort on the part of all parties to achieve a fair and just resolution of those claims which, in the absence of agreement, would have been pursued through the courts for many years to the ultimate detriment of the State and all its citizens, including the Indians. The resolution reached among the Indian claimants and the State affirmed the land transfers and the reservations of rights embodied within the specific treaties that gave rise to the claims at issue, and sought to definitively eliminate any prospect that the claims brought by the Indian claimants would cloud private title to land in the State of Maine.

~~The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State.~~

~~It is the purpose of this Act to implement in part the foregoing agreement.~~

§ 6203. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.

1. Commission. "Commission" means the Maine Indian Tribal-State Commission created by section 6212.

2. Houlton Band of Maliseet Indians. "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.

2-A. Houlton Band ~~Trust Land~~Reservation. "Houlton Band ~~Trust Land~~Reservation" means land or natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians, in compliance with the terms of this Act and the Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420, with moneys from the original $900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724, or with proceeds from a taking of Houlton Band ~~Trust~~ Reservation ~~L~~lands for public uses pursuant to the laws of ~~this State or~~ the United States.

2-B. Maliseet Indian territory. "Maliseet Indian territory" means that territory defined as the Houlton Band Reservation and any other lands held in trust by the United States for the benefit of the Houlton Band of Maliseet Indians or its members.

3. Land or other natural resources. "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.

4. Laws of the State. "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.

5. Passamaquoddy Indian Reservation. "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian Reservation. For purposes of this subsection, the lands reserved to the Passamaquoddy Tribe by the aforesaid agreement shall be limited to Indian Township in Washington County; Pine Island, sometimes referred to as Taylor's Island, located in Big Lake, in Washington County; 100 acres of land located on Nemcass Point, sometimes referred to as Governor's Point, located in Washington County and shown on a survey of John Gardner which is filed in the Maine State Archives, Executive Council Records, Report Number 264 and dated June 5, 1855; 100 acres of land located at Pleasant Point in Washington County as described in a deed to Captain John Frost from Theodore Lincoln, Attorney for Benjamin Lincoln, Thomas Russell, and John Lowell dated July 14, 1792, and recorded in the Washington County Registry of Deeds on April 27, 1801, at Book

3, Page 73; and those 15 islands in the St. Croix River in existence on September 19, 1794 and located between the head of the tide of that river and the falls below the forks of that river, both of which points are shown on a 1794 plan of Samuel Titcomb which is filed in the Maine State Archives in Maine Land Office Plan Book Number 1, page 33. The "Passamaquoddy Indian Reservation" includes those lands which have been or may be acquired by the Passamaquoddy Tribe within that portion of the Town of Perry which lies south of Route 1 on the east side of Route 190 and south of lands now owned or formerly owned by William Follis on the west side of Route 190~~, provided that no such lands may be included in the Passamaquoddy Indian Reservation until the Secretary of State receives certification from the treasurer of the Town of Perry that the Passamaquoddy Tribe has paid to the Town of Perry the amount of $350,000, provided that the consent of the Town of Perry would be voided unless the payment of the $350,000 is made within 120 days of the effective date of this section. Any commercial development of those lands must be by approval of the voters of the Town of Perry with the exception of land development currently in the building stages~~.

6. Passamaquoddy Indian territory. "Passamaquoddy Indian territory" means that territory defined by section 6205, subsection 1.

7. Passamaquoddy Tribe. "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations.

8. Penobscot Indian Reservation. "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in that river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land must be included within the Penobscot Indian Reservation.

The "Penobscot Indian Reservation" includes the following parcels of land that have been or may be acquired by the Penobscot Nation from Bangor Pacific Hydro Associates as compensation for flowage of reservation lands by the West Enfield dam: A parcel located on the Mattagamon Gate Road and on the East Branch of the Penobscot River in T.6 R.8 WELS, which is a portion of the "Mattagamon Lake Dam Lot" and has an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has an area of approximately one acre.

The "Penobscot Indian Reservation" also includes a certain parcel of land located in Argyle, Penobscot County consisting of approximately 714 acres known as the Argyle East Parcel and more particularly described as Parcel One in a deed from the Penobscot Indian Nation to the United States of America dated November 22, 2005 and recorded at the Penobscot County Registry of Deeds in Book 10267, Page 265.

9. Penobscot Indian territory. "Penobscot Indian territory" means that territory defined by section 6205, subsection 2.

10. Penobscot Nation. "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Penobscot Reservation Tribal Council.

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

12. Settlement Fund. "Settlement Fund" means the trust fund established for the Passamaquoddy Tribe and Penobscot Nation by the United States pursuant to congressional legislation extinquishing aboriginal land claims in Maine.

13. Transfer. "Transfer" includes, but is not necessarily limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.

~~§ 6204. Laws of the State to apply to Indian Lands~~

~~Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.~~

§ 6205. Indian territory

1. Passamaquoddy Indian Territory. ~~Subject to subsections 3, 4 and 5, t~~The following lands within the State are known as the "Passamaquoddy Indian territory:"

A. The Passamaquoddy Indian Reservation;

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands ~~are acquired by the secretary prior to January 31, 1991,~~ are not held in common with any other person or entity ~~and are certified by the secretary by January 31, 1991, as held for the benefit of the Passamaquoddy Tribe~~:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T. 2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K. R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands

of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; and the lands of the Dyer Interests in T.A.R.7 W.E.L.S., T.3 R.9 N.W.P., T.3 R.3. N.B.K.P. (Alder Brook Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4 N.B.K.P. (Pittston Academy Grant), T.2 R.3 N.B.K.P. (Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss Township), and any lands in Albany Township~~ acquired by the Passamaquoddy Tribe before January 1, 1991~~;

C. Any land not exceeding 100 acres in the City of Calais acquired by the secretary for the benefit of the Passamaquoddy Tribe as long as the land ~~is acquired by the secretary prior to January 1, 2001,~~ is not held in common with any other person or entity~~ and is certified by the secretary by January 31, 2001, as held for the benefit of the Passamaquoddy Tribe, if:~~

~~(1) The acquisition of the land by the tribe is approved by the legislative body of that city; and~~

~~(2) A tribal-state compact under the federal Indian Gaming Regulatory Act is agreed to by the State and the Passamaquoddy Tribe or the State is ordered by a court to negotiate such a compact~~;

D.
All land acquired by the secretary for the benefit of the Passamaquoddy Tribe in T. 19, M.D. to the extent that the land ~~is acquired by the secretary prior to January 31, 2020,~~ is not held in common with any other person or entity~~ and is certified by the secretary by January 31, 2020 as held for the benefit of the Passamaquoddy Tribe~~.

*** The text of subsection 1, paragraph D-1 is effective until contingent upon certification by the Joint Tribal Council of the Passamaquoddy Tribe ***

D-1.
Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville consisting of Parcels A, B and C conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated July 27, 1981, recorded in the Washington County Registry of Deeds in Book 1147, Page 251, to the extent that the land is ~~acquired by the secretary prior to January 31, 2017, is~~ not held in common with any other person or entity~~ and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe~~; and

*** The text of subsection 1, paragraph D-1 is effective contingent upon certification by the Joint Tribal Council of the Passamaquoddy Tribe ***

D-1.
Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville consisting of Parcels A, B and C conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated July 27, 1981, recorded in the Washington County Registry of Deeds in

Book 1147, Page 251, to the extent that the land ~~is acquired by the secretary prior to January 31, 2017,~~ is not held in common with any other person or entity ~~and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe~~;

*** The text of subsection 1, paragraph D-2 is effective contingent upon certification by the Joint Tribal Council of the Passamaquoddy Tribe. See Historical and Statutory Notes ***

D-2. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Centerville conveyed by Bertram C. Tackeff to the Passamaquoddy Tribe by quitclaim deed dated May 4, 1982, recorded in the Washington County Registry of Deeds in Book 1178, Page 35, to the extent that the land is ~~acquired by the secretary prior to January 31, 2023, is~~ not held in common with any other person or entity ~~and is certified by the secretary by January 31, 2023 as held for the benefit of the Passamaquoddy Tribe~~; and

E. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Township 21 consisting of Gordon Island in Big Lake, conveyed by Domtar Maine Corporation to the Passamaquoddy Tribe by corporate quitclaim deed dated April 30, 2002, recorded in the Washington County Registry of Deeds in Book 2624, Page 301, to the extent that the land ~~is acquired by the secretary prior to January 31, 2017,~~ is not held in common with any other person or entity ~~and is certified by the secretary by January 31, 2017 as held for the benefit of the Passamaquoddy Tribe~~.

2. Penobscot Indian Territory. ~~Subject to subsections 3, 4 and 5, t~~The following lands within the State shall be known as the "Penobscot Indian territory:"

A. The Penobscot Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 31, 2021, are not held in common with any other person or entity and are certified by the secretary by January 31, 2021, as held for the Penobscot Nation:
The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T .2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P . (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K .R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; any land acquired in Williamsburg T.6, R.8, N.W.P.; any 300 acres in Old Town mutually agreed upon by the City of Old Town and the Penobscot Nation Tribal Government, provided that the mutual agreement must be finalized

prior to August 31, 1991; any lands in Lakeville acquired by the Penobscot Nation before January 1, 1991; and all the property acquired by the Penobscot Indian Nation from Herbert C. Haynes, Jr., Herbert C. Haynes, Inc. and Five Islands Land Corporation located in Township 1, Range 6 W.E.L.S.

~~**3. Takings Under the Laws of the State.**~~

~~**A.**~~
~~Prior to any taking of land for public uses within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity proposing the taking, or, in the event of a taking proposed by a public utility, the Public Utilities Commission, shall be required to find that there is no reasonably feasible alternative to the proposed taking. In making this finding, the public entity or the Public Utilities Commission shall compare the cost, technical feasibility, and environmental and social impact of the available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking. Prior to making this finding, the public entity or Public Utilities Commission, after notice to the affected tribe or nation, shall conduct a public hearing in the manner provided by the Maine Administrative Procedure Act, on the affected Indian reservation. The finding of the public entity or Public Utilities Commission may be appealed to the Maine Superior Court.~~

~~In the event of a taking of land for public uses within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity or public utility making the taking shall, at the election of the affected tribe or nation, and with respect to individually allotted lands, at the election of the affected allottee or allottees, acquire by purchase or otherwise for the respective tribe, nation, allottee or allottees a parcel or parcels of land equal in value to that taken; contiguous to the affected Indian reservation; and as nearly adjacent to the parcel taken as practicable. The land so acquired shall, upon written certification to the Secretary of State by the public entity or public utility acquiring such land describing the location and boundaries thereof, be included within the Indian Reservation of the affected tribe or nation without further approval of the State. For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation. The acquisition of land for the Passamaquoddy Tribe or the Penobscot Nation or any allottee under this subsection shall be full compensation for any such taking. If the affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the moneys received for such taking shall be reinvested in accordance with the provisions of paragraph B.~~

~~**B.** If land within either the Passamaquoddy Indian Territory or the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State the money received for said land shall be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys received are so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall be included within the respective Indian territory without further approval of the State. To the extent that any moneys received are so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall designate, within 30 days of~~

~~such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall be included within the respective Indian territory. No land acquired pursuant to this paragraph shall be included within either Indian Territory until the Secretary of Interior has certified, in writing, to the Secretary of State the location and boundaries of the land acquired.~~

~~**4. Taking Under the Laws of the United States.** In the event of a taking of land within the Passamaquoddy Indian territory or the Penobscot Indian territory for public uses in accordance with the laws of the United States and the reinvestment of the moneys received from such taking within 2 years of the date on which the moneys are received, the status of the lands acquired by such reinvestment shall be determined in accordance with subsection 3, paragraph B.~~

~~**5. Limitations.**~~
~~No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.~~

~~Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.~~

§ 6205-A. Acquisition of Houlton Band ~~Trust~~ Reservation Land

1. Approval. The State of Maine approves the acquisition, by the secretary, of Houlton Band ~~Trust~~ Reservation l~~L~~and within the State of Maine provided as follows.

A. No land or natural resources acquired by the secretary may have the status of Houlton Band ~~Trust~~ Reservation l~~L~~and, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing.

~~**B.** No land or natural resources may be acquired by the secretary for the Houlton Band of Maliseet Indians until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 6208-A, together with a letter stating that he holds not less than $ 100,000 in a trust account for the payment of Houlton Band of Maliseet Indians' obligations, and a copy of the claim filing procedures he has adopted.~~

~~**C.** No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Houlton Band of Maliseet Indians without the approval of the legislative body of the city, town, village or plantation.~~

~~**2. Takings for Public Uses.** Houlton Band Trust Land may be taken for public uses in accordance with the laws of the State of Maine to the same extent as privately-owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States' court of competent jurisdiction.~~

~~**3. Restraints on Alienation.** Any transfer of Houlton Band Trust Land shall be void ab initio and without any validity in law or equity, except:~~

~~**A.** Takings for public uses pursuant to the laws of this State;~~

~~**B.** Takings for public uses pursuant to the laws of the United States;~~

~~**C.** Transfers of individual use assignments from one member of the Houlton Band of Maliseet Indians to another band member;~~

~~**D.** Transfers authorized by United States Public Law 96-420, Section 5(g)(3), United States Code, Title 25, Section 1724(g)(3); and~~

~~**E.**~~
~~Transfers made pursuant to a special act of Congress.~~

~~If the fee to the Houlton Band Trust Fund Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Houlton Band Trust Land.~~

§ 6206. Rights, Privileges, Powers and Immunities~~duties~~ of the Indian tribes ~~and the State within their respective Indian territories~~

1. General Powers. Except as otherwise provided in this Act, the State recognizes that the Passamaquoddy Tribe, ~~and~~ the Penobscot Nation, the Houlton Band of Maliseet Indians and their respective members~~within their respective Indian territories,~~ shall have, exercise and enjoy all the rights, privileges, powers and immunities generally afforded to federally-recognized Indian tribes and their members under federal law, and that their respective Indian territories are and shall be treated as Indian country under federal law~~, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided~~

~~by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.~~

~~**2. Power to sue and be sued.** The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.~~

~~**3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation.~~

~~The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.~~

26. Application of Federal Law Enacted for the Benefit of Indian Tribes. Except as otherwise provided in this Act, the acts of the United States Congress enacted before or after the effective date of this Act and any amendments thereto, and other federal laws and regulations enacted for the general benefit of Indian tribes, shall apply to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and their respective members and territories in the same manner as they apply to other federally-recognized tribes.

~~§ 6206-A. Powers of the Houlton Band of Maliseet Indians~~

~~The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.~~

§ 6206-B. ~~Law enforcement powers~~Tribal-State Cooperation on Issues of Mutual Interest ~~of Houlton Band of Maliseet Indians~~

1. ~~Appointment of~~ Cross Deputization Agreements. ~~tribal law enforcement officers.~~ The State and its political subdivisions are hereby authorized to enter into cross-deputization or similar agreements with the tribes that allow for State law enforcement officers to enforce the laws of the tribes within each tribe's respective territories and to allow for tribal law enforcement

officers to enforce the laws of the State within the State's territory. ~~Houlton Band of Maliseet Indians may appoint law enforcement officers who have the authority to enforce all the laws of the State within the Houlton Band Trust Land.~~ This section does not limit the existing authority of tribal officers under tribal law or affect the performance of federal duties by tribal officers.

2. Tribal-State Cooperative Agreements. Notwithstanding subparagraph (1) above, the State and its political subdivisions are ~~is~~ authorized to enter into cooperative agreements with federally recognized Indian tribes to avoid litigation and to facilitate cross-jurisdictional cooperation and the delivery of services on issues of mutual interest including but not limited to criminal jurisdiction and law enforcement, taxation, environmental regulation, and natural resources. The Governor and political subdivisions of the State respectively may elect to name a designee who will have authority to negotiate and enter into cooperative agreements with federally--recognized Indian tribes as provided for in this Act.

~~**2. Authority of state, county and local law enforcement officers.** State and county law enforcement officers and law enforcement officers appointed by the Town of Houlton have the authority to enforce all laws of the State within the Houlton Band Trust Land.~~

3. Agreements for cooperation and mutual aid. The ~~Houlton Band of Maliseet Indians and any~~ state, any county or local law enforcement agency may enter into agreements for cooperation and mutual aid with any of the Indian tribes.

4. Powers, duties and training requirements. Law enforcement officers ~~appointed by~~of the Houlton Band of Maliseet Indians, Penobscot Nation or Passamaquoddy Tribe ~~pursuant to this section~~, when enforcing the laws of the State under an agreement entered pursuant to this section, possess the same powers, enjoy the same immunities and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

~~**5. Report to Legislature.** By January 1, 2010, the Houlton Band of Maliseet Indians shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters detailing the band's experience with the exercise of law enforcement authority under this section. The report must include observations and comments from the state and county law enforcement agencies providing law enforcement services in Aroostook County and from the Houlton Police Department.~~

6. Repeal. [2009, c. 384, Pt. A, §4 (AFF); 2009, c. 384, Pt. A, §1 (RP).]

§ 6207. Regulation of fish and wildlife resources

~~**1. Adoption of Ordinances by Tribe.** Subject to the limitations of subsection 6, the Passamaquoddy Tribe, and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:~~

~~**A.** Hunting, trapping or other taking of wildlife; and~~

~~**B.** Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.~~

~~Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe, or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe, and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.~~

~~**2.** The Passamaquoddy Tribe, and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe, and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.~~

~~**3. Adoption of Regulations by the Commission.** Subject to the limitations of subsection 6, the commission shall have exclusive authority to promulgate fishing rules or regulations on:~~

~~**A.** Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;~~

~~**B.** Any section of a river or stream both sides of which are within Indian territory; and~~

~~**C.** Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.~~

~~In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.~~

~~Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe, or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the Penobscot Nation. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.~~

~~In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.~~

~~**3-A. Horsepower and Use of Motors.** Subject to the limitations of subsection 6, the commission has exclusive authority to adopt rules to regulate the horsepower and use of motors on waters less than 200 acres in surface area and entirely within Indian territory.~~

~~**4. Sustenance Fishing Within the Indian Reservations.** Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe, and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.~~

5. Posting to the Public. Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe, ~~or~~ the Penobscot Nation, or the Houlton Band of Maliseet Indians shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

~~**6. Supervision by Commissioner of Inland Fisheries and Wildlife.** The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot~~

~~Nation or the commission, may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.~~

~~In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.~~

7. Transportation of Game. Fish lawfully taken within Indian territory ~~or in waters subject to commission regulation~~ and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe, ~~and~~ the Penobscot Nation, or Houlton Band of Maliseet Indians may be transported within the State.

8. Fish and Wildlife on Non-Indian Lands. The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe, ~~and~~ the Penobscot Nation, the Houlton Band of Maliseet Indians and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the ~~Passamaquoddy Tribe, the Penobscot Nation~~tribes or the commission.

9. Fish. As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.

§ 6208. Taxation

1. Settlement Fund income. The Settlement Fund and any portion of such funds or income therefrom distributed to the Passamaquoddy Tribe or the Penobscot Nation or the members thereof shall be exempt from taxation under the laws of the State.

~~**2. Property taxes.** The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an~~

~~amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.~~

~~**2-A. Payments in lieu of taxes; authority.** Any municipality in which Houlton Band Trust Land is located has the authority, at its sole discretion, to enter into agreements with the Houlton Band of Maliseet Indians to accept other funds or other things of value that are obtained by or for the Houlton Band of Maliseet Indians by reason of the trust status of the trust land as replacement for payments in lieu of taxes.~~

~~Any agreement between the Houlton Band of Maliseet Indians and the municipality must be jointly executed by persons duly authorized by the Houlton Band of Maliseet Indians and the municipality and must set forth the jointly agreed value of the funds or other things identified serving as replacement of payments in lieu of taxes and the time period over which such funds or other things may serve in lieu of the obligations of the Houlton Band of Maliseet Indians provided in this section.~~

~~**3. Other taxes.** The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.~~

~~**§ 6208-A. Houlton Band Tax Fund**~~

~~**1. Fund.** The satisfaction of obligations, described in section 6208, owed to a governmental entity by the Houlton Band of Maliseet Indians shall be assured by a trust fund to be known as the Houlton Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than $100,000. The principal shall be formed with moneys transferred from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724. Any interest earned by the Houlton Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of $25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.~~

~~**2. Claims.** The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Houlton~~

~~Band of Maliseet Indians is liable pursuant to section 6208, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State of Maine. No payment of a valid claim may be satisfied with moneys from the fund unless the secretary finds, as a result of his own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Maine Commissioner of Finance and Administration and the Houlton Band of Maliseet Indians.~~

~~**3. Distributions.** If the unencumbered principal available for the payment of claims exceeds the sum of $100,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Houlton Band of Maliseet Indians. The secretary shall give 30 days' written notice to the Commissioner of Finance and Administration of a proposed transfer of excess principal to the Houlton Band of Maliseet Indians. Any distribution of excess principal to the Houlton Band of Maliseet Indians shall be exempt from taxation.~~

~~**4. Other remedies.** The existence of the Houlton Band Tax Fund as a source for the payment of Houlton Band of Maliseet Indians' obligations shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.~~

§ 6209-A. Extension~~Jurisdiction~~ of the Passamaquoddy Reservation ~~Tribal Court~~

~~**1. Exclusive Jurisdiction over Certain Matters.** Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:~~

~~**A.** Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed $ 5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, except when committed against a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation or against the property of a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation;~~

~~**B.** Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation on the reservation of the Passamaquoddy Tribe;~~

~~**C.** Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy~~

~~Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation;~~

~~**D.** Indian child custody proceedings to the extent authorized by applicable federal law; and~~

~~**E.** Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe.~~

~~The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Passamaquoddy Indian reservation and the State has exclusive jurisdiction over those offenses and crimes~~

~~**2. Definitions of Crimes; Tribal Procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.~~

~~**3. Lesser Included Offenses in State Courts.** In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Passamaquoddy Tribe constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.~~

~~**4. Double Jeopardy, Collateral Estoppel.** A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.~~

5. Future Indian Communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.

§ 6209-B. Extension~~Jurisdiction~~ of the Penobscot Nation Reservation~~Tribal Court~~

~~**1. Exclusive Jurisdiction over Certain Matters.** Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:~~

~~**A.** Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $ 5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;~~

~~**B.** Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;~~

~~**C.** Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation;~~

~~**D.** Indian child custody proceedings to the extent authorized by applicable federal law; and~~

~~**E.** Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation.~~

~~The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive~~

~~jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses and crimes.~~

~~**2. Definitions of Crimes; Tribal Procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.~~

~~**3. Lesser Included Offenses in State Courts.** In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Penobscot Nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.~~

~~**4. Double Jeopardy, Collateral Estoppel.** A prosecution for a criminal offense or juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Penobscot Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.~~

5. Future Indian Communities. Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.

~~**§ 6209-C. Jurisdiction of the Houlton Band of Maliseet Indians Tribal Court**~~

~~**1. Exclusive Jurisdiction over Certain Matters.** Except as provided in subsections 3 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:~~

~~**A.** Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $ 5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians, except when committed against a person who is not a member of the Houlton Band of Maliseet Indians or against the property of a person who is not a member of the Houlton Band of Maliseet Indians;~~

~~**B.** Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Houlton Band of Maliseet Indians on the Houlton Band Jurisdiction Land;~~

~~**C.** Civil actions between members of the Houlton Band of Maliseet Indians arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians;~~

~~**D.** Indian child custody proceedings to the extent authorized by applicable federal law; and~~

~~**E.** Other domestic relations matters, including marriage, divorce and support, between members of the Houlton Band of Maliseet Indians, both of whom reside within the Houlton Band Jurisdiction Land.~~

~~The governing body of the Houlton Band of Maliseet Indians shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. The decision to exercise, to terminate the exercise of or to reassert the exercise of jurisdiction under each of the subject areas described by paragraphs A to E may be made separately. Until the Houlton Band of Maliseet Indians notifies the Attorney General that the band has decided to exercise exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to exercise or chooses to terminate its exercise of exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters until the Houlton Band of Maliseet Indians chooses to exercise its exclusive jurisdiction. When the Houlton Band of Maliseet Indians chooses to reassert the exercise of exclusive jurisdiction over any or all of the areas of the exclusive jurisdiction authorized by this subsection it must first provide 30 days' notice to the Attorney General. Except as provided in subsections 2 and 3, all laws of the State relating to criminal offenses and juvenile crimes apply within the Houlton Band Trust Land and the State has exclusive jurisdiction over those offenses and crimes.~~

~~**1-A. Exclusive Jurisdiction over Penobscot Nation Members.** The Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:~~

~~A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $ 5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation against a member or property of a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection, and by a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection against a member or the property of a member of the Penobscot Nation;~~

~~B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Penobscot Nation on the Houlton Band Jurisdiction Land;~~

~~C. Civil actions between a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection and members of the Penobscot Nation arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Penobscot Nation under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation;~~

~~D. Indian child custody proceedings to the extent authorized by applicable federal law; and~~

~~E. Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection or the Penobscot Nation, both of whom reside on the Houlton Band Jurisdiction Land.~~

~~The Houlton Band of Maliseet Indians may assert, terminate or reassert exclusive jurisdiction over these areas as described in subsection 1.~~

~~**1-B. Exclusive Jurisdiction over Passamaquoddy Tribe Members.** The Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:~~

~~A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed $ 5,000 and that are committed on the Houlton Band Jurisdiction Land by a member of the Passamaquoddy Tribe against a member or property of a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection, and by a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection against a member or the property of a member of the Passamaquoddy Tribe;~~

~~**B.** Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe on the Houlton Band Jurisdiction Land;~~

~~**C.** Civil actions between a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection and members of the Passamaquoddy Tribe arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Passamaquoddy Tribe under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Passamaquoddy Tribe;~~

~~**D.** Indian child custody proceedings to the extent authorized by applicable federal law; and~~

~~**E.** Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under this subsection or the Passamaquoddy Tribe, both of whom reside on the Houlton Band Jurisdiction Land.~~

~~The Houlton Band of Maliseet Indians may assert, terminate or reassert exclusive jurisdiction over these areas as described in subsection 1.~~

~~**2. Definitions of Crimes; Tribal Procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.~~

~~**3. Lesser Included Offenses in State Courts.** In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Houlton Band of Maliseet Indians constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.~~

~~**4. Double Jeopardy; Collateral Estoppel.** A prosecution for a criminal offense or juvenile crime over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime arising out of the same conduct over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a~~

~~criminal offense or juvenile crime arising out of the same conduct over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.~~

~~**5. Houlton Band Jurisdiction Land.** For the purposes of this section, "Houlton Band Jurisdiction Land" means only the Houlton Band Trust Land described as follows:~~

~~**A.** Lands transferred from Ralph E. Longstaff and Justina Longstaff to the United States of America in trust for the Houlton Band of Maliseet Indians, located in Houlton, Aroostook County and recorded in the Aroostook County South Registry of Deeds in Book 2144, Page 198; and~~

~~**B.** Lands transferred from F. Douglas Lowrey to the United States of America in trust for the Houlton Band of Maliseet Indians, located in Houlton and Littleton, Aroostook County and recorded in the Aroostook County South Registry of Deeds in Book 2847, Page 114.~~

~~The designation of Houlton Band Jurisdiction Land in this subsection in no way affects the acquisition of additional Houlton Band Trust Land pursuant to applicable federal and state law, nor limits the Houlton Band of Maliseet Indians from making additional requests that portions of the trust land be included in this subsection.~~

~~**6. Effective Date; Full Faith and Credit.** This section takes effect only if the State, the Passamaquoddy Tribe and the Penobscot Nation agree to give full faith and credit to the judicial proceedings of the Houlton Band of Maliseet Indians and the Houlton Band of Maliseet Indians agrees to give full faith and credit to the judicial proceedings of the State, the Passamaquoddy Tribe and the Penobscot Nation.~~

§ 6209-D. Full faith and credit

The Passamaquoddy Tribe, the Penobscot Nation and the State ~~shall~~ agree to give full faith and credit to the judicial proceedings of the Houlton Band of Maliseet Indians.

The Houlton Band of Maliseet Indians ~~shall~~ agrees to give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe, the Penobscot Nation and the State.

~~**§ 6210. State lLaw enforcement on Indian reservations and within Indian territory**~~

~~**1. Exclusive authority of tribal law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the Passamaquoddy Tribe or the~~

~~Penobscot Nation have jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.~~

~~**2. Joint authority of tribal and state law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the authority within their respective Indian territories and state and county law enforcement officers have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce all laws of the State other than those over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.~~

~~**3. Agreements for cooperation and mutual aid.** This section does not prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.~~

~~**4. Powers and training requirements.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation possess the same powers and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.~~

§ 6211. Eligibility of Indian tribes for~~and~~ state funding

1. Eligibility generally. The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians shall be eligible for participation and entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities as a matter of right because citizens of the tribes are also citizens of the State. Such entitlement shall be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians may be raised through any source of revenue available to the respective tribe, nation or band. Additionally, to the extent that the State applies for and receives federal funds in part based on inclusion of the citizens of the tribes within the State's user population, the State shall coordinate with the tribes to ensure the tribal citizens realize the benefits of such federal funds. ~~, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of moneys employs a factor for the municipal real property tax rate, and in the absence of such tax within the Indian territory, the formula applicable to such Indian territory shall be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of moneys employs a factor representing municipal valuation, the valuation applicable to such Indian territory shall be determined by the State Tax Assessor in the manner generally provided by the laws of the State, provided, however, that property owned by or held in trust for either tribe or nation and used for governmental purposes shall be treated for purposes of valuation as like property owned by a municipality.~~

~~**2. Limitation on eligibility.** In computing the extent to which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds under subsection 1, other than funds in support of education, any money received by the respective tribe, nation or band from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, must be deducted in computing any payment to be made to the respective tribe, nation or band by the State. Unless otherwise provided by federal law, in computing the extent to which the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds for education under subsection 1, the state payment must be reduced by 15% of the amount of federal funds for school operations received by the respective tribe, nation or band within substantially the same period for which state funds are provided, and in excess of any local share ordinarily required by state law as a condition of state funding. A reduction in state funding for secondary education may not be made under this section except as a result of federal funds received within substantially the same period and allocated or allocable to secondary education.~~

2-A. Limitation on eligibility.

[1997, c. 626, §3 (AFF); 1997, c. 626, §2 (RP) .]

3. Eligibility for discretionary funds. The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.

~~**4. Eligibility of individuals for state funds.** Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State as long as in computing the extent to which any person is entitled to receive any such funds any money received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State is deducted in computing any payment to be made by the State.~~

§ 6212. Maine Indian Tribal-State Commission

1. Commission created. The Maine Indian Tribal-State Commission is established. The commission consists of 13 members, 6 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 Houlton Band of Maliseet Indians, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation 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 12 members, shall select an individual who is a resident of the State to act as chair. In the event of the death, resignation, replacement or disability of the chair, the commission may select, by a majority vote of its 12 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation, replacement or disability, the Governor, after consulting with the chiefs of the Houlton Band of Maliseet Indians, the Penobscot Nation and the Passamaquoddy Tribe, 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 and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate. The Legislature shall hold hearings on any reports and recommendations provided by the commission within one year from receipt of such reports and recommendations.

Nine members constitute a quorum of the commission and a decision or action of the commission is not valid unless 7 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.

The Governor or the Governor's designee and the chief executive elected leader or the chief executive elected leader's designee of the following tribes shall communicate to produce a proposed biennial budget for the commission and to discuss any adjustments to funding:

A. The Houlton Band of Maliseet Indians;

B. The Passamaquoddy Tribe; and
C. The Penobscot Nation.

§ 6213. Approval of prior land transfers

1. Approval of tribal land transfers. Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of any Indian nation, or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any state, which transfer occurred prior to October 10, 1980~~the effective date of this Act~~, shall be deemed to have been made in accordance with the laws of the State.

2. Approval of certain individual land transfers. Any transfer of land or other natural resources located anywhere within the State, from, by or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, shall be deemed to have been made in accordance with the laws of the State.

~~**§ 6214. Tribal school committees**~~

~~The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.~~

§ 6215. Tribal Consultation

1. Tribal Consent on Certain Actions. The State of Maine, and each of its officers, departments, and agencies shall consult with the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, respectively, in order to obtain their free, prior and informed consent prior to taking actions that may directly and tangibly affect tribal rights or tribal resources, including but not limited to land, water, and other natural resources.

2. Tribal Consultation Prior to Certain Actions

A. The State of Maine, and each of its officers, departments, and agencies, will request government-to-government consultation with the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, respectively, to ensure a complete understanding of certain proposed actions and to identify and address tribal concerns with the same. The requirement for consultation is independent of any other consent requirement.

B. The State of Maine, and each of its officers, departments, and agencies must consult with the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, respectively, with the goal to avoid litigation wherever possible. Such consultation must occur prior to: the filing of civil litigation against the Passamaquoddy Tribe, the Penobscot Nation, or

the Houlton Band of Maliseet Indians; the filing of civil litigation against a business or entity owned by the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians; and the filing of legislation and proposed rules and regulations, the development of department and agency policies, and the taking of other state action that may directly affect the tribes listed in this section, tribal rights, or other tribal resources, including but not limited to land, water, and other natural resources.

C. A request for consultation must be sent to the head of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians, or to any person identified by the tribes to receive the request.

D. The notice will provide a time of no less than thirty days for the affected tribe to respond by either agreeing to or rejecting consultation. Thirty days will run from the date of actual receipt or five days after date of mailing for notices sent by first class mail. The notice will provide clear information about the action or project that may result in tribal effects, clearly state the timeframe for response and how to respond, and provide information to be used to contact the appropriate State official for more information.

E. If a statute of limitations, court rule, or other factor requires the State to provide less than 30 days' notice, the notice will clearly identify the deadline and the applicable State of Maine department or agency must make every reasonable effort to consult within the time available.

F. If the affected tribe does not respond within thirty days of receipt of the notice, or the amount of time provided under (D), the applicable State of Maine department or agency may conclude that the affected tribe has declined consultation on the project.

DRAFT

APPENDIX J

Letter of 5/9/2019 from Chief Francis, Chief Sabattis, Chief Peter-Paul, Chief Nicholas and Chief Dana to Speaker Gideon and President Jackson

May 9, 2019

Via Email
Hon. Troy D. Jackson
President of the Senate
3 State House Station
Augusta, Maine 04333

Via Email
Hon. Sara Gideon
Speaker of the House
2 State House Station
Augusta, Maine 04333

Re: Amending Maine's Act to Implement the Indian Land Claims Settlement and Related Amendments to the Micmac Settlement Act

Dear House Speaker Gideon and Senate President Jackson:

Thank you for the initiative you are taking to amend, or to repeal and replace, the Maine Act to Implement the Indian Land Claims Settlement ("MIA") and the Micmac Settlement Act ("MSA") (collectively the "Acts") in order to ensure that the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians (collectively the "Tribes") enjoy the same rights, powers, privileges, and immunities as other federally-recognized Indian tribes in the United States unless otherwise agreed to by the Tribes and Maine.

Goals

In follow up to the meeting you kindly hosted on April 17, 2019, at Speaker Gideon's office, you asked the Tribes to provide you with a list of their primary goals.

Our overarching goal is to amend the MIA and MSA in a manner that modernizes the relationship between the State and Tribes by affirming and promoting tribal self-determination, self-government, and economic self-sufficiency, while preserving the original intent of the parties to remove any cloud on title to land in the State of Maine that resulted from land claims by the tribal nations. While there are additional issues that are specific and of great importance to each of the respective Tribes, the leadership of the Tribes have a consensus that for this process to work there must be a commitment to accomplish the following as to all Tribes:

1. Amendments to section 6204 of the MIA and section 7203 of the MSA (and other sections of the Acts as necessary) to establish that the laws of the State shall not apply to the Tribes or their respective lands, except as agreed by the State and the Tribes or as provided by federal law;

2. Amendments to sections 6206 and 6206-A of the MIA and section 7205 of the MSA (and other sections of the Acts as necessary) to confirm that the Tribes shall exercise and enjoy the same rights, powers, privileges, and immunities as other federally-recognized Indian tribes, except as agreed by the State and the Tribes; and

3. Amendments to section 6206 and 6206-A of the MIA and section 7205 of the MSA (and other sections of the Acts as necessary) to confirm that Acts of Congress intended to benefit federally-recognized Indian tribes in general apply to the Tribes and their lands, except as agreed by the State and the Tribes.

In framing these as "amendments," we do not mean to limit any other approach. We also recognize that each of these broad concepts implicates specific issues, such as criminal justice, which will require careful discussion to ensure that the amendments promote community relations and economic benefits that improve the quality of life for all Maine citizens. We look forward to beginning this process with you and other Maine legislators and appreciate your commitment to its ultimate success.

Structure of the Process

In addition to ensuring that we enter into this process with a common understanding of the Tribes' goals, it is critical that we agree to a structure for the Commission's work and interaction with the Tribes. As you know, by the terms of Congress's ratifications of MIA and MSA, changes to the jurisdictional allocation provisions of the MIA and MSA require the consent of the affected Tribe or Tribes, and so we must have a structure that culminates in an agreement between the Tribes and the State.

To achieve an agreement, we propose that the State form a Commission of legislators who will work on the amendments with a select committee of representatives of the respective Tribes, recognizing that particular topics may require input from individuals with relevant expertise. Once there is agreement between the Commission and the Tribes' Committee, the Commission can propose the amendments to the Legislature for enactment, and the Tribes' Committee can propose the amendments to the Tribes' respective legislative bodies for approval. There will be further details to work out, but we believe this makes sense as a basic structure for this process.

History and Context

As further background, we would like to share some of the history and context underlying the Tribes' collective goals.

Tribal nations in Maine entered the very first treaty with the United States following its Declaration of Independence—the Treaty of Watertown, July 19, 1776. By the

terms of that Treaty, Maine's tribal nations committed to fight with the Americans against the British in the Revolutionary War. Two hundred years later, the State of Maine, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians agreed to a settlement to resolve expansive tribal land claims. Prior to the settlement, the United States Court of Appeals for the First Circuit held in *Bottomly v. Passamaquoddy Tribe,* 599 F.2d 1061 (1st Cir. 1979), that the Passamaquoddy Tribe enjoyed the sovereign powers that all Indian tribes retain under federal law, and the Maine Supreme Judicial Court held in *State v. Dana,* 404 A.2d 551 (Me. 1979), that the Passamaquoddy Reservation constituted "Indian Country" for purposes of federal law. These decisions established favorable precedents on tribal sovereignty and self-governance not only for the Passamaquoddy Tribe, but for other tribal nations within the State of Maine, including the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians.

As a part of the land claims settlement, the State desired to negotiate the parameters of each government's jurisdiction over lands and natural resources in order to eliminate ongoing litigation and jurisdictional disputes. The Tribes agreed in an effort to be good neighbors and to improve community relationships affected by the land claims. However, aspects of the resulting jurisdictional arrangement have proven unworkable. As construed, the MIA and MSA have restricted Tribal sovereignty to a degree rarely seen elsewhere in the country, thereby hampering the ability of the Tribes in Maine to exercise powers of self-government, including the provision of essential governmental services and the advancement of economic development in their communities; negatively impacting the eligibility of the Tribes, their citizens, and surrounding communities for federal programs and funding; and increasing rather than diminishing costly protracted litigation over the extent of tribal and state jurisdiction, to the detriment of all Maine citizens.

The federal government is firmly committed to enhancing tribal sovereignty and self-government. The U.S. Supreme Court affirmed the inherent sovereignty of tribal nations in a trilogy of cases authored by the great Chief Justice John Marshall, issued from 1823-1832.

Since 1970, Congress has enacted multiple laws to further tribal sovereignty because doing so enables tribes to be self-determining governments, with ability to tailor their laws to suit their unique cultures and traditions and to govern their lands without external interference. Experiences of other states has shown that the exercise and recognition of tribal sovereignty is beneficial to tribal-state relations and to all state citizens because it allows states and tribes to operate in an atmosphere of mutual respect and thereby to cooperate in mutually beneficial ways. In addition, the exercise of tribal sovereignty spurs economic development and the delivery of essential governmental services that are beneficial to state and local economies and to Indian and non-Indian communities alike.

The current jurisdictional allocations in the MIA between the State and the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians inhibits these Tribes and their communities from realizing the benefits that flow from the exercise of their inherent sovereign authority, and from the federal government's policy of furthering tribal self-determination and self-government. The MSA imposes the same constraints upon the Micmacs. The State and the Tribes should amend these jurisdictional allocations, consistent with the three goals stated above, to affirm the sovereign authorities of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians over their respective lands in accord with the decisions of *Bottomly* and *Dana*, established principles of federal Indian law, and as agreed by the State and the Tribes. These amendments will advance the relationship between the State and the Tribes and improve the quality of life for all Maine citizens.

We hope that, upon forming your Commission, you embrace these goals with this history and context in mind.

Sincerely,

/s Kirk Francis
Chief, Penobscot Nation

/s Clarissa Sabattis
Chief, Houlton Band of Maliseet Indians

/s Edward Peter-Paul
Chief, Aroostook Band of Micmac Indians

/s William Nicholas
Chief, Passamaquoddy Tribe

/s Marla Dana
Chief, Passamaquoddy Tribe

cc: Hon. Rena D. Newell, Passamaquoddy Tribe, Representative to the State Legislature
Hon. Maulian Dana, Penobscot Nation Ambassador

APPENDIX K

Excerpted speech by Representative Lewis Mitchell of the Passamaquoddy Tribe to the 63rd Maine State Legislature in 1887

SPEECH BY LEWIS MITCHELL BEFORE THE 63RD MAINE STATE LEGISLATURE, 1887 (excerpted)

Lewis Mitchell, Representative of the Passamaquoddy Tribe of Indians

I was authorized by the Passamaquoddy Tribe of Indians to come here before you for the purpose of making known to you what the Passamaquoddy Indians have done for the American people, and how we have been used by the American people and how we used them. In 1775 or 1776, in the struggle between Great Britain and America, your people came to us for assistance. You authorized Col. John Allan to speak to us and you said, "He is our mouth, believe what he says to you." After many kind words and promises, Francis Joseph, who was the chief of the tribe at that time, accepted his offer. He promised to go and help his people gain their independence. Immediately he sent his captains to different parts of his country to notify his people to prepare for immediate war. In a few days Francis Joseph gathered an army of six hundred men. At that time, and many years before that, the Passamaquoddy Tribe was the headquarters of the Abnaki Nation.

Passamaquoddy Tribe can show you by a letter from Col. John Allan when he authorized the Passamaquoddy Indians to guard the coast from Machias to Passamaquoddy, and authorized them to seize the enemy's vessels. And according to his orders we can show you by the affidavit, Capt. Sopiel Socktoma, with fifty others of his tribe, captured an armed schooner in Passamaquoddy Bay, and they ran her to Machias and gave her up to Col. John Allan.

We know the Indians who served in that war are passed out of existence, but the Passamaquoddy Tribe helped the Americans in that war, and the tribe is still in existence. Now we bountily ask your attention to help us by letting the Legislature examine the papers and refer them to Congress, if they see fit.

In the treaties of 1725, 1794, and Governor Dummer's treaty of 1727, and in the laws of Massachusetts and Maine at their separation, we were guaranteed the right to hunt and fish forever.

In the year 1854 or 1857 some dishonest person or persons presented a petition to the Maine Legislature, asking the State to sell the Indians' land – Indians did not need it – so the Legislature passed a resolve, that a certain piece of land, situated in the Town of Perry, owned by the Indians, would be sold by public auction, on such day, at Perry (they must have arranged everything so they wouldn't bid against each other) and that land was sold for the small sum of $500.00. The Indians opposed the sale of it. Now their firewood costs the Indians of Pleasant Point $1,500.00 a year.

If that land had not been sold, the Indians would not suffer for want of firewood. Thousands of cords of cordwood have been cut, and wood is on it yet. The land cleared by the Indians was also sold. Now we claim again that this is not right. An Indian agent himself bought this land afterward and again when we lost the claim on the Islands the case Granger vs. Indians, we not only lost the claim, but $2,500.00 out of the Indians in favor of Mr. Granger.

Just consider, today, how many rich men there are in Calais, in St. Stephen, Milltown, Machias, East Machias, Columbia, Cherryfield, and other lumbering towns. We see a good many of them worth thousands and even millions of dollars. We ask ourselves, how do they make most of their money? Answer is, they make it on lumber or timber once owned by the Passamaquoddy Indians.

How many of their privileges have been broken? How many of their lands have been taken from them by authority of the State? Now, we say to ourselves, these Indians ought to have everything they ask for. They deserve assistance. We are sent here to help the poor and defend their rights.

Now, this plainly shows us how much worse a people of five hundred and thirty souls are, stripped of their whole country, their privileges on which they depend for their living; all the land they claim to own now being only ten acres. If one or two men in this body were Indians, they would fight like braves for their rights.

Now look at yourselves and see whether I am right or wrong. If you find any insulting language in my speech, I ask your pardon. I don't mean to insult anybody, but simply tell you of our wrong.

DEFAULT RULES OF CIVIL JURISDICTION & LAND USE IN INDIAN COUNTRY

Indian country (IC) includes all lands within the boundaries of an Indian reservation (regardless of fee status or non-Indian ownership) and tribal and tribal-citizen lands held in trust by the United States or restricted fee status. 18 U.S.C. § 1151.

Outside Indian country: Indian tribes and their citizens are subject to state and local jurisdiction, absent a treaty or statute providing otherwise.

Inside Indian country: Absent federal law providing otherwise...

GOVERNMENT EXERCISING JURISDICTION & SUBJECT OF REGULATION	DEFAULT FEDERAL COMMON LAW RULE	STATUS QUO IN MAINE UNDER MICSA/MIA	COMMENTS
State			
Tribal Citizens	State government *lacks* regulatory authority and other forms of civil jurisdiction over tribes, tribal citizens and tribal businesses in IC	State regulation and other forms of civil jurisdiction over tribes, tribal citizens, and tribal businesses in IC is generally *permitted with the exception of* internal tribal matters and matters under 30 M.R.S. §§ 6207, 6209-A, B, C	
Non-Citizens	On *non-citizen fee lands* in IC, state government *has* regulatory authority and other forms of civil jurisdiction over non-citizens On *tribal or tribal-citizen lands* held in trust or restricted fee status, state regulation or other forms of civil jurisdiction over non-citizens is *prohibited only if* it interferes or is incompatible with federal and tribal interests, unless the state interests at stake are sufficient to justify assertion of state authority (*Bracker* test)	State regulation and other forms of civil jurisdiction over non-citizens in IC is generally *permitted*	
Land Use	State government *lacks* land use authority over *tribal or tribal-citizen lands* held in trust or restricted fee status	State regulation of tribal and tribal-citizen lands is *permitted with the exception of*	Tribal and state and local governments

This legal summary is intended for the sole purpose of facilitating the discussions of the Task Force. This summary is not intended to represent or otherwise reflect the legal position of any member of the Task Force or any tribal nation and shall not be so construed.

	State government *lacks* land use authority over fee lands *owned by a tribe or tribal citizens except in exceptional circumstances* State government *has* regulatory authority over fee lands *owned by non-citizens* in IC	internal tribal matters and matters under 30 M.R.S. §§ 6207, 6209-A, B, C State government *has* regulatory authority over fee lands owned by non-citizens in IC	enter agreements to harmonize land use planning and regulation in IC
Tribal			
Tribal Citizens	Tribal government *has* regulatory authority and other forms of civil jurisdiction over tribal citizens and tribal-citizen businesses in IC	Same	
Non-Citizens	Tribal government generally *has* regulatory authority and other forms of civil jurisdiction over non-citizens on *tribal and tribal-citizen lands* held in trust or restricted fee status Tribal regulation and other forms of civil jurisdiction over non-citizens on *non-citizen fee land* is *presumptively invalid* and *permitted only if* non-citizen has consensual relationship with tribe or tribal citizens, or if regulation is necessary to protect health and welfare, economic security, or political integrity of the tribe (*Montana* test)	Subject to uncertainty	
Land Use	Tribal government *has* regulatory authority over *tribal and tribal-citizen lands* in IC, including lands held in trust, restricted fee, and fee simple status Tribal regulation of *non-citizen fee lands* is *presumptively invalid* and *permitted only if* non-citizen has consensual relationship with tribe or tribal citizens, or if regulation is necessary to protect health and welfare, economic security, or political integrity of the tribe (*Montana* test)	Same Subject to uncertainty	Tribal and state and local governments enter agreements to harmonize land use planning and regulation in IC

This legal summary is intended for the sole purpose of facilitating the discussions of the Task Force. This summary is not intended to represent or otherwise reflect the legal position of any member of the Task Force or any tribal nation and shall not be so construed.

Task Force to Amend the Maine Act to Implement the Indian Land Claims Settlement In Accord with the Joint Resolution SPO622 LR 2507, Item 1, 129th Maine Legislature

Issue Paper Prepared for Discussion by the Task Force
September 12, 2019

CIVIL JURISDICTION EXAMPLE: RAISING GOVERNMENTAL REVENUE THROUGH GAMING

Federal Indian Law

Tribal Nations possess inherent sovereign authority to conduct and regulate economic development activities on tribal lands to the extent that right has not been eliminated or limited by treaty or federal statute.[1] Many Tribal Nations across the United States, including the Penobscot Nation, began to conduct commercial bingo and other games in the 1970s pursuant to this inherent authority. Such games were generally conducted under tribal law and were entirely outside of state regulation.

In 1987, the Supreme Court upheld the legitimacy of these early gaming operations through its landmark decision in *California v. Cabazon Band of Mission Indians*[2], which concluded that gaming could be conducted under the auspices of tribal sovereignty and in a manner not subject to state criminal or regulatory jurisdiction. In response, Congress passed the Indian Gaming Regulatory Act (IGRA), which limited but affirmed tribal sovereignty in the field of gaming and adopted a unique tribal-state-federal framework to balance each sovereigns' respective interests in the area.[3] The purpose of IGRA, as stated by Congress is "to promote tribal economic development, tribal self-sufficiency, and strong tribal governments."[4]

* * *

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[1] *See, e.g., Merrion v. Jicarilla Apache Tribe,* 455 U.S. 130, 137 (1982) (tribes retain "sovereign" authority to control economic activity within their reservations and trust lands); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335 (1983) (tribes have inherent sovereign authority "to undertake and regulate economic activity within the reservation").
[2] 480 U.S. 202 (1987).
[3] Upon enacting IGRA, Congress restated the holding of *Cabazon*:

> Indian tribes have the exclusive right to regulate gaming activity on Indians lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming.

25 U.S.C. § 2701(5).
[4] 25 U.S.C. § 2701(4).

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Contrary to common misunderstandings, the net proceeds that Tribal Nations obtain through gaming are not "commercial profits"; they must be used to fund tribal governmental services such as health, housing, and education.[5] Thus, the generation of tribal governmental revenues from gaming is no different than a state's operation of a lottery, a horse racing track, or a liquor store. Tribal Nations invest these governmental revenues in governmental services and economic development, delivering well-documented benefits to both Indians and non-Indians in their communities. (Indeed, unlike states, gaming is critical source of revenue for Tribal Nations because most tribes lack a tax base.[6])

(Please see JONATHAN B. TAYLOR, THE ECONOMIC & COMMUNITY BENEFITS OF TRIBES IN WASHINGTON (2019) for a discussion of the benefits that gaming brings to tribes and local economies. A copy has been to Task Force staff for distribution.)

Classes of IGRA Gaming

There are three forms of gaming that are permitted under IGRA, each with different applicable regulatory overlays. Class I gaming primarily includes social or traditional games played for minimal prizes or in connection with tribal ceremonies or celebrations.[7] Class I games are under the exclusive jurisdiction of Tribal Nations.[8] Class II gaming includes bingo games "whether or not electronic, computer, or other technologic aids are used in connection therewith"[9], as well as certain, non-banked card games[10] that are not

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[5] 25 U.S.C. § 2710(b)(2)(B).

[6] As Justice Sotomayor, quoting Professor Matthew Fletcher, recently explained:

> Tribes are largely unable to obtain substantial revenue by taxing tribal members who reside on non-fee land that was not allotted under the Dawes Act. As one scholar recently observed, even if Tribes imposed high taxes on Indian residents, "there is very little income, property, or sales they could tax." Fletcher, *supra*, at 774. The poverty and unemployment rates on Indian reservations are significantly greater than the national average. As a result, "there is no stable tax base on most reservations." Fletcher, supra, at 774.

Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 812–13 (2014)

[7] 25 U.S.C. §2703(6).

[8] *Id.* at § 2710(a)(1).

[9] *Id.* at § 1703(7)(A)(i).

[10] Banked card games involve players playing against the house, as opposed to other players, and include baccarat, blackjack, and chemin de fer. *See* William C. Canby, Jr., AMERICAN INDIAN LAW IN A NUTSHELL 348 (2d ed 2015).

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prohibited by and are conducted in conformance with state law.[11] Tribal Nations and the National Indian Gaming Commission (NIGC), a federal agency, have regulatory oversight over Class II gaming, to the exclusion of states.[12] IGRA stipulates that Class II gaming must be conducted pursuant to tribal law but only "within a State that permits such gaming for any purpose by any person, organization, or entity".[13]

Finally, IGRA defines Class III gaming as including "all forms of gaming that are not class I gaming or class II gaming."[14] Class III gaming is often equated to "Las Vegas-style gaming" and includes slot machines, roulette, craps, and banked card games, such as blackjack.[15] Class III gaming may only be conducted in "a State that permits such gaming for any purpose by any person, organization, or entity" provided that the gaming is regulated by tribal law and is conducted in accordance with a tribal-state gaming compact that must be approved by the United States Department of the Interior.[16] Tribal Nations and states can negotiate a range of issues as part of their Class III gaming compacts, including the allocation of criminal and civil jurisdiction as necessary for the regulation of gaming, revenue sharing, relevant public health matters, and remedies for breach of contract.[17] Regardless of the "class" of gaming, IGRA stipulates that Tribal Nations must hold the "sole proprietary interest [in] and responsibility for" operation of all gaming conducted under the law.[18] This means that tribally-owned casinos cannot be sold to non-tribal parties.

The Positive Impact of IGRA Gaming on State Economies

In 2017, revenues from tribally-owned gaming operations nationwide totaled approximately $32.4 billion from 494 gaming operations, owned by 242 Tribal Nations.[19] Significant portions of this overall amount is shared with state and local governments through direct payments and revenue sharing agreements. For example, in 2014, approximately $16 billion of the Indian gaming industries' revenues were shared with state and local governments, entirely pursuant to tribal-state gaming compacts or similar

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[11] 25 U.S.C. § 2703(7)(A)-(B).
[12] *Id.* at § 2710(b)(1).
[13] *Id.*
[14] *Id.* at § 2710(b)(3).
[15] AMERICAN INDIAN LAW IN A NUTSHELL at 350.
[16] *See* 25 U.S.C. § 2710(d).
[17] *Id.* at § 2710(d)(3)(C).
[18] *Id.* at § 2710(b)(2)(A).
[19] National Indian Gaming Commission, "2017 Indian Gaming Revenue Increase 3.9% to $32.4 Billion" (June 26, 2018) (available at https://www.nigc.gov/news/detail/2017-indian-gaming-revenues-increase-3.9-to-32.4-billion).

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inter-governmental agreements.[20] Direct payments to local and state governments are generally made to defray the cost of gaming on neighboring governments and in return for valuable market exclusivity.[21]

Status Quo in Maine

Maine has been home to tribal gaming since well before *Cabazon* and IGRA[22] but the Tribal Nations of Maine have yet to achieve the rights of economic development afforded by either. Maine has thus far enabled out-of-state corporations to proceed with for-profit gaming enterprises and rejected efforts by the Tribes to generate governmental revenues and attending local economic through gaming.[23]

While the Tribal Nations have sought to establish gaming operations under state law, state lawmakers and voters have repeatedly rejected tribal attempts to expand beyond bingo halls, even as voters approved the creation of gaming opportunities for non-tribal commercial interests. Today, Maine is home to two casinos that are owned by out-of-state corporations: Hollywood Casino Bangor[24] and Oxford Casino[25]. As the State of Maine commissioned WhiteSands report notes, both casinos were established pursuant to state referendums that were "overtly funded by commercial casino interests".[26] These publicly-traded corporations do not reinvest their revenues *locally* in government services and further economic development but instead export those dollars to corporate shareholders *outside of Maine*. Tribal Nations, however, would keep all of these gaming revenues local, circulating and creating ripple effects in the state economy.

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[20] Alan Meister, Ph.D., "The Economic Impact of Tribal Gaming: A State-by-State Analysis", (Sept. 2017) (prepared for the American Gaming Ass'n).

[21] *See* 25 U.S.C. § 2710(b)(2)(B)(v); AMERICAN INDIAN LAW IN A NUTSHELL at 366-67.

[22] The Penobscot Nation established "Original Indian Bingo" on Indian Island in 1973. *See* Penobscot Nation timeline *available at* https://www.penobscotculture.com/index.php/tribal-timeline (last visited Aug. 27, 2019).

[23] In *Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me. 1983), the Maine Supreme Judicial Court held, contrary to the Supreme Court's ruling in *Cabazon*, that Tribal Nations do not have inherent sovereign authority to generate governmental revenues through reservation gaming operations. *See id* at 482-487.

[24] Hollywood Casino Bangor is owned by Penn National Gaming, Incorporated, a national operator of casinos and racetracks based in Pennsylvania. *See generally*, https://www.pngaming.com/.

[25] Oxford Casino is owned by and operated by Churchill Downs Incorporated, which has a portfolio of gaming properties that spans multiple states. *See generally*, http://www.churchilldownsincorporated.com/.

[26] WhiteSand Gaming, "Market Feasibility Study: Expanded Gaming in Maine (Final Report) (Aug. 2014).

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Maine law currently permits Tribal Nations to operate high-stakes bingo upon the approval of a license application by the state's Gambling Control Unit.[27] Significantly though, Maine law restricts the operation of such high-stakes games to no more than 27 weekends per year.[28] In addition, Tribal Nations may, in conjunction with a high-stakes bingo game, be authorized by the Gambling Control Unit to sell "lucky seven" or similar tickets that are purchased from a machine and that offer the purchaser a chance to win a prize, provided that the tickets are only sold two hours before and two hours after a high-stakes bingo game.[29]

Needless to say, if locked out of the benefits of IGRA, Tribal Nations in Maine have no real prospects of obtaining the related economic development benefits from gaming to fund tribal governmental services.

In sum, the Wabanaki Tribal Nations' proposed changes to the MIA would facilitate gaming-related economic development for the benefit of the Wabanaki communities, their neighbors, and the state, as a whole. The revenue generated from tribal gaming in Maine would stay in Maine and would benefit tribal and local economies for years to come.

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[27] 17 M.R.S.A. § 314-A(1).
[28] *Id.* at §314-A(3).
[29] *Id.* at § 314-A(1-A).

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APPENDIX L

Summaries of federal Indian law presented by Tribal Counsel on September 13, 2019

Task Force to Amend the Maine Act to Implement the Indian Land Claims Settlement In Accord with the Joint Resolution SPO622 LR 2507, Item 1, 129th Maine Legislature

Issue Paper Prepared for Discussion by the Task Force
September 12, 2019

CIVIL JURISDICTION EXAMPLE: THE REGULATION OF NATURAL RESOURCES (GENERAL PRINCIPLES)

Federal Indian Law

Tribal Nations exercise inherent governmental authority over lands and natural resources within their Indian country.[1] Lands over which Indian tribes exercise this authority are (a) reservation lands retained as aboriginal title, i.e. lands that a tribe has used and occupied (exclusive of other tribes) from time immemorial and never ceded by valid treaty; (b) reservations lands specifically set aside for a tribe by federal law or treaty; or (c) lands that the United States takes into trust (or imposes a restraint on alienation) for a specific Tribal Nation or tribal citizens,. We refer to all three types of lands here as "Indian country" or "reservations and trust lands."

Specific authority to regulate natural resources is generally presumed to have been retained by a Tribal Nation unless such authority has been limited under federal law.[2] Thus, the authority of Tribal Nations to regulate natural resources and the environment derives from "two interrelated sources": 1) retained inherent tribal sovereignty to govern tribal lands, to the extent such authority has not been limited by federal law; and 2) powers authorized by Congress under specific laws.[3]

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[1] *See, e.g.*, *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335–36 (1983) ("tribes have the power to manage the use of its territory and resources by both members and nonmembers [and] to undertake and regulate economic activity within the reservation"); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982) (same).
[2] *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §2.02, at 118 (Nell Jessup Newton ed., 2012) (citing *Worcester v. Georgia*, 31 U.S. 515, 552-553 (1832)).
[3] *Id* at §10.01, 784.

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1) Tribal Authority

Tribal Nations are sovereign governments and property owners that have retained the inherent power to regulate their territory. [4] As such, Tribal Nations "may legislate to ensure environmental protection."[5] In particular, tribal governments possess the authority to establish comprehensive natural resource ordinances or laws that can touch upon all aspects of natural resource regulation including standards for conduct on tribal lands; requirements to obtain permits to engage in certain activities on tribal lands; guidelines for enforcement of natural resource-related laws/regulations; penalties for violations; and procedures for the administration of enforcement actions.

Within a so-called "checkerboard reservation," where original Indian landholdings were sold in fee simple to non-members, tribal authority over natural resources use by such non-members is limited.[6]

2) Powers Authorized by Congress

Laws passed by Congress have altered how natural resources are regulated in Indian country in two major ways. First, federal laws of general applicability, like the Clean Water Act or the Safe Water Drinking Act, enable federal regulation of resources in Indian country by agencies such as the Environmental Protection Agency (EPA).[7] Such statutes will sometimes delegate specific regulatory authority to Tribal Nations but permit the EPA to retain authority until a tribal government assumes regulatory control pursuant to an established process.[8]

Federal statutes that sanction Tribal Nations' regulatory authority over certain natural resource-related issues are grounded in the idea of federalism, which similarly respects the sovereign right of states to regulate their own lands and resources. Starting in the

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[4] *Id.*

[5] *Id.*

[6] *See Montana v. United States,* 450 U.S. 544, 565-566 (holding that in such a circumstance, tribes can regulate nonmember activities if the nonmember has entered into a "consensual relationship with the tribe or its members" or where the nonmember's conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe").

[7] *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §10.01, at 785.

[8] *See, e.g.,* 40 C.F.R. § 123.1(h) (Clean Water programs); 40 C.F.R. § 27.1 (Resource Conservation and Recovery Act hazardous waste program); *see also* U.S. EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984), *available at* https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf.

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1980s, Congress began a practice of providing for the delegation of regulatory authority over natural resources to Tribal Nations through "Treatment as a State" or "TAS" provisions in pollution control laws. TAS status enables a Tribal Nation to assume primary regulatory control over the administration of standards and programs under the relevant federal statute.[9] There are currently three major federal pollution control laws that authorize Tribal Nations to obtain TAS status by the EPA: the Clean Water Act, the Safe Drinking Water Act, and the Clean Air Act. To achieve TAS status, a Tribal Nation must generally demonstrate that it possesses the jurisdiction and capacity to operate each element of the environmental program that is seeks to administer.[10] Tribes with TAS status and states may establish regulatory standards that are more stringent than EPA standards, which are considered minimum standards.[11]

Status Quo in Maine

In the late-1970s, federal court decisions confirmed that Maine lacked authority to control the exploitation of natural resources and related pollution of the same within the Maine Tribes' reservations. As Congress stated in its final committee reports on the land claims settlement in 1980, the U.S. Court of Appeals for the First Circuit had established that "the Maine Tribes still possess inherent sovereignty to the same extent as other tribes in the United States"[12] and that they were "entitled to protection under federal Indian common law doctrines."[13]

At that time, tribal members continued to engage in traditional subsistence practices, not fully understanding the polluted state of their sustenance resources. An EPA report found that as of 1968, "the Penobscot [River] . . . received the untreated industrial wastes discharged non-stop from seven pulp and paper mills," five of which flowed directly into the Main Stem – the home of the Tribe's aboriginal villages occupied from time immemorial. In 1964, this was equivalent to "untreated domestic sewage load produced in one day by about 5,000,000 people," thereby depressing "dissolved oxygen levels . . . as low as zero," in blatant violation of Maine's water quality standards.[14]

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[9] *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §10.02 at 791 (citing Clean Water Act § 518, 33 U.S.C. § 1377(e))
[10] *Id.* at §10.03, at 794.
[11] *Id.* at §10.03, at 795.
[12] S. Rep. No. 96-957, at 14; H.R. Rep. 96-1353, at 14.
[13] S. Rep. No. 96-957 at 13.
[14] U.S.E.P.A., *A Water Quality Success Story: Penobscot River, Maine,* December, 1980 at 4-5, accessible at https://nepis.epa.gov/ via Google search, last visited Sept. 6, 2019.

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Nevertheless, as set out in the separate paper on fishing, hunting and trapping practices, the Tribal Nations engaged in their traditional subsistence and cultural practices. For example, well into the 1990s, when tribal members became educated about pollution, Penobscot families, relied upon fish, eel, and other food sources from the Penobscot River for up to four meals per week to the tune of two to three pounds per meal.[15]

Pursuant to the Settlement Acts, with the exception of "internal tribal matters" for the Penobscot Nation and the Passamaquoddy Tribe, Congress generally granted Maine regulatory authority over the reservations and trust lands (and related natural resources) of Tribal Nations in Maine.[16]

Given the importance of environmental quality within Indian country for the Tribal Nations' subsistence and cultural practices, control over pollution has become a battleground. Paper corporations and the State of Maine have fought against both federal and tribal regulatory authority within the reservations and trust lands. Litigation has been ongoing for decades, and absent amendments to the Settlement Acts, is likely to continue.[17]

One example of the abysmal failure of the status quo is dioxin contamination of the Penobscot River. In the late 1990s, the United States Department of the Interior, as trustee for the Penobscot Nation, commenced a natural resources damages proceeding against potentially responsible parties, in particular, Lincoln Pulp & Paper (LP&P). In July, 1999, the Bureau of Indian Affairs commissioned a report entitled "Final Report: The Economic Value of Foregone Cultural Use: A Case Study of the Penobscot Nation." The report states that "the Penobscot Nation has been deprived of its rightful use of the Penobscot River" and estimates that the value of the Tribe's foregone use of the Penobscot River between $34.9 and $62.7 million.

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[15] These facts are supported by the sworn affidavits of Penobscot citizens filed in a variety of recent federal court cases and administrative proceedings and can be made available to the Task Force upon request.

[16] *See* 30 M.R.S.A. § 6204. ratified by 25 U.S.C. §§ 1721 et. seq..

[17] *See, e.g., Maine v. Wheeler,* Civil Action No. 1:14-cv-264-JDL (pending before the U.S. District Court for the District of Maine) (Maine claiming authority to promulgate water quality standards in Indian territories; ongoing controversies about whether Maine is required to protect sustenance fishing rights to ensure a quality and quantity of fish for tribal sustenance); *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007) (whether Maine may take over pollution permitting within Indian territories under the Clean Water Act); *Great Northern Paper, Inc. v. Penobscot Nation*, 770 A.2d 574 (1st Cir. 2001) (whether paper corporation can invoke Maine Freedom of Access Law to obtain governmental documents of the Penobscot Nation regarding efforts of the Nation to protect its reservation from environmental pollution).

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In 2001, however, LP&P filed for Chapter 11 bankruptcy to discharge its obligations, including any claims for natural resources damages. The United States, as trustee for the Penobscot Nation, filed a proof of claim in that proceeding, to recover "damages suffered by the Penobscot Indian Nation . . . for the loss of its sustenance fishing right and cultural use due to the contamination of the waters and sediments of the Penobscot River, which includes areas of the Nation's reservation."

The Wabanaki Tribal Nations' proposed changes to the MIA in the area of civil jurisdiction over natural resources are intended to enhance the Tribal Nations' ability to regulate the environments in which they have lived since time immemorial. Increased tribal jurisdiction in these areas will have untold positive impacts in the waters, woods, and lands that the Wabanaki People and all Mainers cherish and rely upon.

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Task Force to Amend the Maine Act to Implement the Indian Land Claims Settlement In Accord with the Joint Resolution SPO622 LR 2507, Item 1, 129th Maine Legislature

Issue Paper Prepared for Discussion by the Task Force
September 12, 2019

CIVIL JURISDICTION EXAMPLE: THE REGULATION OF NATURAL RESOURCES (HUNTING, TRAPPING, AND FISHING)

Federal Indian Law

In 1979, one year before Congress settled the historic Indian land claims in Maine, the Supreme Court, in a landmark tribal fishing rights case, wrote that subsistence practices in their traditional territories are "not much less necessary to the existence of the Indians than the atmosphere they breathe[]."[1]

Tribal Nations exercise inherent governmental authority over lands and natural resources -- including the exploitation of fish and wildlife through hunting, fishing and trapping -- within their Indian country.[2] Lands over which Indian tribes exercise this authority are (a) reservation lands retained as aboriginal title, i.e. lands that a tribe has used and occupied (exclusive of other tribes) from time immemorial and never ceded by valid treaty; (b) reservations lands specifically set aside for a tribe by federal law or treaty; or (c) lands that the United States takes into trust (or imposes a restraint on alienation) for a specific Tribal Nation or tribal citizens. We refer to all three types of lands here as "Indian country" or "reservations and trust lands."

The inherent sovereign authority that Tribal Nations exercise over hunting, trapping, and fishing within their reservations and trusts lands is generally exclusive of any state authority.[3] However, the Supreme Court has held that a state may exercise limited authority over tribal fishing if it can "demonstrate that its regulation is a reasonable and

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[1] *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n,* 443 U.S. 658, 680 (1979).
[2] *See, e.g., New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335–36 (1983) ("tribes have the power to manage the use of its territory and resources by both members and nonmembers [and] to undertake and regulate economic activity within the reservation"); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982) (same).
[3] *New Mexico v. Mescalero Apache Tribe*, 462 U.S. at 342.

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necessary conservation measure . . . and that its application to the Indians is necessary in the interests of conservation."[4]

Absent relinquishment by valid treaty or federal statute, Tribal Nations retain governmental authority to regulate the exploitation of natural resources within their reservations and trust lands. [5] Likewise, absent such relinquishment, the tribal citizens of Tribal Nations have the right to take fish and wildlife, pursuant to the Tribal Nation's laws, for personal consumption or for sale. "The establishment of a reservation by treaty, statute, or agreement includes the implied right of Indians to hunt and fish on that reservation free of regulation by the state."[6]

Status Quo in Maine

Tribal sovereign authority over hunting, trapping, and fishing on reservation and trust lands was of utmost importance to the Maine tribes at the time of the land claims settlement, and one of the fundamental purposes for which Congress set aside lands for the Tribal Nations was to enable them to continue their sustenance practices. The Tribes' subsistence resources are their cultural resources. Thus, retaining sovereign authority over the exploitation of fish and wildlife with their reservations and trust lands was critical to their survival, both in economic terms and for cultural identity.

These are not romantic notions of the distant past. For example, Penobscot family names, ntútem (or "totems" in English), reflect the fish in the River: Neptune (eel); Sockalexis (sturgeon), Penewit (yellow perch), and for untold generations, and well into the 1990s, until education about water pollution suppressed their sustenance practices, Penobscot families relied upon fish, eel, and other food sources from the River for up to four meals per week to the tune of two to three pounds per meal.[7]

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[4] *Antoine*, 420 U.S. at 207; *see also Puyallup Tribe v. Dept. of Game*, 391 U.S. 392 (1968) (*Puyallup I*).

[5] COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §18.01, 1154 (Nell Jessup Newton ed., 2012) (citing *Worcester v. Georgia*, 31 U.S. 515, 552-553 (1832)). *See City of Albuquerque v. Browner,* 97 F.3d 415 (10th Cir. 1996) (recognizing sovereign authority of Pueblo to set water quality standards in Rio Grande to allow Pueblo to safely exercise ceremonial practices).

[6] William C. Canby, Jr., AMERICAN INDIAN LAW IN A NUTSHELL 518 (2d ed.2015) (citing *Menominee Tribe v. United States*, 391 U.S. 404 (1968)).

[7] These facts are supported by the sworn affidavits of Penobscot citizens filed in a variety of recent federal court cases and administrative proceedings and can be made available to the Task Force upon request.

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Notwithstanding the grant of a significant measure of state authority over the Maine tribes and their lands and natural resources pursuant to the State's Maine Implementing Act (MIA) and the federal Maine Indian Claims Settlement Act (Settlement Act) that ratified MIA (collectively the "Settlement Acts"), tribal inherent authority over hunting, fishing, and trapping within the reservations and trust lands was largely left undisturbed. [8] The Settlement Acts recognized reserved tribal hunting, fishing, gathering, and trapping rights and authorities in at least two major ways: 1) Congress confirmed that the Maine tribes would "retain as reservations those [] natural resources which were reserved to them in their treaties [] and not subsequently transferred by them"[9]; and 2) MIA, 30 M.R.S.A. § 6207(1) provided that the Penobscot Nation and the Passamaquoddy Tribe would exercise exclusive regulatory authority over sustenance fishing by tribal members within their respective reservations and exclusive regulatory authority over hunting, trapping, and other taking of wildlife within their respective reservations and trust lands.[10]

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[8] As Maine Attorney General Richard Cohen testified, the State did not restore its authority over "traditional matters of heritage to the Indians such as fish and game." Settlement of Indian Land Claims in the State of Maine; Hearing Before the Committee on Interior and Insular Affairs, House of Representatives, 96th Cong., 2nd sess., H.R. 7919.

[9] S. Rep. No. 96-957, at 18 (1980); H.R. Rep. 96-1353, at 18 (1980). The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac all entered into treaties that reserved lands and natural resources, including hunting and fishing rights. The State of Maine expressly agreed to uphold such treaty rights upon its entrance to the Union. *See* Maine Const., Art. X, sec. 5 ("the new State shall . . . assume and perform all the duties and the obligations . . . towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise").

[10] In his opening remarks at the Public Hearings on the MIA, Maine Attorney General Cohen stated "[a]s a general rule, States have little authority to enforce state laws on Indian Lands," but the settlement "recovers for the State much of the jurisdiction over the existing reservations that it has lost in . . . recent litigation," with specific "exceptions which recognize historical Indian concerns." Transcript of March 28, 1980 Public Hearing before the Joint Select Committee on Indian Land Claims, 6-7 (1980). . The Tribe's attorney, Thomas Tureen, testified that "as the negotiations progressed," the State expressed a willingness to compromise in recognition of "the Tribes' legitimate interest in . . . exercising tribal powers in certain areas of particular cultural importance such as hunting and fishing." Id. at 436. The State's representatives appreciated the critical importance of these sovereign powers for the tribes. Upon explaining the settlement to Maine's Joint Committee, Deputy Attorney General, John Paterson, provided Committee members with a report entitled "Indian Rights and Claims," emphasizing that:

> A primary interest of tribal governments in pressing jurisdictional claims over persons and property is the Indian's desire to preserve the cultural heritage of the tribe. In order to preserve this unique legacy, the political integrity and economic viability of the tribal community must be respected and developed. . . . *The tribe's ability to regulate the use*

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Despite the protection of ancient hunting, fishing, trapping and gathering rights in the Settlement Acts, tribal members still voiced the concern "[t]hat [,under the Settlement Act], subsistence hunting and fishing rights will be lost since they will be controlled by the State of Maine".[11] For example, at the Senate Hearings on the settlement, Penobscot tribal citizen, Lorraine Nelson explained the importance of these rights for her family's economic survival. Employing the Penobscot locution "fishes my islands," meaning to fish in the waters surrounding islands, she testified:

> My son hunts and fishes my islands to help provide for our family, and if we are to abide by State laws . . . my family will endure hardship because of the control of the taking of deer and fish. You know as well as I, inflation has taken its toll, and at the present time I am unemployed and have a family of five to support. Two of these children are going to college. I have brought them up by myself.[12]

To assuage these concerns, Congress, through its final committee reports on the Settlement Acts, responded that the hunting, trapping, and fishing rights and authorities under § 6207 were "expressly retained" and "sovereign" authorities that Maine could not control or "terminate."[13] The legislative reports state further that the "State has only a residual right to prevent the []tribes from exercising their hunting and fishing rights in a manner which has a substantially adverse effect on stocks in or on adjacent lands or waters . . . not unlike that which other states have been found to have in connection with federal Indian treaty hunting and fishing rights."[14]

Unlike the setting of federal Indian law, however, the MIA provides that the prosecution of violations of the Tribes' hunting and fishing regulations by nonmembers proceeds to state court, not tribal court, and that the Maine Tribal State Commission has exclusive authority to promulgate regulations governing fishing by nonmembers on reservation and

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> *and extent of development of [land and water] resources is central to the cultural preservation and economic vitality of the tribe.*

Council of State Governments, *Indian Rights and Claims*, at 3, attached to Memorandum Re: Background Documents from the John M. R. Patterson, Deputy Attorney General to Joint Select Committee on Indian Land Claims (March 27, 1980) in 2 MAINE JOINT SELECT COMMITTEE ON INDIAN LAND CLAIMS, BACKGROUND INFORMATION ON INDIAN LAND CLAIMS (1980) (on file with the University of Maine School of Law library).

[11] S. Rep. No. 96-957, at 14-16; H.R. Rep. 96-1353, at 14-16.

[12] *Proposed Settlement of Maine Indian Land Claims: Hearings on S. 2829 Before the S. Select Comm. on Indian Affairs,* 96th Cong. 38 (1980) (testimony of Lorraine Nelson).

[13] S. Rep. No. 96-957, at 14-15; H.R. Rep. 96-1353, at 14-15.

[14] S. Rep. No. 96-947, at 17; H.R. Rep. 96-1353, at 17.

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trust lands. Under principles of federal Indian law, these adjudicatory and regulatory authorities would rest exclusively with the Tribal Nation.

In closing, the Wabanaki Tribal Nations' proposed changes to the MIA would bolster the ability of tribal members to exercise tribal hunting, fishing, and trapping rights and would improve the ability of the Tribal Nations to effectively regulate such activities on their reservations and trust lands. These changes would enhance tribal member access to traditional cultural activities, which will have positive ripple effects throughout the Wabanaki communities.

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DEFAULT RULES OF CRIMINAL JURISDICTION & LAW ENFORCEMENT IN INDIAN COUNTRY

Indian country (IC) includes all lands within the boundaries of an Indian reservation (regardless of fee status or non-Indian ownership) and tribal and tribal-citizen lands held in trust by the United States or restricted fee status. 18 U.S.C. § 1151.

Outside Indian country: Indians are subject to state criminal jurisdiction, absent a treat of statute providing otherwise. Tribes may have concurrent jurisdiction to prosecute their own citizens for crimes occurring outside of Indian country, where the crime substantially implicates matters of internal tribal self-governance.

Inside Indian country: Absent federal law providing otherwise...

GOVERNMENT EXERCISING CRIMINAL JURISDICTION & DEFENDANT'S STATUS	DEFAULT RULE UNDER FEDERAL LAW	STATUS QUO IN MAINE UNDER MICSA/MIA	COMMENTS
State			
Non-Indians	State government has criminal jurisdiction over non-Indians for victimless crimes and crimes against non-Indians in IC. State government lacks jurisdiction over crimes committed by non-Indians against Indians	State government has *full* criminal jurisdiction over non-Indians in IC	
Indians	State government *lacks* criminal jurisdiction over Indians in IC	State government has criminal jurisdiction over *certain offenses* committed by Indians in IC, consistent with 30 M.R.S. §§ 6209-A, B, C, 6210	In the 1940s and 1950s, Congress granted specific states criminal jurisdiction over Indians in IC – several of those states have "retroceded" jurisdiction back to the U.S. and tribes
United States			
Non-Indians	United States has criminal jurisdiction over *all federal crimes*, and over *all other crimes committed by non-Indians against Indians* in IC	United States' criminal jurisdiction is limited to *federal crimes only*	

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Indians	United States has criminal jurisdiction over *all federal crimes* and over *major crimes*[1] *committed by Indians* in IC, regardless of Indian status of the victim United States has criminal jurisdiction over all other crimes committed by Indians in IC, except offenses committed against other Indians, offenses that have been punished under the law of the Tribe, and offenses which are exempted from federal prosecution pursuant to treaty	United States' criminal jurisdiction is limited to *federal crimes only*	
Tribal			
Non-Indians	Tribal government *lacks* criminal jurisdiction over non-Indians in IC, with the exception of certain domestic violence offenses committed against Indians, 25 U.S.C. § 1304 (VAWA)	Tribes in Maine are currently seeking authority under the Violence Against Women Act (VAWA) to prosecute non-Indians for certain DV offenses committed against Indians	States and tribes enter cross-deputization or other cooperative law enforcement agreements so tribal police may arrest non-Indians for violations of state law in IC, and state police may arrest Indians for violations of tribal law in IC
Indians	Tribal government has criminal jurisdiction over Indians inside of IC, including authority to imprison offenders up to three years, 25 U.S.C. § 1302	Tribal government generally has exclusive criminal jurisdiction over offenses committed in IC that carry a maximum penalty of less than one-year imprisonment or a fine of no more than $5,000, 30 M.R.S. §§ 6209-A, B, C, 6210	

[1] Under the Major Crimes Act (Act of March 3, 1885, ch. 341, 23 Stat. 362), as amended, these crimes include murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, felony assault, assault of a minor, felony child abuse or neglect, arson, burglary, robbery, and larceny. 18 U.S.C. § 1153.

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APPENDIX M

Charts comparing default federal Indian law and laws applicable in Maine, with Task Force recommendations

ENTITY WITH JURISDICTION	INDIVIDUALS/GROUPS OVER WHOM JURISDICTION IS EXERCISED	FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	*Tribes and tribal citizens*	Legislative jurisdiction Tribes have exclusive legislative jurisdiction over matters concerning conduct by tribal citizens on tribal land.[1]	Legislative jurisdiction The **Passamaquoddy Tribe and Penobscot Nation** have the power to enact ordinances and collect taxes "subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State."[6] The **Houlton Band of Maliseet Indians** may not "exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers."[7]	***Recommendation #18*** (Vote 9-0) Amend the Maine Implementing Act to restore to the Tribal nations the exclusive authority to exercise civil legislative jurisdiction over Indians and non-Indians on tribal land. To the extent that a Tribal nation does not exercise, or terminates its exercise of exclusive civil legislative jurisdiction, the State has exclusive jurisdiction over those matters.

[1] *Cohen's Handbook of Federal Indian Law,* §7.02[1][a] at pg. 599 (Neil Jessup Newton ed., 2012) ('There is no general federal statute limiting tribal jurisdiction over tribal members, and federal law acknowledges this jurisdiction"); *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 332 (1983). ("A tribe's power to prescribe the conduct of tribal members has never been doubted").

[6] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6206(1).

[7] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6206-A.

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		Adjudicatory jurisdiction Tribes have adjudicatory jurisdiction over matters concerning conduct by tribal citizens on tribal land.[2] Tribal courts have jurisdiction over disputes involving internal tribal affairs.[3] Congress has given tribes jurisdiction over certain matters (for example, tribes have exclusive jurisdiction over Indian children in custody proceedings when the child resides on a reservation.)[4] Tribes may not have the same authority over citizens of tribal nations other than their own.[5]	Adjudicatory jurisdiction The **Passamaquoddy Tribal Court** has exclusive jurisdiction over: • "Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy Tribe by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation."[8] • "Indian child custody proceedings to the extent authorized by applicable federal law,"[9] and • "Other domestic relations matters, including marriage, divorce and support, between members of the	***Recommendation #19*** (Vote 9-0) Amend the Maine Implementing Act to restore to the Tribal nations the exclusive authority to exercise civil adjudicatory jurisdiction over Indians and non-Indians on Tribal land. To the extent that a Tribal nation does not exercise, or terminates its exercise of exclusive civil adjudicatory jurisdiction, the State has exclusive jurisdiction over those matters

[2] *Cohen's Handbook of Federal Indian Law,* §7.02[1][a] at pg. 599 (Neil Jessup Newton ed., 2012) ('There is no general federal statute limiting tribal jurisdiction over tribal members, and federal law acknowledges this jurisdiction"); *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324, 332 (1983). ("A tribe's power to prescribe the conduct of tribal members has never been doubted").

[3] Canby, William. *American Indian Law in a Nutshell, 6th ed.* at pg. 226 (St. Paul, MN: Thomson/West, 2015), referencing *Smith v. Babbitt,* 100 F.3d 556 (8th Cir. 1996).

[4] *Cohen's Handbook of Federal Indian Law,* §11.03 at pg. 840 (Neil Jessup Newton ed., 2012).

[5] Canby, William. *American Indian Law in a Nutshell, 6th ed.* at pg. 210 (St. Paul, MN: Thomson/West, 2015) ("...it is no longer safe to assume that a tribe's civil authority over nonmember Indians is the same as its authority over its members.")

[8] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-A(1)(C).

[9] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-A(1)(D).

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			Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe."[10] In the event the Tribe chooses not to exercise its jurisdiction, the state has jurisdiction.[11] The **Penobscot Nation Tribal Court** has exclusive jurisdiction over • "Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation,"[12] • Indian child custody proceedings to the extent authorized by applicable federal law,"[13] and • "Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of	

[10] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-A(1)(E).
[11] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-A(1).
[12] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-B(1)(C).
[13] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-B(1)(D).

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			whom reside on the Indian reservation of the Penobscot Nation."[14] In the event the Tribe chooses not to exercise its jurisdiction, the state has jurisdiction.[15] The **Houlton Band of Maliseet Indians Tribal Court** has exclusive jurisdiction over: • "Civil actions between members of the Houlton Band of Maliseet Indians arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Houlton Band of Maliseet Indians,"[16] • Indian child custody proceedings to the extent authorized by applicable federal law,"[17] and • "Other domestic relations matters, including marriage, divorce and support, between members of the Houlton Band of Maliseet Indians, both of whom reside within the Houlton Band Jurisdiction Land"[18].	

[14] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-B(1)(E).
[15] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-A(1).
[16] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1)(C).
[17] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1)(D).
[18] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1-A)(C).

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			• "Civil actions between a member of those federally recognized tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-A)] and members of the Penobscot Nation arising on the Houlton Band Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation,"[19] • "Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-A)] or the Penobscot Nation, both of whom reside within the Houlton Band Jurisdiction Land"[20]. • "Civil actions between a member of those federally recognized tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-B)] and members of the Passamaquoddy Tribe arising on the Houlton Band Jurisdiction Land and cognizable	

[19] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1-A)(E).

[20] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1-A)(E).

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			as small claims under the laws of the State and civil actions against a member of the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Houlton Band Jurisdiction Land by a member of the Passamaquoddy Tribe,"[21] • "Other domestic relations matters, including marriage, divorce and support, between members of either those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians under [Section 6209-C(1-B)] or the Passamaquoddy Tribe, both of whom reside within the Houlton Band Jurisdiction Land"[22]. The state has jurisdiction until the Tribe chooses to exercise its jurisdiction.[23] *The Micmac Settlement Act[24] does not address civil jurisdiction.	
	Non-tribal citizens	<u>Legislative jurisdiction</u> The law regarding matters involving non-citizens is complex.[25] According to the U.S. Supreme Court in *Montana v. United States,*	<u>Legislative jurisdiction</u> Within their respective territories, the Passamaquoddy Tribe and the Penobscot Nation have the same power to enact ordinances as do municipalities.[33]	See Recommendations #18 and #19.

[21] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1-B)(C).
[22] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1-B)(E).
[23] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6209-C(1).
[24] *Micmac Settlement Act,* 30 MRSA §7201 et. seq.
[25] *Cohen's Handbook of Federal Indian Law,* §7.02[1][a] at pg. 600 (Neil Jessup Newton ed., 2012).
[33] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6206(1).

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		tribes have legislative authority over non-tribal citizens in two circumstances: (1) where nonmembers enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements, or (2) where conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[26] Courts in subsequent decisions have relied on the two-part *Montana* test in examining the bounds of legislative jurisdiction of tribes. The ownership status of the lands (that is, whether the land is tribally owned, held in fee by a tribal citizen, or held in fee by a non-citizen) is only one factor in determining the legitimacy of a regulation.[27] The Ninth Circuit has held that the *Montana* test is limited to cases involving non-Indian held tribal land.[28]	The Passamaquoddy Tribe and the Penobscot Nation have authority to enact ordinances in some areas involving hunting and fishing (see chart), that apply to non-citizens.[34]	

[26] *Montana v. United States,* 450 U.S. 544, 565-566 (1981).
[27] Smith, Jane. *Tribal Jurisdiction over Nonmembers: A Legal Overview*. Congressional Research Service, 7-5700, pgs. 5-6 (November 26, 2013), citing *Nevada v. Hicks*, 533 U.S. 353, 360 (2001). ("The ownership status of land, in other words, is only one factor to consider in determining whether the regulation of the activities of nonmember is "necessary to protect tribal self-government or to control internal relations." It may sometimes be a dispositive factor." "). The ability of tribes to regulate activities of nonmembers on tribal citizen owned fee land is not entirely clear.
[28] *Water Wheel Camp Recreational Area, Inc. v. LaRance,* 642 F. 3d 802 (9th Cir. 2011).
[34] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(1).

		Adjudicatory jurisdiction Tribal courts must have both subject matter and personal jurisdiction to have adjudicatory jurisdiction.[29] A tribal court must have legislative or regulatory jurisdiction over non-citizens in matters in question in order to have subject matter jurisdiction in a case involving those non-citizens.[30] Tribal courts will have personal jurisdiction over a non-tribal member if the conduct occurs on tribal land and on tribal citizen owned fee land or if the conduct involves at least "minimum contacts" with the tribe.[31]	Adjudicatory jurisdiction The state, rather than the tribes, holds exclusive jurisdiction over violations of tribal ordinances by noncitizens.[35]	
		Sovereign immunity Tribes enjoy sovereign immunity unless sovereign immunity is waived by the tribe or federal law abrogates immunity. Unless immunity	Sovereign immunity The **Passamaquoddy Tribe, Penobscot Nation** and their members "may sue and be sued in the courts of the State to the same extent as any other entity or person in the state	

[29] *Cohen's Handbook of Federal Indian Law,* §7.01 at pg. 597 (Neil Jessup Newton ed., 2012).
[30] *Cohen's Handbook of Federal Indian Law,* §7.01 at pg. 598 (Neil Jessup Newton ed., 2012), citing *Strate v. A-1 Contractors,* 520 U.S. 438, 453 (1997) ("[as] to nonmembers, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction.").
[31] *Cohen's Handbook of Federal Indian Law,* §7.02[2] at pg. 604 (Neil Jessup Newton ed., 2012), citing *Int'l Shoe Co v. Washington,* 326 U.S. 310, 316 (1945); See also *Williams v. Lee,* 358 U.S. 217 (1959).
[35] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6206(3).

		has been waived or abrogated, a State cannot sue a tribe, even for cases involving off-reservation conduct.[32]	provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State."[36]	
State	*Tribes and tribal citizens.*	Legislative jurisdiction The states generally lack authority to regulate the conduct of tribal citizens on tribal land.[37] - Adjudicatory jurisdiction The states generally lack authority over tribal citizens on	Legislative jurisdiction Generally, the State may regulate tribal citizens, including on tribal land.[40] - Adjudicatory jurisdiction Generally, State laws apply to tribal citizens, including on tribal land.[41]	See Recommendations #18 and #19.

[32] *Oklahoma Tax Com'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509 ("Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation"); *see also Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998); *Cohen's Handbook of Federal Indian Law*, §7.03[1][a][i] at pg. 607 (Neil Jessup Newton ed., 2012).

[36] *An Act to Implement the Maine Indian Claims Settlement*, 30 MRSA §6206(2); the degree to which this clause abrogates sovereign immunity is unclear. Similar language regrading the Houlton Band of Maliseet Indians is not present in the Act. The Micmac Settlement Act also lacks language regarding sovereign immunity. See *Aroostook Band of Micmacs v. Ryan*, 404 F.3d 48, 63 (1st Cir. 2005), in which the First Circuit stated that "inherent tribal sovereignty is a federal common law right that preempts contrary state law". See also *Narragansett Indian Tribe v. Rhode Island*,449 F.3d 16, 24 (1st Cir. 2006) overruling *Aroostook Band of Micmacs v. Ryan*, in which the First Circuit stated that "In our view, both the *Aroostook* panel's sculpting of the distinction and its ensuing discussion of the scope of tribal sovereign immunity misread the applicable Supreme Court precedents and, thus, are incorrect."

[37] *Cohen's Handbook of Federal Indian Law*, §6.03[1][a] at pg. 511 (Neil Jessup Newton ed., 2012).

[40] *An Act to Implement the Maine Indian Claims Settlement*, 30 MRSA §6204; See *Great Northern Paper, Inc. v. Penobscot Nation*, 770 A2d 574, 587 (Me. 2001). ("The settlement acts, taken together, memorialized the Tribes' agreement to that result and gave Congress's imprimatur to a future in which the Tribes gained clarity of their official status in the eyes of the federal government, while at the same time, the state obtained clarity of its jurisdiction over the Tribes, thus significantly limiting the Tribes' sovereignty in their interactions with the State of Maine"). See also *Aroostook Band of Micmacs v. Ryan*, 484 F. 3d 41 (1st Cir. 2007), in which the court found that the related Aroostook Band of Micmacs Settlement Act did not alter the terms of the MICSA and that as such the Micmacs were not immune to suit based on Maine's employment discrimination laws.

[41] *An Act to Implement the Maine Indian Claims Settlement*, 30 MRSA §6204; See *Great Northern Paper, Inc. v. Penobscot Nation*, 770 A2d 574, 587 (Me. 2001). ("The settlement acts, taken together, memorialized the Tribes' agreement to that result and gave Congress's imprimatur to a future in which the Tribes gained clarity of their official status in the eyes of the federal government, while at the same time, the state obtained clarity of its jurisdiction over the Tribes, thus significantly limiting the Tribes' sovereignty in

		reservations and on tribal-citizen owned fee land.[38] State courts do not have jurisdiction over claims related to internal tribal self-government.[39]	Tribal courts have exclusive jurisdiction over certain civil actions, child custody proceedings, and other domestic relations matters.[42]	
	Non-tribal citizens	Legislative jurisdiction Whether the states have regulatory authority over non tribal citizens on tribal land and on tribal-citizen-owned fee land depends on a balancing test, weighing tribal, state and federal interests.[43] (*Bracker* test). - Adjudicatory jurisdiction State assertion of jurisdiction over non-tribal citizens for actions taking place on tribal	Legislative jurisdiction While the tribes have authority to enact ordinances in some areas, involving hunting and fishing (see chart), that apply to non-citizens,[45] the State has authority to regulate other activities by non-members on tribal land. - Adjudicatory jurisdiction The State holds exclusive jurisdiction over violations of tribal ordinances by noncitizens.[46]	See Recommendations #17 and #18.

their interactions with the State of Maine"). See also *Aroostook Band of Micmacs v. Ryan,* 484 F. 3d 41 (1st Cir. 2007), in which the court found that the related Aroostook Band of Micmacs Settlement Act did not alter the terms of the MICSA and that as such the Micmacs were not immune to suit based on Maine's employment discrimination laws.

[38] *Cohen's Handbook of Federal Indian Law,* §7.03[1][a][i] at pg. 608 (Neil Jessup Newton ed., 2012); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144. ("When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal.")

[39] Canby, William. *American Indian Law in a Nutshell, 6th ed.* at pg. 215. (St. Paul, MN: Thomson/West, 2015), citing *Healy Lake Village v. Mt. McKinley Bank*, 322 P.3d 366 (Alaska 2014) and *Cayuga Nation v. Jacobs*, 986 N.Y.S.2d 791 (Sup. Ct. 2014).

[42] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §§ 6209-A, 6209-B, and 6209-C.

[43] *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144-145 ("More difficult questions arise where, as here, a State asserts authority over the conduct of non-Indians engaging in activity on the reservation. In such cases we have examined the language of the relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence. This inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into the nature of the state, federal and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.").

[45] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(1).

[46] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6206(3).

		land may be preempted by federal law or may infringe on the rights of Indians to make their own laws.[44]		
Federal Government	*Tribes and tribal citizens*	Legislative jurisdiction The Indian Commerce Clause gives Congress broad regulatory authority over tribal affairs.[47] Federal laws of general applicability are presumed to apply to Indian tribes; however, that presumption may be overcome using the balancing test described in *Donovan v. Coeur d'Alene Tribal Farm.*[48]	Legislative jurisdiction Laws and regulations of the United States "which 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 shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State."[56] "The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians,	

[44] *Cohen's Handbook of Federal Indian Law,* §7.03[2] at pg. 610 (Neil Jessup Newton ed., 2012), citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-143.
[47] U.S. Const. art. 1, § 8, cl. 3.
[48] Canby, William. *American Indian Law in a Nutshell, 6th ed.* at pg. 319. (St. Paul, MN: Thomson/West, 2015), citing *Donovan v. Coeur d'Alene Tribal Farm,* 751 F.2d 1113, 1116 (9th Cir.1985). ("A federal statute of generally applicability that is silent on the issue of applicability to Indian tribes will not apply to them if: (1) the law touches "exclusive rights of self-governance in purely intramural matters"; (2) the application of the law to the tribe would "abrogate rights guaranteed by Indian treaties"; or (3) there is proof "by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservation…" ").
[56] 25 U.S.C. § 1725(h).

			Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the state of Maine."[57]	
		Adjudicatory jurisdiction The role of federal courts in civil cases is limited to matters involving federal questions and to questions involving diversity of citizenship:[49] • If the matter at hand involves a federal question, that is, a question derived from the Constitution, laws, or treaties of the United States, the federal district courts have jurisdiction.[50]	Adjudicatory jurisdiction Nothing in the Maine Implementing Act limits federal court jurisdiction.	

[49] Canby, William. *American Indian Law in a Nutshell, 6th ed.* at pg. 247. (St. Paul, MN: Thomson/West, 2015).
[50] 28 U.S.C. § 1331.
[57] 15 U.S.C § 1735(b)

		• It should be noted that diversity of citizenship is not established in cases when one party to a case is an Indian residing on tribal land and the other party is a non-Indian living in the same state because Indians are also citizens of the states in which they live.[51] Civil actions may be brought by tribes regarding matters arising under the Constitution, laws, or treaties of the United States, though the extent of this authority remains in question.[52] Federal courts also have jurisdiction over matters involving review of actions by federal agencies.[53] Tribal citizens have brought civil rights actions under 28 U.S.C. § 1983 in federal court; a number of other federal laws, including the Federal Tort Claims Act[54], also allow individual tribal citizens to bring claims in federal court.[55]		

[51] Canby, William. *American Indian Law in a Nutshell, 6th ed.* at pg. 255. (St. Paul, MN: Thomson/West, 2015).`
[52] 28 U.S.C. § 1362; *Cohen's Handbook of Federal Indian Law*, §7.04[1][a] at pg. 614 (Neil Jessup Newton ed., 2012), citing *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976).
[53] 5 U.S.C §§ 702, 704.
[54] 28 U.S.C. § 1346(b)
[55] *Cohen's Handbook of Federal Indian Law*, §7.04[1][a] at pg. 624 (Neil Jessup Newton ed., 2012).

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Location of the Criminal Conduct

Federal law, including court precedent, recognizes the jurisdiction of tribal courts over certain criminal offenses *when those offenses occur in "Indian country"*, a phrase defined in federal statute, 18 US.C. §1151. The settlement and implementing acts governing the federally recognized Tribes in Maine recognize the jurisdiction of tribal courts over certain criminal offenses that occur on the Passamaquoddy or Penobscot Indian reservations or on Houlton Band Jurisdiction Land.

Default Federal Indian Law[1]	Law Currently Applied in Maine	Task Force Consensus
Land over which tribal courts have specific, limited criminal jurisdiction: ". . .the term "Indian country" . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent[2] and, including rights-of-way running through the reservation, (b) all dependent Indian communities[3] within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and	Land over which tribal courts have specific, limited criminal jurisdiction: • The Passamaquoddy Tribal Court has jurisdiction over certain criminal and juvenile offenses (see chart below) "committed on the reservation of the Passamaquoddy Tribe"[5] or, potentially, the "extended reservation" of the Tribe.[6] • The Penobscot Nation Tribal Court has jurisdiction over certain criminal and juvenile offenses (see chart below) "committed on the Indian reservation of the Penobscot Nation"[7] or, potentially, the Tribe's "extended reservation."[8] • The Houlton Band of Maliseet Indians Tribal Court has jurisdiction over certain criminal and	***Recommendation #2:*** (Vote 9-1) Amend the Maine Implementing Act to recognize the jurisdiction of the Passamaquoddy Tribal Court, Penobscot Nation Tribal Court and the Houlton Band of Maliseet Indians Tribal Court over certain criminal and juvenile offenses committed on the following Tribal lands: any land held now or in the future by the Secretary of Interior in trust for the relevant Tribe and any restricted-fee land held now or in the future by the relevant Tribe. ***Item for future discussion***: Whether to recommend establishment of a Micmac Tribal Court.

[1] The "Default Federal Indian Law" set forth in this document is the federal law governing criminal jurisdiction that applies in states or portions of states that are not subject to a contradictory treaty provision, subject to a contradictory federal statute (for example, a land claims settlement act) or subject to Public Law 280.

[2] In general, "even land owned by non-Indians in fee simple (i.e., where there has been 'issuance of any patent') is still 'Indian country' if it is within the exterior boundaries of an Indian reservation in the United States." CANBY, WILLIAM C., JR., AMERICAN INDIAN LAW IN A NUTSHELL 141 (6th ed. 2015).

[3] To qualify as a "dependent Indian communit[y]", the land "first . . . must have been set aside by the Federal Government for the use of the Indians as Indian land; second . . . must be under federal superintendence." *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998); *see* CANBY, *supra* note 2, at 147.

[5] *Act to Implement the Maine Indian Claims Settlement* ("*Maine Implementing Act*"), 30 M.R.S.A. §6209-A(1)(A), (B); *see also* §6203(5) (defining "Passamaquoddy Indian Reservation").

[6] MITSC has the authority to recommend that the Legislature designate as an "extended reservation" the land on which "25 or more adult members of the Passamaquoddy Tribe resid[e] within their Indian territory and in reasonable proximity to each other." *Maine Implementing Act,* 30 M.R.S.A. §6209-A(5). If both the Legislature and relevant Tribe approve, Passamaquoddy Tribal Court's jurisdiction under the *Maine Implementing Act* may be amended to include the "extended reservation." *Id.*

[7] *Maine Implementing Act*, 30 M.R.S.A. §6209-B(1)(A), (B) §6203(8) (defining "Penobscot Indian Reservation"); *see also* §6203(8) (defining "Penobscot Indian Reservation").

[8] MITSC has the authority to recommend that the Legislature designate as an "extended reservation" the land on which "25 or more adult members of the Penobscot Nation resid[e] within their Indian territory and in reasonable proximity to each other." *Maine Implementing Act,* 30 M.R.S.A. §6209-B(5). If both the Legislature and relevant Tribe approve, Penobscot Nation Tribal Court's jurisdiction under the *Maine Implementing Act* may be amended to include the "extended reservation." *Id.*

§6209-B(5).

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(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."[4]	juvenile offenses (see chart below) "committed on the Houlton Band Jurisdiction Land."[9] The Micmac Settlement Act does not authorize / recognize the authority of the Aroostook Band of Micmacs to establish a tribal court.[10]	

Court Criminal Jurisdiction

Court	Defendant/Victim	Default Federal Indian Law[1]	Law Currently Applied in Maine (MICSA/MIA)	Task Force Consensus
Tribal Court[11]	*Indian defendant & Indian victim or victimless crimes*	Possibly[12] concurrent jurisdiction (with federal courts) over "**major crimes**" [13] committed against an Indian victim. Exclusive jurisdiction over **other crimes** committed against an Indian victim.[14] Jurisdiction (possibly exclusive, possibly concurrent w/federal courts) over **victimless crimes**.[15] *Defendant*: Indian defendant need not be a member of specific Tribe with jurisdiction.[16] *Penalties:* Maximum penalty that may be imposed for "any 1 offense":	Passamaquoddy Tribal Court: Exclusive jurisdiction over crimes if: • *Location*: on Passamaquoddy Indian Reservation; • *Penalties*: maximum potential penalty for offense is $5,000 fine & < 1-year imprisonment; and • *Defendant and victim:* each a member of the Passamaquoddy Tribe, Houlton Band of Maliseet Indians, or Penobscot Nation or defendant is such a member and it is a victimless crime.[21] *Juveniles*: if court has jurisdiction over an offense committed by an adult, its jurisdiction extends to juveniles. Court also has jurisdiction over juvenile victimless crimes involving drugs and alcohol.[22]	***Recommendation #3*** (two parts) (Vote 10-0): Amend the Maine Implementing Act to: Part 1: Equate the exclusive criminal jurisdiction of the Passamaquoddy Tribal Court and Houlton Band of Maliseet Indians Tribal Court with the exclusive criminal jurisdiction of the Penobscot Nation Tribal Court over offenses

[4] 18 U.S.C. §1151 (original statute is written as a single paragraph and has been reformatted above).

[9] "Houlton Band Jurisdiction Land" is a specific subset of the Houlton Band Trust Land; the band may request that additional trust land be included in the future. *See* 30 M.R.S.A. §6209-C(5).

[10] *The Micmac Settlement Act*, 30 M.R.S.A. §§7201 to 7207.

[11] The *Indian Civil Rights Act* requires tribal courts to protect a criminal defendant's rights "to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor" and to hire counsel. 25 U.S.C. §1302(a). The *Maine Implementing Act* incorporates these protections. 30 M.R.S.A. §6209-A(2) (Passamaquoddy Tribal Court); §6209-B(2) (Penobscot Nation Tribal Court), §6209-C(4) (Houlton Band of Maliseet Indians Tribal Court).

[12] CANBY, *supra* note 2, at 191 (noting the U.S. Supreme Court has not yet addressed whether Tribes retain concurrent jurisdiction over major crimes after enactment of the *Major Crimes Act*, 18 U.S.C. §1153, which gave federal courts jurisdiction over the enumerated major crimes when committed by one Indian against another Indian); COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §9.04 (Neil Jessup Newton ed., 2012) (hereinafter "COHEN") (same).

[13] *Major Crimes Act,* 18 U.S.C. §1153 (applicable to "murder, manslaughter, kidnapping, maiming, a felony under chapter 109A [sexual abuse], incest, a felony under section 113 [aggravated assault], an assault against [a victim <16 years old], felony child abuse or neglect, arson, burglary, robbery and a felony under section 661 [theft]").

[14] CANBY, *supra* note 2, at 190; COHEN, *supra* note 12, at §9.04.

[15] CANBY, *supra* note 2, at 190 ("[V]ictimless crimes by Indians are matters wholly internal to the tribes…."). *But see* footnote 43 regarding potential concurrent federal jurisdiction.

[16] CANBY, *supra* note 2, at 190 (citing 25 U.S.C. §1301(2)); COHEN, *supra* note 12, at §9.04 (same).

[21] *Maine Implementing Act*, 30 M.R.S.A. §6209-A(1)(A).

[22] *Maine Implementing Act*, 30 M.R.S.A. §6209-A(1)(B).

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		• $5,000 fine and 1-year imprisonment[17]; or • $15,000 fine and 3-years imprisonment <u>if</u> certain due process protections are observed[18] and defendant has previously been convicted of a comparable offense or if the crime would be punishable by >1-year imprisonment under federal law. Maximum penalty that may be imposed in "a criminal proceeding": 9-yrs. imprisonment.[19] *Juveniles:* if tribal court has jurisdiction over an offense committed by an adult, its jurisdiction extends to juveniles.[20]	<u>Penobscot Nation Tribal Court</u>: Exclusive jurisdiction over crimes if: • *Location*: on Penobscot Indian Reservation; • *Penalties*: maximum potential penalty for offense is $5,000 fine & < 1-year imprisonment; and • *Defendant and victim:* each a member of "any federally recognized Indian tribe, nation, band or other group" <u>or</u> defendant is such a member and it is a victimless crime.[23] *Juveniles*: if court has jurisdiction over an offense committed by an adult, its jurisdiction extends to juveniles. Court also has jurisdiction over juvenile victimless crimes involving drugs and alcohol.[24] <u>Houlton Band of Maliseet Indians Tribal Court</u>: May choose[25] to exercise exclusive jurisdiction over crimes: • *Location*: on Houlton Band Jurisdiction Land; and • *Penalties*: maximum potential penalty for offense is $5,000 fine & < 1-year imprisonment; and • *Defendant and victim:* one of the following is true: ➢ Each is a member of the Houlton Band of Maliseet Indians or the defendant is such a member and it is a victimless crime;[26] or ➢ Potentially jurisdiction when victim and defendant are each a member of Passamaquoddy Tribe, Penobscot Nation or Houlton Band of Maliseet Indians (unclear if victimless crimes are	committed by Indian defendants. <u>Part 2:</u> Recognize the authority of Tribal Courts in Maine to impose the maximum penalties other Tribal Courts are authorized to impose under the federal Tribal Law and Order Act of 2010, as long as the due process protections required by that Act are observed. ***Item for future discussion:*** Whether to adopt the broader, federal definition of "Indian" and/or permit jurisdiction over members of the Mimac and Maliseet Tribes in Canada.

[17] 25 U.S.C. §1302(a)(7)(B).

[18] 25 U.S.C. §1302(a)(7)(C); §1302(c) (required due process protections to impose >1-year sentence: effective assistance of counsel; if defendant is indigent, free counsel by licensed attorney; presiding judge with sufficient legal training and law license; record of the proceeding; and public availability of the Tribe's criminal laws and court rules prior to charging of defendant).

[19] 25 U.S.C. §1302(a)(7)(D).

[20] *Cf.* CANBY, *supra* note 2 at 195; COHEN, *supra* note 12, at §9.04 n.18. For more information regarding the myriad issues attendant to the exercise of jurisdiction over juvenile Indian defendants, *see* Addie C. Rolnick, *Untangling the Web: Juvenile Justice in Indian Country*, 19 N.Y.U. J. LEGIS. & PUB. POL'Y 49, 90 (2016).

[23] *Maine Implementing Act*, 30 M.R.S.A. §6209-B(1)(A).

[24] *Maine Implementing Act*, 30 M.R.S.A. §6209-B(1)(B).

[25] This chart lists the *potential* criminal jurisdiction of the Houlton Band of Maliseet Indians Tribal Court. The State retains jurisdiction over these offenses until the Tribe decides to exercise this jurisdiction; the Tribe also has authority to terminate or reassert this jurisdiction at any time. §6209-C(1), (1-A), (1-B) (final, unnumbered paragraphs).

[26] *Maine Implementing Act*, 30 M.R.S.A. §6209-C(1)(A) (Houlton Band of Maliseet Indians Tribal Court has jurisdiction over crimes "committed . . . by a member of the Houlton Band of Maliseet Indians, except when committed against a person [or the person's property] who is not a member of the Houlton Band of Maliseet Indians.").

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			included when the defendant is a Passamaquoddy or Penobscot member).[27] *Juveniles*: if court has jurisdiction over an offense committed by an adult, its jurisdiction extends to juveniles. Court also has jurisdiction over juvenile victimless crimes involving drugs and alcohol.[28]	
	Indian defendant & Non-Indian victim	Unclear if concurrent jurisdiction (with federal courts) over "**major crimes**" exists.[29] Clear concurrent jurisdiction[30] (with federal courts) over **other crimes,** subject to maximum penalties and due process protections outlined above.	No tribal jurisdiction.[31]	*See Recommendation #5 (below) providing for concurrent tribal court criminal jurisdiction.*
	Non-Indian defendant & Indian victim	Generally, tribal courts lack jurisdiction over non-Indian defendants.[32] VAWA Exception: Concurrent jurisdiction (with state or federal courts) over: • *Offense*: domestic or dating violence, and certain protection order violations;	No tribal jurisdiction.[31] **Note:** If enacted, LD 766 (as amended)[34] would expand tribal court criminal jurisdiction as follows: (1) The Passamaquoddy Tribal Court and Penobscot Nation Tribal Court would have the choice whether to exert concurrent jurisdiction (with State courts) over:	***Recommendation 4:*** (Vote 10-0) Enact and implement LD 766, *An Act Regarding the Penobscot Nation's and the Passmanquoddy Tribe's*

[27] Under §6209-C(1-A)(A) of the *Maine Implementing Act*, the Houlton Band of Maliseet Indians Tribal Court has jurisdiction over crimes,

> committed on the Houlton Band Jurisdiction Land by a member of the Penobscot Nation *against* a member or property of a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians *under this subsection*, and by a member of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction of the Houlton Band of Maliseet Indians *under this subsection* against a member or the property of a member of the Penobscot Nation. (Emphasis added.)

Because the relevant ***subsection***, §6209-C(1-A), only expressly subjects *members of the Penobscot Nation* to the jurisdiction of the Houlton Band of Maliseet Indians Tribal Court, a literal reading of the statutory language requires both defendant and victim to be members of the Penobscot Nation. Similar language is employed in §6209-C(1-B)(A) regarding the Houlton Band of Maliseet Indians Tribal Court's criminal jurisdiction over members of the Passamaquoddy Tribe. Yet, the structure of these provisions suggests that the Legislature may have intended to grant the court criminal jurisdiction over crimes committed by a member of any one of these three Tribes against another member of any one of these three Tribes. (This interpretation would match the literal language of the statutes if the word "section" replaced the word "subsection" in §6209-C(1-A) and (1-B).) There are no court cases addressing this issue, however.

In addition, unlike the other tribal court statutes in the *Maine Implementing Act*, §6209-C(1-A)(A) and (1-B)(A) require that the offense be committed "against" an identified class of Indians for tribal court jurisdiction to attach. A literal reading of this language excludes jurisdiction over victimless crimes when the defendant is a Penobscot or Passamaquoddy member. Similar language in the federal *General Crimes Act*, 25 U.S.C. §1152, has resulted in uncertainty whether tribal jurisdiction is nevertheless retained over "victimless crimes." *See* footnote 43.

[28] *Maine Implementing Act*, 30 M.R.S.A. §6209-C(1)(B); (1-A)(B); (1-B)(B).

[29] CANBY, *supra* note 2, at 190-91; COHEN, *supra* note 12, at §9.04 (noting that the U.S. Supreme Court "has not addressed the issue" and lower courts have "arrived at different conclusions").

[30] CANBY, *supra* note 2, at 190 (observing that the *General Crimes Act*, 25 U.S.C. §1152, expressly recognizes tribal concurrent jurisdiction by granting federal jurisdiction over non-major offenses committed by Indians against non-Indians in Indian country, but excluding federal jurisdiction if the Indian defendant has already "been punished by the local law of the tribe").

[31] *Maine Indian Claims Settlement Act of 1980* ("*Settlement Act*"), §6(a), 94 Stat. 1785, 1793 (formerly codified at 25 U.S.C. §1725(a)); *Maine Implementing Act*, 30 M.R.S.A. §6204.

[32] CANBY, *supra* note 2, at 195 (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)); COHEN, *supra* note 12, at §9.04 (same). Tribal courts likely have the power to control decorum and punish disruptive non-Indian litigants through the criminal contempt power, however. CANBY, *supra* note 2, at 195; COHEN, *supra* note 12, at §9.04.

[34] LD 766, as amended by Committee Amend. "A" (H-648) & House Amend. "A" (H-655). This bill passed both chambers of the Maine Legislature and is awaiting action by the Governor.

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		• *Defendant and victim*: ➢ non-Indian defendant resides or is employed in the Tribe's Indian country <u>or</u> is the spouse, intimate partner or dating partner of a tribal member or Indian residing in Tribe's Indian country; <u>and</u> ➢ victim: is an Indian. • *Penalties/due process*: maximum penalties and due process protections outlined above for crimes by Indian defendants apply; there must be a representative jury (*i.e.*, that includes non-Indians) and "other rights" under Constitutional must be observed.[33]	• *Offense*: adult (non-juvenile) Class D domestic violence offenses and protection order violations; • *Defendant*: not member of federally recognized Tribe; • *Victim*: member of a federally recognized Tribe, nation, band or other group; • *Penalties: maximum* potential penalties for the offense must not exceed $2,000 fine or 1-year imprisonment; • *Due process:* must have a representative jury (same language as VAWA) <u>and</u> a unanimous jury verdict. (2) Judiciary Committee may report out legislation to give Penobscot & Passamaquoddy Tribes jurisdiction over "crimes other than Class D and E crimes" consistent with 25 U.S.C. §1302 & §1304 (VAWA Reauth. of 2013).	*Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of* 2013, as it is ultimately amended by agreement of the Tribes and the State, to amend the Maine Implementing Act to grant Tribal courts jurisdiction over certain domestic violence criminal offenses committed by non-Indian defendants on Tribal lands against Indian victims.
	Non-Indian defendant & Non-Indian victim or victimless	No tribal jurisdiction.[32]	No tribal jurisdiction. [31]	
State Courts	*Indian defendant & Indian victim or victimless crimes*	No state jurisdiction.[35]	Except for offenses in exclusive jurisdiction of a tribal court as set forth above, State courts have jurisdiction over all non-federal adult crimes and juvenile crimes.[36] • *Exception to tribal court exclusive jurisdiction:* a State court may enter a conviction involving a crime that is within the exclusive jurisdiction of a tribal court if the crime is a lesser-included offense of a crime charged in State court.[37]	
	Indian defendant & Non-Indian victim	No state jurisdiction.[35]	Exclusive state jurisdiction.[36]	**Recommendation #5:** (Vote 10-0) Amend the Maine Implementing Act to

[33] *Violence Against Women Reauthorization Act of 2013*, 25 U.S.C. §1304; CANBY, *supra* note 2, at 196-97; COHEN, *supra* note 12, at §9.02[3][d] (Supp. 2017).

[35] CANBY, *supra* note 2, at 200-01 ("States traditionally have no criminal jurisdiction in Indian country over crimes by Indians against anyone . . . .").

[36] *Settlement Act*, § 6(a), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(a)); *Maine Implementing Act*, 30 M.R.S.A. §6204. State courts do not have jurisdiction, however, over general federal criminal statues—for example, theft from the U.S. mail. *See* footnote 40.

[37] *Maine Implementing Act*, 30 M.R.S.A. §6209-A(3); §6209-B(3); §6209-C(3).

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				recognize the concurrent jurisdiction of Tribal courts over offenses committed on Tribal lands by Indian defendants against non-Indian victims, subject to the maximum penalty provisions and due process requirements of the Tribal Law and Order Act of 2010.
	Non-Indian defendant & Indian victim	No state jurisdiction.[38]	Exclusive state jurisdiction. [36]	*See Recommendation #4 (above) supporting implementation of LD 766, as amended, which provides for concurrent tribal court jurisdiction over a subset of these criminal offenses.*
	Non-Indian defendant & Non-Indian victim or no victim	Exclusive state jurisdiction.[39]	Exclusive state jurisdiction. [36]	
Federal Courts	*All defendants (victim irrelevant)*	Exclusive jurisdiction over "general federal criminal statutes that are effective throughout the nation" and that apply "to all persons, whether or not Indian."[40]	Same as default federal Indian law (not abrogated in settlement or implementing acts).	
	Indian defendant & Indian victim or victimless crimes	Jurisdiction (possibly concurrent with Tribes), over "**major crimes**" committed against an Indian victim. [41]	No federal jurisdiction.[44]	

[38] CANBY, *supra* note 2, at 170 ("Crimes . . . by non-Indians against Indians are punishable exclusively by the federal government. *Williams v. United States*, 327 U.S. 711 (1946.)").

[39] CANBY, *supra* note 2, at 199-200, 203 (citing *United States v. McBratney*, 104 U.S. 621 and *Draper v. United States*, 164 U.S. 240 (1896)); COHEN, *supra* note 12, at §9.03[1].

[40] CANBY, *supra* note 2, at 170 (noting these "general federal criminal statutes"—e.g., theft from the U.S. mail or gun possession crimes that involve interstate commerce— "apply in Indian country to all persons, whether or not Indian.").

[41] *Major Crimes Act*, 18 U.S.C. §1153 (applicable to "murder, manslaughter, kidnapping, maiming, a felony under chapter 109A [sexual abuse], incest, a felony under section 113 [aggravated assault], an assault against [a victim <16 years old], felony child abuse or neglect, arson, burglary, robbery and a felony under section 661 [theft]. . ..."). *See supra* n.12 for discussion of possible concurrent jurisdiction of Tribal courts.

[44] *Settlement Act*, §6(c), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(c)) (abrogating federal jurisdiction over offenses in Indian country under *the General Crimes Act*, 18 U.S.C. §1152, and the *Major Crimes Act*, 18 U.S.C. §1153, in the State of Maine).

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		No jurisdiction over **other crimes** committed against Indian victims.[42] Unclear whether jurisdiction exists over **victimless crimes** committed by Indians.[43]		
	Indian defendant & Non-Indian victim	Jurisdiction (possibly concurrent with Tribes), over "**major crimes**" committed against non-Indian victims.[41] Jurisdiction over **other crimes** committed against non-Indian victims unless Indian defendant has been "punished by the local law of the tribe."[45] Unclear whether jurisdiction exists over **victimless crimes** committed by Indians.[43]	No federal jurisdiction.[44]	
	Non-Indian defendant & Indian victim	Exclusive jurisdiction over all crimes.[46] VAWA Exception: federal courts have concurrent (not exclusive) jurisdiction over crimes over which tribal courts have concurrent jurisdiction via VAWA (see footnote 33 and accompanying text).	No federal jurisdiction.[44]	
	Non-Indian defendant & Non-Indian victim or no victim	No federal jurisdiction when victim is a non-Indian.[47] Unclear whether federal courts have jurisdiction when it is a victimless crime.[48]	Same as default federal Indian law (not altered in settlement or implementing acts).	

[42] *General Crimes Act,* 18 U.S.C. §1152; CANBY, *supra* note 2, at 178, 203.

[43] Under the *General Crimes Act*, 25 U.S.C. §1152, a non-major crime "committed by one Indian *against* the person or property of another Indian" is excepted from federal court jurisdiction. A literal reading of §1152 thus requires an Indian victim for the exception to attach, rendering "victimless crimes" like traffic or public decency offenses subject to federal rather than tribal court jurisdiction. Although the U.S. Supreme Court rejected that strict reading in an adultery case, *United States v. Quiver*, 241 U.S. 602 (1916), and concluded Tribes retained jurisdiction over that victimless offense, several lower federal courts reached the opposite conclusion for other victimless offenses. CANBY, *supra* note 2, at 178-80, 203; COHEN, *supra* note 12, at §9.02[1][c][iii].

[45] *General Crimes Act,* 18 U.S.C. §1152; CANBY, *supra* note 2, at 181, 203; COHEN, *supra* note 12, at §9.02[1][D][ii].

[46] *General Crimes Act*, 18 U.S.C. §1152; CANBY, *supra* note 2, at 176, 203.

[47] CANBY, *supra* note 2, at 176, 203 (citing *United States v. McBratney*, 104 U.S. 621 (1881) and *Draper v. United States*, 164 U.S. 240 (1896)).

[48] CANBY, *supra* note 2, at 177, 203 (discussing lower court cases reaching different conclusions on this issue).

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	Juvenile offenses	Jurisdiction over offenses committed by a juvenile if (1) federal court would have jurisdiction over the offense if committed by an adult and (2) state court lacks jurisdiction or declines to exercise its jurisdiction.[49]	Same as default federal Indian law (not abrogated in settlement or implementing acts), but because federal courts lack criminal jurisdiction in Maine other than over generally applicable federal offenses, part (1) of the test will not be met for nearly all offenses.	

Other issues related to criminal jurisdiction

Issue	Default Federal Indian Law[1]	Law Currently Applied in Maine (MICSA/MIA)	Task Force Consensus
Legislative authority to define criminal offenses in Indian country	**Tribal government** has legislative authority to define all crimes over which tribal court has exclusive or concurrent jurisdiction in Indian country (for example, crimes by an Indian against an Indian victim & VAWA crimes).[50]	**Tribal governments** generally lack authority to define crimes in Indian country.[51] • Exception: Passamaquoddy Tribe and Penobscot Nation have "*exclusive* authority . . . to promulgate and enact ordinances regulating" the taking of wildlife within their respective Indian territories as well as the taking of fish in any pond of less than 10 acres of surface area within their respective Indian territories.[52] *See Fish & Game chart.*	**Recommendation #6**: (Vote 9-1) Amend the Maine Implementing Act to recognize each Tribal government's authority to define all crimes and juvenile offenses committed on its Tribal lands over which its Tribal court has exclusive or concurrent criminal jurisdiction, but retain the authority of the State to define all crimes and juvenile offenses committed on Tribal lands over which state courts have
	State legislatures only have legislative authority to define the crimes within their court jurisdiction (crimes by a non-Indian against either a non-Indian victim or no victim).	**Maine Legislature:** except where a Tribe or MITSC has exclusive authority to promulgate hunting and fishing ordinances (see row above and footnote 52)"[t]he definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes . . . are governed by the laws of the State."[53]	

[49] 18 U.S.C. §5032; COHEN, *supra* note 12, at §9.02[1][e] n.71 ("Under the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. §§5031-5042, both the [*General Crimes Act* and the *Major Crimes Act*] can apply to the conduct of juveniles in Indian country.").

[50] *Cf.* CANBY, *supra* note 2, at 181, 190.

[51] *Settlement Act*, §6(a), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(a)); *Maine Implementing Act*, 30 M.R.S.A. §6204.

[52] The *Maine Implementing Act* does not specify whether the hunting, trapping and fishing ordinances enacted by the Penobscot Nation and the Passamaquoddy Tribe may impose criminal penalties. 30 M.R.S.A. §6207(1). Several of the hunting and fishing ordinances enacted by the Passamaquoddy Tribe and Penobscot Nation do include criminal penalties, however. *See, e.g.*, http://www.wabanaki.com/wabanaki_new/documents/American%20Eel%20Management%20Plan%20Part%205.pdf (last visited Oct. 1, 2019). In addition, MITSC has "*exclusive* authority to promulgate fishing rules or regulations" on certain ponds and sections of river within the Penobscot or Passamaquoddy Indian territories. §6207(3). It is not clear whether the rules promulgated by MITSC are criminal or civil in nature because they do not include penalty provisions. *See* https://www.mitsc.org/s/Rules-Fishing-on-Waters.pdf (last visited Oct. 1, 2019).

[53] *Maine Implementing Act*, 30 M.R.S.A. §6209-A(2); §6209-B(2); §6209-C(2). *See also* 30 M.R.S.A. §6204; *Settlement Act*, §6(a), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(a)).

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	Congress has legislative authority over Indian country.[54]	**Congress** has legislative authority over Indian country but has waived applicability of several federal criminal laws to Maine.[55]	exclusive or concurrent jurisdiction.
Double Jeopardy	Under the dual sovereignty doctrine, successive prosecutions by a Tribe, the state and the federal government for the same conduct do not violate the Fifth Amendment to the U.S. Constitution.[56] • Exception: by statute, an Indian defendant may not be prosecuted in federal court for a non-major crime committed against a non-Indian victim if the defendant has been punished under tribal law.[57]	Under the dual sovereignty doctrine, successive prosecutions by a Tribe, the state and the federal government for the same conduct do not violate the Fifth Amendment to the U.S. Constitution.[56] In addition, successive prosecutions by the State and the Tribes for the same conduct are specifically authorized by statute and do not violate double jeopardy prohibitions under the Maine constitution.[58]	

[54] *See* CANBY, *supra* note 2 at 176 (explaining that, when federal jurisdiction is based on the *General Crimes Act*, 18 U.S.C. §1152, the criminal laws of the state in which the offense was committed are borrowed to define the offenses and permissible sentences for any crime not defined under federal law); *id.* at 185 (explaining that, the *Major Crimes Act*, 18 U.S.C. §1135(b), borrows the criminal laws of the state in which the offense was committed to define the elements of the crime and potential punishments for any of the major crimes not defined by federal law).

[55] *Settlement Act*, §6(c), 94 Stat. at 1793 (formerly codified at 25 U.S.C. §1725(c)) (waiving criminal jurisdiction under several federal statutes, including the *General Crimes Act*, 18 U.S.C. §1152, and the *Major Crimes Act*, 18 U.S.C. §1153). In addition, under §16(b) of the *Settlement Act* the "provisions of any Federal law enacted after" October 10, 1980 "for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt application of the laws of the State of Maine . . . shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine." 94 Stat. at 1797 (formerly codified at 25 U.S.C. §1735(b)).

[56] COHEN, *supra* note 12, at §9.05 (citing, for example, *United States v. Wheeler*, 435 U.S. 313 (1978)).

[57] *General Crimes Act,* 18 U.S.C. §1152; CANBY, *supra* note 2, at 181; COHEN, *supra* note 12, at §9.02[1][d][ii].

[58] *Maine Implementing Act*, 30 M.R.S.A. §6209-A(4); §6209-B(4); §6209-C(4); *Sate v. Mitchell*, 1998 ME 128, 712 A.2d 1033.

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ENTITY WITH JURISDICTION	INDIVIDUALS/GROUPS OVER WHOM JURISDICTION IS EXERCISED	FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	*Tribes and tribal citizens*	Aboriginal title (original Indian title over land) includes the exclusive right to hunt, fish and gather on that land.[1] Aboriginal title can only be extinguished by treaty, abandoned or eliminated by federal statute.[2] Additionally, termination of a reservation will not extinguish hunting, fishing and gathering rights unless the act of termination makes such extinguishment explicit.[3] Treaties may give tribes hunting, fishing and gathering rights on off-reservation lands.[4] Tribes have the power to regulate their lands as regards hunting, fishing and gathering.[5] Courts have found that tribes may regulate fishing by tribal members off tribal lands at "usual and accustomed" fishing places.[6]	The **Passamaquoddy Tribe and Penobscot Nation** have exclusive authority within their territories to promulgate ordinances regulating hunting and trapping on tribal land as well as fishing "on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area."[7] Notwithstanding any rule or regulation promulgated by MITSC or the State, the members of the **Passamaquoddy Tribe and the Penobscot Nation** may take fish within their respective tribal reservations for their individual sustenance (subject to certain oversight by the Commissioner of the Department of Inland Fisheries and Wildlife).[8] "…subject to [certain oversight by the Commissioner of the Department	***Recommendation #7*** (Vote 9-0) Amend the Maine Implementing Act to recognize federal law regarding the exclusive jurisdiction of Tribes to regulate fishing and hunting by Tribal citizens of all federally recognized Tribes on Tribal lands, using the expanded definition of tribal lands described in consensus recommendation #2.

[1] *Cohen's Handbook of Federal Indian Law*, §18.01 at pg. 1154 (Nell Jessup Newton ed., 2012).
[2] *Cohen's Handbook of Federal Indian Law*, §18.01 at pg. 1155 (Nell Jessup Newton ed., 2012), citing *Mitchel v. United States,* 34 U.S. 711, 746 (1835) and *United States v. Santa Fe P.R.Co.*, 314 U.S. 339, 347 (1941).
[3] *Cohen's Handbook of Federal Indian Law*, §18.03[1] at pg. 1159 (Nell Jessup Newton ed., 2012); See *Menominee Tribe v. United States,* 391 U.S. (1968).
[4] *Cohen's Handbook of Federal Indian Law*, §18.04[1] at pg. 1163 (Nell Jessup Newton ed., 2012).
[5] *Cohen's Handbook of Federal Indian Law*, §18.03[2][a] at pg. 1160 (Nell Jessup Newton ed., 2012), citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, (1983), and *State v. McCLure,* 268 P.2d 629, 635 (Mont. 1954).
[6] *Cohen's Handbook of Federal Indian Law*, §18.04[3][b] at pg. 1179(Nell Jessup Newton ed., 2012); ee *Settler v. Lameer,* 507 F.2d 231, 239 (9th Cir. 1974).
[7] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(1).
[8] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(4).

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			of Inland Fisheries and Wildlife], ordinances may include special provisions for the sustenance of the individual members of the **Passamaquoddy Tribe or the Penobscot Nation.**"[9]	
	Non-tribal citizens	Tribes have the authority to regulate the hunting, fishing and gathering activities of nonmembers on tribal land.[10] This includes the authority to exclude non-citizens from hunting, fishing and gathering on tribal land.[11] While tribes can use civil remedies to enforce tribal laws and rules, tribes do not have criminal enforcement powers over non-citizens.[12] Courts have used the *Montana* test to examine the permissibility of tribal hunting, fishing and gathering laws and regulations governing non-tribal-citizens on non-citizen owned fee lands.[13]	**Passamaquoddy Tribe and Penobscot Nation** tribal ordinances regarding hunting and fishing within their territories "shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation…"[14] MITSC has exclusive authority to promulgate fishing rules or regulations on ponds not under the exclusive authority of the Passamaquoddy Tribe or Penobscot Nation, of which 50% or more of the linear shoreline is in Indian territory; any section of a river or stream, both sides of which are in Indian territory; and any section of a river or stream, one side of which is within Indian territory for a continuous length of a	***Recommendation #8*** (Vote 9-0) Amend the Maine Implementing Act to restore and affirm the exclusive jurisdiction of Tribes to regulate fishing and hunting by non-Tribal citizens on tribal lands, using the expanded definition of Tribal lands described in consensus recommendation #2, but do not cede any of MITSC's authority to regulate hunting and fishing under current law to the State.

[9] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(1).

[10] *Cohen's Handbook of Federal Indian Law*, §18.06[1] at pg. 1185 (Nell Jessup Newton ed., 2012); See *Lower Brule Sioux Tribe v. State of South Dakota*, 104 F.ed 1017, 1022 (8th Cir. 1997).

[11] *Cohen's Handbook of Federal Indian Law*, §18.06[1] at pg. 1185 (Nell Jessup Newton ed., 2012); See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983) ("A tribe's power to exclude nonmembers entirely or to condition their presence on the reservation is equally well established"); and *Quechan v. Rowe,* 531 F.2d 408, 410 (9th Cir. 1976) ("In the absence of treaty provisions or congressional pronouncements to the contrary, the tribe has the inherent power to exclude non-members from the reservation.").

[12] *Cohen's Handbook of Federal Indian Law*, §18.06[1] at pg. 1185 (Nell Jessup Newton ed., 2012), citing *Oliphant v. Squamish Indian Tribe*, 435 U.S. 191 (1978).

[13] *Montana v. United States,* 450 U.S. 544, 565-566 (1981) (the *Montana* test examines whether a tribes has civil jurisdiction over a nonmember and is two part: (1) does the non-tribal member in question have a consensual relationship with the tribe or its members that is related to the conduct at issue, or (2) does the conduct in question threaten the tribe's political integrity, economic security, or health or welfare); See *South Dakota v. Bourland,* 508 U.S. 679 (1993) for a more recent example of the application on the Montana test to tribal regulation of non-Indian hunting and fishing.

[14] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(1).

			half mile or more.[15] Prior to the promulgation of such rules, state laws and rules remain in effect [16] MITSC also had the authority to adopt rules to regulate the horsepower and use of motors on water less than 200 acres in surface area and entirely within Indian territory.[17] MITSC-promulgated regulations "shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation.[18]	
State	*Tribes and tribal citizens.*	States generally do not have the authority to regulate hunting, fishing and gathering by tribal citizens on tribal lands.[19] While states may regulate hunting, fishing and gathering by tribal members off tribal land to some degree, state conservation regulations applying to tribal members off tribal lands must be non discriminatory and must be	The Commissioner of Inland Fisheries and Wildlife has the authority to conduct fish and wildlife surveys on Indian territory and waters, provided reasonable advance notice is provided and the tribe is provided the opportunity to participate. The Commissioner, after consultation with the tribe in question and after a public hearing, may also impose measures upon tribal lands, including regulations, intended to	***Recommendation #9*** (Vote 8-0) Amend the Maine Implementing Act to relinquish the State of Maine's jurisdiction with respect to the regulation of fishing and hunting by both Tribal and non-Tribal citizens on tribal lands, except that, solely for conservation

[15] MITSC has promulgated certain fishing regulations. *See* "Fishing on Waters Under Jurisdiction of Maine Indian Tribal-State Commission," C.M.R. 94-409, ch. 201.

[16] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(3). See also *Mills v. Penobscot Nation*, 861 F.3d 324 (1st Cir. 2017), in which the First Circuit reviewed two district court rulings made on cross motions for summary judgement. The First Circuit affirmed the district court ruling that the plain text of the MICSA and MIA regarding the extent of the Penobscot Indian Reservation was unambiguous and that the Reservation included islands in the Main Stem of the Penobscot River, but not the river itself. The Circuit Court reversed the district court ruling that determined that the MICSA provided the Nation with individual sustenance fishing rights in the entirety of the Maine Stem. The First Circuit determined that the judgment had been premature because the claim was not ripe and because the tribe lacked standing. The Court's decision rested on its determination that the Nation had suffered no harm and faced no imminent threat to substance fishing, which the state had long allowed.

[17] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(3-A).

[18] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(3).

[19] *Cohen's Handbook of Federal Indian Law,* §18.06[2] at pg. 1187 (Nell Jessup Newton ed., 2012) ("The states' ability to exercise concurrent regulatory authority over on-reservation hunting fishing and gathering activities by members of the governing tribe is severely restricted"); See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983).

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		reasonable and necessary for conservation[20]. A similar test has been applied to state safety regulations.[21]	protect fish and wildlife stocks outside tribal boundaries.[22]	purposes, the State of Maine may regulate Tribal members engaged in such activities off Tribal lands to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved Tribal treaty rights.
	Non-tribal citizens	States have very limited authority to regulate hunting, fishing and gathering on tribal land.[23]	Fishing and hunting are regulated by the state except where the Penobscot or Passamaquoddy have authority as described above or where MITSC has authority as described above.	
Federal Government	*Tribes and tribal citizens*	The federal government has the power to regulate hunting, fishing and gathering by tribal citizens on tribal lands in the same manner as other tribal affairs.[24] Though the federal government has not often exercised this power[25], the Secretary of the Interior has regulated fishing off of tribal lands.[26]	Nothing in the Maine Implementing Act limits federal jurisdiction.	
	Non-tribal citizens	The federal government has not heavily exercised its power to regulated hunting, fishing and gathering on tribal lands.[27] 18	Nothing in the Maine Implementing Act limits federal jurisdiction.	

[20] *Cohen's Handbook of Federal Indian Law,* §18.04[3][b] at pg. 1180 (Nell Jessup Newton ed., 2012); See *Dep't of Game v. Puyallup Tribe*, 414 U.S. 44 (1973).

[21] *Cohen's Handbook of Federal Indian Law,* §18.04[3][b] at pg. 1181 (Nell Jessup Newton ed., 2012); See *Confederated Tribes of the Colville Reservation v. Anderson*, 761 F. Supp. 2d 1101, 1197 (E.D. Wash. 2011). ("Using the Supreme Court's conservation-necessity standard as its guide, the Court holds that a state may enact and enforce laws regulating a tribal member's exercise of an "in common" hunting right for public-safety purposes if the law('s): 1) reasonably prevents a public-safety threat; 2) is necessary to prevent the identified public-safety threat; 3) does not discriminate against Indians; and 4) application to the Tribe is necessary in the interest of public safety.").

[22] *An Act to Implement the Maine Indian Claims Settlement,* 30 MRSA §6207(6).

[23] *Cohen's Handbook of Federal Indian Law,* §18.03[2][1] at pg. 1160 (Nell Jessup Newton ed., 2012); See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983) and *Antoine v. Washington*, 420 U.S. 194 (1975).

[24] *Cohen's Handbook of Federal Indian Law,* §18.06[3] at pg. 1189 (Nell Jessup Newton ed., 2012).

[25] *Cohen's Handbook of Federal Indian Law,* §18.04[3][c] at pg. 1182 (Nell Jessup Newton ed., 2012).

[26] *Cohen's Handbook of Federal Indian Law,* §18.06[3] at pg. 1189 (Nell Jessup Newton ed., 2012).

[27] *Cohen's Handbook of Federal Indian Law,* §18.06[3] at pg. 1189 (Nell Jessup Newton ed., 2012).

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		U.S.C.§ 1165 makes trespass on Indian lands to hunt, fish or gather without tribal permission a federal crime. The Lacey Act[28] makes it a federal crime to transport, sell, receive, acquire or purchase fish, wildlife or plants harvested in violation of federal, tribal or state law.		

[28] 16 U.S.C. §§ 3371-3378.

FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
"Tribes generally retain exclusive rights to the use of land and resources within their territories, unless those rights have been abrogated by treaty or statute." *Cohen's Handbook of Federal Indian Law*, § 17.01, at 1106 (Nell Jessup Newton ed., 2012). Many federal environmental laws provide for delegation of regulatory authority to individual states, subject to minimum federal standards and to the oversight and veto authority of EPA. *See, e.g.,* 33 U.S.C. § 1342(b) (EPA may delegate to States the authority to issue discharge permits pursuant to the Clean Water Act). States generally do not have authority to implement federal environmental statutes within Indian territories. *Cohen's Handbook of Federal Indian Law*, § 10.02[1], at 790 (Nell Jessup Newton ed., 2012). "In the environmental context, Congress has authorized Indian tribes to assume primary regulatory authority, or primacy, for administering most of the federal environmental programs in Indian country." *Cohen's Handbook of Federal Indian Law*, § 10.01[1], at 784-85 (Nell Jessup Newton ed., 2012). Various federal laws have provisions authorizing the EPA to treat Indian tribes as States for purpose of implementing federal environmental programs. *See, e,g,,* 42 U.S.C. § 7601(d)(1)(A) (under the Clean Air Act, EPA "authorized to treat Indian tribes as States"); 33 U.S.C. § 1377(e) (under the Clean Water Act, EPA "authorized to treat an Indian tribe as a State"); 42 U.S.C. § 9626(a) (under the Comprehensive Environmental Response, Compensation and Liability Act, the "governing body of an Indian tribe	"[T]he background rule is that Maine law on natural resources governs the tribes and their territories." *Maine v. Johnson*, 498 F.3d 37 (1st Cir. 2007) (holding that Maine has authority to regulate discharge sources draining into tribal waters, as well as sources on tribal lands owned by tribal entities). "Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein." 30 M.R.S. § 6204; *see also* MICSA, § 6(a) and (b) (Passamaquoddy Tribe and Penobscot Nation subject to the jurisdiction of the State to the extent provided in the MIA, and, with certain exceptions, other tribes and bands of Indians "shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein"). Section 6(h) of MICSA states: "Except as otherwise provided in this Act, the laws and regulations of the United States which 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 shall be applicable in the State of Maine, except that no law or regulation of the United	***Recommendation #10*** (Vote 9-0) Amend the Maine Implementing Act to restore and affirm the Tribes' rights to exercise regulation of natural resources and land use on Tribal land to the fullest extent under federal Indian law. Note: This includes "treatment as a state" (TAS) status.

shall be afforded substantially the same treatment as a State"). Tribal water quality standards may be enforceable in non-tribal areas. *See, e.g., City of Albuquerque v. Browner,* 97 F.3d 415 (9th Cir. 1996) (holding that EPA had authority to require upstream dischargers to comply with downstream tribal standards); *Wisconsin v. E.P.A.*, 266 F.3d 741, 750 (7th Cir. 2001) (same).	States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State." Section 16(b) of MICSA states: "The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine." MICSA, § 16(b).	

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ENTITY WITH JURISDICTION	INDIVIDUALS/GROUPS TO WHOM BENEFIT IS PROVIDED	FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	*Tribes and tribal citizens.*	Tribes may choose to administer Bureau of Indian Education (BIE) funded primary and secondary schools through contracts provided under the authority of the Indian Self-Determination and Education Assistance Act.[1] Schools funded in this manner are referred to as "contract schools."[2] Tribes may also elect to utilize grants available under the Tribally Controlled Schools Act, which was enacted to provide tribes with greater autonomy in managing their schools.[3] Today, most schools under tribal control are "grant schools" rather than "contract schools."[4] Tribes also have the ability to operate colleges funded through the Tribally Controlled College or University Assistance Act of 1998.[5]	The impact of the *Act to Implement the Maine Indian Claims Settlement* and the federal *Maine Indian Claims Settlement Act* on tribal administration of educational services is not clear.[6] Maine has the following BIE-funded schools: • Beatrice Rafferty School – Perry, ME (K-8 grant school) • Indian Island School – Indian Island, ME (PK-8 grant school) • Indian Township School – Princeton, ME (K-8 grant school)	

[1] *Cohen's Handbook of Federal Indian Law,* §22.03[2][a][i], at 1401 (Nell Jessup Newton ed., 2012) (citing former 25 U.S.C. §450 *et seq.*, currently codified at 25 U.S.C. §5301 *et seq.*).
[2] *Cohen's Handbook of Federal Indian Law,* §22.03[2][a][i], at 1401 (Nell Jessup Newton ed., 2012).
[3] *Cohen's Handbook of Federal Indian Law,* §22.03[2][a][ii], at 1402 (Nell Jessup Newton ed., 2012) (citing 25 U.S.C. §2501).
[4] *Cohen's Handbook of Federal Indian Law,* §22.03[2][a][ii], at 1402 (Nell Jessup Newton ed., 2012).
[5] *Cohen's Handbook of Federal Indian Law,* §22.03[2][b][i], at 1405-06 (Nell Jessup Newton ed., 2012) (citing Pub. L. No. 105-244, §901, 112 Stat. 1827 (1998), codified at 25 U.S.C. §1801 *et seq.*).
[6] On one hand, *Maine Indian Claims Settlement Act of 1980* specifically provides foe Maine's tribes to receive federal benefits and funding for federal services, at least where not abrogated in the Act itself. See 25 U.S.C. §1725(b)(3) ("Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this subchapter.") and 25 U.S.C. §1725(i) ("As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians.). On the other hand, 25 U.S.C. §1735(b) provides65, "The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine."

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	Non-tribal citizens	Non-Indian children may attend BIE funded primary and secondary schools with the consent of the school board; however, federal funding is not available for such children.[7] Tribally operated colleges are not required to admit non-Indian students, though many do so.[8]	*The Act to Implement the Maine Indian Claims Settlement* or the federal *Maine Indian Claims Settlement Act of 1980* does not appear to affect federal language regarding the delivery of educational services to non-tribal citizens, though see footnote 6.	
State	*Tribes and tribal citizens*	States (and local entities) may not discriminate against Indian students in administration of state educational programs.[9]	The Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians are eligible for state benefit programs in the same manner as other state residents.[10] The tribes are also eligible for discretionary state grants or loans.[11] Residents of the Passamaquoddy and Penobscot territories and the Houlton Band Trust Land are eligible for state benefit programs.[12]	
Federal Government	*Tribes and tribal citizens*	The federal government has a unique responsibility for the education of Indians, which is described in the Native American	The impact of the *Act to Implement the Maine Indian Claims Settlement* and the federal *Maine Indian Claims*	

[7] *Cohen's Handbook of Federal Indian Law,* §22.03[2][a][iii], at 1402-03, footnote 56 (Nell Jessup Newton ed., 2012).
[8] *Cohen's Handbook of Federal Indian Law,* §22.03[2][b][i], at 1406 (Nell Jessup Newton ed., 2012).
[9] *Cohen's Handbook of Federal Indian Law,* §22.03[1][b], at 1400 (Nell Jessup Newton ed., 2012).
[10] *An Act to Implement the Maine Indian Claims Settlement,* 30 M.R.S.A. §6211(1) ("The Passamaquoddy Tribe, the Penobscot Nation and Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must be determined using statutory criteria and formulas generally applicable to municipalities in the State."). *See* 30 M.R.S.A. §6211(1)-(2) (describing funding calculations).
[11] *An Act to Implement the Maine Indian Claims Settlement,* 30 M.R.S.A. §6211(3).
[12] *An Act to Implement the Maine Indian Claims Settlement,* 30 M.R.S.A. §6211(4). ("Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State as long as in computing the extent to which any person is entitled to receive any such funds any money received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State is deducted in computing any payment to be made by the State.").

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		Education Improvement Act of 2001.[13] However, the extent of this responsibility is unclear, though it is well established that the federal government is not required to pay for the entire cost of the education of Indians when a separate entity could be required to provide educational services.[14] <u>BIA/BIE Programs</u> • The BIE funds certain elementary and secondary schools as well as higher education. Regardless of how schools are administered (directly by the BIE or by tribes via contract or grant), funding for schools is provided through the Indian Schools Equalization Program.[15] Although funding is calculated using a formula based on eligible Indian enrollment and other factors, funding is dependent upon appropriations.[16] • The BIE currently operates two colleges: Haskell Indians Nations University and Southwestern Indian Polytechnic Institute.[17] The federal government also provides loans and grants for Indian students to attend colleges not administered by the BIE or tribes.[18]	*Settlement Act* on the federal government's unique responsibility for the education of Indians in unclear (see footnote 6).	

[13] *Cohen's Handbook of Federal Indian Law*, §22.03[1][b], at 1399 (Nell Jessup Newton ed., 2012) (citing 15 U.S.C. §2000).
[14] *Cohen's Handbook of Federal Indian Law*, §22.03[a][b], at 1399-1400 (Nell Jessup Newton ed., 2012) (citing *Meyers ex. rel. Meyers v. Board of Educ.*, 905 F. Supp. 1544, 1568 (D. Utah 1995)).
[15] *Cohen's Handbook of Federal Indian Law*, §22.03[2][a][iii], at 1402-03 (Nell Jessup Newton ed., 2012) (citing 15 U.S.C. §2000 *et seq.*).
[16] *Cohen's Handbook of Federal Indian Law*, §22.03[2][a][iii], at 1402-03 (Nell Jessup Newton ed., 2012).
[17] *See* Bureau of Indian Education, *Colleges and Universities*, at https://www.bie.edu/Schools/Colleges/index.htm (last visited Oct. 10, 2019).
[18] *Cohen's Handbook of Federal Indian Law*, §22.03[2][b][i], at 1406-1407 (Nell Jessup Newton ed., 2012).

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		• Johnson-O'Malley Grants allow the Secretary of the Interior to fund health, social, and educational services for Indians, but are primarily used for education.[19] The funds are intended to supplement existing resources to provide service to Indian children age 3 through grade 12, with priority funding for reservation-based schools.[20] <u>DOE Programs</u> • The federal impact program funds services provided by local educational agencies to children whose parents are federal employees or who reside on federal or Indian land.[21] These funds are intended to supplant local contributions that would otherwise be available for the child.[22] An area of dispute involves the manner in which states consider impact aid in calculating their school funding formulas.[23] • The Indian Education Act[24] provides funding (subject to appropriations) for a variety of purposes related to the education of Indians.[25]		

[19] *Cohen's Handbook of Federal Indian Law*, §22.03[2][c], at 1407 (Nell Jessup Newton ed., 2012) (citing 25 U.S.C. §§452-457).
[20] *Cohen's Handbook of Federal Indian Law*, §22.03[2][c], at 1408 (Nell Jessup Newton ed., 2012).
[21] *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1409 (Nell Jessup Newton ed., 2012) (citing 20 U.S.C. §7703(a)(1)).
[22] *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1409 (Nell Jessup Newton ed., 2012).
[23] *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1410 (Nell Jessup Newton ed., 2012) (citing *Gwinn Area Cmty. Schs. v. Michigan*, 741 F.2d 840 (6th Cir. 1984) and *Zuni Sch. Dist. v. State*, CV-98-14-II (N.M. Dist. Ct., 11th Dist.) (Oct. 14, 1999)).
[24] 20 U.S.C. §§7401-7402.
[25] *Cohen's Handbook of Federal Indian Law*, §22.03[3][a][ii], at 1410 (Nell Jessup Newton ed., 2012).

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ENTITY WITH JURISDICTION	INDIVIDUALS/GROUPS TO WHOM BENEFIT IS PROVIDED	FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	*Tribes and tribal citizens*	Tribal law may require tribes to provide specific benefits to tribal citizens.[1] Tribes may choose to administer federal services under the Indian Self-Determination and Education Assistance Act.[2] The Act allows tribes to establish contracts (also called "638 contracts") with the federal government to administer services, including services provided under the Snyder Act (see footnote 22), services provided under the Indian Reorganization Act (see footnote 22), certain services provided by the United States Public Health Service, services administered by the Department of the Interior with funding from other agencies, services intended for the benefit of Indians because of their status as Indians and administered by the Department of Health and Human	The impact of the *Act to Implement the Maine Indian Claims Settlement* and the federal *Maine Indian Claims Settlement Act of 1980* on tribal administration of healthcare or social services is not clear.[17]	

[1] *Cohen's Handbook of Federal Indian Law,* §22.01[3], at 1385 (Nell Jessup Newton ed., 2012).
[2] 25 U.S.C. §5301 *et seq.* (formerly codified at 25 U.S.C. §450 *et seq.*).
[17] On one hand, *Maine Indian Claims Settlement Act of 1980* specifically provides foe Maine's tribes to receive federal benefits and funding for federal services, at least where not abrogated in the Act itself. See 25 U.S.C. §1725(b)(3) ("Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this subchapter.") and 25 U.S.C. §1725(i) ("As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians.). On the other hand, 25 U.S.C. §1735(b) provides65, "The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this subchapter and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine."

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		Services or the Department of the Interior. [3] Self-determination contracts are subject to certain requirements, as outlined in the law itself.[4] However, the law provides that the federal government may only deny a contract under certain circumstances, including a finding by the Department of the Interior that the services to be rendered are unsatisfactory, that "adequate protection of trust resources" is not provided for, that the services contacted cannot be properly completed or maintained under the proposed contract, that the funds requested are in excess of allowable amounts, or that the services proposed are beyond the allowable scope.[5] The Tribal Self-Governance Act[6] provided the opportunity for greater tribal autonomy and allows tribes to enter into an agreement, or compacts, with the federal government to administer programs handled by the Department of the Interior.[7] Tribes are able to enter into self-governance compacts with the Department of Health and Human Services to		

[3] 25 U.S.C. §5321(a)(1) (formerly codified at 25 U.S.C. §458aaa).
[4] 25 U.S.C. §5301 *et seq.* (formerly codified at 25 U.S.C. §450).
[5] 25 U.S.C. §5321(a)(2) (formerly codified at 25 U.S.C. §458aaa(a)(2)).
[6] 25 U.S.C. §5383 (formerly codified at 25 U.S.C. §458aaa).
[7] *Cohen's Handbook of Federal Indian Law,* §22.02[3], at 1389 (Nell Jessup Newton ed., 2012); 25 U.S.C. §5381 *et seq.*

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		administer Indian Health Services (IHS) programs.[8] The law allows a limited number of tribes per year to enter into self-governance compacts.[9] In order to be eligible, tribes must have completed a required planning phase, requested participation by resolution or other action by the tribe's governing body, and have demonstrated financial stability and management capacity for three fiscal years.[10] Funding of self-determination contracts and self-governance compacts is subject to Congressional appropriations.[11] Tribes are not able to self-administer programs described under the Social Security Act (including SSI) because these programs are not administered "for the benefit of Indians because of their state as Indians").[12] However other programs, including TANF and child welfare, child support enforcement and adoption and foster services, have statutory language that allows for direct administration.[13] Tribes may administer Supplemental Nutrition Assistance Program		

[8] *Cohen's Handbook of Federal Indian Law,* §22.02[3], at 1390 (Nell Jessup Newton ed., 2012).
[9] 25 U.S.C. §5383(b)(1).
[10] 25 U.S.C. §5383(c)(1).
[11] 25 U.S.C. §5383(e) (self-governance compacts); 25 U.S.C. §5322(a) (self-determination contracts); *see Cohen's Handbook of Federal Indian Law,* §22.02[5], at 1394 (Nell Jessup Newton ed., 2012),
[12] *Cohen's Handbook of Federal Indian Law,* §22.06[2][b], at 1445-56 (Nell Jessup Newton ed., 2012) (citing former 25 U.S.C. §450f(a)(1)(E), currently codified at 25 U.S.C. §5321(a)(1)(E)).
[13] *Cohen's Handbook of Federal Indian Law,* §22.06[2][b], at 1446 (Nell Jessup Newton ed., 2012).

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		(SNAP) benefits (otherwise known as food stamps) if the Food and Nutrition Service of the United States Department of Agriculture (USDA) determines that the state is not properly handling program administration on a reservation and that the tribe has the ability to manage the program's administration.[14] The Special Supplemental Nutrition Program for Women Infants, and Children (WIC) allows for tribal administration.[15] The Federal Tort Claims Act provides that the federal government is responsible for tort claims against tribes carrying out self-determination contracts and as such, the Attorney General will provide representation in such cases.[16]		
	Non-tribal citizens	Tribes may provide certain healthcare services to non-tribal citizens. See Federal Section for additional information.	*The Act to Implement the Maine Indian Claims Settlement* or the federal *Maine Indian Claims Settlement Act* does not appear to affect federal language regarding the delivery of healthcare or social services to non-tribal citizens, though see footnote 17.	
State	*Tribes and tribal citizens.*	Services provided by state governments must be nondiscriminatory, and states cannot exclude tribal citizens from receipt of services for which they would be	The Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians are eligible for state benefit	

[14] *Cohen's Handbook of Federal Indian Law,* §22.06[3], at 1447 (Nell Jessup Newton ed., 2012).
[15] *Cohen's Handbook of Federal Indian Law,* §22.06[3], at 1447 (Nell Jessup Newton ed., 2012).
[16] *Cohen's Handbook of Federal Indian Law,* §22.02[4][a], at 1391 (Nell Jessup Newton ed., 2012) (citing former 25 USC 450f(d), currently codified at 25 U.S.C. §5321(d), and the Indian Appropriations Act, Pub. L. No. 101-512, §314, 104 Stat. 1915 (1990)).

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		eligible were they not tribal citizens.[18] States administering federal programs may not restrict Indians' access to benefits due to their status as Indians.[19]	programs.[20] The tribes are also eligible for discretionary state grants or loans.[21] Residents of Passamaquoddy and Penobscot territories or the Houlton Band Trust Land are eligible for state benefit programs.[22]	
Federal Government	*Tribes and tribal citizens*	The federal government has an obligation to provide certain services to tribal citizens. This obligation derives from treaties and other agreements, the inherent trust relationship that exists between tribal citizens and the federal government and federal law itself.[23] Courts have interpreted laws regarding this obligation liberally and have been critical of efforts to reduce or restrict services.[24] However, there have been cases in which the courts have	The impact of the *Act to Implement the Maine Indian Claims Settlement* and the federal *Maine Indian Claims Settlement Act* on tribal administration of healthcare or social services is not clear (see footnote 17).	

[18] *Cohen's Handbook of Federal Indian Law,* §22.01[3], at 1385 (Nell Jessup Newton ed., 2012) ("Indians therefore have a right to state services on the same terms as other state citizens. Indians may not be excluded from state services because of their special trust relationship with the federal government, because they live on tax-exempt land, or because they are entitled to federal services).

[19] *Cohen's Handbook of Federal Indian Law,* §22.06[2][a], at 1444 (Nell Jessup Newton ed., 2012) (citing *Morton v. Ruiz,* 415 U.S. 199 (1974)).

[20] *An Act to Implement the Maine Indian Claims Settlement,* 30 M.R.S.A. §6211(1) ("The Passamaquoddy Tribe, the Penobscot Nation and Houlton Band of Maliseet Indians are eligible for participation and entitled to receive benefits from the State under any state program that provides financial assistance to all municipalities as a matter of right. Such entitlement must be determined using statutory criteria and formulas generally applicable to municipalities in the State."). *See* 30 M.R.S.A. §6211(1)-(2) (describing funding calculations).

[21] *An Act to Implement the Maine Indian Claims Settlement,* 30 M.R.S.A. §6211(3).

[22] *An Act to Implement the Maine Indian Claims Settlement,* 30 M.R.S.A. §6211(4) ("Residents of the Indian territories or Houlton Band Trust Land are eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State as long as in computing the extent to which any person is entitled to receive any such funds any money received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State is deducted in computing any payment to be made by the State.").

[23] *Cohen's Handbook of Federal Indian Law,* §22.01[3], at 1384 (Nell Jessup Newton ed., 2012). Relevant federal laws include Snyder Act (25 U.S.C.§13), which directs the Bureau of Indian Affairs to "direct, supervise and expend" funds for healthcare and other services for Indians, and the Indian Health Care Improvement Act or IHCIA (25 U.S.C. §1601 *et seq.*).

[24] *Cohen's Handbook of Federal Indian Law,* §22.01[3], at 1384 (Nell Jessup Newton ed., 2012; See *Morton v. Ruiz,* 415 U.S. 199 (1974); *McNabb v. Bowen,* 829 F.2d 787, 792 (9th Cir. 1987); and *State of Arizona v. United States,* 657 F.2d 1479 (9th Cir 1988).

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		allowed for redistribution of resources and for attenuation of services when similar services are available via other means.[25] Aside from healthcare[26], other services specific to Indians provided for under federal law include: • general assistance, • a work experience program for those receiving general assistance, • employment assistance and vocational training, • burial assistance, • disaster and emergency assistance, • adult care supports, and • social and protective services for children, the elderly and families.[27] Tribal citizens are also eligible for federal programs such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI) and other supports.[28].		

[25] *Cohen's Handbook of Federal Indian Law,* §22.01[3], at 1384 (Nell Jessup Newton ed., 2012) (citing *Vigil v. Andrus,* 667 F.2d 931 (10th Cir 1982), in which the court determined that the BIA could transfer its school lunch program, which had provide free school lunch to all Indian children, to the United States Department of Agriculture, which provided lunches only to children with demonstrated need, and *Lincoln v. Vigil* 508 U.S. 182 (1993), in which the Court determined that the Indian Health Service could discontinue certain clinical services so as to direct resources to a broader group of Indians).

[26] See the Indian Health Care Improvement Act or IHCIA (25 U.S.C. §1601 *et seq.*). Because the IHCIA was authorized as part of the Affordable Care Act, its future is uncertain given ongoing litigation. *See Texas v. United States*, 340 F. Supp. 3d 579 (N.D. Tex. 2018).

[27] *Cohen's Handbook of Federal Indian Law,* §22.06[1], at 1443 (Nell Jessup Newton ed., 2012), citing 25 C.F.R. §20.300-20.319 (general assistance), 25 C.F.R. §20.320-20.323 (work experience), 25 C.F.R. Pts. 26 and 27 (employment assistance and vocational training), 25 C.F.R. §20.324-20.327 (burial assistance), 25 C.F.R. §20.327-20.330 (disaster and emergency assistance), 25 C.F.R. §20.331-20.335 (adult care), 25 C.F.R. §20.400-20.516 (social and protective services)).

[28] *Cohen's Handbook of Federal Indian Law,* §22.06[2][a], at 1444, (Nell Jessup Newton ed., 2012).

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	Non-tribal citizens	IHS services may be provided to the following non-tribal citizens: • children of tribal citizens who are under age 19[29]; • spouses of tribal citizens, if the tribe determines, through resolution of the tribal governing body, that spouses as a class are eligible[30]; • individuals in need of emergency stabilization or individuals to whom provision of services is necessary to prevent the spread of communicable disease or to deal with a public health threat;[31] • non-Indian women pregnant with the child of an eligible Indian;[32] and • family members of an eligible Indian if the care is directly related to the treatment of the eligible individual.[33]	*The Act to Implement the Maine Indian Claims Settlement* or the federal *Maine Indian Claims Settlement Act* does not appear to affect federal language regarding the delivery of healthcare or social services to non-tribal citizens, though see footnote 17.	

[29] 25 U.S.C §1680c(a).
[30] 25 U.S.C §1680c(b).
[31] 25 U.S.C §1680c(d).
[32] 25 U.S.C §1680c(d).
[33] 25 U.S.C §1680c(d).

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TAXING ENTITY	INDIVIDUALS & GROUPS TAXED	FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATIONS
Tribe	*Tribes and tribal members*	Tribes have inherent authority to impose taxes within their jurisdiction, and this authority is strongest for taxation of members	The Penobscot Nation and the Passamaquoddy Tribe can enact and collect taxes as any other municipality of the State within their respective Indian territories. MIA, § 6206(1). The Maliseet Band does not have the powers or privileges of a municipality. MIA, § 6206-A.	***Recommendation #11*** (Vote 9-0) Amend the Maine Implementing Act to recognize federal law providing that Tribes have exclusive jurisdiction to tax Tribal members and Tribal entities on Tribal lands, including entities owned by a Tribe or Tribal member, using the definition of Tribal lands described in consensus recommendation #2.
	Non-tribal members	Tribes have authority to impose taxes on non-Indians within their jurisdiction, provided that one of the following criteria from *Montana v. United States*, 450 U.S. 544 (1981), is satisfied: • The tribe is taxing an activity of a non-member who has entered into a consensual relationship with the tribe or its members through commercial dealings, contracts, leases, or other arrangements. • The activity of the nonmember threatens or has some direct effect on the tribe's political integrity, economic security, or health and welfare of the tribe.	The Penobscot Nation and the Passamaquoddy Tribe can enact and collect taxes as any other municipality of the State within their respective Indian territories. MIA, § 6206(1). The Houlton Band of Maliseet Indians does not have the powers or privileges of a municipality, MIA, § 6206-A, including the power to create taxes.	***Recommendation #15*** (Vote 9-0) Amend the Maine Implementing Act to recognize federal law providing that Tribes have concurrent jurisdiction to tax non-members on Trial lands, using the definition of Tribal lands described in consensus recommendation #2.
State	*Tribes and tribal members*	<u>Tribal land</u> Categorically, States are not permitted to tax tribes or tribal members for activities on tribal land or property located within or on tribal land. This applies to sales tax, income tax, and	<u>General rule (non-property taxes):</u> With certain exceptions, the Maine tribes and their members (and all other tribes and their members) are "liable for payment of all other taxes and fees to the same extent	***Recommendation #12*** (Vote 8-0) Amend the Maine Implementing Act to recognize federal law providing that Tribes, Tribal members, and

		property tax.[1] Determining whether the tax is categorically barred depends on the legal incidence of taxation (not the economic incidence).[2] When the legal incidence of the state tax falls on the tribe or its members, it is invalid.[3] <u>Non-tribal land</u> States may tax activities and lands of tribes and tribal members wholly outside of Indian country.[4] Income earned by tribes and tribal members outside of Indian country is subject to tax. <u>Tribal and Non-tribal land</u> When the activity taxed falls within and without of Indian country, the taxes must be prorated in order to be valid. • Taxes on income earned inside and outside of Indian country by tribal members residing in Indian country must be prorated so that	as any other person or entity in the State." MIA, § 6208(3). • When the Penobscot Nation and the Passamaquoddy Tribes act in their business capacity (and not governmental capacity), they are "deemed to be a business corporation organized under the laws of the State and shall be taxed as such." MIA, § 6208(3). • When the Penobscot Nation and Passamaquoddy Tribe act in their governmental capacity, they are treated as exempt from all taxes as another municipality would be. MIA, § 6206(1). • The Houlton Band of Maliseet Indians does not have the powers or privileges of a municipality, so it has no government exemption from (non-property) State taxes. §6206-A. <u>Property taxes:</u> • The Penobscot Nation and Passamaquoddy Tribe shall make payments in lieu of taxes (PILOTs) "on all real and personal property	Tribal entities are not subject to state and local sales taxation on Tribal lands, using the definition of Tribal lands described in consensus recommendation #2. ***Recommendation #13*** (Vote 8-0) Amend the Maine Implementing Act to recognize federal law providing that Tribal members who live on Tribal lands are not subject to state income tax for income earned on Tribal lands, using the definition of tribal lands described in consensus recommendation #2. ***Recommendation #14*** (Vote 8-0) Amend the Maine Implementing Act to recognize federal law providing that Tribal lands are not subject to

[1] *Cohen's Handbook of Federal Indian Law,* §8.03[1][b] at pg. 697 (Neil Jessup Newton ed., 2012) (collecting cases finding immunity for tribes and tribal members in Indian country from state sales taxes, fuel taxes, vehicle registration excise taxes and registration fees, net income taxes, person property taxes, real property taxes, cigarette excise taxes, license fees, etc.).

[2] *Oklahoma Tax Comm'n v. Chickasaw Nation,* 515 U.S. 450, 458 (1995); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation,* 425 U.S. 463, 482 (1976). The legal incidence test provides clarity for tax administrators. Express statutory language identifying the taxed party generally is dispositive. *Chickasaw Nation,* 515 U.S. at 461; *cf.* 36 M.R.S.A. § 1753 (2010) ("The [sales] tax imposed by this Part is declared to be a levy on the consumer."). Absent express language, "the question is one of 'fair interpretation of the taxing statute as written and applied.'" *Chickasaw Nation,* 515 U.S. at 461 (quoting *Cal. Bd. of Equalization v. Chemehuevi Tribe,* 474 U.S. 9, 11 (1985) (per curiam)).

[3] *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation,* 425 U.S. 463,475–481 (1976) (Montana's cigarette sales tax imposed on retail consumers could not be applied to on-reservation retail sales to tribal members).

[4] *Cohen's Handbook of Federal Indian Law,* §8.03[1][b] at pg. 699 (Neil Jessup Newton ed., 2012); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145, 150 (1973) (upholding income tax on tribe for income earned from off-reservation ski resort).

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		only income earned outside Indian country is taxed. • Taxes on income earned inside Indian country by tribal members residing outside of Indian country are valid.[5] • Generally, State vehicle excise taxes and registration fees cannot be imposed on tribal members living on tribal land even if the vehicle will be used off tribal land. The residence of the vehicle owner controls.	within their respective Indian territory [(defined by MIA, §§ 6205(1), (2))] in an amount equal to that which would otherwise be imposed by a county, a district, or State, or other taxing authority." MIA, § 6208(2). o Real or personal property used by Penobscot Nation and Passamaquoddy Tribe in their governmental capacity, is exempt from taxation to same extent as property owned by a municipality. MIA, §§ 6206(1), 6208(2). • The Houlton Band of Maliseet Indians shall make PILOTS on "Houlton Band Trust Land [(defined by MIA, § 6203(2))] in an amount equal to that which would otherwise be imposed by a county, a district, or State, or other taxing authority." MIA, § 6208(2). o No property is exempt. MIA, § 6206-A. <u>Miscellaneous state tax provisions expressly affecting tribes</u> • 36 M.R.S.A. § 1504: excise taxes on watercraft owned by residents of Indian reservations paid to the tribal clerks • 36 M.R.S.A. § 1605: provision to return property taxes assessed on out parcels in Indian Township to the Tribe from the Unorganized Territory Education and Services Fund.	state and local real property tax, using the definition of tribal lands described in consensus recommendation #2.

[5] *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 462–63 (1995) (applying general rule that a State "may tax all the income of its residents, even income earned outside the taxing jurisdiction," including income earned in Indian country).

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			• 36 M.R.S.A. § 1815: provision to return a portion of sales tax collected on Passamaquoddy reservation to the Tribe.	
	Non-tribal citizens	Tribal lands State taxes where the legal incidence of taxation falls on nonmembers in Indian country are valid unless preempted by federal law or if the state tax would interfere with the tribe's ability to exercise its sovereign functions.[6] • Preemption is not simply whether the activity is expressly prohibited, but requires examination of "relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence." *Bracker*, 448 U.S. at 144-45. • "This inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into the nature of the state, federal and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." *Id.* • Factors considered include extent of federal regulation, regulatory and revenue raising interest of the	The State's power to tax non-tribal citizens is not affected by MIA or MICSA.	***Recommendation #16*** (Vote 9-0) Amend the Maine Implementing Act to recognize federal law providing that state and local governments have concurrent jurisdiction to tax non-members on Tribal lands unless their jurisdiction is preempted under a fact-specific, federal common law balancing test. ***Item for future discussion:*** That the State and tribes come together to discuss the concurrent imposition of taxes on nonmembers at tribal entities on tribal lands, including entities owned by a tribe or tribal member.

[6] *Cohen's Handbook of Federal Indian Law,* §8.03[1][d] at pg. 706 (Neil Jessup Newton ed., 2012); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).

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		tribe and the State, and provision of services.[7] • The State should have a specific, legitimate regulatory interest in the activity taxed.		

[7] *Cohen's Handbook of Federal Indian Law,* § 8.03[1][d] at pg. 707 (Neil Jessup Newton ed., 2012),

FEDERAL LAW	MAINE (MICSA/MIA)	TASK FORCE RECOMMENDATION
In the absence of federal authorization, states generally lack regulatory authority over tribal gaming. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Indian Gaming Regulatory Act of 1988 ("IGRA") provides regulatory framework for gaming activities on Indian land. • "Indian land" includes "all lands within the limits of any Indian reservation" and "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703. Subject to various exceptions, tribes may not conduct gaming on land acquired by the Secretary in trust for the benefit of a tribe after October 17, 1988. 25 U.S.C. § 2719(a). Exceptions: • One exception is for lands "located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988." 25 U.S.C. § 2719(a)(1). • Another exception is for lands "taken into trust as part of . . . a settlement of a land claim." 25 U.S.C. § 2719(b)(1)(B). **Class I gaming** is "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. § 2703(6). • Class I gaming on Indian land is within the exclusive jurisdiction of the tribe. 25 U.S.C. § 2710(a)(1). **Class II gaming** includes bingo (including electronic) as well as card games played in accordance with State laws regarding permitted hours and prize limits. Class II gaming does <u>not</u> include banked card games where players play against the house or electronic facsimiles of games of chance or slot machines.[1]	State laws govern: "Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein." 30 M.R.S. § 6204; *see also* MICSA, § 6(a) and (b) (Passamaquoddy Tribe and Penobscot Nation subject to the jurisdiction of the State to the extent provided in the MIA, and, with certain exceptions, other tribes and bands of Indians "shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein"). Applicability of federal law: Section 16(b) of MICSA states: "The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine." 25 U.S.C. §1735(b). The U.S. Court of Appeals for the First Circuit has held that, by virtue of § 16(b) of the MICSA, the Indian Gaming Regulatory Act ("IGRA") does not apply in Maine. *See*	***Recommendation #17:*** (Vote 9-0) Amend the Maine Implementing Act to render the federal Indian Gaming Regulatory Act applicable to Maine.

[1] Canby, William C., Jr., AMERICAN INDIAN LAW IN A NUTSHELL 348-49 (6th ed. 2015) (interpreting definition in 25 U.S.C. § 2703(7)).

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• Tribes, with oversight by the National Indian Gaming Commission, may license and regulate Class II gaming on Indian land if the state "permits such gaming for any purpose by any person, organization or entity." 25 U.S.C. §2710(b)(1).
 	
Class III gaming includes "all forms of gaming that are not Class I gaming or Class II gaming", including banked-card games like blackjack as well as other table games and slot machines.[2]
• If the state "permits such gaming for any purpose by any person, organization, or entity" then Class III gaming may be conducted in conformance with a Tribal-State compact that is approved by the Secretary of the Interior. 25 U.S.C. §2710(d)(1)(B), (d)(1)(C), (d)(3)(B).
• "The State shall negotiate with the Indian tribe in good faith to enter into such a compact." 25 U.S.C. § 2710(d)(3)(A). The compact may address issues including, *inter alia*, application of criminal and civil laws and regulations of the tribes and state; division of criminal and civil jurisdiction between the state and tribe; licensing standards for gaming facility; taxation by the tribe in amounts comparable to state taxes for similar activity; and assessments imposed by state to defray necessary costs of regulating the activity. 25 U.S.C. § 2710(d)(3)(C).
 	
Additional limits on Class II and III gaming:
• The Indian tribe must have "sole proprietary interest and responsibility for the conduct of any gaming activity," 25 U.S.C. §2710(b)(2)(A), (d)(2)(A); and
• Net revenues from tribal gaming may only be used to:
  ○ "fund tribal government operations or programs";
  ○ "provide for the general welfare of the Indian tribe or its members";
  ○ "promote tribal economic development";
  ○ "donate to charitable organizations" or
  ○ "help fund operations of local government agencies."
25 U.S.C. §2710(b)(2)(B); (d)(2)(A).
	Passamaquoddy Tribe v. State of Maine, 75 F.3d 784 (1st Cir. 1996).[3]
	
	Generally applicable laws:
	
	Games of Chance / Bingo:
	The Gambling Control Unit may issue licenses to conduct "card games" (ex: poker, blackjack or cribbage) and tournament card games or may accept a registration to operate games of chance, raffles, or beano/bingo to specific types of organizations, including:
	• Bona fide nonprofit charitable, educational, political, civic, recreational, fraternal, patriotic or religious organizations. 17 M.R.S.A. § 1832(2); § 313-C(1)(C).
	• Comprehensive laws limit the operation of the games, including the fees that may be charged to participants and prizes that may be awarded. *See* Title 17, ch. 62 & 13-A.
	
	Casinos:
	The Gambling Control Board is only authorized to issue 2 casino operator licenses: one to a commercial track that was licensed to operate a slot machine facility on 1/1/2011 (*i.e.*, Hollywood Casino in Bangor) and another located in Oxford County (*i.e.*, Oxford Casino). 8 M.R.S.A. § 1011(2-A).
	
	Specific tribal gaming law:
	The State's Gambling Control Unit may issue licenses to federally recognized Indian tribes to:
	• Operate high-stakes beano or high-stakes bingo for a maximum of 27 weekends (Sat. & Sun. only) per year; 17 M.R.S.A. § 314-A(1), (3); <u>and</u>
	• Sell "lucky seven or similar sealed tickets" during the period beginning 2 hours before and ending 2 hours after a beano/bingo game. 17 M.R.S. § 314-A(1-A); § 324-A.	

[2] Canby, William C., Jr., AMERICAN INDIAN LAW IN A NUTSHELL 34849 (6th ed. 2015) (interpreting definition in 25 U.S.C. § 2703(8)).
[3] Given this decision that IGRA does not apply to Maine under the terms of federal law (IGRA and MICSA), if the MIA were amended to eliminate the applicability of state gaming laws in Indian territory, the pre-IGRA framework of *Cabazon*—that states lack authority to regulate gaming in Indian country—would apply in Maine.

The information contained herein is summary information for discussion purposes only and does not represent the opinion of the Task Force, its individual members, or tribes.

APPENDIX N

Report on Federal Laws Enacted After October 10, 1980 for the Benefit of Indians or Indian Nations, prepared by the Human Rights and Indigenous Peoples Clinic, Suffolk University Law School

Federal Laws Enacted After October 10, 1980 For the Benefit of Indians or Indian Nations

Research Findings

Requested by the State of Maine Task Force on Changes to the Maine Indian Claims Settlement Implementing Act

Compiled by the Human Rights and Indigenous Peoples Clinic
Suffolk University Law School

December 2019

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Executive Summary

In October 2019, the State of Maine's Task Force on Changes to the Maine Indian Claims Settlement Implementing Act ("Task Force") made a request to the Human Rights and Indigenous Peoples Clinic at Suffolk University Law School ("Clinic") to research federal laws enacted after October 10, 1980 for the benefit of Indians and Indian nations. This report presents those research findings.

As part of the Task Force's mandate to consider changes to the several state and federal Maine Indian claims settlement acts, it sought to compile a list of federal legislation enacted after October 10, 1980 that benefit Indian nations and Indians. The reason for this request is that one section of the federal Maine Indian Claims Settlement Act ("MICSA") provides that federal laws "enacted after October 10, 1980, for the benefit of Indians [or] Indian nations ...which would affect or preempt the application of the laws of the State of Maine" do not apply within the State of Maine, unless the law is specifically made applicable within the State. 25 U.S.C. §1735(b). Researching which laws may be implicated by section 1735(b), may help facilitate discussions on changes to the settlement acts.

The primary research tool utilized by the Clinic was Congress.gov, which covers all federal laws. The Clinic used different search terms, i.e. Indian, Native American, tribe, American Indian and tribal to capture the terminology used at different periods of times and to ensure that all potential laws were found. Using the following guidelines, the research results were reviewed to determine whether to include a particular law in the final findings.

- Laws which were applicable to just a specific tribe(s) were not included.
- Laws which solely provided for the appropriation of funds under a preexisting program were not included.
- If a law seemed to provide a benefit to an Indian nation or Indians, it was included.
- If a law amended an earlier law, the Clinic did not review the earlier law which was being amended. Instead, if it seemed that the earlier law and the amendment of that law provided a benefit to an Indian nation or Indians, it was included.
- If there was a question whether to include a law, the law was included.

<u>When considering to include a law, the Clinic did not conduct a legal analysis under section 1735(b); namely the Clinic did not attempt to answer the question whether a law was "for the benefit of Indians [or] Indian nations" and "which would affect or preempt the application of the laws of the State of Maine."</u> As a result, this report and its findings should not be regarded as a comprehensive list of laws triggered by section 1735(b), but rather a list of federal laws enacted after October 10, 1980 related to or which may benefit Indians and Indian nations.

The Clinic identified approximately 151 laws covering a wide range of topics. Major federal Indian legislation was enacted or amended during this 40 year period, including the Indian Civil Rights Act, Indian Self-Determination Act, American Indian Religious Freedom Act, Indian Gaming Regulatory Act, Native American Graves Protection and Repatriation Act, Indian Tribal Economic Development and Contract Encouragement Act, American Indian Probate Reform Act, Esther Martinez Native American Languages Preservation Act, Tribal Law and Order Act, and the Violence Against Women Act. The report lists all the laws by Congress, and then follows with a list of each law (again by Congress) with a brief description of the law and a web link to the full document.

We hope that this report proves helpful in the Task Force's work and we thank the Task Force for including the Clinic in this important endeavor.

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List of Laws by Congress

96th Congress
National Historic Preservation Act Amendments of 1980, P.L. 96-515
Indian Health Care Amendments of 1980, P.L. 96-537
State and Local Fiscal Assistance Act Amendments of 1980, P.L. 96-604

97th Congress
Indian Mineral Development Act of 1982, P.L. 97-382
Indian Claims Limitation Act of 1982, P.L. 97-394
Indian Tribal Governmental Tax Status Act of 1982, P.L. 473
Nuclear Waste Policy Act of 1982, P.L. 97-425
Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451
Lacey Act Amendments of 1981, P.L. 97-79

98th Congress
Per Capita Payments to Indians, P.L. 96-64
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Indian Financing Act Amendments of 1984, P.L. 98-449
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Food Security Act of 1985, P.L. 99-198
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A bill to amend Title 25 relating to Indian education programs, P.L. 99-228
A bill to prevent sexual molestation of children in Indian country, P.L. 99-303
Safe Drinking Water Act Amendments of 1986, P.L. 99-339
Education of the Handicapped Amendments of 1986, P.L. 99-459
Electric Consumer Protection Act of 1986, P.L. 99-495
American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act, P.L.99-498
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Indian Alcohol and Substance Abuse Prevention and Treatment Act, P.L. 99-570

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Housing and Community Development Act of 1987, P.L. 100-242
Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. P.L. 100-297
Abandoned Shipwreck Act of 1987, P.L. 100-298
Indian Housing Act of 1988, P.L. 100-358
Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418

A bill to make clarifying, corrective, and conforming amendments to laws relating to Indian education, and for other purposes, P.L. 100-427
A bill to amend the Indian Financing Act of 1974, and for other purposes, P.L. 100-442
Indian Self-Determination and Education Assistance Act Amendments of 1988, P.L. 100-473
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Indian Health Care Amendments of 1988, P.L. 100-713

101ST Congress
National Museum of the American Indian Act, P.L. 101-185
Amendment to the Indian Alcohol and Substance Abuse Prevention and Treatment Act, P.L. 101-272
To Authorize and Request the President to Proclaim the Month of November, 1990, and thereafter as "Native American Indian Heritage Month.", P.L. 101-343
Indian Law Enforcement Reform Act, P.L. 101-379
Indian Environmental Regulatory Enhancement Act of 1990, P.L. 101-408
Native American Languages Act, P.L. 101-477
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102nd Congress
To make permanent the legislative reinstatement, following the decision of Duro against Reina of the power of Indian tribes to exercises criminal jurisdiction over Indians, P.L. 102-137
Indian Environmental General Assistance Program Act of 1992, P.L. 102-497
Native American Languages Act of 1992, P.L. 102-524

103rd Congress
An Act to extend the suspended implementation of certain requirements of the food stamp program on Indian reservations, P.L. 103-11
Omnibus Budget Reconciliation Act of 1993, P.L. 103-65
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Indian Self-Determination Act Amendments of 1994, P.L. 103-413
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Indian Health Care Improvement Technical Corrections Act of 1996, P.L. 104-313
National Invasive Species Act of 1996, P.L. 104-332
Native American Housing Assistance and Self-Determination Act of 1996, P.L. 104-330
To make certain technical corrections in laws relating to Native Americans, and for other purposes, P.L. 104-109

105th Congress
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Transportation Equity Act for the 21st Century, P.L. 105-178
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Coats Human Services Reauthorization Act of 1998, P.L. 105-285

106th Congress
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Alaska Native and American Indian Direct Reimbursement Act of 1999, P.L.106-417
Native American Business Development, Trade Promotion, and Tourism Act of 2000, P.L. 106-464
Indian Arts and Crafts Enforcement Act of 2000, P.L. 106-497
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Indian Land Consolidated Act Amendments of 2000, P.L. 106-462
Older Americans Act of Amendments of 2000, P.L. 106-501
Omnibus Indian Advancement Act, P.L. 106-568
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107th Congress
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108th Congress
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109th Congress
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110th Congress
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111th Congress
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Claims Resolution Act of 2010, P.L. 111-291
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113th Congress
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Violence Against Women Reauthorization Act of 2013, P.L. 113-4
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Kilah Davenport Child Protection Act of 2013, P.L. 113-104
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115th Congress

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Autism Collaboration, Accountability, Research, Education, and Support Act of 2019, P.L. 116-60

96TH CONGRESS (1980)

Public Law Number: 96-515
Name of Law: National Historic Preservation Act Amendments of 1980
Description: Declares that it shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals, to: (1) use measures to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony; (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations; (3) administer federally owned, administered, or controlled prehistoric and historic resources; (4) contribute to the preservation of non federally owned prehistoric and historic resources; (5) encourage the public and private preservation and utilization of all usable elements of the Nation's environment; and (6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.
Link: https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg2987.pdf#page=1

Public Law Number: 96-537
Name of Law: Indian Health Care Amendments of 1980
Description: Primarily an appropriations bill, but does amend the Indian Health Care Improvement Act to direct the Secretary of Health and Human Services to assist tribal organizations in administering programs on or near Federal Indian reservations and in or near Alaska Native villages, to assist Indians to enroll for Medicare benefits and to apply for Medicaid benefits. Directs the Secretary to enter into contracts with urban and rural tribal organizations to establish and administer programs to make health services more accessible to Indian populations. Requires such organizations to submit a report for each fiscal year on the expenditure of funds received under such contracts. Makes such report subject to audit by the Secretary and the Comptroller General.
Link: https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg3173.pdf#page=4

Public Law Number: 96-604
Name of Law: State and Local Fiscal Assistance Act Amendments of 1980
Description: Removes the requirement that governments of Indian tribes and Alaskan native villages spend revenue sharing funds for the benefit of members of the tribe or village according to the county in which they reside.
Link: https://uscode.house.gov/statutes/pl/96/604.pdf

97TH CONGRESS (1981-1982)

Public Law Number: 97-382
Name of Law: Indian Mineral Development Act of 1982
Description: To permit Indian tribes to enter into certain agreements for the disposition of tribal mineral resources, and for other purposes.
Link: https://www.govinfo.gov/content/pkg/STATUTE-96/pdf/STATUTE-96-Pg1938.pdf

Public Law Number: 97-394
Name of Law: Indian Claims Limitation Act of 1982
Description: Part of an larger appropriations bill; makes amendments to timing of Indian Claims (28 U.S.C. 2415)
Link: https://www.govinfo.gov/content/pkg/STATUTE-96/pdf/STATUTE-96-Pg1966.pdf

Public Law Number: 97-473
Name of Law: Indian Tribal Governmental Tax Status Act of 1982
Description: Treating tribal government as states for certain tax purposes
Link: https://uscode.house.gov/statutes/pl/97/473.pdf

Public Law Number: 97-425
Name of Law: Nuclear Waste Policy Act of 1982
Description: Requires the Secretary to notify the State in which, or the Indian tribe on whose reservation, a repository for high-level radioactive waste or spent nuclear fuel from atomic energy defense activities or from research and development activities of the Secretary is proposed to be located. Entitles the State or Indian tribe involved to rights of participation and consultation with respect to the development of such a repository.
Link: https://www.govinfo.gov/content/pkg/STATUTE-96/pdf/STATUTE-96-Pg2201.pdf

Public Law Number: 97-451
Name of Law: Federal Oil and Gas Royalty Management Act of 1982
Description: Title II address oil and gas leases on Indian lands, including entering into cooperative agreements
Link: https://www.govinfo.gov/content/pkg/STATUTE-96/pdf/STATUTE-96-Pg2447.pdf

Public Law Number: 97-79
Name of Law: Lacey Act Amendments of 1981
Description: Repeals provisions of Federal law prohibiting commerce in wildlife and fish (the Lacey and Black Bass Acts). Sets forth prohibitions against trade in any fish or wildlife taken or possessed in violation of Federal, Indian tribal, State, or foreign law. Adds a new prohibition against trade in plants which are subject to State conservation of species laws.
Link: https://www.govinfo.gov/content/pkg/STATUTE-95/pdf/STATUTE-95-Pg1073.pdf

98TH CONGRESS (1983-1984)

Public Law Number: 98-64
Public Law Name: Per Capita Payments to Indians
Description: To provide that per capita payments to Indians may be made by tribal governments, and for other purposes; Funds held in trust by the Secretary of Interior for an Indian tribe and which are to be distributed per capita to members of that tribe may be distributed by either the Secretary or at the request of the governing body of the tribe and subject to approval of the Secretary.
Link: https://www.govinfo.gov/content/pkg/STATUTE-97/pdf/STATUTE-97-Pg365.pdf

Public Law Number: 98-369
Name of Law: Deficit Reduction Act of 1984
Description: Amends rules treating Indian Tribal governments as States to be permanent and expanded
Link: Unable to find

Public Law Number: 98-449
Name of Law: Indian Financing Act Amendments of 1984
Description: To reauthorize and amend the Indian Financing Act (1974); including securities for Indian-owned economic enterprises
Link: Unable to find

Public Law Number: 98-451
Name of Law: Indian Trust Fund Interest Rates Amendment, 1984
Description: "That all funds held in trust by the US and carried in principal accounts on the books of the US Treasury to the credit of Indian Tribes shall be invested by the Secretary of Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved and bearing interest.
Link: https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1729.pdf

Public Law Number: 98-500
Name of Law: Old Age Assistance Claims Settlement Act
Description: To compensate heirs of deceased Indians for improper payments from trust estates to States or political subdivisions thereof as reimbursements for old age assistance received by decedents during their lifetime.
Link: https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg2317.pdf#page=1

Public Law Number: 98-608
Name of Law: Indian Land Consolidation Act Amendment
Description: Technical amendments
Link: https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg3171.pdf

99TH CONGRESS (1985-1986)

Public Law Number: 99-89
Name of Law: Indian Education Technical Amendments Act of 1985
Description: Technical amendments to Title XI of the Education Amendments of 1978, relating to Indian Education Programs, including establishment of standards
Link: https://www.govinfo.gov/content/pkg/STATUTE-99/pdf/STATUTE-99-Pg379.pdf

Public Law Number: 99-198
Name of Law: Food Security Act of 1985
Description: Section on employment and training: "The Secretary shall promulgate guidelines that (i) enable State agencies, to the maximum extent practicable, to design and operate an employment and training program that is compatible and consistent with similar programs operated within the State, and (ii) ensure, to the maximum extent practicable, that employment and training programs are provided for Indians on reservations."
Link: https://www.govinfo.gov/content/pkg/STATUTE-99/pdf/STATUTE-99-Pg1354.pdf

Public Law Number: 99-272
Name of Law: Consolidated Omnibus Budget
Description: Amendments to Public Service Act to allow for Secretary to enter into contracts of fiscal agents on Indian health services; amendments to eligibility of small business owned by Indian tribes; determination of economic disadvantage of an Indian; creation of advisory committee on native American veterans
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg82.pdf

Public Law Number: 99-228
Name of Law: A bill to amend Title 25 relating to Indian education programs
Description: Amends definition of "eligible Indian student"; provides exceptions for when the Secretary of Interior can permit a student to attend a BIA school if they are not an eligible Indian student
Link: https://www.govinfo.gov/content/pkg/STATUTE-99/pdf/STATUTE-99-Pg1747.pdf

Public Law Number: 99-303
Name of Law: A bill to prevent sexual molestation of children in Indian country
Description: Amends the Major Crimes Act with respect to crimes in Indian country to include the crime of felonious sexual molestation of a minor
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg438.pdf

Public Law Number: 99-339
Name of Law: Safe Drinking Water Act Amendments of 1986
Description: Authorizes the Administrator to make special provisions for treating Indian tribes as States under this Act; directs the administrator to conduct a survey of drinking water on Indian reservations within one year of this Act's enactment
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg642.pdf

Public Law Number: 99-457
Name of Law: Education of the Handicapped Amendments of 1986
Description: Secretary may make grants to and cooperative agreements with the Secretary of the Interior to remove architectural barriers in schools serving Indians on reservations; Includes tribes in cooperative agreements on early education of handicapped children.
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg1145.pdf

Public Law Number: 99-495
Name of Law: Electric Consumer Protection Act of 1986
Description: Amends the Federal Power Act to environmental protections and relicensing of electricity generating projects, including those on Indian lands.
Link: https://www.usbr.gov/power/legislation/ecpa.pdf

Public Law Number: 99-498
Name of Law: American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act
Description: Creation of Institute of American Indian and Alaska Native Culture and Arts Development to coordinate the Federal Government's effort to preserve, support, revitalize, and disseminate Indian art and culture and Native Hawaiian art and culture
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg1268.pdf

Public Law Number: 99-506
Name of Law: Rehabilitation Act Amendments of 1986
Description: American Indian vocational rehabilitation services; study of needs of American Indians with handicaps.
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg1807.pdf#page=4

Public Law Number: 99-570
Name of Law: Indian Alcohol and Substance Abuse Prevention and Treatment Act
Description: Act authorizes and develops a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members and provides authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level. Part of the larger bill which also includes programs for Indian youth, to meet the needs of Indian children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior; amendments to the Indian Elementary and Secondary School Assistance Act.
Link: https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf

100th CONGRESS (1987-1988)

Public Law Number: 100-4
Name of Law: Water Quality Act of 1987
Description: TITLE V: To amend the Federal Water Pollution Control Act to provide for the renewal of the Feb. 4, 1987 quality of the Nation's waters. Authorizes the Administrator to treat Indian Tribes specially or as States as required to meet such tribes' sewage treatment needs.
Link: https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg7.pdf

Public Law Number: 100-17
Name of Law: Surface Transportation and Uniform Relocation Assistance Act of 1987
Description: Authorizes the preferential employment of Indians on construction projects and contracts on Indian reservation roads.
Amendment: Federal-Aid Highway Act of 1956
Link: https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg132.pdf

Public Law Number: 100-175
Name of Law: Older Americans Act Amendments of 1987
Description: Amend the Older Americans Act of 1965 to include grants for Native Americans.
Link: https://history.nih.gov/research/downloads/PL100-175.pdf

Public Law Number: 100-177
Name of Law: Public Health Service Amendments of 1987
Description: Amends the Public Health Service Act to require the Secretary, in assigning members of the Corps to health manpower shortage areas, to: (1) give priority to meeting the needs of the Indian Health Service and the needs of health programs or facilities operated by tribes or tribal organizations.
Link: https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg986.pdf#page=5

Public Law Number: 100-233
Name of Law: Agricultural Credit Act of 1987
Description: Addresses disposition and leasing on farm lands, including on Indian reservations.
Link: https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg1568.pdf

Public Law Number: 100-242
Name of Law: Housing and Community Development Act of 1987
Description: Requires Secretary to provide mortgages to certain properties within Indian reservations
Link: https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg1815.pdf

Public Law Number: 100-297
Name of Law: Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988
Description: Reserves one percent of basic grant funds to BIA schools; provides for the basic grant program for Indian children and Indian youth in schools funded by federal govt. Title V: Indian Education sets forth provisions relating to education, bureau and contract schools, tribally controlled school grants, financial assistance to local educational agencies, special programs and projects to improve educational opportunities for Indian children, special programs relating to Adult education for Indians.
Amendment: Elementary and Secondary Education Act of 1965
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg130.pdf

Public Law Number: 100-298
Name of Law: Abandoned Shipwreck Act of 1987
Description: Any abandoned shipwreck in or on any Indian lands is property of tribe owning such lands.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg432.pdf

Public Law Number: 100-358
Name of Law: Indian Housing Act of 1988
Description: Amends the United States Housing Act of 1937 to establish a separate assisted housing program for Indians
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg676.pdf

Public Law Number: 100-418
Name of Law: Omnibus Trade and Competitiveness Act of 1988
Description: Authorizes the secretary of commerce to provide grants to entities for the development of foreign markets for American Indian arts and crafts.
Link: https://www.govinfo.gov/content/pkg/USCODE-2011-title19/pdf/USCODE-2011-title19-chap20.pdf

Public Law Number: 100-427
Name of Law: A bill to make clarifying, corrective, and conforming amendments to laws relating to Indian education, and for other purposes
Description: Makes technical, and conforming amendments to the Education Amendments of 1978 regarding: Bureau of Indian Affairs funded schools, coordinated programs among the tribe
Amendments: Education Amendments of 1978, Tribally Controlled Schools Acts of 1988, Indian Education Act of 1988
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg1603.pdf

Public Law Number: 100-442
Name of Law: A bill to amend the Indian Financing Act of 1974, and for other purposes
Description: Amends the Indian Financing Act of 1974 to increase the amount of loans to individual Indians or economic enterprises
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg1763.pdf

Public Law Number: 100-472
Name of Law: Indian Self-Determination and Education Assistance Act Amendments of 1988
Description: Directs the Secretary, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof for: (1) the transfer of certain hospitals and health services; (2) construction programs administered by the Secretary for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and (3) any program for the benefit of Indians without regard to the agency of the Department of Health and Human Services or the Department of the Interior within which it is performed. Authorizes the Secretary, upon the request of any tribal organization, to contract with or make a grant to any tribal organization for: (1) obtaining technical assistance from providers designated by the tribal organization; and (2) planning, designing, monitoring, and evaluating Federal programs serving the tribe. Makes technical assistance provided by the Secretary in the development of self-determination contracts subject to the availability of appropriations.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2285.pdf

Public Law Number: 100-485
Name of Law: Family Support Act of 1988
Description: Amends the AFDC program to require States to establish a job opportunities and basic skills training program (Program) which helps needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence. Allows Indian tribes to apply directly to Secretary within 6 months of enactment to establish and administer their own Programs.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2343.pdf

Public Law Number: 100-497
Name of Law: Indian Gaming Regulatory Act
Description: Establishes the jurisdictional framework that governs gaming activity on Indian Lands.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2467.pdf

Public Law Number: 100-647
Name of Law: Technical and Miscellaneous Revenue Act of 1988
Description: Amends the Internal Revenue Code to prohibit the imposition of any Federal income or employment tax in connection with income derived by an Indian or Indian tribe from the exercise rights secured by treaty, Executive order, or Act of Congress.
Link: https://www.givemeliberty.org/docs/TaxResearchCD/Statutes/102Stat3499.pdf

Public Law Number: 100-656
Name of Law: Business Opportunity Development Reform Act of 1988
Description: Exempts economically disadvantaged Indian tribes from specified requirements for competition for set-aside contracts.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg3853.pdf

Public Law Number: 100-690
Name of Law: Anti-Drug Abuse Act of 1988
Description: Amends Victims of Crime Act of 1984 to allow for grants to tribes to address child abuse cases. **Amends** Juvenile Justice and Delinquency Prevention Act of 1974 to allow for programs to tribes addressing juvenile detention.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg4181.pdf

Public Law Number: 100-691
Name of Law: Federal Cave Resources Protection Act of 1988
Description: Authorizes the Secretary of the Interior to delegate permit authority to an Indian tribe for caves on Indian lands at a tribe's request. Requires a tribe's permission before the removal of any cave resource on such tribe's land. Entitle tribes to notice before the issuance of a permit if the Secretary determines that possible harm or destruction of a religious or cultural site may occur.
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg4546.pdf

Public Law Number: 100-713
Name of Law: Indian Health Care Amendments of 1988
Description: Reauthorize and amend the Indian Health Care Improvement Act
Link: https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg4784.pdf

101ST CONGRESS (1989-1990)

Public Law Number: 101-185
Name of Law: National Museum of the American Indian Act
Description: Establishes within the Smithsonian Institution a memorial to Native Americans to be known as the Nation Museum of the American Indian, to provide for the study and research of Native Americans and their culture and the collection and exhibition of Native American objects.
Link: https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg1336.pdf#page=1

Public Law Number: 101-272
Name of Law: Amendment to the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986.
Description: Allows Indian tribes to lease non-Indian land for substance abuse treatment centers.
Link: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg137.pdf

Public Law Number: 101-343
Name of Law: To Authorize and Request the President to Proclaim the Month of November, 1990, and thereafter as "Native American Indian Heritage Month."
Description: Designates November as Native American Indian Heritage Month **Amendment:** N/A
Link: https://www.loc.gov/law/help/commemorative-observations/pdf/Pub.%20L.%20101-343.pdf

Public Law Number: 101-379
Name of Law: Indian Law Enforcement Reform Act
Description: Clarify and strengthen the authority for certain Department of the Interior law enforcement services, activities, and officers in Indian country, and for other purposes.
Link: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg473.pdf

Public Law Number: 101-408
Name of Law: Indian Environmental Regulatory Enhancement Act of 1990
Description: Authorizes grants to improve the capability of Indian tribal governments to regulate environmental quality
Amendment: Amends the Native American Programs Act of 1974.
Link: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg883.pdf

Public Law Number: 101-477
Name of Law: Native American Languages Act
Description: Promotes the rights and uses of Native languages through schools and other program
Link: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg1152.pdf

Public Law Number: 101-601
Name of Law: Native American Graves Protection and Repatriation Act.
Description: To provide for the protection of Native American Graves
Link: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg3048.pdf#page=5

102ND CONGRESS (1991-1992)

Public Law Number: 102-137
Name of Law: To make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W, May 29, 1990), of the power of Indian tribes to exercises criminal jurisdiction over Indians.
Description: Makes permanent the legislative reinstatement of the power of tribal courts to exercise criminal misdemeanor jurisdiction over nonmember Indians.
Amendment: Department of Defense Appropriations Act, 1991
Link: https://www.govinfo.gov/content/pkg/STATUTE-105/pdf/STATUTE-105-Pg646.pdf#page=1

Public Law Number: 102-497
Name of Law: Indian Environmental General Assistance Program Act of 1992
Description: Provides general assistance grants to eligible Indian tribal governments or intertribal consortia to cover the costs of planning, developing, and establishing environmental protection programs on Indian lands.
Link: https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg3255.pdf#page=7

Public Law Number: 102-524
Name of Law: Native American Languages Act of 1992
Description: Directs the Secretary of Health and Human Services to award grants to eligible tribal governments and Native American organizations to assist Native Americans in assuring the survival and continuing vitality of their languages.
Amendment: Amends the Native American Programs Act of 1974
Link: https://www.govinfo.gov/content/pkg/STATUTE-106/pdf/STATUTE-106-Pg3434.pdf

103RD CONGRESS (1993-1994)

Public Law Number: 103-11
Name of Law: An Act to extend the suspended implementation of certain requirements of the food stamp program on Indian reservations.
Description: Amends the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 to delay until January 31, 1994, implementation of food stamp program provisions: (1) requiring staggered coupon issuance to participating households on Indian reservations; and (2) exempting such households from the program's monthly reporting option.
Link: https://www.congress.gov/103/bills/s284/BILLS-103s284enr.pdf

Public Law Number: 103-66
Name of Law: Omnibus Budget Reconciliation Act of 1993
Description: To provide for reconciliation pursuant to section 7 of the concurrent Resolution on the budget for fiscal year 1994. Includes various tax benefits, credits and deductions for Indians and tribes.
Link: https://www.congress.gov/103/bills/hr2264/BILLS-103hr2264enr.pdf

Public Law Number: 103-176
Name of Law: Indian Tribal Justice Act
Description: Establishes within the BIA the office of Tribal Justice Support to further the development of tribal justice systems and Courts of Indian offenses including through agreements with tribes under Indian Self-Determination and Education Assistance Act. Also authorizes funds for tribal judicial conferences.
Link: https://www.congress.gov/103/bills/hr1268/BILLS-103hr1268enr.pdf

Public Law Number: 103-177
Name of Law: American Indian Agricultural Resource Management Act
Description: To improve the management, productivity, and use of Indian agricultural land and resources through farmland enhancement, education, and training programs.
Link: https://www.congress.gov/103/bills/hr1425/BILLS-103hr1425enr.pdf

Public Law Number: 103-183
Name of Law: Preventive Health Amendments of 1993
Description: To amend the Public Health Service Act to revise and extend the program of grants relating to preventive health measures with respect to breast and cervical cancer. Allows the grants to be made to tribes and tribal organizations. Includes these changes in evaluation and reporting requirements.
Link: https://www.congress.gov/103/bills/hr2202/BILLS-103hr2202enr.pdf
Link: https://www.congress.gov/103/bills/s1777/BILLS-103s1777enr.pdf

Public Law Number: 103-225
Name of Law: Food Stamp Program Improvements Act of 1994
Description: To amend the Food Stamp Act of 1977 to modify the requirements relating to monthly reporting and staggered issuance of coupons for households residing on Indian reservations, to ensure adequate access to retail food stores by food stamp households, and to maintain the integrity of the food stamp program, and for other purposes.
Amendment: Amends the Food Stamp Act of 1977.
Link: https://www.congress.gov/103/bills/s1926/BILLS-103s1926enr.pdf

Public Law Number: 103-239
Name of Law: School-to-Work Opportunities Act of 1994
Description: To establish a national framework for the development of School-to-Work Opportunities systems in all States, and for other purposes. Development and Implementation Grants for School-to-Work Programs for Indian Youths - Directs the Secretaries to provide grants for SWO programs for Indian youths that involve schools funded by the Bureau of Indian Affairs.
Link: https://www.congress.gov/103/bills/hr2884/BILLS-103hr2884enr.pdf

Public Law Number: 103-252
Name of Law: Human Services Amendments of 1994
Description: Require Head Start agencies to provide that those on Indian reservations include members of Indian Tribes living near the reservation and authorizes the secretary to take certain funds to buy facilities owned by Indian tribes and make them suitable Head Start facilities; Other sections revise provisions and allows Indian tribes to enroll additional children (who don't meet low-income standards) in Head Start programs and adds a study of availability and delivery to Indian children living on or near reservations, Alaskan natives, and children of migrant and seasonal farmworkers.
Link: https://www.congress.gov/103/bills/s2000/BILLS-103s2000enr.pdf

Public Law Number: 103-322
Name of Law: Violent Crime Control and Law Enforcement Act of 1994
Description: Authorizes attorney general to make grants to Indian tribal governments (and others) to increase police presence, expand and improve cooperative efforts between law enforcement agencies and community members to enhance public safety.
Amendment: Amends the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act).
Link: https://www.congress.gov/103/bills/hr3355/BILLS-103hr3355enr.pdf

Public Law Number: 103-337
Name of Law: National Defense Authorization Act for Fiscal Year 1995
Description: Sec. 322 allows any federally recognized Indian tribe to participate in DOD (department of defense) environmental restoration programs.
Link: https://www.congress.gov/103/bills/s2182/BILLS-103s2182enr.pdf

Public Law Number: 103-344
Name of Law: American Indian Religious Freedom Act Amendments of 1994
Description: Permits the traditional use of peyote for Indian religious purposes. States that this Act shall not prohibit: (1) the Drug Enforcement Agency from reasonably regulating persons who cultivate, harvest, or distribute peyote; and (2) a Federal agency from reasonably limiting peyote use in circumstances of public safety.
Amendment: Amends the American Indian Religious Freedom Act.
Link: https://www.congress.gov/103/bills/hr4230/BILLS-103hr4230enr.pdf

Public Law Number: 103-403
Name of Law: Small Business Administration Reauthorization and Amendments Act of 1994
Description: Authorizes agencies or nonprofit entities established by a Native American tribal government to be Microloan intermediaries.
Amendment: Amends the Small Business Act and the Small Business Investment Act of 1958.
Link: https://www.congress.gov/103/bills/s2060/BILLS-103s2060enr.pdf

Public Law Number: 103-412
Name of Law: American Indian Trust Fund Management Reform Act of 1994
Description: Amends Federal law to require the Secretary of the Interior (Secretary) to take specified actions to properly discharge U.S. trust responsibilities with regard to Indian funds investment. Reforms the management of Indian trust funds, including Indian trust fund management program, and creating a Special Trustee for American Indians.
Link: https://www.congress.gov/103/bills/hr4833/BILLS-103hr4833enr.pdf

Public Law Number: 103-413
Name of Law: Indian Self-Determination Act Amendments of 1994
Description: To specify the terms of contracts entered into by the United States and Indian tribal organizations under the Indian Self-Determination and Education Assistance Act, and for other purposes. Amends the Indian Self-Determination and Education Assistance Act to add a definition of the term "construction contract," excluding planning services contracts, Bureau of Indian Affairs (BIA) roads maintenance contracts, Housing Improvement Program contracts, and Health and Human Services health facility maintenance and improvement contracts. Requires annual consultation with Indian tribes and organizations when developing the budget for Indian Health Service with BIA. Adds new title on self-governance – expresses congressional findings and declares that it is the policy of this title to permanently establish and implement tribal self-governance.
Link: https://www.congress.gov/103/bills/hr4842/BILLS-103hr4842enr.pdf

Public Law Number: 103-432
Name of Law: Social Security Act Amendments of 1994
Description: Makes amendments to the Social Security Act. Amends coverage of Indians in JOBS program. Sec. 204 requires a State part B plan to describe specific measures taken by the State to comply with the Indian Child Welfare Act.
Link: https://www.congress.gov/103/bills/hr5252/BILLS-103hr5252enr.pdf

Public Law Number: 103-600
Name of Law: Indian Dams Safety Act of 1994
Description: To provide for the maintenance of dams located on Indian lands by the Bureau of Indian Affairs or through contracts with Indian tribes.
Link: https://www.congress.gov/103/bills/hr1426/BILLS-103hr1426enr.pdf

Public Law Number: 103-761
Name of Law: Improving America's Schools Act of 1994
Description: Extends for five years the authorizations of appropriations for the programs under the Elementary and Secondary Education Act of 1965 and for certain other purposes. Establishes a new ESEA title IX, Indian, Native Hawaiian, and Alaska Native Education, which adds revised Indian Education Act programs to ESEA to improve educational opportunities for children
Link: https://www.congress.gov/103/bills/hr6/BILLS-103hr6enr.pdf

Public Law Number: 103-783
Name of Law: Indian Lands Open Dump Cleanup Act of 1994
Description: To clean up open dumps on Indian lands, and for other purposes. Requires the Director of the Indian Health Service to: (1) study and inventory open dumps on Indian and Alaska Native lands; and (2) develop and implement a ten-year plan to address solid waste disposal needs on such lands. Enter into agreements with tribes and provides for tribe demonstration project.
Link: https://www.congress.gov/103/bills/s720/BILLS-103s720enr.pdf

104th CONGRESS (1995-1996)

Public Law Number: 104-127
Name of Law: Federal Agriculture Improvement and Reform Act of 1996
Description: To modify the operation of certain agricultural programs. Amends the Consolidated Farm and Rural Development Act to establish a rural community advancement program of grants, loans, guarantees, and other assistance to local communities and federally recognized Indian tribes. Establishes in the Treasury a Rural Development Trust Fund. Authorizes a rural venture capital demonstration program.
Link: https://www.congress.gov/104/plaws/publ127/PLAW-104publ127.pdf

Public Law Number: 104-146
Name of Law: Ryan White CARE Act Amendments of 1996
Description: Ensure the ongoing availability of services for Native American communities to enable such communities to care for Native Americans with HIV disease.
Link: https://www.congress.gov/104/plaws/publ146/PLAW-104publ146.pdf

Public Law Number: 104-182
Name of Law: Safe Drinking Water Act Amendments of 1996
Description: Provides for grants to tribes on small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water to regulations.
Link: https://www.congress.gov/104/plaws/publ182/PLAW-104publ182.pdf

Public Law Number: 104-188
Name of Law: Small Business Job Protection Act of 1996
Description: To provide tax relief for small businesses, to protect jobs, to create opportunities, to increase the take home pay of workers. Tribes as employers and as tax-exempt organizations eligible under section 401(k) and other deductions.
Link: https://www.congress.gov/104/plaws/publ188/PLAW-104publ188.pdf

Public Law Number: 104-272
Name of Law: Professional Boxing Safety Act of 1996
Description: Includes sections on professional boxing on Indian reservations.
Link: https://www.congress.gov/104/plaws/publ272/PLAW-104publ272.pdf

Public Law Number: 104-278
Name of Law: National Museum of the American Indian Act Amendments of 1996
Description: Amends the National Museum of the American Indian Act to require the Smithsonian Institution to expedite the repatriation of such objects where a requesting Indian tribe or Native Hawaiian organization can show cultural affiliation.
Link: https://www.congress.gov/104/plaws/publ278/PLAW-104publ278.pdf

Public Law Number: 104-313
Name of Law: Indian Health Care Improvement Technical Corrections Act of 1996
Description: Makes technical corrections to the Indian Health Care Improvement Act concerning allopathic medicine and Indian health professions scholarships and active duty service obligations.
Link: https://www.congress.gov/104/plaws/publ313/PLAW-104publ313.pdf

Public Law Number: 104-322
Name of Law: National Invasive Species Act of 1996
Description: To provide for ballast water management to prevent the introduction and spread of nonindigenous species into the waters of the United States, and for other purposes. Provides for interstate (in addition to existing State) aquatic nuisance species management plans, allowing Indian tribes as well as States to participate.
Amendment: Amends the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.
Link: https://www.congress.gov/104/plaws/publ332/PLAW-104publ332.pdf

Public Law Number: 104-330
Name of Law: Native American Housing Assistance and Self-Determination Act of 1996
Description: To provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance, and for other purposes.
Link: https://www.congress.gov/104/plaws/publ330/PLAW-104publ330.pdf

Public Law Number: 104-109
Name of Law: To make certain technical corrections in laws relating to Native Americans, and for other purposes.
Description: To make certain technical corrections in laws relating to Native Americans, and for other purposes. Makes technical amendments to the following acts: Indian Lands Open Dump Cleanup Act of 1994; Indian Self- Determination Contract Reform Act of 1994, and Native American Languages Act. Amends the Indian Self-Determination and Education Assistance Act to allow a participating tribe the option to incorporate self-determination provisions of title I into an agreement entered into under titles III or IV of the Act.
Link: https://www.congress.gov/104/plaws/publ109/PLAW-104publ109.pdf

105TH CONGRESS (1997-1998)

Public Law Number: 105-33
Name of Law: Balanced Budget Act of 1997
Description: Directs the Secretary to make grants for services for the prevention and treatment of type I diabetes in Indians through the Indian Health Service and tribal and urban Indian health programs. Amends SSA title IV part D (Child Support and Establishment of Paternity) to modify child support requirements affecting: ... (9) direct Federal grants to Indian tribes for child support enforcement.
Link: https://www.congress.gov/105/plaws/publ33/PLAW-105publ33.pdf

Public Law Number: 105-178
Name of Law: Transportation Equity Act for the 21st Century
Description: Amends the emergency relief provisions to authorize an emergency fund for expenditure by the Secretary, subject to specified restrictions, for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds to have suffered serious damage as a result of natural disaster over a wide area or catastrophic failure for any external cause.
Link: https://www.congress.gov/105/plaws/publ178/PLAW-105publ178.pdf

Public Law Number: 105-220
Name of Law: Workforce Investment Partnership Act of 1998
Description: Native American programs to support employment and training programs and provides for workforce investment activities and supplemental services under programs for Indians. American Indian vocational rehabilitation programs.
Link: https://www.congress.gov/105/plaws/publ220/PLAW-105publ220.pdf

Public Law Number: 105-244
Name of Law: Higher Education Amendments of 1998
Description: Directs the Secretary to provide grants and related assistance to American Indian Tribe Colleges and Universities to improve and expand their capacity to serve Indian students.
Link: https://www.congress.gov/105/plaws/publ244/PLAW-105publ244.pdf

Public Law Number: 105-262
Name of Law: Department of Defense Appropriations Act
Description: Authorizes Secretary to carry out program to distribute surplus dental equipment to Indian health service facilities and to federal-qualified health centers.
Link: https://www.congress.gov/105/plaws/publ262/PLAW-105publ262.pdf

Public Law Number: 105-285
Name of Law: Coats Human Services Reauthorization Act of 1998
Description: Provides for grants to community food and nutrition programs to benefits Indians.
Link: https://www.congress.gov/105/plaws/publ285/PLAW-105publ285.pdf

106TH CONGRESS (1999-2000)

Public Law Number: 106-179
Name of Law: Indian Tribal Economic Development and Contract Encouragement Act of 2000
Description: To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.
Amendment: Amends the Indian Reorganization Act to remove a requirement that a tribe's choice of legal counsel and fixing of fees be subject to the Secretary's approval.
Link: https://www.congress.gov/106/plaws/publ179/PLAW-106publ179.pdf

Public Law Number: 106-260
Name of Law: Tribal Self-Governance Amendments of 2000
Description: Amends the Indian Self-Determination and Education Assistance Act to direct the Secretary of Health and Human Services (HHS) to establish a Tribal Self-Governance Program within the Indian Health Service of HHS to provide further self-governance by Indian tribes. Directs the Secretary, at the request of an Indian tribe, to enter into an agreement for the acquisition of any goods, services or supplies available to the Secretary from other Federal agencies that are not directly available to the tribe under this Act or any other Federal law, including acquisitions from prime vendors. Allows patient records, at the option of an Indian tribe or tribal organization, to be deemed Federal records under the Federal Records Act of 1950 for the limited purpose of making such records eligible for storage by the Federal Records Center to the same extent as other HHS patient records.
Link: https://www.congress.gov/106/plaws/publ260/PLAW-106publ260.pdf

Public Law Number: 106-310
Name of Law: Children's Health Act of 2000
Description: Direct the secretary to make grants, contracts, or cooperative agreements for alcohol and drug prevention or treatment services for Indians and Alaska Natives. Also establishes a Commission for Indian and Native Alaskan Health Care to study health concerns of Indians and Native Alaskans. Authorizes the director for the Center for Substance Abuse Treatment to make grants to States and Indian tribes recognized by the U.S. to have a higher rate or have a rapid increase n methamphetamine or amphetamine abuse or addiction. Permits tribes to expand activities in connection to treatment in specific geographic areas.
Link: https://www.congress.gov/106/plaws/publ310/PLAW-106publ310.pdf

Public Law Number: 106-417
Name of Law: Alaska Native and American Indian Direct Reimbursement Act of 1999
Description: To amend the Indian Health Care Improvement Act to make permanent the demonstration program that allows for direct billing of Medicare, Medicaid, and other third party payers, and to expand the eligibility under such program to other tribes and tribal organizations
Link: https://www.congress.gov/106/plaws/publ417/PLAW-106publ417.pdf

Public Law Number: 106-447
Name of Law: Indian Tribal Regulatory Reform and Business Development Act of 2000
Description: Directs Secretary of Commerce to establish the Regulatory Reform and Business Development on Indian Lands Authority to facilitate identifying and removing obstacles to investment, business development, and the creation of wealth with respect to Native American economies.
Link: https://www.congress.gov/106/plaws/publ447/PLAW-106publ447.pdf

Public Law Number: 106-464
Name of Law: Native American Business Development, Trade Promotion, and Tourism Act of 2000
Description: Provides financial and technical assistance and administrative services for business development and legal and regulatory compliance to Indian tribes, organizations, and businesses (eligible entities); and (2) other assistance to enhance the economies of Indian tribes.
Link: https://www.congress.gov/106/plaws/publ464/PLAW-106publ464.pdf

Public Law Number: 106-559
Name of Law: Indian Tribal Justice Technical and Legal Assistance Act of 2000
Description: Directs the Attorney General, in consultation with the Office of Tribal Justice and the Department of Justice to award grants to (2) non-profit entities that provide legal assistance services for Indian tribes, members of Indian tribes, or tribal justice programs; Title II: Indian Tribal Courts; Title IV: National Leadership Symposium for American Indian, Alaskan Native, and Native Hawaiian Youth
Link: https://www.congress.gov/106/plaws/publ559/PLAW-106publ559.pdf

Public Law Number: 106-462
Name of Law: Indian Land Consolidated Act Amendments of 2000
Description: Piloted the Indian Land Consolidation program. Sets forth various provisions such as the acquisition of fractional interests in Indian trust or restricted lands. Requires the Secretary to provide estate-planning assistance to Indian land owners.
Amendment: Amends the Indian Land Consolidated Act
Link: https://www.congress.gov/106/plaws/publ462/PLAW-106publ462.pdf

Public Law Number: 106-497
Name of Law: Indian Arts and Crafts Enforcement Act of 2000
Description: Provides that in a civil action brought against a person who offers or displays for sale or sells a good in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization resident within the United States, damages shall include any and all gross profits accrued by the defendant as a result of such activities.
Amendment: Amends the 1990 Indian Arts and Crafts Act
Link: https://www.congress.gov/106/plaws/publ497/PLAW-106publ497.pdf

Public Law Number: 106-501
Name of Law: Older Americans Act of Amendments of 2000
Description: Establishes a Native American caregiver support program.
Link: https://www.congress.gov/106/plaws/publ501/PLAW-106publ501.pdf

Public Law Number: 106-568
Name of Law: Omnibus Indian Advancement Act
Description: Amendments to Native American Home Ownership and housing assistance and Indian Employment, Training and Related Services to: (1) revise requirements regarding affected programs to include programs for assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing them with the world of work, facilitating the creation of job opportunities, and any services related to these activities (replacing current law requirements of job training, tribal work experience, employment opportunities, or skill development, or any program designed for the enhancement of job opportunities or employment training); (2) require the Secretary of the Interior to reconsider disapproval of any statutory waiver requested by a tribe.
Link: https://www.congress.gov/106/plaws/publ568/PLAW-106publ568.pdf

Public Law Number: 106-569
Name of Law: American Homeownership and Economic Opportunity Act of 2000
Description: Amends the Housing and Community Development Act of 1992 to make permanent the Indian housing loan guarantee authority. Amends the Native American Housing Assistance and Self-Determination Act of 1996 to: (1) restrict the Secretary's authority to waive housing plan requirements to not more than 90 days; (2) permit the Secretary to waive local cooperation requirements upon a good faith showing and agreement to make certain payments in lieu of taxes; (3) permit assistance to Indian families that are not low-income upon a showing of need; (4) eliminate separate housing plan requirements for small tribes; (5) permit the Secretary to waive certain environmental review requirements under specified conditions; (6) permit reservation housing assistance for specified full-time Federal, State, county, or tribal law enforcement officers; (7) revise audit, review, and hearing provisions; (8) prescribe a funding formula for housing authorities operating fewer than 250 units based on an average of FY 1992 through 1997 allocations; and (9) repeal the requirement regarding the certification of compliance with subsidy layering requirements.
Link: https://www.congress.gov/106/plaws/publ569/PLAW-106publ569.pdf

107TH CONGRESS (2001-2002)

Public Law Number: 107-171
Name of Law: Farm Security and Rural Investment Act of 2002
Description: Authorizes the Secretary to provide agricultural incentive programs to Indian Tribes; to carry out fresh fruit and vegetable distribution programs to one Indian reservation; provides certain Indian farmers or ranchers on Indian reservation land with 95% operation loan guarantees; directs secretary to waive certain limitations for a direct loan to a farmer or rancher whose farm is subjected to jurisdiction of an Indian Tribe; makes a tax exempt entity on Indian reservation eligible for rural business grants; authorizes secretary to make telephone loans to Tribes; authorizes secretary to make grans to train rural firefighters and emergency medical personnel
Link: https://www.congress.gov/107/plaws/publ171/PLAW-107publ171.pdf

Public Law Number: 107-249
Name of Law: Indian Financing Amendments Act of 2002
Description: Increase the Indian Financing Act of 1974 from $100,000 to $250,000 the amount of total unpaid principal indebtedness of an individual Indian for which the Bureau of Indian Affairs may guarantee or insure loans
Link: https://www.congress.gov/107/plaws/publ331/PLAW-107publ331.pdf

Public Law Number: 107-292
Name of Law: Native American Housing Assistance and Self-Determination Reauthorization Act of 2002
Description: Amends the Native American Housing Assistance and Self-Determination Act of 1996 to reauthorize: (1) block grants; (2) Federal loan guarantees; (3) training and technical assistance; (4) Indian Housing Loan Guarantee Fund; Secretary of Interior required to study and report to Congress on feasibility of demonstration projects for community development and on the extent of black mold infestation of Native American housing
Link: http://www.congress.gov/107/plaws/publ292/PLAW-107publ292.pdf

108TH CONGRESS (2003-2004)

Public Law Number: 108-374
Name of Law: American Indian Probate Reform Act of 2004
Description: Amends the Indian Land Consolidation Act to require that any trust or restricted interest in land or interest in trust personality, subject to applicable Fed law, that is not disposed of by valid will shall descend: (1) according to an applicable tribal probate code approved in the Act; or (2) if such tribal does not apply, in accordance with this Act.
Link: https://www.congress.gov/108/plaws/publ374/PLAW-108publ374.pdf

109TH CONGRESS (2005-2006)

Public Law Number: 109-136
Name of Law: Native American Housing Enhancement Act of 2005
Description: Amends the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing programs for Indians. Prohibits the Secretary of Housing and Urban Development from restricting access to the housing grant amount for any Indian tribe based solely on: (1) whether the recipient for the tribe retains program income; (2) the amount of any such program income retained; (3) whether the recipient retains certain reserve amounts; or (4) whether the recipient has expended retained program income for housing-related activities.
Link: https://www.congress.gov/109/plaws/publ136/PLAW-109publ136.pdf

Public Law Number: 109-157
Name of Law: Indian Land Probate Reform Technical Corrections Act of 2005
Description: Makes technical amendments with regard to: (1) partition of highly fractionated Indian land; (2) tribal probate codes; (3) descent and distribution; (4) the fractional interest acquisition program; (5) establishment of fair market value; and (6) land ownership information.
Link: https://www.congress.gov/109/plaws/publ157/PLAW-109publ157.pdf

Public Law Number: 109-394
Name of Law: Esther Martinez Native American Languages Preservation Act of 2006
Description: Amends the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs. Authorizes the Secretary of Health and Human Services, as part of the Native American languages grant program, to make three-year grants for educational Native American language nests, survival schools, and restoration programs.
Link: https://www.congress.gov/109/plaws/publ394/PLAW-109publ394.pdf

110TH CONGRESS (2007-2008)

Public Law Number: 110-411
Name of Law: Native American Housing Assistance and Self-Determination Reauthorization Act of 2008
Description: To reauthorize the programs for housing assistance for Native Americans and Amends the Native American Housing Assistance and Self-Determination Act of 1996 to make mandatory the role of the federal government in providing housing assistance to Native Americans and in promoting the economic self-sufficiency and self-determination of Native Americans.
Link: https://www.congress.gov/110/plaws/publ411/PLAW-110publ411.pdf

111TH CONGRESS (2009-2010)

Public Law Number: 111-3
Name of Law: Children's Health Insurance Program Reauthorization Act of 2009
Description: Award grants to Indian Health Service providers and urban Indian organizations receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.) for outreach to, and enrollment of, children who are Indians.
Link: https://www.congress.gov/111/plaws/publ3/PLAW-111publ3.pdf

Public Law Number: 111-5
Name of Law: American Recovery and Reinvestment Act of 2009
Description: Authorizes the National Coordinator to award grants to states or Indian tribes for the establishment of programs for loans to health care providers to support certified electronic health record technology. Tribes eligible for emergency TANF funds. Continuation of protections for Indian property from Medicaid estate recovery. Protections for Indians under CHIP and Medicaid.
Link: https://www.congress.gov/111/plaws/publ5/PLAW-111publ5.pdf

Public Law Number: 111-13
Name of Law: Serve America Act
Description: Establishes a new Learn and Serve program, Innovative Community-Based Service-Learning Programs and Research, providing grants to states, nonprofit organizations, territories, and Indian tribes.
Link: https://www.congress.gov/111/plaws/publ13/PLAW-111publ13.pdf

Public Law Number: 111-148
Name of Law: Patient Protection and Affordable Care Act
Description: Reimbursement for all Medicare part B services furnished by certain Indian Hospitals and Clinics. (Sec. 3505) Requires the Secretary to establish three programs to award grants to qualified public, nonprofit IHS, Indian tribal, and urban Indian trauma centers to: (1) assist in defraying substantial uncompensated care costs; (2) further the core missions of such trauma centers, including by addressing costs associated with patient stabilization and transfer; and (3) provide emergency relief to ensure the continued and future availability of trauma services.
Link: https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf

Public Law Number: P.L. 111-211
Name of Law: Indian Arts and Crafts Amendments Act of 2010
Description: To protect Indian arts and crafts through the improvement of applicable criminal proceedings. Also includes Tribal Law and Order Act of 2010.
Amendments: To Indian Civil Rights Act of 1968
Link: https://www.govinfo.gov/content/pkg/PLAW-111publ211/pdf/PLAW-111publ211.pdf

Public Law Number: 111-269
Name of Law: Indian Veterans Housing Opportunity Act of 2010
Description: To exclude from consideration as income under the Native American Housing Assistance and Self-Determination Act of 1996 amounts received by a family from the Department of Veterans Affairs for service-related disabilities of a member of the family.
Link: https://www.congress.gov/111/plaws/publ269/PLAW-111publ269.pdf

Public Law Number: 111-291
Name of Law: Claims Resolution Act of 2010
Description: Addresses Individual Indian Money Account Litigation Settlement. Establishes the Trust Land Consolidation Fund (TLCF) upon final approval of the settlement with amounts from the TLCF to be made available to the Secretary of the Interior to conduct the Land Consolidation Program (LCP) and for other specified costs.
Link: https://www.congress.gov/111/plaws/publ291/PLAW-111publ291.pdf

Public Law Number: 111-358
Name of Law: America Competes Reauthorization Act of 2010
Description: The Director shall continue to support a program to award grants on a competitive, merit-reviewed basis to tribal colleges and universities to enhance the quality of undergraduate STEM education at such institutions and to increase the retention and graduation rates of Native American students pursuing associate's or baccalaureate degrees in STEM.
Link: https://www.congress.gov/111/plaws/publ358/PLAW-111publ358.pdf

112TH CONGRESS (2011-2012)

Public Law Number: 112-14
Name of Law: Moving Ahead for Progress in the 21st Century Act
Description: Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities. Secretary of the Interior, shall maintain a comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program. Secretary of the Interior shall maintain any regulations governing the tribal transportation program.
Link: https://www.congress.gov/112/plaws/publ141/PLAW-112publ141.pdf

Public Law Number: 112-151
Name of Law: Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 or HEART Act of 2012
Description: To amend the Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior, and for other purposes.
Link: https://www.congress.gov/112/plaws/publ151/PLAW-112publ151.pdf

113TH CONGRESS (2013-2014)

Public Law Number: 113-2
Name of Law: Disaster Relief Appropriations Act, 2013
Description: Tribal requests for a major disaster or emergency declaration under The Stafford Act.
Amendment: Amends Title I and Sections 102, 401, and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).
Link: https://www.congress.gov/113/plaws/publ2/PLAW-113publ2.pdf

Public Law Number: 113–4
Name of Law: Violence Against Women Reauthorization Act of 2013
Description: This law generally applies to tribes and Native American organizations Specifically, Title IX concerns safety for Indian women.
Link: https://www.congress.gov/113/plaws/publ4/PLAW-113publ4.pdf

Public Law Number: 113-5
Name of Law: Pandemic and All-Hazards Preparedness Reauthorization Act of 2013
Description: Section 201 allows the federal government to authorize a state or tribe to temporarily reassign state and local public health department or agency personnel funded through PHSA programs to immediately address a public health emergency in the state or tribe
Link: https://www.congress.gov/113/plaws/publ5/PLAW-113publ5.pdf

Public Law Number: 113-79
Name of Law: Agricultural Act of 2014
Description: Sec. 4004. Food distribution program on Indian reservations. Sec. 6005. Tribal college and university essential community facilities. Sec. 8005. Tribal watershed forestry assistance program.
Link: https://www.congress.gov/113/plaws/publ79/PLAW-113publ79.pdf

Public Law Number: 113-104
Name of Law: Kilah Davenport Child Protection Act of 2013
Description: Amends the federal criminal code to apply certain increased criminal penalties against any person who commits domestic assault and who has a final conviction on at least two separate prior occasions under state, federal, or tribal court proceedings (a habitual offender) for offenses that would be, if subject to federal jurisdiction, assault, sexual abuse, or a serious violent felony against a spouse or intimate partner (as under current law) or against a child of, or in the care of, the person committing the domestic assault.
Link: https://www.congress.gov/113/plaws/publ104/PLAW-113publ104.pdf

Public Law Number: 113-121
Name of Law: Water Resources Reform and Development Act of 2014
Description: To provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, and for other purposes. Section 5013 funds Indian programs; Section 5031 deals with state, tribal, and local permits; Section 1031 concerns a tribal partnership program.
Link: https://www.congress.gov/113/plaws/publ121/PLAW-113publ121.pdf

Public Law Number: 113-128
Name of Law: Workforce Innovation and Opportunity Act
Description: To amend the Workforce Investment Act of 1998 to strengthen the United States workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs in the United States, and to promote individual and national economic growth. Section 166 supports Native American employment and training activities. Section 423 supports Native American vocational rehabilitation services.
Link: https://www.congress.gov/113/plaws/publ128/PLAW-113publ128.pdf

Public Law Number: 113-146
Name of Law: Veterans Access, Choice, And Accountability Act of 2014
Description: Concerns VA outreach to Tribal Medical Facilities and Indian Health Services to raise awareness of veteran programs. Technical amendments made subsequently by P.L. 113- 175
Link: https://www.congress.gov/113/plaws/publ146/PLAW-113publ146.pdf

Public Law Number: 113–168
Name of Law: Tribal General Welfare Exclusion Act of 2014
Description: To amend the Internal Revenue Code of 1986 to clarify the treatment of general welfare benefits provided by Indian tribes.
Link: https://www.congress.gov/113/plaws/publ168/PLAW-113publ168.pdf

Public Law Number: 113-183
Name of Law: Preventing Sex Trafficking and Strengthening Families Act
Description: Section 302 specifically deals with child support enforcement programs for Indian tribes.
Link: https://www.congress.gov/113/plaws/publ183/PLAW-113publ183.pdf

Public Law Number: 113–186
Name of Law: Child Care and Development Block Grant Act of 2014
Description: Amends Child Care and Development Block Grant Act to include collaborations with tribes.
Link: https://www.congress.gov/113/plaws/publ186/PLAW-113publ186.pdf

Public Law Number: 113-281
Name of Law: Howard Coble Coast Guard and Maritime Transportation Act of 2014
Description: Section 312 requires DHS to provide notice of major marine casualties to state and tribal governments within 24 hours of it being reported to DHS. Section 313 amends provisions of the Federal Water Pollution Control Act (commonly known as the Clean Water Act) by authorizing Indian tribes to participate in area committees established to plan for responses to spills.
Link: https://www.congress.gov/113/plaws/publ281/PLAW-113publ281.pdf

Public Law Number: 113-287
Name of Law: Enactment of Title 54—National Park Service and Related Programs
Description: Creation of Historic Preservation Programs and Authorities for Indian Tribes and Native Hawaiian Organizations.
Link: https://www.congress.gov/113/plaws/publ287/PLAW-113publ287.pdf

Public Law Number: 113-295
Name of Law: Tax Increase Prevention Act of 2014
Description: Concerns the Indian employment tax credit and the tax credit for producing electricity using Indian coal facilities placed in service before 2009.
Link: https://www.congress.gov/113/plaws/publ295/PLAW-113publ295.pdf

114th Congress (2015-2016)

Public Law Number: 114-10
Name of Law: Medicare Access and CHIP Reauthorization Act of 2015
Description: Section 213 Extends an existing special diabetes program for Indians with type I diabetes.
Link: https://www.congress.gov/114/plaws/publ10/PLAW-114publ10.pdf

Public Law Number: 114-22
Name of Law: Justice for Victims of Trafficking Act of 2015
Description: Section 904 allows for DHS to provide training to assist any tribal government in starting a program of training to identify human trafficking.
Link: https://www.congress.gov/114/plaws/publ22/PLAW-114publ22.pdf

Public Law Number: 114-91
Name of Law: Protecting Our Infants Act of 2015
Description: Section 4 allows HHS to provide technical assistance to states and Indian tribes to improve neonatal abstinence syndrome surveillance.
Link: https://www.congress.gov/114/plaws/publ91/PLAW-114publ91.pdf

Public Law Number: 114-92
Name of Law: National Defense Authorization Act for Fiscal Year 2016
Description: Allows service secretaries to convey excess relocatable military housing units to certain Indian tribes, at no cost, and without consideration.
Link: https://www.congress.gov/114/plaws/publ92/PLAW-114publ92.pdf

Public Law Number: 114-94
Name of Law: Fixing America's Surface Transportation Act or the FAST Act
Description: Sec 1117 through 1121 provides funding and requirements for both tribes and government to set us tribal transportation self-governance program.
Link: https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf

Public Law Number: 114-95
Name of Law: Every Student Succeeds Act
Description: Reauthorize the Elementary and Secondary Education Act of 1965 to ensure that every child achieves. Title. VII focuses on Indian education.
Link: https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf

Public Law Number: 114-165
Name of Law: Native American Children's Safety Act
Description: To amend the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings.
Link: https://www.congress.gov/114/plaws/publ165/PLAW-114publ165.pdf

Public Law Number: 114-178
Name of Law: Indian Trust Asset Reform Act
Description: To provide for Indian trust asset management reform. Establishes Indian Trust Asset Management Demonstration Project that allows tribes to propose Trust Asset Management plans.
Link: https://www.congress.gov/114/plaws/publ178/PLAW-114publ178.pdf

Public Law Number: 114-198
Name of Law: Comprehensive Addiction and Recovery Act of 2016
Description: authorize the Attorney General and Secretary of Health and Human Services to award grants to address the prescription opioid abuse and heroin use crisis, including to tribal governments.
Link: https://www.congress.gov/114/plaws/publ198/PLAW-114publ198.pdf

Public Law Number: 114-221
Name of Law: Native American Tourism and Improving Visitor Experience Act or the NATIVE Act
Description: To enhance and integrate Native American tourism, empower Native American communities, increase coordination and collaboration between Federal tourism assets, and expand heritage and cultural tourism opportunities in the United States
Link: https://www.congress.gov/114/plaws/publ221/PLAW-114publ221.pdf

Public Law Number: 114-322
Name of Law: Water Infra-structure Improvements for the Nation Act
Description: The Water Resources Development Act of 2000 (WRDA 2000) is amended to allow the Corps of Engineers to carry out cost-shared design and construction of water resources development projects under the tribal partnership program. At an Indian tribe's request, the Corps of Engineers must report on the feasibility of a water resources development project that will substantially benefit Indian tribes.
Link: https://www.congress.gov/114/plaws/publ322/PLAW-114publ322.pdf

115TH CONGRESS (2017-2018)

Public Law Number: 115-93
Name of Law: Indian Employment, Training and Related Services Consolidation Act of 2017
Description: Amends the Indian Employment, Training and Related Services Demonstration Act of 1992 to rename the Act to the Indian Employment, Training and Related Services Act of 1992 and to revise the program that provides for the integration of employment, training, and related services programs for Indian tribes.
Link: https://www.congress.gov/115/plaws/publ93/PLAW-115publ93.pdf

Public Law Number: 115-243
Name of Law: Tribal Social Security Fairness Act of 2018
Description: Directs the Social Security Administration, at the request of an Indian tribe, to enter into an agreement with he tribe for the purpose of extending Old Age, Survivors, and Disability Insurance benefits under Social Security to tribal council members. Allows tribal council members to receive Social Security credit for taxes paid prior to the establishment of the agreement, if the taxes were timely paid in good faith and not subsequently refunded.
Link: https://www.congress.gov/115/plaws/publ243/PLAW-115publ243.pdf

Public Law Number: 115-325
Name of Law: Indian Tribal Energy Development and Self-Determination Act Amendments of 2017
Description: Amends the Indian Tribal Energy Development and Self Determination Act of 2005 to direct the Department of the Interior to provide Indian tribes with technical assistance in planning their energy resource development programs; amends the Tribal Forest Protection Act of 2004 to direct federal departments to enter into agreements with tribes to carry out demonstration projects to promote biomass energy production on Indian forest land and in nearby communities by providing them with reliable supplies of woody biomass from federal lands. The Department of Energy (DOE) Indian energy education planning and management assistance program is expanded to make intertribal organizations eligible for grants and to allow grants to be used to increase the capacity of tribes to manage energy development and energy efficiency programs.
Link: https://www.congress.gov/115/plaws/publ325/PLAW-115publ325.pdf

Public Law Number: 115-404
Name of Law: Johnson-O'Malley Supplemental Indian Education Program Modernization Act
Description: Requires DOI to annually update the number of Indian students eligible for the Johnson-O'Malley Program (JOM Program). The JOM Program awards contracts to tribal organizations, schools, states, and others to educate Indian students.
Link: https://www.congress.gov/115/plaws/publ404/PLAW-115publ404.pdf

116TH CONGRESS (2019)

Public Law Number: 116-9
Name of Law: John D. Dingell, Jr. Conservation, Management and Recreation Act
Description: Addresses the facilitation of title transfer to Reclamation project facilities to qualifying entities on the completion of repayment of capital costs
Amendment: Also, amends 54 U.S.C. 104909 on donation and distribution of meat from wildlife which includes tribes as recipients; amendments to the Fish and Wildlife Coordination Act, specifically as it relates to protection from invasive species; amendments to Indian Youth Service Corps.
Link: https://www.congress.gov/116/plaws/publ9/PLAW-116publ9.pdf

Public Law Number: 116-22
Name of Law: Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019
Amendment: Amending 42 U.S.C. 247d–4; Tribes may receive technical assistance on Public health and health care system situational awareness and bio surveillance capabilities.
Link: https://www.congress.gov/116/bills/s1379/BILLS-116s1379enr.pdf

Public Law Number: 116-25
Name of Law: Taxpayer First Act
Description: Includes tribes in Qualified Return Preparation programs
Link: https://www.congress.gov/116/bills/hr3151/BILLS-116hr3151enr.pdf

Public Law Number: 116-60
Name of Law: "Autism Collaboration, Accountability, Research, Education, and Support Act of 2019
Amendment: Amends 42 USC 280i to include tribes in programs related to autism
Link: https://www.congress.gov/116/plaws/publ60/PLAW-116publ60.pdf

APPENDIX O

L.D. 766, as engrossed and passed to be enacted by the Legislature on 6/20/2019

Engrossed version - As enacted by both Chambers of the Legistature - Currently on Governor's desk

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 571 - L.D. 766

An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013

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

PART A

Sec. A-1. 30 MRSA §6206, sub-§3, as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each ~~shall have~~ has the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section ~~shall~~ must be made by each tribal governing body. ~~Should~~ If either tribe or nation ~~choose~~ chooses not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State ~~shall have~~ has exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. ~~The~~ Except as provided in sections 6209-A and 6209-B, the State ~~shall have~~ has exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.

Sec. A-2. 30 MRSA §6210, sub-§5 is enacted to read:

5. Reports to the State Bureau of Identification. Penobscot Nation and Passamaquoddy Tribe law enforcement agencies shall submit to the Department of Public Safety, State Bureau of Identification such uniform crime reports and other information required by Title 25, section 1544.

Sec. A-3. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the First Regular Session of the 129th Legislature, the Secretary of State receives written certification by the Governor and

Council of the Penobscot Nation and the Joint Tribal Council of the Passamaquoddy Tribe that the nation and the tribe have agreed to the provisions of this Part pursuant to 25 United States Code, 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 of Representatives and the Revisor of Statutes; except that in no event may this Part become effective until 90 days after the adjournment of the First Regular Session of the 129th Legislature.

PART B

Sec. B-1. 30 MRSA §6209-B, sub-§1-A is enacted to read:

1-A. Concurrent jurisdiction over certain criminal offenses. The Penobscot Nation has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by an individual who is not a member of a federally recognized Indian tribe on the Penobscot Indian Reservation for which the potential maximum term of imprisonment does not exceed one year and the potential fine does not exceed $2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not include offenses committed by juveniles or criminal offenses committed against an individual who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of an individual who is not a member of any federally recognized Indian tribe, nation, band or other group.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, if the Penobscot Nation chooses to exercise jurisdiction under this subsection, the Penobscot Nation may not deny to any criminal defendant the right to a jury drawn from a cross section of the community that does not systematically exclude any distinctive group, a jury of 12 and the right to a unanimous jury verdict. In exercising the concurrent jurisdiction authorized by this subsection, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Penobscot Nation has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

Sec. B-2. 30 MRSA §6209-B, sub-§2, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or

regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

At the conclusion of a prosecution for a criminal offense, except a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the tribal court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

Sec. B-3. 30 MRSA §6209-B, sub-§4, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

4. Double jeopardy; collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the Penobscot Nation has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Penobscot Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.

Sec. B-4. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the First Regular Session of the 129th Legislature, the Secretary of State receives written certification by the Governor and Council of the Penobscot Nation that the nation has agreed to the provisions of this Part pursuant to 25 United States Code, 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 of Representatives and the Revisor of Statutes; except that in no event may this Part become effective until 90 days after the adjournment of the First Regular Session of the 129th Legislature.

PART C

Sec. C-1. 30 MRSA §6209-A, sub-§1-A is enacted to read:

1-A. Concurrent jurisdiction over certain criminal offenses. The Passamaquoddy Tribe has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by an individual who is not a member of a federally recognized Indian tribe on the Passamaquoddy Tribe Reservation for which the potential

maximum term of imprisonment does not exceed one year and the potential fine does not exceed $2,000; Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not include offenses committed by juveniles or criminal offenses committed against an individual who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation or against the property of an individual who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, if the Passamaquoddy Tribe chooses to exercise jurisdiction under this subsection, the Passamaquoddy Tribe may not deny to any criminal defendant the right to a jury drawn from a cross section of the community that does not systematically exclude any distinctive group, a jury of 12 and the right to a unanimous jury verdict. In exercising the concurrent jurisdiction authorized by this subsection, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Passamaquoddy Tribe has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

Sec. C-2. 30 MRSA §6209-A, sub-§2, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

At the conclusion of a prosecution for a criminal offense, except a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the tribal court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

Sec. C-3. 30 MRSA §6209-A, sub-§4, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

4. Double jeopardy; collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the Passamaquoddy Tribe has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.

Sec. C-4. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the First Regular Session of the 129th Legislature, the Secretary of State receives written certification by the Governor and Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Part pursuant to 25 United States Code, 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 of Representatives and the Revisor of Statutes; except that in no event may this Part become effective until 90 days after the adjournment of the First Regular Session of the 129th Legislature.

PART D

Sec. D-1. 25 MRSA §1544, first ¶, as amended by PL 1985, c. 779, §67, is further amended to read:

It ~~shall be~~ is the duty of all state, county, tribal and municipal law enforcement agencies, including those employees of the University of Maine System appointed to act as ~~policemen~~ law enforcement officers, to submit to the State Bureau of Identification uniform crime reports, to include such information as is necessary to establish a Criminal Justice Information System and to enable the commanding officer to comply with section 1541, subsection 3. It ~~shall be~~ is the duty of the bureau to prescribe the form, general content, time and manner of submission of such uniform crime reports. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and Legislature annual reports based on such reports. ~~A~~ The bureau shall furnish copy of such annual reports ~~shall be furnished~~ to all state, county, tribal and municipal law enforcement agencies.

Sec. D-2. Authority and jurisdiction; legislation. The Joint Standing Committee on Judiciary may report out to the Second Regular Session of the 129th Legislature legislation that addresses the authority and jurisdiction of the Penobscot Nation and the Passamaquoddy Tribe to charge, prosecute and impose sentences for

crimes other than Class D and Class E crimes consistent with the federal Violence Against Women Reauthorization Act of 2013 and the Tribal Law and Order Act of 2010.