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## JUDICIARY

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### STATE OF MAINE HOUSE OF REPRESENTATIVES 132ND LEGISLATURE FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to H.P. 617, L.D. 958, “An Act to Prohibit Eminent Domain on Tribal Lands”

Amend the bill by striking out the title and substituting the following:

**'An Act to Prohibit Eminent Domain on Existing Tribal Trust Lands'**

Amend the bill in Part A by striking out all of section 1 and inserting the following:

**'Sec. A-1. 30 MRSA §6205**, as amended by PL 2021, c. 650, §§2 to 4 and affected by §13, is further amended to read:

**§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;

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 not held in common with any other person or entity and are certified by the secretary 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;

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 not held in common with any other person or entity and is certified by the secretary 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 not held in common with any other person or entity and is certified by the secretary as held for the benefit 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 not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe;

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 not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe;

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 not held in common with any other person or entity and is certified by the secretary as held for the benefit of the Passamaquoddy Tribe; and

F. Land acquired by the secretary for the benefit of the Passamaquoddy Tribe in Perry consisting of:

(1) Land conveyed by Denise E. Plouffe to the Passamaquoddy Tribe by quitclaim deed dated October 5, 2017, recorded in the Washington County Registry of Deeds in Book 4403, Pages 18 and 19; and

(2) Land conveyed by Austin Humphries to the Passamaquoddy Tribe by deed dated November 18, 1983, recorded in the Washington County Registry of Deeds in Book 1252, Pages 93 to 95.

Notwithstanding subsection 5 and any other provision of this Act to the contrary, the addition of land to the Passamaquoddy Indian territory pursuant to this paragraph is not subject to approval by any city, town, village or plantation within the State.

**2. Penobscot Indian territory.** Subject to subsections 3,4 and 5, the following lands within the State ~~shall be~~ are 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 not held in common with any other person or entity and are certified by the secretary 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; any lands in Lakeville acquired by the Penobscot Nation; 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.** Except as provided in subsection 3-A, this subsection governs the taking of land for public uses under the laws of the State within either the Passamaquoddy Indian territory or the Penobscot Indian territory.

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~~ is 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

1 nation, shall conduct a public hearing in the manner provided by the Maine  
2 Administrative Procedure Act, on the affected Indian reservation. The finding of the  
3 public entity or Public Utilities Commission may be appealed to the Maine Superior  
4 Court.

5 In the event of a taking of land for public uses within the Passamaquoddy Indian  
6 Reservation or the Penobscot Indian Reservation, the public entity or public utility  
7 making the taking shall, at the election of the affected tribe or nation, and with respect  
8 to individually allotted lands, at the election of the affected allottee or allottees, acquire  
9 by purchase or otherwise for the respective tribe, nation, allottee or allottees a parcel  
10 or parcels of land equal in value to that taken; contiguous to the affected Indian  
11 reservation; and as nearly adjacent to the parcel taken as practicable. The land so  
12 acquired ~~shall~~ must, upon written certification to the Secretary of State by the public  
13 entity or public utility acquiring such land describing the location and boundaries  
14 thereof, be included within the Indian Reservation of the affected tribe or nation  
15 without further approval of the State. For purposes of this section, land along and  
16 adjacent to the Penobscot River ~~shall be~~ is deemed to be contiguous to the Penobscot  
17 Indian Reservation. The acquisition of land for the Passamaquoddy Tribe or the  
18 Penobscot Nation or any allottee under this subsection shall be full compensation for  
19 any such taking. If the affected tribe, nation, allottee or allottees elect not to have a  
20 substitute parcel acquired in accordance with this subsection, the ~~moneys~~ money  
21 received for such taking ~~shall~~ must be reinvested in accordance with the provisions of  
22 paragraph B.

23 B. If land within either the Passamaquoddy Indian Territory or the Penobscot Indian  
24 Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot  
25 Indian Reservation is taken for public uses in accordance with the laws of the State, the  
26 money received for ~~said~~ that land ~~shall~~ must be reinvested in other lands within 2 years  
27 of the date on which the money is received. To the extent that any ~~moneys~~ money  
28 received ~~are~~ is so reinvested in land with an area not greater than the area of the land  
29 taken and located within an unorganized or unincorporated area of the State, the lands  
30 so acquired by such reinvestment shall be included within the respective Indian  
31 territory without further approval of the State. To the extent that any ~~moneys~~ money  
32 received ~~are~~ is so reinvested in land with an area greater than the area of the land taken  
33 and located within an unorganized or unincorporated area of the State, the respective  
34 tribe or nation shall designate, within 30 days of such reinvestment, that portion of the  
35 land acquired by such reinvestment, not to exceed the area taken, which shall be  
36 included within the respective Indian territory. ~~No land~~ Land acquired pursuant to this  
37 paragraph ~~shall~~ may not be included within either Indian Territory until the Secretary  
38 of Interior has certified, in writing, to the Secretary of State the location and boundaries  
39 of the land acquired.

40 **3-A. Taking under the laws of the State prohibited.** Land within the  
41 Passamaquoddy Indian territory on the effective date of this subsection and land within the  
42 Penobscot Indian territory on the effective date of this subsection may not be taken for  
43 public uses under the laws of the State.

44 **4. Taking under the laws of the United States.** ~~In the event of a taking of land within~~  
45 ~~the Passamaquoddy Indian territory or the Penobscot Indian territory for public uses in~~  
46 ~~accordance with the laws of the United States and the reinvestment of the moneys received~~

1 from such taking within 2 years of the date on which the moneys are received, the status of  
2 the lands acquired by such reinvestment shall be determined in accordance with subsection  
3 3, paragraph B.

4 **5. Limitations.** ~~No lands~~ Lands held or acquired by or in trust for the Passamaquoddy  
5 Tribe or the Penobscot Nation, other than those described in subsections 1, 2, and 3 ~~and 4~~,  
6 ~~shall may not~~ be included within or added to the Passamaquoddy Indian territory or the  
7 Penobscot Indian territory except upon recommendation of the commission and approval  
8 of the State to be given in the manner required for the enactment of laws by the Legislature  
9 and Governor of Maine, ~~provided, however, except that no~~ lands within any city, town,  
10 village or plantation ~~shall may not~~ be added to either the Passamaquoddy Indian territory  
11 or the Penobscot Indian territory without approval of the legislative body of ~~said the~~ city,  
12 town, village or plantation in addition to the approval of the State.

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

17 Amend the bill in Part A by striking out all of section 2 and inserting the following:

18 '**Sec. A-2. Contingent effective date.** This Part takes effect 150 days after  
19 adjournment of the First Special Session of the 132nd Legislature only if, within 120 days  
20 after adjournment of the First Special Session of the 132nd Legislature, the Secretary of  
21 State receives written certification from the Chief of the Penobscot Nation, or the designee  
22 under the Maine Revised Statutes, Title 3, section 602, that the Penobscot Nation has  
23 agreed to the provisions of this Part and from the Chief of the Passamaquoddy Tribe at  
24 Sipayik and the Chief of the Passamaquoddy Tribe at Motahkomikuk, or the designee under  
25 the Maine Revised Statutes, Title 3, section 602, that the Passamaquoddy Tribe has agreed  
26 to the provisions of this Part, copies of which must be submitted by the Secretary of State  
27 to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor  
28 of Statutes.'

29 Amend the bill in Part B by striking out all of section 2 and inserting the following:

30 '**Sec. B-2. 30 MRSA §6205-B** is enacted to read:

31 **§6205-B. Acquisition of Houlton Band Trust Land**

32 **1. Acquisition.** Lands or other natural resources acquired by the secretary for the  
33 benefit of the Houlton Band of Maliseet Indians in accordance with the requirements of the  
34 federal Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986,  
35 Public Law 99-566 are included within Houlton Band Trust Land.

36 **2. Takings under laws of State prohibited.** Land within Houlton Band Trust Land  
37 on the effective date of this section may not be taken for public uses under the laws of this  
38 State.'

39 Amend the bill in Part B in section 3 in the 2nd line (page 5, line 21 in L.D.) by striking  
40 out the following: "Regular" and inserting the following: 'Special'

41 Amend the bill in Part B in section 3 in the 3rd line (page 5, line 22 in L.D.) by striking  
42 out the following: "Regular" and inserting the following: 'Special'

1 Amend the bill in Part C in section 1 in §7204 by striking out all of the 2nd indented  
2 paragraph (page 6, lines 3 and 4 in L.D.) and inserting the following:

3 **'1. Takings under the laws of State prohibited. Land within Mi'kmaq Nation Trust**  
4 **Land on the effective date of this subsection may not be taken for public uses under the**  
5 **laws of this State.'**

6 Amend the bill in Part C in section 2 in the 2nd line (page 6, line 6 in L.D.) by striking  
7 out the following: "Regular" and inserting the following: 'Special'

8 Amend the bill in Part C in section 2 in the 3rd line (page 6, line 7 in L.D.) by striking  
9 out the following: "Regular" and inserting the following: 'Special'

10 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
11 number to read consecutively.

## 12 SUMMARY

13 This amendment, which is the majority report of the committee, eliminates the  
14 provision of the Act to Implement the Maine Indian Claims Settlement imposing  
15 restrictions on the Passamaquoddy Tribe and the Penobscot Nation when they reinvest  
16 funds received as compensation for a taking of land within respective Indian territories for  
17 public uses under federal law.

18 The amendment also limits the applicability of the bill. Under the amendment, only  
19 those trust lands of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of  
20 Maliseet Indians and the Mi'kmaq Nation as of the date that the relevant tribal government  
21 or governments certify approval of this legislation may not be taken for public uses under  
22 the laws of this State.

## 23 FISCAL NOTE REQUIRED

24 (See attached)