

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Date:

(Filing No. H-)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 428, L.D. 585, “An Act To Restore to the Penobscot Nation and Passamaquoddy Tribe the Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010”

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

'An Act To Enact the Tribal-State Collaboration Act'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA c. 376 is enacted to read:

CHAPTER 376

TRIBAL-STATE COLLABORATION

§11051. Short title

This chapter may be known and cited as "the Tribal-State Collaboration Act."

§11052. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Agency. "Agency" means the following:

- A.** The Department of Agriculture, Conservation and Forestry;
- B.** The Department of Corrections;
- C.** The Department of Economic and Community Development;
- D.** The Department of Education;
- E.** The Department of Environmental Protection;

- 1 F. The Department of Health and Human Services;
- 2 G. The Department of Inland Fisheries and Wildlife;
- 3 H. The Department of Labor;
- 4 I. The Department of Public Safety;
- 5 J. The Department of Administrative and Financial Services;
- 6 K. The Department of Professional and Financial Regulation;
- 7 L. The Department of Defense, Veterans and Emergency Management;
- 8 M. The Department of Marine Resources;
- 9 N. The Department of Transportation;
- 10 O. The Office of the Public Advocate; and
- 11 P. The Public Utilities Commission.
- 12 **2. Indian tribe.** "Indian tribe" means a federally recognized Indian tribe within the
- 13 State of Maine.
- 14 **§11053. Collaboration between agencies and Indian tribes**
- 15 **1. Required policies.** An agency shall develop and implement a policy that:
- 16 A. Promotes effective communication and collaboration between the agency and the
- 17 Indian tribes;
- 18 B. Promotes positive government-to-government relations between the State and the
- 19 Indian tribes;
- 20 C. Promotes cultural competency in the agency's interactions with the Indian tribes
- 21 and tribal members;
- 22 D. Establishes a process for collaboration between the agency and the Indian tribes
- 23 regarding the agency's programs, rules and services that substantially and uniquely
- 24 affect the Indian tribes or tribal members. In the context of emergency rulemaking
- 25 pursuant to section 8054, the policy must require notice and collaboration to the extent
- 26 practicable. Collaboration under this paragraph must be in addition to any process
- 27 available to members of the general public and must include:
- 28 (1) Providing the Indian tribes reasonable written notice of the contemplated
- 29 program, rule or service;
- 30 (2) Allowing the Indian tribes a reasonable opportunity to provide information,
- 31 advice and opinions on the contemplated program, rule or service;
- 32 (3) Requiring the agency to consider the information, advice and opinions it
- 33 receives from the Indian tribes under subparagraph (2); and
- 34 (4) Requiring the agency to make reasonable efforts to complete the collaboration
- 35 process before taking final action on the contemplated program or service or, in
- 36 the case of a rule, before publication of the proposed rule pursuant to section 8053,
- 37 subsection 5; and
- 38 E. Establishes a method for informing employees of the agency of the provisions of
- 39 this Act and the policy that the agency adopts pursuant to this section.

1 **2. Consultation in policy development.** An agency shall request comments from
2 each Indian tribe and the Maine Indian Tribal-State Commission, and consider each
3 comment received, before adopting a policy under subsection 1.

4 **3. Tribal liaison.** An agency shall designate an individual who reports directly to the
5 head of the agency to serve as the agency's tribal liaison. The tribal liaison shall:

6 A. Assist with developing and ensuring the implementation of the policy required by
7 subsection 1;

8 B. Serve as a contact person responsible for facilitating effective communication
9 between the agency and the Indian tribes; and

10 C. Coordinate the training of agency employees as provided in section 11054.

11 **§11054. Mandatory training**

12 An agency shall ensure that the tribal liaison designated pursuant to section 11053,
13 subsection 3, other employees responsible for tribal collaboration under this Act and other
14 employees whose work substantially and uniquely affects Indian tribes or tribal members
15 receive training designed to promote:

16 **1. Communication and collaboration.** Effective communication and collaboration
17 between the agency and the Indian tribes;

18 **2. Government-to-government relations.** Positive government-to-government
19 relations between the State and Indian tribes; and

20 **3. Cultural competency.** Cultural competency in tribal issues.

21 **§11055. Tribal-State Summit; reports by agencies and Indian tribes**

22 **1. Annual Tribal-State Summit.** The Governor shall meet at least annually with the
23 leaders of Indian tribes in a Tribal-State Summit to address issues of mutual concern, which
24 may include:

25 A. Implementation of the Maine Native American study provisions of Title 20-A,
26 section 4706;

27 B. Implementation of the provisions of this Act; and

28 C. Improving communication between the State and the Indian tribes.

29 **2. Biennial agency reports.** Beginning January 10, 2023 and biennially by January
30 10th thereafter, an agency shall file a report with the joint standing committee or
31 committees of the Legislature having jurisdiction over the agency and with the Maine
32 Indian Tribal-State Commission on the activities of the agency pursuant to this Act. The
33 report must include:

34 A. A copy of the current policy adopted under section 11053, subsection 1 and a
35 description of any changes that have been made to that policy since the filing of the
36 previous report. If the agency has not yet adopted a policy under section 11053,
37 subsection 1, the agency must describe the steps the agency has taken to adopt such a
38 policy;

39 B. The name and contact information of the tribal liaison designated by the agency
40 under section 11053, subsection 3;

- 1 C. A description of training provided pursuant to section 11054;
- 2 D. A statement of programs, rules or services, to the extent known at the time of the
- 3 report, that the agency intends to adopt, amend or provide in the coming reporting
- 4 period that substantially and uniquely affect Indian tribes or tribal members; and
- 5 E. A summary of tribal collaboration activities the agency has engaged in under the
- 6 provisions of this Act during the prior biennium and any recommendations for
- 7 improving the effectiveness of this Act, including recommendations regarding other
- 8 agency actions for which it may be appropriate to require collaboration under this Act.

9 **3. Reports by Indian tribes.** Beginning January 10, 2023 and biennially by January
10 10th thereafter, an Indian tribe may file a report with the joint standing committee of the
11 Legislature having jurisdiction over judiciary matters and the Maine Indian Tribal-State
12 Commission that includes a summary of the collaboration between the Indian tribe and
13 agencies under this Act during the prior biennium and any recommendations for improving
14 the effectiveness of this Act, including recommendations regarding other agency actions
15 for which it may be appropriate to require collaboration under this Act.

16 **§11056. Cause of action and right of review not conferred; savings clause**

17 **1. Cause of action and right of review not conferred.** An agency's failure to comply
18 with the requirements of this Act does not:

- 19 A. Create a cause of action or a right of judicial review of any action by an agency;
- 20 B. Constitute grounds for a court to invalidate an agency rule under section 8058; or
- 21 C. Constitute grounds for a court to reverse or modify an agency action under section
- 22 11007, subsection 4, paragraph C or to direct an agency to engage in any further action
- 23 under section 11007, subsection 4, paragraph B.

24 **2. Federal funding requirements.** Nothing in this Act affects, modifies or replaces
25 any tribal collaboration or consultation requirement imposed on or assumed by an agency
26 as a condition of the acceptance of federal funding.

27 **Sec. 2. 30-A MRSA §2202, sub-§2,** as enacted by PL 2009, c. 636, Pt. D, §2, is
28 amended to read:

29 **2. Party.** "Party" means a public agency or the following federally recognized Indian
30 tribes or their political subdivisions:

- 31 A. The Passamaquoddy Tribe; ~~and~~
- 32 B. The Penobscot Nation; ~~and~~
- 33 C. The Houlton Band of Maliseet Indians.'

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

36 **SUMMARY**

37 This amendment, which a minority report of the committee, replaces the bill with the
38 Tribal-State Collaboration Act, which requires the Department of Agriculture,
39 Conservation and Forestry, the Department of Corrections, the Department of Economic
40 and Community Development, the Department of Education, the Department of

1 Environmental Protection, the Department of Health and Human Services, the Department
2 of Inland Fisheries and Wildlife, the Department of Labor, the Department of Public Safety,
3 the Department of Administrative and Financial Services, the Department of Professional
4 and Financial Regulation, the Department of Defense, Veterans and Emergency
5 Management, the Department of Marine Resources, the Department of Transportation, the
6 Office of the Public Advocate and the Public Utilities Commission each to designate a
7 tribal liaison and to develop and implement a policy that promotes positive government-to-
8 government relations between the State and federally recognized Indian tribes within the
9 State, promotes cultural competency in the agency's interactions with Indian tribes and
10 tribal members and establishes a process for collaboration between the agency and Indian
11 tribes regarding the agency's programs, rules and services that substantially and uniquely
12 affect the Indian tribes or tribal members. The Act also directs the Governor to meet at
13 least annually with the leaders of the Indian tribes in a Tribal-State Summit to address
14 issues of mutual concern, including implementation of the Tribal-State Collaboration Act,
15 improving communication between the State and the Indian tribes and implementation of
16 the requirement to include Maine Native American studies in the Department of
17 Education's system of learning results.

18 The amendment also includes the Houlton Band of Maliseet Indians within the list of
19 parties that may join an interlocal cooperation agreement under the Maine Revised Statutes,
20 Title 30-A, chapter 115.

21 **FISCAL NOTE REQUIRED**

22 **(See attached)**