

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Thirtieth Legislature  
State of Maine

Daily Edition

Second Regular Session  
beginning January 5, 2022

beginning at Page 1311

The President Pro Tem requested the Sergeant-At-Arms escort the Senator from Aroostook, Senator **JACKSON**, to the rostrum where he resumed his duties as President.

The Sergeant-At-Arms escorted the Senator from Penobscot, Senator **DILL**, to his seat on the Floor.

The Senate was called to order by the President.

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Senate at Ease.

The Senate was called to order by the President.

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Off Record Remarks

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**ORDERS OF THE DAY**

**Unfinished Business**

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later Assigned (4/7/22) matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Enact the Maine Data Collection Protection Act"  
H.P. 669 L.D. 913

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-905)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - April 7, 2022 by Senator **DAUGHTRY** of Cumberland

Pending - **ACCEPTANCE** of the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**

(In House, April 5, 2022, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-905)**.)

(In Senate, April 7, 2022, the motion by Senator **CARNEY** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report **FAILED**.)

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (4/11/22) matter:

HOUSE REPORTS - from the Committee on **ENERGY, UTILITIES AND TECHNOLOGY** on Bill "An Act To Provide More Options to Maine Electric Service Customers and Support Maine's Climate Goals"

H.P. 222 L.D. 318

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-918)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - April 11, 2022 by Senator **VITELLI** of Sagadahoc

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, April 7, 2022, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-918) AS AMENDED BY HOUSE AMENDMENT "A" (H-955)** thereto.)

(In Senate, April 11, 2022, Reports **READ**.)

On motion by Senator **LAWRENCE** of York, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

Bill **READ ONCE**.

Committee Amendment "A" (H-918) **READ**.

House Amendment "A" (H-955) to Committee Amendment "A" (H-918) **READ** and **ADOPTED**, in concurrence.

Committee Amendment "A" (H-918) as Amended by House Amendment "A" (H-955) thereto, **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-918) AS AMENDED BY HOUSE AMENDMENT "A" (H-955)** thereto, in concurrence.

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The Chair laid before the Senate the following Tabled and Later Assigned (4/12/22) matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Provide Passamaquoddy Tribal Members Access to Clean Drinking Water" (EMERGENCY)

H.P. 662 L.D. 906

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (H-984)** (6 members)

Report "B" - **Ought Not to Pass** (5 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "B" (H-985)** (2 members)

Tabled - April 12, 2022 by Senator **CARNEY** of Cumberland

Pending - **ACCEPTANCE OF ANY REPORT**

(In House, April 12, 2022, Report "**A**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-984)**, READ and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-984)**.)

(In Senate, April 12, 2022, Reports **READ**.)

Senator **CARNEY** of Cumberland moved the Senate **ACCEPT** Report "**A**", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-984)**, in concurrence.

On motion by Senator **POULIOT** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Carney.

Senator **CARNEY:** Thank you, Mr. President. I rise in support of the pending motion. Colleagues of the Senate, L.D. 906 is urgent legislation that's needed to address a problem that should not happen in Maine, should not really happen anywhere in the 21<sup>st</sup> Century. The Passamaquoddy - members of the Passamaquoddy Tribe at Pleasant Point do not have access to clean drinking water. The source of water supplied to the tribe by the Passamaquoddy Water District is a reservoir that's filling up with sediment from the surrounding land. Run-off from rain and wind driven debris go into the reservoir and it is measurably shallower each year. During certain times of the year the water is brown with sediment. It has a foul odor, color, and taste. The water is not safe to drink and often is not usable for even ordinary household purposes.

I want to explain in a little bit of detail what this bill does to that members can understand how it will resolve this urgent problem. First of all, it makes changes to the charter for the Passamaquoddy Water District. The Passamaquoddy Water District is a quasi-municipal district. It is governed according to a charter that was created by a public law in 1983. It's not owned by the Passamaquoddy Tribe. There are elected board members who make the decisions regarding the Passamaquoddy Water District. It serves the town of Perry, the city of Eastport, and the Passamaquoddy Reservation at Pleasant Point, although only the city of Eastport and the Passamaquoddy Reservation uses the Passamaquoddy Water District for residential water. This quasi-municipal water district does not have the financial resources it needs to provide clean drinking water. One reason the district can't provide the clean drinking water is that, unlike every other water district in Maine, it is not tax exempt. Most recently both the Passamaquoddy Tribe and the State of Maine have spent literally hundreds of thousands of dollars to install a filtration system that will improve the quality of water but not fix the problem. Going forward, the Passamaquoddy Water District will need to replace filters regularly and these costs - these will cost tens of thousands of dollars each year. No one is asking the town of Perry or the city of Eastport to help pay for the system or the filters but this legislation amends the Passamaquoddy Water District charter to make the district exempt from property taxes

like every other water district and that tax exempt status will provide enough money to replace the filters when they are too dirty to clean the water.

The second thing L.D. 906 does is that it is directed - let's see, is to help address the fundamental issue of the reservoir, the surface water source for the Passamaquoddy District, filling up with sediment. The Passamaquoddy Tribe owns two parcels of land that are a potential source of water. They would like to put these parcels into federal trust status with the U.S. Department of the Interior. These two parcels would be available for use by the tribe as a new source, to ensure that the tribe has access to clean drinking water.

The third provision to which - relates to which government entity has jurisdiction to regulate drinking water on the Passamaquoddy Reservation at Pleasant Point. This legislation gives the Passamaquoddy Tribe the discretion to pursue three different paths forward for future regulation of the water on tribal land. The Passamaquoddy Tribe can enter into an inter-government agreement, establishing concurrent state and tribal jurisdiction to regulate the water. The Passamaquoddy Tribe could exercise exclusive authority to regulate the water within Passamaquoddy territory or, third, the Passamaquoddy Tribe could seek treatment as a state status with the U.S. Environmental Protection Agency in order to implement the Federal Safe Drinking Water Act within the Passamaquoddy territory. This last path, treatment as a state, would open up federal funding to the Passamaquoddy Tribe to build the infrastructure needed to get clean water from either the two parcels that the tribe currently owns or from another source to members of the Passamaquoddy Tribe at Pleasant Point.

We all need clean drinking water, everyone in our state. I ask my colleagues to be future and solution oriented in considering this legislation. L.D. 906 is a clear and implementable path to getting clean drinking water to the Passamaquoddy Tribe at Pleasant Point. I urge my colleagues to vote in support of the pending motion.

**THE PRESIDENT:** The Chair recognizes the Senator from Washington, Senator Moore.

Senator **MOORE:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise to express my concerns and provide additional information regarding L.D. 906. I begin by saying everyone deserves to have access to good, reliable, clean drinking water. Numerous laws, federally and in Maine, along with numerous drinking water regulations, are in place to preserve these rights. Nobody is arguing against the need for clean water for the Passamaquoddy Water District customers in Perry, Pleasant Point, and Eastport. This is not only a tribal issue. It's a regional issue. As Senator Carney explained, currently the Passamaquoddy Water District was created as a quasi-municipal district in 1983 to provide water service to Pleasant Point and to Eastport. As she mentioned, the source of water is Boyden Lake and its watershed, which is located in Perry. The water is drawn from Boyden Lake and treated at the Passamaquoddy Water District's water treatment plant. From the treatment plant the treated water is pumped into the transmission main which carries water about three miles to Pleasant Point and an additional 3.2 miles to Eastport. An average of 200,000 gallons per day is treated and pumped for distribution. There is a total of 21 miles of distribution system piping, ranging in size from 1" to 10" in diameter. The water district also has two storage facilities, one in

Pleasant Point which holds 347,000 gallons of water and one in Eastport which holds 365,000 gallons of water. From the standpipes, water if further distributed to customers via water pipes owned by the water district in Eastport and by the tribe in Pleasant Point. In 2014, the Town of Perry voters enacted a large-scale water extraction ordinance to prevent unintended consequences of large-scale water extraction pumping tests which, historically, had caused several residential wells to run dry. As I understand, this ordinance applies to any one or any company who desires to do water extraction of more than 5,000 gallons per day. The Passamaquoddy Tribe currently owns two pieces of land in Perry that could potentially provide access to clean ground water sources that could serve the tribal and non-tribal Passamaquoddy Water District customers. These are the ones referenced in the bill. Due to the volume of water expected to be pumped to provide the service, the Town of Perry ordinance would be applicable. To date, the Town of Perry has not received an application for a permit to do pumping tests to confirm this presumption nor has there been any discussions with the town to remove the land from the tax rolls if placed into the Passamaquoddy Indian territory. I feel the tribes should respect and adhere to the ordinance in determining if the Perry offer is a reliable and workable source for clean drinking water for citizens in all three communities.

My concern with this bill also addresses the water quality throughout the reservation. Presently, the water district owns the primary water pipes throughout Eastport, which I mentioned, which were replaced several years ago as part of a major improvement project. However, the tribe owns the water pipes throughout the reservation and have been in place for quite some time. The new filtering system being placed at the treatment plant this June is being touted to greatly improve the filtering of the water from the stream. However, if the cleaner water is still being distributed through existing pipes throughout the reservation the existing poor water quality could still exist and I recall in Calais, when I became a City Counselor, we were told that we had to get off of St. Stephen water and find our own wells. It took several years to be able to do that. We found the wells and when we reversed the flow of the water all heck broke loose with the bad pipes that were in town, throughout the town. They reversed the water flow. We saw copper rust and everything you could think of and all of our white clothing became very, very rusty colored. The city had to find filters - bought filters, bought all kinds of different solutions that could help clear this out and we underwent a major project to change the water pipes in Calais, all because of reversing the direction of the water.

Finding an alternate water source, such as what might be available on the properties owned by the tribe, will still have to go through the existing pipes for distribution to the homes. Before we transfer land from the Town of Perry to the reservation, I feel we should press the pause button. My hope would be the Passamaquoddy Water District would work with the tribe and the Town of Perry to address these issues in a collaborative manner with open and mutually respectful communication and with an eye towards finding a solution that minimizes and mitigates negative impacts. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Brenner.

Senator **BRENNER:** Thank you, Mr. President. Colleagues of the Senate, with all due respect to my seatmate, I would say the

pause button has been pushed. We're here today because the Passamaquoddy Tribe does not have access to clean water because it's been leading a multi-year, multi-stakeholder effort to solve this complicated problem. Along the way, the tribe successfully attained grant funding from a variety of sources, increased water quality testing, begun public health data collection, funded studies to identify alternate supplies of water, developed new wells, and financed key infrastructure improvements at the Passamaquoddy Water District. In the past year alone, the tribe is responsible for the delivery of more than \$200,000 to help fund key upgrades at the local water district. This funding was made available to assist the tribe's ongoing ...

**THE PRESIDENT:** Senator Brenner, I'm sorry. Can you just defer. Your microphone either quit working or isn't working now. Okay, we're good to go.

Senator **BRENNER:** Alright. There are a number of systemic issues that need to be addressed in order to create real change for the future and it's time for the Legislature to act on this. The tribe wants to take any steps necessary to ensure clean drinking water for its citizens and neighbors. However, the tribe is constantly hindered by restrictions on its sovereignty and the financial restraints placed on the Passamaquoddy Water District under Maine law. Other tribes across the country do not experience these same roadblocks. Currently, the Passamaquoddy Water District sources water from the Boyden Reservoir. The depth of the lake has been diminished significantly over the years and drinking water comes from the bottom of the water body. The reservoir is fed by a lake that is heavily used for recreational and agricultural purposes and it's essentially a toilet bowl for water fowl. When the water containing fecal matter is disinfected for public use a carcinogenic group of chemicals called trimethylpentanes, THMs, can form. THMs can cause cancer, liver or kidney problems, reproductive difficulties, or other health effects. Sensitive groups of people, such as the young, elderly, pregnant women, and cancer patients, may be more susceptible to adverse health effects at any level of exposure to THMs. Certain times of the year drinking water at Pleasant Point and Eastport is also tainted by bad odor, poor taste, and discoloration. When water quality is particularly bad the tribe works with local partners and donors to deliver bottled water to households to reduce reliance on unsafe and unsightly drinking water. On the reservation's school there's a policy of not allowing students to consume municipal water supplied by the Passamaquoddy Water District and they've taken a variety of measures to ensure the availability of clean water to students and staff. Fluctuations in quality tend to be most stark in the summer when levels of the water are at their lowest and when the Passamaquoddy Water District and the reservoir and the lake that feed it are more susceptible to disturbances by wind, rain, and other weather events. A bad storm will almost always cause water delivered to the reservation to become discolored. Conditions will likely worsen with climate change and increased storm frequency and severity.

L.D. 906 will simply, rather than complicate - will simplify rather than complicate the existing jurisdictional framework. The Governor's Office has raised concerns that the jurisdictional provisions of L.D. 906 will do nothing but cause confusion but the opposite is true. The confusion faced in the recent past when attempting to utilize a new well to serve an on-reservation school is a perfect example. The school was built in the middle of the

pandemic, replacing an older school that had a policy of not allowing children to drink the water from the fountains because the fountains had municipal water that sometimes turned brown. When the new school was built the tribe wanted students to be able to actually drink the water from the fountains, imagine that. In order for this to be a reality, the school needed a clean source of water that they could always rely on. The tribe determined the issue was an internal tribal matter, not subject to state regulations, and they dug a well for the children. The State informed the tribe that it needed State approval to use on-reservation wells. In this example we're talking about the delivery of water entirely within tribal lands that serves children at a brand new, federally funded school on the reservation. This is not a clear example - if this is not a clear example of an internal tribal matter that should not be subject to State jurisdiction than I'm not sure what is. To ensure safe water was available for the school children the tribe agreed to have the school well permitted by the State on an interim basis until the jurisdictional disagreement could be resolved. L.D. 906 would resolve this jurisdictional disagreement. If L.D. 906 became law, the school well would fall under the EPA jurisdiction as drinking water systems on tribal lands across the country are typically regulated by the federal government. L.D. 906 will create new opportunities and remove unnecessary roadblocks in order to end a public health crisis. If 906 passes the tribe will work directly with the federal EPA to utilize and regulate new sources of clean drinking water. The shift will bring undivided attention to EPA to Passamaquoddy lands in a way that is simply not currently possible. Dedicated resources would be made specifically available to deal with safe drinking water issues. The tribe is in the process of completing a roadside well, located just across from the school, which will serve as a new public drinking supply on the reservation. The roadside well would be a second water system that would fall under EPA jurisdiction under the SDWA, the first being the school well. It is illogical to limit the full potential impact of this human rights legislation based on vague hypotheticals. While the concerns over jurisdictional - jurisdiction are hypothetical in nature, no one disputes that there's an issue with the quality of the drinking water at Point Pleasant. There are clear benefits in passing this legislation with the jurisdictional components included. Not only will there be an immediate impact but these provisions are critical to obtaining long-term solutions to the problem. The bottom line is the State should have no need to approve how the Passamaquoddy Tribe uses tribally own water located on tribally owned lands. This is a basic human right. It's about child welfare. It's about public health. Mr. President, I've seen this film before. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Mr. President. I request permission to ask a question through the Chair.

**THE PRESIDENT:** The Senator may proceed.

Senator **BENNETT:** It's an honest question. I'd really like to, as I've heard the stories on this situation, I'd like to know if there's any other place. Where else in Maine, in this blessed state, in the modern age, have there been the kind of chronic problems with the public drinking water supply that we have heard about today? Thank you.

**THE PRESIDENT:** The Senator from Oxford, Senator Bennett, has posed a question through the Chair for anyone who may answer. The Chair recognizes the Senator from Cumberland, Senator Sanborn.

Senator **SANBORN:** Thank you, Mr. President. I don't have a direct answer to my good friend's question but I have sort of an oblique answer and so I thought I would rise at this point in the debate to tell my story. I own a business where 95% of the product we produce is the amazingly delicious and clean water that flows from the taps in Portland, Maine. When I travel outside of Maine, and folks ask about why we have such a thriving brewing industry in the state of Maine, I tell them it's because Portland, Maine's municipal water is the best in the world. It tastes good. It is clean. It is wholesome and won't make you sick and it's because Maine has a beautiful natural environment, fantastic clean watersheds with woodlands and clean rivers and clean lakes and clean aquifers. Our Portland Municipal Water District takes advantage of the Sebago Lake watershed and is able to make it so that when I turn on the faucet at my home or at my business I drink water that is gorgeous. It's delicious. Every Mainer should have that right and, Mr. President, I'm not aware of Mainers that don't have access to delicious water through their municipality except for these horrific stories that I have heard coming out of Sipayik. So, when I joined the Judiciary Committee and start to learn more about this issue I just continued to go back to that sense of how shocking it is in 2022 that there are Mainers who don't have access to even potable water coming out of their faucets when I have water that's the best in the world. I know it exists in the aquifers of Maine. Let's make sure that we do everything we can as a Body to give access to it to all Mainers. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Keim.

Senator **KEIM:** Mr. President, ladies and gentlemen of the Senate, first, there's no one in this room today that doesn't want people to have access to clean water. It's absolutely essential and everyone recognizes that. But this bill is not about the access to clean water because the solution to the water issues for Pleasant Point are in a filtration system, as you heard already, that is about to be installed. So, there are issues with this bill, however, that need to be addressed that are somewhat different. One of them is the process by which this bill came to us. When I had a constituent come to me with a complaint about their neighbor's light being too bright, shining too brightly in their yard, they wanted me to put in a law about the light and make a law so you can't shine lights near a yard. I said 'Have you talked to your neighbor yet? Don't come to me. Go to your neighbor.' That simple step has never been done. So, what this bill seeks to do is to take land and put it into trust status in a manner unlike we have ever done in the State Legislature before, without local approval. This bill was a concept draft and the Town of Perry, not only were they not engaged on this issue, they didn't even find out about the language of this bill until 36 hours before a public hearing. They were given no good neighbor opportunity to even discuss solutions before it came to us and they also - this bill seeks to change the water district charter and, for those of you who have worked on State and Local Government, you know that a water district charter is a creature of the Legislature and we change

them all the time. But we don't do it when one customer comes to us and says 'We want the charter changed. We want any change to it at all.' They would go to the water district trustees and say 'We need to change and here is why' and they would go through that route and that's the proper process. So, for us, in this - as a State Body, to over step and overrule the local authority and the proper process that this bill and that these ideas and these solutions that are being presented to us, the proper process has been completely sidestepped. The reason that we were given of why they never went to the Town of Perry or to the water district is because we were told that they were discriminatory and racist. That is very concerning. It's very concerning and so I actually did reach out to people in Perry and talked to the people of Perry because I wanted to hear their story, which is something we didn't hear much in the Judiciary Committee at all because they were sort of caught flat footed by this. They didn't know it was coming. They didn't have time to discuss it and they weren't really prepared for being called discriminatory in a public setting. I would like to read to you a note from one of the residents of the town of Perry. He says, 'The need for clean water for the residents of Pleasant Point and Eastport is real. Thankfully, that need is being addressed by a state-of-the-art filtration system that has been approved and will be installed by the Passamaquoddy Water District this summer. In fact, if not for supply chain issues it would already be in place. So, with the water quality issues being addressed, why would the Legislature take the unprecedented step of singling out Perry as the only town in Maine deprived of the right to give its consent to converting tribal land to trust status? The Legislature has never before deprived a town of this right. It would establish a far reaching precedent. But to me,' the letter goes on to say, 'the most troubling aspect of the debate surrounding this legislation is the negative portrayal of the people of Perry by some proponents of the bill. Perry is a community where the ties of friendship and family run deep with our Passamaquoddy neighbors. I don't know a single person here who is unsympathetic to the need for clean, safe drinking water for either Pleasant Point or Eastport. They are our friends and neighbors. Please vote no to allow the filtration system to do its job to solve the water quality issues and allow the people of Perry the same right to give consent to trust status as every other municipality in Maine.' That is one letter that I've had but there are definitely other people who have reached out and who have said and shared similar sentiments. There is not a relationship problem, or at least there was not a relationship problem between the tribe and the town and they would like to engage and be part of the solution as has been, I know the Governor's Office in looking for solutions as well to this water quality issue, which everyone wants to solve and there are many people engaged in the process. So, I would ask us today that we consider the precedent that we're setting, that we would over step the process that we have established for good reason, to safe guard the rights of everyone, of all Maine people, and not only some and allow them to work through solutions as neighbors and then, once they need us to step in and help, that we would move at that point and consider it at that time. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Claxton.

Senator **CLAXTON:** Thank you, Mr. President. May I address the question to the Chair and then speak to the motion?

**THE PRESIDENT:** The Senator may proceed.

Senator **CLAXTON:** In response to my good colleague from Oxford, I offer Lewiston/Auburn as the example of places where water supply is under constant pressure and threat. They share a common water system, Lake Auburn, and recently, with changes in the Auburn zoning, there's some concern that the water quality in Lake Auburn, which is now waived by the federal government, would have to have a filtration plant installed. The part that makes it significant is that there's local concern about that and the locals are in the process of coming up with a plan to reverse the council's decision. They have sovereign say in their access to water. Since the water is shared with Lewiston, Lewiston has become concerned and they've gone so far as to put a cease and desist order in place and, based on that, they have some sovereign say in what their water source, how it's treated. In the instance that we're talking about, the Passamaquoddy has no sovereign say and we've had 40 years to work this out and it still hasn't happened. So, that doesn't seem fair to me. At least Lewiston/Auburn had some say and the Passamaquoddy ought to have some say. The definition of home rule, or local rule, applies in this instance. We should not be using the local or home rule to trump the Passamaquoddy home rule. That doesn't seem fair and to have some of the contents of what's coming out of the diminishing surface water source have to go through all kinds of chemical treatment when, in fact, there's access to an aquifer, that's doesn't seem fair. This is not a utility for many people. This is a sacred right to a sacred resource. So, for those reasons, I think that the Passamaquoddy have long been owed the right of sovereignty to their own water source. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Daughtry.

Senator **DAUGHTRY:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'd like to pose a question through the Chair, if that is permissible.

**THE PRESIDENT:** The Senator may proceed.

Senator **DAUGHTRY:** Are there any other water districts in the state that pay property taxes like the water district that we're discussing here today?

**THE PRESIDENT:** The Senator from Cumberland, Senator Daughtry, has posed a question through the Chair to anyone who may answer. The Chair recognizes the Senator from Cumberland, Senator Carney.

Senator **CARNEY:** Thank you, Mr. President. I would like to answer the question and also speak on this matter as well. Thank you. The Passamaquoddy Water District is the only quasi-municipal water district in Maine that does not have tax exempt status. It's actually a nonprofit entity that is a quasi-municipal district and it is the only one that has to pay property taxes. I'd like to address a few other issues that have been raised by colleagues in this Chamber. I think I'll just start with expressing gratitude that everybody is so strongly in agreement on the importance of clean drinking water. I think that that agreement and passion flowed throughout the entire committee process on this legislation. I did want to address some concerns. First of all,

the portrayal of this as a dispute between two neighbors, this is really an issue between three different public bodies; the Town of Perry, the City of Eastport, and the Passamaquoddy Reservation at Pleasant Point. The Passamaquoddy tribe at Pleasant Point has 300 homes and so this wasn't just one customer asking for a change. It was 300 families who have to import water into their homes instead of using the water that comes out of their taps. I do agree, wholeheartedly, with the statements that communities should try to work through these problems before coming to the Legislature for a solution. This bill was offered in the first session of this Legislature. The committee carried the bill over specifically so that efforts could be made to work through solutions and those solutions did not emerge. We, as a committee, really felt that the urgency of providing clean drinking water to the Passamaquoddy Tribe at Pleasant Point was an urgent and priority issue that needed to move forward when between sessions the issue wasn't resolved. I'm reading my messy writing here. Thirdly, I did want to comment on the process in the committee, and I think that members of this Chamber can understand that the issues raised by this legislation, the passion behind people who are frustrated and upset and feel that their very lives and livelihood are impacted by the dangerous contaminants that are in the water system, that generates a lot of heat and passion. We also saw that the issue of property tax laws by changing the charter, so that the Passamaquoddy Water District joined all of the other water districts in the state, that that generated a lot of passion and the Judiciary Committee is actually a committee that sees a lot of passion in most of the work we do and we, as a committee, generally, and particularly on this matter, we worked really hard to focus on the facts and to listen to everybody and, you know, all of these parties couldn't come to an agreement and so it was our job, as the committee, to take up the legislation, listen to everybody, and to make a very well thought out, carefully reasoned decision. That's exactly what we did. We didn't rely on the discord that came through in some people's statements. We really looked at the human rights issue of access to clean drinking water and what was the clearest path forward to that. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator Hickman.

Senator **HICKMAN:** Thank you, Mr. President. Women and men of the Senate, I rise with humility and a great deal of anguish to speak in favor of the pending motion. We deal with a broad range of issues in this Chamber, some humbling or inspirational, others provocative or downright painful. Rarely, however, do we have the opportunity to take up legislation intended to address a clean and present human rights violation right here in the great state of Maine in the year 2022. Most of us, Mr. President, take the availability of clean, clear drinking water for granted. We turn on the taps in our homes and in this building and trust that what comes out looks and smells and tastes like water. For a moment let's pretend we don't. Let's pretend that when we turn on the faucets in the shower or the kitchen that water is brown. What would you think if the water that runs from your faucets at home was brown or smelled like rotten eggs or chlorine? What would you do? When a vital necessity like potable water is not guaranteed your entire life revolves around securing that vital and essential necessity. It consumes you, as it should. It becomes your focus, the center of your attention. Now imagine that you have access to the solution to your problem right in your own backyard, on your own lands. But when you try to access that

solution your neighbor and the government says 'You need our approval to use what you own.' How would you feel being told that you need someone else's permission to use what you already own? Women and men of the Senate, that is the experience of the Passamaquoddy Tribe to access water on their own land.

For 40 years, more than a generation, two in these days, the water delivered by a local water district to the Passamaquoddy Tribe and to the neighboring city of Eastport has been unreliable. The water source, a shallow reservoir, is practically filled with silt. It becomes more and more shallow as it fills and the silt is deposited by the stream that feeds the pond. As a result, the reservoir is increasingly susceptible to wind and rain storms that stir up dark, foul colored liquid that more closely resembles weak coffee than drinking water. In the summer months, as we've heard, it is home to birds that use the water source as a bathroom. The level of fecal matter in the water requires significant treatment through chlorination. The result is a drinking water supply, if you want to call it that, that tends to be brown from residual silt, heavily chlorinated from cleaning out that fecal matter. I have seen pictures of children's skin that has been burned from this water. I have seen the drinking water notices that acknowledge that this water can cause cancer and liver damage. This is an unacceptable violation of human rights and, yes, this is the water that has been delivered to hundreds of homes in Washington County for decades, all under the State's watch, all under our jurisdiction. Since 2019, the Passamaquoddy Tribe has led multi stakeholder efforts to pursue short, medium, and long term solutions to this human rights violation. The needs may be complicated but they boil down to basically two things: money and access to alternate sources of drinking water.

That is what this Majority Report is about, Mr. President. This amendment would rectify the fact that the local water district that serves the tribe and the city of Eastport is the only water district in the state that pays property taxes. Pursuant to this amendment, the local water district would be exempt from property taxes and the savings would help the district afford the critical maintenance that it cannot otherwise afford today. To secure this human right and ensure better access to clean water for the residents of Sipayik, this amendment would allow the tribe to protect two pieces of tribally owned land where there is known to be water. One parcel is the location of a roadside spring that will provide an on-reservation location for tribal members to fill up water jugs. The current fill up location is currently 15 miles away in one direction. The second parcel of land is known to have a potentially large aquifer supply. The tribe previously helped examine this aquifer as a way to help the local water district replace the current dirty water. This could be a long term solution to the current supply which is in irreversible decline. These tribally owned lands would become protected by the federal government and immune from local regulations. The local town where these lands are located opposes these lands going into federal trust status. In the past, the town has demanded payment of a significant sum of money just to support tribal efforts to put lands in trust status. There's that word again, money. That same town, which does not rely on the same water supply as the tribe, now wishes to veto the Passamaquoddy effort to obtain clean drinking water. They say everyone has a right to clean water, yet they oppose their neighbor's attempts to get it. This dynamic where a neighbor is allowed to veto how you use your own land is the unfortunate reality of the Passamaquoddy Tribe. How would

you feel if your neighbor passed a law to specifically block you from using your own land to derive potable water? That's the Passamaquoddy experience today. It is time for change.

Opponents of this bill, as we have heard, say putting this land in trust over the objection of a local town is bad precedent. I say it's a violation of tribal sovereignty. Current law in Maine allows two tribes, the Maliseets and the Micmacs, to put land in trust without the need for local approval. So why should the Passamaquoddy need the approval of the neighboring towns when other Maine tribes don't? Why should a municipality be able to block another government's quest for clean drinking water?

Article 1, section 1, of the Constitution of Maine reads as follows: all people are born equally free and independent and have certain natural, inherent, and unalienable rights among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and a pursuant and obtaining safety and happiness. How can you defend life and liberty? How can you pursue safety and happiness if you do not have access to clean drinking water? The Passamaquoddy deserve the ability to use their water on their lands. Why does Maine or a municipality need to dictate how the tribe uses its water? In the middle of the pandemic, Maine required State approval before the tribe could supply clean drinking water from an on-reservation well to a school located just hundreds of feet away. Why is it in Maine that tribes must come to the State for permission to use their water? Why does Maine need this power over its first inhabitants? Article 1, section 2, of the Constitution of Maine reads as follows: all power is inherent in the people. All three governments are founded in their authority and instituted for their benefit. They have, therefore, an unalienable and indefeasible right to institute government and to also reform or totally change the same when their safety and happiness requires it. And, so, the Passamaquoddy people have come in peace to this place to alter and reform our government through this legislation because their safety and happiness require it. Mr. President, a change has got to happen.

James Bowman also wrote, 'I love America more than any other country in the world and exactly for this reason I insist on the right to criticize her perpetually.' Well, I love Maine more than any other state in the nation and precisely for this reason I insist on the right to criticize her constructively. We have a tribal nation and EPA ready to step up and help this community in need today. The State of Maine must set aside her painful paternalism towards the tribes and get out of the way. Put another way, as my wise mother was known to say, on this matter before us, Maine needs to go sit down somewhere and be quiet. On this vital matter this amendment would assist Maine in her quietude. L.D. 906 would help the tribe help the local water district, which would, in turn, provide clean water in the city of Eastport and for the tribe. This legislation would directly benefit the people in these communities and would not hold their human right to access clean drinking water subservient to the veto of a local government that has perfectly fine drinking water. This legislation would clarify that the tribe, working with the EPA, can regulate its own drinking water on its own lands without interference from the State or any of her political subdivisions. Access to clean drinking water is a natural, inherent, and unalienable human right and so there is no reason why the Passamaquoddy Tribe, which has brought solutions to the table, should be turned around in their quest to help themselves, their families, their neighbors, their community secure this fundamental human right. In these

moments, Mr. President, when we have the opportunity to support the fulfillment of a human right, the answer should be simple and so, Mr. President, as we go away this afternoon let us go away ever more committed to advancing the dignity and worth of every human personality, ever more committed to protecting and defending the human rights of all people. I urge my colleagues today in the Senate to vote unanimously as one voice to advance this amendment that embraces human rights. It's been a long time coming. Let us stand with the people who have studied and labored over this issue, fighting for their bodily health and wellbeing. Let us stand with the people who have been stewards of and survived off this land since time immemorial. Let us stand with trust that the tribal community's instincts and their earnest desire to make a better, cleaner world for generations yet to be born. We must come to see, Mr. President, that the end we seek is a society at peace with itself, a society that can live with its conscience. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Keim.

Senator **KEIM:** Thank you, Mr. President. I rise to clarify a couple of points. One is, listening to speeches you may not realize that the water district is a five member board and it does serve also the town of Eastport, so there's a lot of like-minded people that want to fix the water issues. But the water district is a five member board. One is from the town of Eastport, one is from the town of Perry, and three are tribal members. So, obviously, they did have opportunity to change their water district charter through proper channels and bring it from the water district itself. You've heard, though, that they've been blocked from using their water and that they've been turned around from finding solutions. But while that bill was sitting for a whole year with no language with it, during that time we heard testimony that the water district board was never approached about this. We also heard testimony that the town was not approached about this. So, while they - you've heard that they were actively seeking solutions for a year and then there was no option other than this language, that is not the same testimony that we heard from their neighbors. I just wanted to make sure that was understood as we vote on this bill. Thank you.

**THE PRESIDENT:** The pending question before the Senate is Acceptance of Report "A", Ought to Pass as Amended by Committee Amendment "A" (H-984), in concurrence. Is the Senate ready for the question?

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The Chair noted the absence of the Senator from York, Senator **DESCHAMBAULT**, and further excused the same Senator from today's Roll Call votes.

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The Doorkeepers secured the Chamber.

The Secretary opened the vote.