OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Janet Stocco, Legislative Analyst

LD 585 *Original Title:* **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** (Rep. Talbot Ross)

Title of Sponsor's Proposed Amendment: **An Act To Enhance Tribal-State Collaboration, To Revise the Tax Laws Regarding the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation and To Authorize Off-track Betting Facilities and Federally Recognized Indian Tribes to Conduct Sports Wagering** (Rep. Talbot Ross)

Public Hearing Date on Sponsor's Proposed Amendment: Feb. 17, 2022

Electronic Committee File: https://legislature.maine.gov/ctl/JUD/02-17-2022?panel=0&time=0&sortdir=0&sortby=2

SUMMARY

This bill analysis focuses on the Sponsor's Proposed Amendment, which contains provisions negotiated by the Chief Executive and the elected leadership of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, with the assistance of the Maine Revenue Services and the Attorney General's Office. The proposed amendment addresses three distinct issues involving the relationship between the State of Maine and the federally recognized Indian Tribes in the State.

1. Tribal-State Collaboration. Part A of the amendment enacts the Tribal-State Collaboration Act, which applies to the 4 federally recognized Indian tribes in the State (the Mi'kmaq Nation,[1] the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation) and provides as follows:

- The Departments of (a) Agriculture Conservation and Forestry, (b) Corrections, (c) Economic and Community Development, (d) Education, (e) Environmental Protection, (f) Health and Human Services, (g) Inland Fisheries and Wildlife, (h) Labor, (i) Public Safety, (j) Administrative and Financial Services, (k) Professional and Financial Regulation, (l) Defense, Veterans and Emergency Management, (m) Marine Resources, and (n) Transportation, and (o) the Office of the Public Advocate and (p) the Public Utilities Commission must each:
  - ***Policy:*** Develop a policy that promotes positive government-to-government relations between the State and federally recognized Indian tribes within the State, promotes cultural competency in the agency's interactions with Indian tribes and tribal members, and establishes a process for consulting with the Indian tribes regarding "the agency's programs, rules and services that substantially and uniquely affect the Indian tribes or tribal members" —the policy must require the agency to make reasonable efforts to complete the following before final action on the program or service or before publishing the proposed rule: provide advanced written notice to the Indian tribes; allow the Indian tribes an opportunity to provide information and input; and require the agency to consider that input.
  - ***Notice to Employees:*** Inform agency employees of the collaboration policy requirements;

[1] The Mi'kmaq Nation was formerly known as the Aroostook Band of Micmacs.

- ***Liaison:*** Designate a tribal liaison to implement the Act's requirements and to facilitate communication with the Indian tribes;
- ***Mandatory Training:*** Provide mandatory training on cultural competency, effective collaboration and positive government-to-government relations between the State and the Indian tribes to agency employees responsible for consultation under the policy as well as for agency employees "whose work substantially and uniquely affects Indian tribes or tribal members";
- ***Reports:*** Beginning Jan. 10, 2023, biennially file a report with the Legislature and the Maine Indian Tribal-State Commission (MITSC) providing an update on its responsibilities under the Act; identifying the agency's proposed programs, rules or services "that substantially and uniquely affect Indian tribes or tribal members"; and making recommendations, if any, for expanded collaboration under the Act.
- ***No cause of action:*** Failure of an agency to comply with the Act's requirements does not itself create a right of action or constitute a ground to invalidate, reverse or remand an agency's action.

➢ ***Tribal-State Summit:*** The Governor must annually convene a Tribal-State Summit with the leaders of the Indian tribes to address issues of mutual concern including implementation of the Act, improving communication between the State and the Indian tribes, and implementation of the requirement to include Maine Native American studies in the Department of Education's system of learning results.

➢ ***Interlocal cooperation agreements:*** Part A of the amendment also includes the Houlton Band of Maliseet Indians within the list of parties that may join an interlocal cooperation agreement under the Maine Revised Statutes, Title 30-A, chapter 115. Pursuant to 30-A M.R.S. §2201, the purposes of that chapter is "to permit public agencies of the State or any adjoining state, including but not limited to municipalities, counties and school administrative units, and federal agencies and Indian tribes and their political subdivisions to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby to provide services and facilities within the State in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of communities. "

2. State Tax Laws. Part B of the amendment contains a Legislative findings provision supporting the changes to the State's tax laws set forth in Parts C to H if the amendment, which apply to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians but **not** the Mi'kmaq Nation:

➢ ***General provisions:*** Part C of the amendment:

- *Tribes and tribal lands:* Defines "Houlton Band Trust Land" by reference to the federal Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986 and "Passamaquoddy Indian territory" and "Penobscot Indian territory" by reference to the Maine Implementing Act (MIA). It also defines "tribal land" to include all 3 aforementioned types of a land and "tribal member" as an enrolled member of one of these 3 federally recognized Indian tribes.
- *Tribal entity:* Newly defines "tribal entity" for state tax law purposes as a separate and distinct legal entity chartered under federal law or the law of any state that is either (a) wholly owned by any combination of these 3 federally recognized Indian tribes or tribal members, including either spouse of a married couple if one spouse is a tribal member; or (b) where at least 75% of the ownership interests are held in aggregate by one or more of these 3 federally recognized Indian tribes and the entity "is controlled and managed" by one of those tribes under the management and control tests developed by the federal Small Business Administration in 13 C.F.R. §124.109(C)(4)(i)(A) and (B):

> **(4)** ***Control and management.***
>
> **(i)** The management and daily business operations of a Tribally-owned concern must be controlled by the Tribe. The Tribally-owned concern may be controlled by the Tribe through one or more

> individuals who possess sufficient management experience of an extent and complexity needed to run the concern, or through management as follows:
>
> > **(A)** Management may be provided by committees, teams, or Boards of Directors which are controlled by one or more members of an economically disadvantaged tribe, or
> >
> > **(B)** Management may be provided by non-Tribal members if the concern can demonstrate that the Tribe can hire and fire those individuals, that it will retain control of all management decisions common to boards of directors, including strategic planning, budget approval, and the employment and compensation of officers, and that a written management development plan exists which shows how Tribal members will develop managerial skills sufficient to manage the concern or similar Tribally-owned concerns in the future.

- *Tribal governments exempt from sales and income tax:* Provides that the Passamaquoddy Tribe and the Penobscot Nation are deemed to act in a governmental capacity and not in a business capacity for purposes of applying the State's sales tax and income tax laws and are therefore exempt from these taxes notwithstanding the Maine Implementing Act (MIA), which provides:

> **30 M.R.S. §6208(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.

- ***State Sales Tax*:** Part D of the amendment:
  - Exempts from the State's sales tax **all** sales (for any purpose) occurring on or after Jan. 1, 2023 *to the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe or the Penobscot Nation*; and
  - Exempts from the State's sales tax sales occurring on or after Jan. 1, 2023 *to tribal members* or *tribal entities that are sourced to tribal lands*, but provides that the use tax applies to such sales if the exempt property or service is used primarily outside of tribal land during the first year after purchase. The applicable test for where a specific sale is "sourced" is set forth in 36 M.R.S. §1819 of current law.
- ***Transfer of Sales Tax Revenue:*** Under current 36 M.R.S. §1815, the amount of sales tax revenue collected by the State attributable to sales occurring on the Passamaquoddy reservations at Pleasant Point or Indian Township is returned by the Treasurer of the State to the Passamaquoddy Tribe on a monthly basis. Part E of the amendment expands the transfer of sales tax revenue, effective Jan. 1, 2023, as follows:
  - Expands the sales tax transfers to the Passamaquoddy Tribe to include tax collected on sales occurring on all of the Passamaquoddy Indian territory (this includes both reservations and trust lands); and
  - Authorizes sales tax transfers to the Penobscot Nation and to the Houlton Band of Maliseet Indians for tax collected on sales occurring on, respectively, Penobscot Indian territory and Houlton Band Trust Land.
- ***Miscellaneous Taxes:*** Effective Jan. 1, 2023, Part F of the amendment:
  - Exempts tribal land from the State's **commercial forestry excise tax** in Title 36, Chapter 367, which is imposed on commercial forest land of greater than 500 acres by a person throughout the State;
  - Exempts **wild blueberries** grown on tribal lands from the 1.5¢ per pound tax in 36 M.R.S. §4303 on wild blueberries either processed in the State or shipped unprocessed outside of the State. The proceeds of this tax are used to fund the Wild Blueberry Commission of Maine under 36 M.R.S. §4311-A; and
  - Exempts potatoes grown on tribal lands from the 6¢ per hundredweight **state potato tax** in 36 M.R.S. §4605. The proceeds of this tax are used to fund the Maine Potato Board under 36 M.R.S. §4604.

- ***State Income Tax:*** Part G of the amendment makes the following changes, effective Jan. 1, 2023:
  - *Section 17 Corporations:* Section G-2 provides that a tribal corporation organized under Section 17 of the federal Indian Reorganization Act of 1934, 25 U.S.C. §5124, is not subject to state corporate income tax. According to a U.S. Department of the Interior, Division of Economic Development publication on "Choosing a Tribal Business Structure" from 2015, "A Section 17 corporation is wholly owned by the tribe, but is separate and distinct from the tribal government. . . Section 17 corporations are not required to pay federal income taxes whether they are operated on or off the reservation."
  - *Tribal Members Residing on Tribal Land:* Sections G-1 and G-3 to -5 of the amendment create state income tax modifications for tribal members residing on tribal land and for the estates of a decedent who is a tribal member residing on tribal lands—for the amount of income or loss derived from or connected to sources on tribal lands. The test for determining whether a tribal member resides on tribal land under section G-1 of the amendment is analogous to the test for determining whether an individual is a resident of the State for income tax purposes under 36 M.R.S. §5102(5). The test for determining whether income derives from or sourced to tribal lands under section G-5 of the amendment is analogous to the test for whether income of a nonresident individual is sourced to the State in 36 M.R.S. §5142(1)-(6).
- ***Rulemaking:*** Part H of the amendment authorizes the Bureau of Revenue Services to adopt routine technical rules to implement the state tax law provisions in Parts C to G of the amendment.

3. Gaming.

Sports betting: Part I of the amendment sets forth legislative findings related to Part J, which legalizes and authorizes the Department of Public Safety, Gambling Control Unit (GCU) and the Director of the GCU to regulate sports wagering in the State. Part J is similar to the provisions of LD 1352, An Act To Regulate Sports Betting, as amended by the majority VLA committee amendment and by a House floor amendment:

Topic	LD 585 proposed amendment	LD 1352 (as currently amended)
Facility operators are authorized to accept sports wagers placed by customers within a physical location in the State. Municipalities retain home rule authority to enact zoning and public safety ordinances related to sports wagering facilities.	Eligibility for facility licenses: • Off-track betting facilities licensed under 8 M.R.S. §275-D (currently Waterville, Sanford, Lewiston and Brunswick); and • Off-track betting facility licensed under P.L. 2016, ch. 626 (currently Scarborough). Each may receive 1 license, which may not be transferred or assigned. No more than 7 licenses may issue.	Eligibility for facility licenses: • Licensed commercial track; • OTB (same types as LD 585) licensed before Jan. 1, 2021; • Casino or slot machine facility; • Federally recognized Indian tribe in the State Each may receive 1 license.
Mobile operators are authorized to accept sports wagers from customers physically located in the State placed through mobile applications or digital platforms approved by the GCU Director.	Eligibility for mobile license: • Federally recognized Indian tribe in the State Each may receive 1 license, which may not be transferred or assigned, except to a business entity wholly owned by the Tribe with a principal place of business in Maine.	Eligibility for mobile license • Licensed commercial track; • OTB (same as above) but licensed before Jan. 1, 2021; • Casino or slot machine facility; • Federally recognized Indian tribe in the State
Management services licenses. Entities with sufficient sports wagering knowledge and experience	The contract and any material change to the contract must be approved by the GCU director:	The contract and any material change to the contract must be approved by the GCU director.

Topic	LD 585 proposed amendment	LD 1352 (as currently amended)
may obtain a license and enter a contract with a facility or mobile operator to manage its sports wagering operations. Subcontracting of management services provider's responsibilities is prohibited.	• If the management services provider contracts with ≥ 1 operator, director must approve method of separately accounting for each operator's sports wagering receipts; • Management services provider may not receive > 30% of operator's adjusted gross sports wagering receipts, unless director concludes receipt of ≤ 40% is commercially reasonable.	
Supplier license. Only a licensed supplier may sell or lease sports wagering equipment, systems or services to licensed facility and mobile operators. The equipment, systems or services must conform to standards established by the director by rule, which may include accepting another jurisdiction's approval. A supplier may only sell equipment, systems or services that have been tested and approved by an approved independent testing laboratory.		
License fees and terms.	• *Facility*: $4,000 for 4-year term • *Mobile*: $200,000 for 4-year term • *Management Services or Supplier licenses*: $40,000 for 4-year term	• *Facility*: $2,000 for 2-year term • *Mobile*: $100,000 for 2-year term • *Management Services or Supplier licenses*: $20,000 for 2-year term
Temporary Licenses for facility operators, mobile operators, suppliers and management services providers.	The director may issue a temporary license upon payment of the initial license fee as long as the director is not aware of any reason the applicant may be ineligible for licensure and if the applicant meets the requirements established by rule. A temporary license lasts for one year or until the final decision on the application, whichever is shorter.	Same as LD 585 proposed amendment, except: A federally recognized Indian tribe is not eligible for a temporary facility operator unless the tribe has a license to operate high-stakes beano. (A tribe that does not have such a license may nevertheless request a temporary mobile operator license.)
Background Investigations. Applicants must disclose the identities of and consent to fingerprint-based background investigations of: (a) the applicant, (b) each person that owns ≥10% of a corporate applicant and has the ability to control the corporation's activities; (b) each direct or indirect owner of a noncorporate applicant whom the director determines has ability to control its business operation; and (c) all key personnel with significant influence over the applicant's relevant business operation. Grounds for denying an initial or renewed license and for imposing administrative sanctions (including warnings, license suspensions/revocations) include: • Knowingly false application statement including failure to disclose required information; • Past revocation of any gambling-related license by any government authority; • Past felony conviction or other criminal conviction or civil violation adjudication involving dishonesty, deception, misappropriation or fraud; • Past conviction for gambling crimes in any jurisdiction; • Being a fugitive from justice, drug user, person with substance use disorder, illegal alien or dishonorably discharged from U.S. Armed Forces; • Not being current in the filing or payment of federal or state taxes in any state; • Not being "of good moral character"—evidence of dishonesty, lack of fiduciary care, etc.; • Lack of demonstrated financial assets or financial responsibility; and • Violations of any provision of the sports wagering laws or rules in Maine. A licensee's violation of the State's sports wagering statutes or rules can also lead to a civil penalty of up to $25,000.		

Topic	LD 585 proposed amendment	LD 1352 (as currently amended)
Occupational license. An employee engaged directly in sports wagering-related activities must obtain an occupational license from the GCU director.	• Applicable to employees of facility or mobile operators. • *Fee*: $250 initial; renewal fee of $25 for 1 year or $50 for 3 years.	• Applicable to employees of facility operators only. • *Fee*: $250 initial; renewal fee of $50 for 1 year. • *Exception*: licensed casino employees need not also be licensed under this provision
House Rules: Operators must adopt comprehensive house rules that meet minimum standards established by the director by rule, including by specifying: the amount paid on winning wagers, effects of schedule changes, circumstances for voiding wagers, and treatment of errors, late wagers and related issues. House rules must be approved by the director, advertised and readily available to customers.		
Persons prohibited from making wagers: Operators may not accept sports wagers from: • Individuals under 21 years of age; • Athletes, participants or officials involved in the sports event subject to the wager; • Any operator or management services licensee, employee of such a licensee and persons living in their households, although household persons may wager through other operators; • Interested parties defined by the director by rule—including the owners and employees of teams in the event, owners and employees of other league teams and of the league itself; • Individuals on a list established by the director—both those who voluntarily ask to be placed on the list and those who are placed on the list involuntarily under standards established by rule; • Third persons making wagers on behalf of or as the agent or custodian of another person; and • Gambling Control Unit employees		
Sports events subject to wagers. Professional, collegiate or amateur sports or athletic events, including international events, motor vehicle races, and e-sports are subject to sports wagers. Exceptions: Wagers may **not** be accepted on: (1) high school events; (2) events with majority of participants under age 18 and (3) collegiate-level events in which a Maine team participates—but wagers may be accepted on games and matches in a tournament in which a Maine team participates, as long as the Maine team is not participating in the game or match.		
Other prohibited wagers. • For events with a sports governing body in the United States, operators may not accept wagers on injuries, penalties or outcomes of disciplinary or replay rulings. • In addition, any sports governing body may request that the director prohibit certain types, forms or categories of wagering on its events by demonstrating good cause to believe the wagers are "likely to undermine the integrity or perceived integrity" of the sporting event or governing body. The director must consider comments from operators for each request but may first provisionally grant such requests if it is more likely than not that good cause will be shown.		
Abnormal wagering activity. Operators must report "abnormal wagering activity" that raises concerns about the integrity of the sports event or potential match fixing to the director and the relevant sports governing body. Operators must also use commercially reasonable efforts to cooperate with investigation-related information requests from law enforcement and sports governing bodies. Information shared with the director by sports governing bodies for purposes of investigating or preventing this type of abnormal wagering conduct must be kept confidential by the director unless disclosure is required by the director, directed by law or the sports governing body consents. Information shared with a sports governing body by operators must not be used for commercial purposes and may not be disclosed except (a) in conducting and in resolving integrity-related investigations and (b) to the public to preserve actual or perceived integrity of its sports events, after notice to the operator and an opportunity to object to the disclosure.		

<table>
<tr><th>Topic</th><th>LD 585 proposed amendment</th><th>LD 1352 (as currently amended)</th></tr>
<tr><td colspan="3">Recordkeeping requirements. In addition to requiring the director to establish recordkeeping requirements by rule (see below), operators must also use commercially reasonable methods to maintain the security of wagering data and customer data but must also:
Maintain itemized records of all: wagers placed and abnormal wagering activity for 3 years and video recordings of in-person wagers for at least 1 year. Operators must make these records available to the director upon request or as required by court order.
Maintain anonymized but itemized wagering information in “real time” and disclose this information to (a) the director upon request in a form established by the director by rule and (b) to the relevant sports governing body for integrity monitoring purposes if the sports governing body informs the director that it uses such data for this purpose.</td></tr>
<tr><td>Advertising restrictions</td><td>GCU director must adopt rules:
Prohibiting misleading, deceptive or false ads
Requiring operator to disclose it is a licensed OTB, federally recognized Indian tribe or a corporation wholly owned by a federally recognized Indian tribe
Restricting, to the extent permissible, advertising with a high probability of reaching or designed particularly to appeal to persons under 21 years of age</td><td>By statute, signs and ads:
May not be misleading, deceptive or false
May not include advertising with a high probability of reaching or designed particularly to appeal to persons under 21 years of age
May not be within 1000 feet of the property line of a school
The GCU director may also adopt rules to implement these prohibitions.</td></tr>
<tr><td colspan="3">Additional required rulemaking. The director of the GCU shall adopt routine technical rules addressing:
Additional qualifications for and procedures for obtaining each category of license;
Qualifications and procedures for obtaining temporary licenses;
Sports wagering operation methods, including—authorized wagering systems; use of credit and checks; required receipts; protection of patrons; promotion of social responsibility; and display of resources for problem gambling at each facility and on each mobile application or digital platform;
Establishment of a maximum per-event, per-person wager, if deemed necessary by director;
Standards for house rules and procedures for approval of house rules by the director;
Minimum design and security requirements for facility operators, including—security of premises; self-serve kiosk requirements, identity and age verification requirements; and requiring a refund of any wager placed by a prohibited person;
Minimum design and security requirements for mobile applications and digital platforms, including—identity, age and geolocation verification requirements and requiring a refund of any wager placed by a prohibited person;
Identification of interested parties prohibited from making wagers;
Minimum design, security, testing and approval requirements for sports wagering equipment, systems and services sold by licensed suppliers;
Minimum requirements for contracts between operators and management services licensees;
Minimum operator internal control standards and recordkeeping requirements, including—audit requirements and required reporting of wagers and revenues to the director; and
Establishment of a list of persons prohibited from making wagers, including—voluntary placement on the list and standards for involuntary placement on and removal from the list.
The director may adopt initial sports wagering rules through emergency rulemaking procedures.</td></tr>
</table>

<table>
<tr><th>Topic</th><th>LD 585 proposed amendment</th><th>LD 1352 (as currently amended)</th></tr>
<tr><td colspan="3">Child support interception: Operators must intercept sports wagering winnings for the payment of past due, court-determined child support debt if the winnings exceed the amount for which the licensee is required to file Form W-2G with the IRS—i.e., (a) winnings that are at least $600 and at least 300x the amount of the wager or (b) winnings that, less the wager, are at least $5,000.</td></tr>
<tr><td colspan="3">Tax base: “adjusted gross sports wagering receipts” = total wagers - (winnings paid out + federal taxes)</td></tr>
<tr><td>Facility operator tax</td><td colspan="2">10% of adjusted gross sports wagering receipts:
1% to the General Fund for GCU administrative expenses
1% to the Gambling Addiction Prevention and Treatment Fund
0.55% to the fund to supplement harness racing purses in 8 M.R.S. §290
0.55% to the Sire Stakes Fund in 8 M.R.S. §281
0.4% to the Agricultural Fair Promotion Fund created in the amendment
6.5% to the General Fund</td></tr>
<tr><td>Mobile Operator Tax</td><td>10% of adjusted gross sports wagering receipts
Same tax revenue distribution as above for the facility operator tax</td><td>16% of adjusted gross sports wagering receipts
Same tax revenue distribution as above except the General Fund share is 12.5% of the receipts</td></tr>
<tr><td colspan="3">Unlicensed operation of sports wagering: The following provisions of Title 17-A, chapter 39 apply:
<table>
<tr><th>Offense</th><th>Offense description</th><th>Penalty</th></tr>
<tr><td>Unlawful gambling §954(1)</td><td>Person—not the bettor—who intentionally or knowingly profits from unlawful gambling activity. Class D crime.</td><td>• Individual: up to $2,000 fine & 1-year imprisonment
• Organization: up to $10,000 fine
And forfeiture of all involved income</td></tr>
<tr><td>Aggravated unlawful gambling §953(1)(A)</td><td>Same as above except violation involves receiving or accepting >5 bets totaling >$500 in value in 24 hours. Class B crime.</td><td>• Individual: up to $20,000 & 10-years imprisonment
• Organization: Fine of up to $40,000
And forfeiture of all involved income</td></tr>
</table></td></tr>
<tr><td colspan="3">Fantasy Sports Contests. 8 M.R.S. §1104(2) is amended to allow a fantasy contest operators to offer fantasy contests based on the performance of participants in college athletic events.</td></tr>
</table>

Future mobile gaming opportunities. Section J-10 of the amendment enacts a new chapter 703 of Title 30, which is not located within Maine Implementing Act. Chapter 703 establishes that each federally recognized Indian tribe in this State has the right to conduct mobile gaming under any law of the State authorizing such mobile gaming that is enacted on or after the effective date of this Legislation.

INFORMATION REQUESTED

- ***Request to Chris Jackson (Hollywood Casino):***
  - Range of fees charged in other states by management services companies for mobile sports betting.
  - Annual gaming revenue from Hollywood Casino? See Gambling Control Board Annual Report 2020
- ***Request to Dan Walker (Oxford Casino):***
  - Over the last decade what is the debt and income for the Oxford Casino?
  - Demographics of Oxford Casino clientele versus expected sports betting clientele?
  - Annual gaming revenues from Oxford Casino? See testimony page 4 and Gambling Control Board Annual Report 2020
  - Portion of Oxford Casino revenues that is sent out of the State?
- ***Request to Jon Mandel (Sports Betting Alliance):***

- Please provide information on illegal sports betting market. See response posted here.

➢ ***Requests to analyst:***

- Please provide the bill analysis from LD 1352.

  Answer: The bill analysis is available here along with an attached chart of other states' sports betting laws. The fiscal note to the majority committee amendment to LD 1352 is available here.

- Will the proposed amendment to LD 585 affect the revenue the Passamaquoddy Tribe and the Penobscot Nation receive from the Oxford Casino tax cascade?

  Answer: **No.** Four percent of net slot machine income from the Oxford Casino is transferred "to the tribal governments of the Penobscot Nation and the Passamaquoddy Tribe" under 8 M.R.S. §1036(2-A)(D). Under that law, if the recipient of these funds "owns or receives funds from a slot machine facility or casino, other than the casino in Oxford County or [in Bangor], then the recipient may not receive funds under this subsection, and those funds must be retained by the Oxford County casino operator." The Penobscot Nation's or the Passamaquoddy Tribe's receipt of a sports wagering license would not trigger this condition for allowing Oxford Casino to retain these funds.

- Does Bangor have an OTB?

  Info. from Henry Jennings, Executive Director of the Harness Racing Commission. **Yes and no.** The Bangor Raceway (commercial track) may accept wagers on simulcast races—what we call in the vernacular off-track betting—as part of its commercial track license under 8 M.R.S. §275-B(1). However, the Bangor Raceway does not have an OTB facility license under §275-D.

➢ ***Questions for Jerry Reid (Governor's Office):*** Answers received via email are reproduced below:

- With respect to the Tribal-State Collaboration Act, will there be any fiscal impact on the named state agencies—for purposes of appointing liaisons, engaging in the consultation process required by the bill, training purposes, for the Tribal-State summit, or for any other aspect of this Act?

  Answer: "No. Agencies will appoint tribal liaisons from existing staff. The collaboration, training, and the Summit will all be performed with existing resources."

- With respect to the Tribal-State Collaboration Act, will there be any fiscal impact on the named state agencies—for purposes of appointing liaisons, engaging in the consultation process required by the bill, training purposes, for the Tribal-State summit, or for any other aspect of this Act?

  Answer: "There will be a relatively small impact to the General Fund, and some limited administrative expenses incurred by Maine Revenue Services. Representatives of Maine Revenue Services will be available at the Work Session to provide additional information upon request."

DRAFTING SUGGESTIONS AND POTENTIAL ISSUES:

1. ***Bangor Raceway and facility sports wagering license***. If the committee wishes to amend Part J of the bill to authorize the GCU director to issue a facility sports wagering license to the Bangor Raceway, Section 1206(2) in Part J of the proposed amendment could be amended as follows:

   2. Eligibility; transfer prohibited. To be eligible to receive a facility sports wagering license, an applicant must be a commercial track that sells pari-mutuel pools for simulcast races under §275-B or an off-track betting facility licensed under section 275-D or Public Law 2019, chapter 626, section 16. Each commercial track or off-track betting facility may receive only one facility sports wagering license under this section. A facility sports wagering license may not be transferred or assigned.

2. ***Tribes acting as governments for sales and income tax purposes***. It may make sense to revise section C-10 of the proposed amendment, which enacts 36 M.R.S. §195-E, to clarify that this legislation is not amending the MIA and it is instead establishing a rule for applying the MIA to the State's sales and income tax laws:

   195-E. Tribes deemed as acting in a governmental capacity

   ~~Notwithstanding Title 30, section 6208, subsection 3, for~~ For purposes of Parts 3 and 8 of this Title, the Passamaquoddy Tribe and the Penobscot Nation are deemed to act in a governmental capacity as described in Title 30, section 6208, subsection 3 and not in a business capacity.

3. ***Public Records Exceptions Reviews.*** If a majority of the committee votes in favor of the proposed amendment to LD 585, public records exceptions reviews will be required for several new public records exceptions included within Part J of the proposed amendment. This committee previously approved the analogous public records exceptions when they were included within the majority VLA Committee amendment to LD 1352. *See* VLA memo requesting review and JUD response memo.

   - §1204(3)(H): the director of the GCU must keep confidential criminal history record information of applicants for sports wagering licenses, including the results of fingerprint-based background checks;
   - §1215(3): the director of the GCU must keep confidential information provided by a sports governing body for purpose of investigating or preventing abnormal wagering activity;
   - §1217(1): DHHS receives from facility and mobile operators the name, date of birth and social security number of persons whose winnings exceed the amount reportable to the IRS and must use that information to check a registry containing information on individuals with outstanding child support debt; the Department must keep this information and information in the registry confidential.

4. ***Advertising restrictions.*** Although not raised in the VLA Committee's discussions of LD 1352, the Attorney General's Office has since observed that in *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), the U.S. Supreme Court struck down on First Amendment grounds several restrictions Massachusetts had adopted on the advertising of smokeless tobacco and cigars. The restrictions were designed to prevent underage tobacco use, including by banning the advertising such products within 1,000 feet of a school or playground. The Supreme Court agreed that the state had a substantial interest in preventing underage tobacco use but nevertheless concluded that advertising restrictions must be tailored to serve that interest in a way that does not unduly impinge on a speaker's ability to propose a legal commercial sale to an adult customer.

5. ***Conflicts with LD 1626***. If the proposed amendment to LD 585 and LD 1626 are both enacted, they will conflict with respect to the tribal-state collaboration and state tax provisions of each bill.

FISCAL IMPACT

Not yet determined.