OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 2, 2021

To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 554 **An Act To Create Gaming Equity and Fairness for the Native American Tribes in Maine** (*Rep. Collings*)

SUMMARY

This bill provides that, pursuant to section 6(e) of the federal Maine Indian Claims Settlement Act of 1980, the State of Maine and the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians agree and establish that the federal Indian Gaming Regulatory Act governs the government responsibility and jurisdiction of the state and each tribal government over the conduct of gaming activities by each tribe on its "respective Indian territory or trust land."

BACKGROUND

A. Current federal and state laws governing jurisdiction of State and Tribes over tribal lands

The federal Maine Indian Claims Settlement Act of 1980 ("Settlement Act"), Pub. L. No. 96-420, 94 Stat. 1785 (Oct. 10, 1980), ratified the Maine Implementing Act (see below) and established the following general rules:

1) The Passamaquoddy Tribe, Penobscot Nation, their members and the land owned by or held in trust by the federal government for the benefit of the Passamaquoddy Tribe, Penobscot Nation or their members "shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act"; but, the Passamaquoddy Tribe and Penobscot Nation are "authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto." *Id.* §6(b)(1), (f), 94 Stat. at 1793-94.

2) The members of all other tribes or bands of Indians in the State, including the Houlton Band of Maliseet Indians, its members, and any lands or natural resources owned by or held in trust for the benefit of the Houlton Band of Maliseet Indians or its members, "shall be subject to the civil and criminal jurisdiction of the State [of Maine and] the laws of the State . . . to the same extent as any other person or land therein." *Id.* §6(1), 94 Stat. at 1793.

The Maine Implementing Act ("MIA"), in Title 30, chapter 601 of the Maine Revised Statutes, similarly established that, except as otherwise specified in the MIA, the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians and their members, as well as the lands owned by or held in trust for them, "shall be subject to the laws of the State . . . to the same extent as any other person or lands . . . therein." 30 M.R.S. §6204. The limited exceptions to this general rule include the MIA's recognition, for example, of the Passamaquoddy Tribe's and the Penobscot Nation's municipal-like authority over their respective Indian territories and the 2 tribes' authority over "internal tribal matters" which "shall not be subject to regulation by the State." *See* §6206(1).

A few years after enactment of these laws, the Law Court rejected the Penobscot Nation's argument that, as part of its exclusive jurisdiction over "internal tribal matters," it had the authority to conduct beano games that did not comply with state gaming laws as a method of raising funds to finance essential tribal services and programs. *Penobscot Nation v. Stilphen*, 461 A.2d 478 (1983). The *Stilphen* decision suggests that, under the MIA and federal Settlement Act, the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians[1] may not conduct gaming activities on their lands unless those activities are specifically authorized by Maine law.

B. Current Maine law governing tribal gaming

1. Games of chance and high-stakes bingo

The Gambling Control Unit may issue licenses to conduct "card games" (*e.g.*, poker, blackjack or cribbage) and tournament card games and may accept registrations to operate games of chance, raffles and bingo/beano from certain eligible organizations, including bona fide nonprofit charitable, educational, political, civil, recreational, fraternal, patriotic, religious or veterans' organizations. 17 M.R.S. §313-C (beano); §1832. Comprehensive laws limit the operation of the games, including the value of the prizes that may be awarded, use of proceeds, and in some cases the entry fees charged to participants. See Title 17, chapter 13-A (bingo) and chapter 62 (games of chance and card games).

Under 17 M.R.S. §314-A, a federally recognized Indian tribe—Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians and Aroostook Band of Micmacs—may obtain a license to operate high-stakes bingo for a maximum of 27 weekends per year. There is no limit on the value of a single prize or the total prize value that may be offered during high-stakes bingo. A tribe may also register with the Gambling Control Unit to sell lucky seven or similar sealed tickets during the period beginning 2 hours before and ending 2 hours after the high-stakes bingo game. 17 M.R.S. §324-A. These tickets may be sold in a "dispenser," as long as the "element of chance [is] provided by the ticket itself, not by the dispenser." §314(1-A).

2. Casinos (slot machines and table games)

The Gambling Control Board may issue only 2 casino operator licenses under current law: one to a commercial track that was licensed to operate a slot machine facility on Jan. 1, 2011 (*i.e.*, Hollywood Casino in Bangor) and one to a facility located in Oxford County (*i.e.*, Oxford Casino). 8 M.R.S. §1011(2-A). Although §1011(2-B) provides that the Gambling Control Board "may accept an application submitted by a federally recognized Indian tribe in the State that was licensed to conduct high-stakes beano at a gaming facility in Washington County as of January 1, 2012", that statute further provides that such an application may only be accepted "if that tribe is authorized expressly by law to operate slot machines at that gaming facility." This condition has not been satisfied.

In addition, with respect to the issuance of future casino and slot machine operators licenses, pursuant to current law, a license "may not be issued . . . to operate any casino or slot machine facility located within 100 miles of a licensed casino or slot machine facility" and "any proposed casino or slot machine facility may not be issued a license unless it has been approved by a statewide referendum vote and a vote of the municipal officers or municipality in which the casino or slot machine facility is to be located." 8 M.R.S. §1019(6), (7).

[1] An individual submitted a legal opinion with his testimony suggesting that *Stilphen* does not affect the Houlton Band of Maliseet Indians, which he asserts retains its inherent right to conduct gaming on its trust lands under the Settlement Act.

C. Indian Gaming Regulatory Act of 1988

In *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), the U.S. Supreme Court held that, in the absence of explicit Congressional approval, states may not regulate gaming operations conducted by Indian tribes on tribal lands when the states do not prohibit such gaming as a matter of criminal law or public policy. A year after the *Cabazon* decision, Congress enacted the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. No. 100-497 (Oct. 17, 1988), to regulate Indian gaming and to provide states with a limited authority to negotiate how certain categories of gaming activities on tribal lands would be conducted. The chart below summarizes IGRA's general framework.

Topic	IGRA regulatory framework
Glass I gaming Class I gaming includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations." 25 U.S.C. §2703(6).	Tribes have exclusive jurisdiction to operate and to regulate class I gaming on Indian lands. 25 U.S.C. §2710(a).
Class II gaming Class II gaming includes: bingo (and electronic bingo) as well as card games that are either authorized by or not explicitly prohibited by the laws of the state and that are played in accordance with state laws (if any) regarding permitted hours and prize limits. Class II gaming does not include: banked card games where players play against the house, electronic facsimiles of games of chance, or slot machines of any kind. 25 U.S.C. §2703(7).	Tribes may conduct class II gaming on Indian lands if: (1) The state "permits such gaming for any purpose by any person, organization or entity" and (2) Class II gaming is conducted pursuant to a **tribal ordinance**, approved by the National Indian Gaming Commission (NIGC) chair, which must provide: ➢ The tribe will have "sole proprietary interest and responsibility for" the gaming activity; ➢ Net revenues from the gaming activity may only be used to: (a) fund tribal government operations or programs; (b) provide for the general welfare of the Indian tribe or its members; (c) promote tribal economic development; (d) make donations to charitable organizations; or (e) help fund operations of local government agencies. ➢ Annual independent audits of gaming activities and any contract for supplies or services worth >$25,000/year will be provided to the NIGC; ➢ The gaming facility will be constructed and operated "in a manner which adequately protects the environment and the public health and safety"; and ➢ Background investigations are required for all primary management officials and key employees of the gaming enterprise. 25 U.S.C. §2710(b).
Class III gaming Class III gaming includes "all forms of gaming that are not Class I gaming or Class II gaming,"—*i.e.*, banked card games (for example, blackjack), other table games, slot machines, sports betting, and pari-mutuel wagering on dog or horse racing. 25 U.S.C. §2703(8); 25 C.F.R. §502.4.	Tribes may conduct class III gaming on Indian lands if: (1) The State "permits such gaming for any purpose by any person, organization, or entity"; (2) Class III gaming is authorized by a tribal ordinance, approved by the NIGC Chair, that meets the requirements applicable to a Class II gaming ordinance (see above); and

Topic	IGRA regulatory framework
	(3) Class III gaming is conducted in conformance with an approved Tribal-State compact (see below). A tribe may enter into a management contract for the operation of a Class III gaming activity only if the contract meets the requirements of 25 U.S.C.§2711 and is approved by the Chair of the NIGC. 25 U.S.C. §2710(b).
Tribal-State compact for class III gaming	Upon receiving a request from a tribe, "the State shall negotiate with the Indian tribe in good faith to enter into" a tribal-State compact.[2] The compact may not take effect until it has been approved by the Secretary of the Interior and published in the Federal Register. The tribal-state compact may address issues including: ➢ Application of criminal and civil laws and regulations of the tribe and the State; ➢ Division of criminal and civil jurisdiction between the tribe and the State for enforcing such laws; ➢ Assessments imposed by the State to defray necessary costs of regulating the class III gaming; ➢ Taxation by the tribe in amounts "comparable to amounts assessed by the State for comparable activities"; ➢ Licensing standards for the operation and maintenance of the class III gaming facility; and ➢ "Any other subjects that are directly related to the operation of gaming activities." 25 U.S.C. §2710(D)(3).
Indian Lands Indian lands include, for purposes of IGRA, "all lands within the limits of any Indian reservation" and "any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercise governmental power." 25 U.S.C. §2703(4).	General rule: Tribes may not conduct class II & III gaming on trust land acquired after Oct. 17, 1988. Exceptions: tribes may conduct gaming on: ➢ Lands "located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988"; ➢ Lands on which Secretary of Interior concludes, after consulting with tribal, state and local officials, that it would be in the best interest of the tribe to locate a gaming establishment and it would not be detrimental to the surrounding community, but only if the Governor concurs with the Secretary of Interior; or ➢ Lands "taken into trust as part of . . . a settlement of a land claim." 25 U.S.C. §2719(a), (b).

[2] In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), the U.S. Supreme Court held that the Eleventh Amendment prohibits a tribe from suing a State for failure to negotiate in good faith under IGRA. After the *Seminole Tribe* decision, the Department of Interior promulgated regulations describing the process by which the Secretary of Interior may prescribe procedures under which a tribe may conduct class III gaming on Indian lands if a state refuses to negotiate a compact.

In 1996, the Passamaquoddy Tribe sought to negotiate a tribal-State compact with the State of Maine under IGRA, for the purpose of potentially opening a casino on land to be purchased in Calais. After the State asserted that IGRA did not apply in Maine, the tribe brought a court action to compel the State to negotiate a class III gaming compact. In *Passamaquoddy Tribe v. State of Maine*, 75 F.3d 784 (1st Cir. 1996), the First Circuit Court of Appeals focused on §16(b) of the Settlement Act, which provides:

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

Settlement Act, §16(b), 94 Stat. at 1797 (emphasis added). IGRA, the court noted, was a federal law enacted after October 10, 1980 "for the benefit of Indians, Indian nations, or tribes or bands of Indians" and its provisions "would affect or preempt the application of the [gambling] laws of the state of Maine," yet "Congress . . . chose not to include in [IGRA] any indication that it meant to make the statute specifically applicable within Maine." *Id.* at 793. Accordingly, the First Circuit concluded that Settlement Act "precludes the operation of [IGRA] in Maine." *Id.* at 791, 794.

D. Settlement Act §6(e): federal consent to certain agreements between the State and the tribes

As it is currently drafted, LD 554 provides, pursuant to §6(e) of the federal Settlement Act, that the State and the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians "agree and establish" that "the government responsibility and jurisdiction" of the State and the tribes "within [the tribes'] respective Indian territory or trust land" are governed by IGRA.

In §6(e) of the federal Settlement Act—the provision invoked in LD 554—the federal government provided its advance consent for specific changes to the jurisdictional relationship between the State and the tribes that had been established through the other provisions of the Settlement Act:

> (e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: *Provided*, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.
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> (2) Notwithstanding the provisions of subsection (a) of this section [subjecting the Houlton Band of Maliseet Indians, its members and its territories to the criminal and civil jurisdiction of the State], the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the band or its members.

E. Recent Legislative History

The Law and Legislative Reference Library maintains a comprehensive outline of Maine Casino Gambling Legislative History, available here: https://www.maine.gov/legis/lawlib/lldl/casinogambling/

In 2019, the 129th Legislature established the *Task Force on Changes to the Maine Indian Claims Settlement Act* ("Task Force"), charged with making consensus recommendations to the Legislature proposing changes to the MIA. Information regarding establishment of the Task Force and its membership as well as materials and from Task Force meetings—including an overview of federal Indian gaming law as compared to current Maine gaming law, presented by Attorney Michael-Corey Hinton, Esq., counsel to the Passamaquoddy Tribe—are available on the Task Force website. The final report of the Task Force, including the consensus recommendations, is available on the Task Force website and through the following link: http://legislature.maine.gov/doc/3815. Most relevant to LD 554, in consensus recommendation #17 the Task Force suggested that the Legislature "Amend the Maine Implementing Act to render the federal Indian Gaming Regulatory Act applicable in Maine." *See Task Force Report* at 49-51 (discussing this consensus recommendation).

As directed by the joint order establishing the Task Force, the Joint Standing Committee on Judiciary reported out a bill based on the consensus-based recommendations to the Second Regular Session of the 129th Legislature. *See* LD 2094, *An Act To Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act.* LD 2094 contained a contingent effective date clause providing that, if the bill were enacted, it would only take effect if the Secretary of State received written certification from the tribal governments of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians that each tribe agreed to its provisions. *See* LD 2094, section 25. With respect to tribal gaming, section 24 of LD 2094 proposed to add new language to the MIA, which would have provided:

> **Federal laws enacted after October 10, 1980.** For the purposes of United States Public Law 96-420, Section 16(b), the provisions of any federal law enacted after October 10, 1980 for the benefit of Indians, Indian nations or tribes or bands of Indians apply to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians and their members and is deemed not to affect or preempt the application of the laws of this State, including application of the laws of this State to lands owned by or held in trust for Indians or Indian nations, tribes or bands of Indians, regardless of whether such federal law is specifically made applicable within this State.

The summary of LD 2094 explained: "Although not separately mentioned in the bill, the task force specifically recognized and recommended that [IGRA] should apply in Maine. The portion of the bill addressing the Settlement Act, Section 16(b), accomplishes this goal."

As the Task Force report details, the 9 voting members of the Task Force who provided input on the topic of applying federal laws benefiting Indians and Indian tribes in Maine believed that, although outright elimination of §16(b) of the Settlement Act would require Congressional approval, it might be possible "to render Section[] . . . 16(b) of the Settlement Act inoperable by enacting legislation that affirmatively provides, as a matter of state policy, that federal laws enacted for the benefit of Indian country do not affect or preempt the laws of the State of Maine." These Task Force members recognized, however, that accomplishing this goal through an amendment to the MIA would "require further consideration and careful drafting." *See Task Force Report* at 56; *see also id.* at 15, 29 (briefly summarizing discussion of this issue). In his testimony on LD 2094, Attorney General Frey expressed concern with this provision of the bill, observing that it is unclear whether a court would agree that the

Maine Legislature and the Tribes have authority under §16(b) of the Settlement Act to "deem" that certain federal laws do not affect or preempt the jurisdiction of the State—if those laws, as written, do in fact preempt or affect the application of Maine law. *See* Attorney General Frey's testimony at 9, 18-21.

LD 2094 remained in the possession of the Judiciary Committee when the Legislature adjourned sine die due to the pandemic on March 17, 2020.

ISSUES FOR CONSIDERATION

A. Office of the Attorney General concerns. LD 554 approaches the application of IGRA in Maine in a different manner than the approach taken in LD 2094 from the 129th Legislature. Nevertheless, the Office of the Attorney General has cautioned that it is unclear whether Section 6(e) of the Settlement Act, upon which LD 554 relies, authorizes the State and the tribes to enter into an agreement providing that IGRA governs the conduct of gaming activities by the tribes on tribal lands in Maine. First, the office observes it is not clear that the application of IGRA to gaming conducted by the Passamaquoddy Tribe or the Penobscot Nation is the specific type of amendment to the MIA contemplated by §6(e)(1); moreover, §6(e)(2) does not authorize the State and the Houlton Band of Maliseet Indians to amend the jurisdictional provisions of the MIA regarding the band's trust land. In addition, while both paragraphs of §6(e) reflect the federal government's advance consent to future agreements regarding modifications to the relationship between the State and the tribes, they do not necessarily provide advance consent to changes to that relationship that would impose additional duties on the federal government. Although it has raised these concerns, the Office of the Attorney General has also indicated that it is available to assist the committee and the Legislature in order to effectuate the bill's intent.

B. Governor's concerns. The Governor's Office submitted a letter to the committee requesting that the Committee consider adding a referendum requirement to LD 554 "to confirm that broad public support for this expansion [of legalized gambling opportunities] exists" and provisions clarifying the "nature and extent of regulatory oversight that would accompany gaming under this bill."

C. Concerns regarding market feasibility. Several individuals and entities who testified at the public hearing and who submitted written testimony suggested that establishing a new tribal casino within the State will likely have a negative impact on the revenues generated by State's existing casinos and distributed through the casino cascade as well as the economic outlook of the areas in which those casinos are located. Senator Luchini suggested that, in evaluating this concern, committee members may wish to review the Market Feasibility Study of Expanded Gaming in Maine commissioned by the Legislative Council and submitted by WhiteSand Gaming in 2014. An electronic copy of the report is available on the Law and Legislative Library's website at the following link: http://lldc.mainelegislature.org/Open/Rpts/kf3992_z99w55_2014.pdf.

D. Oxford Casino concerns. In addition to raising questions regarding the impact of a new casino on existing casinos and the local economies of in which they are located, Oxford Casino expressed concern that, under IGRA, it is possible to establish a new tribal casino in the state that without adhering to the following requirements of Maine law: (1) new casinos may not be located within 100 miles of an existing casino; (2) new casinos must be approved by a statewide referendum; (3) new casinos must also be approved by the host municipality; and (4) new casinos must pay "a $250,000 nonrefundable privilege fee to be submitted with the application for the license and a minimum license fee, or cash bid

if the license is part of a competitive bidding process established by law, of $5,000,000." *See* 8 M.R.S. §1019(6)-(7); 8 M.R.S. §1018(1-A).

REQUESTS FOR INFORMATION

A. Referendum requirements under IGRA. Representative Tuttle requested information regarding a state's ability under IGRA to send the terms of a tribal-state compact to the voters for a referendum vote. A memo addressing this question, prepared by OPLA Legislative Researcher Kristin Brawn, is posted in the Electronic LD File for LD 554.

B. Population figures for states with tribal-state compacts. Representative Dolloff requested information regarding the population of the states with Tribal-state compacts and the numbers of tribal casinos in each of those states. A memo addressing this question, prepared by OPLA Legislative Researcher Kristin Brawn, is posted in the Electronic LD File for LD 554.

C. Impact of LD 554 on casino cascade. VLA Committee members requested information regarding the distribution of current casino taxes, including how those distributions might be affected by the establishment of a tribal casino. Pursuant to 8 M.R.S. §1036(1), (2) & (2-C) Hollywood Casino in Bangor must collect 1% of gross slot machine income—*i.e.*, revenue before payout of winnings—for the administrative expenses of the Gambling Control Board and an additional 39% of net slot machine income and 16% of net table game income for distribution in specific amounts to specified funds and entities. Pursuant to 8 M.R.S. §1036(2-A) and (2-B), Oxford Casino must collect 46% of net slot machine income and 16% of net table game income for distribution in specific amounts to various funds and for specified funds and entities. The *State of Maine Compendium of State Fiscal Information*, prepared by the Office of Fiscal and Program Review, provides an excellent summary of the "casino cascade" recipients and amounts received by each, which is attached to this bill analysis.

Currently, 4% of net slot machine income from the Oxford Casino must be distributed "to the tribal governments of the Penobscot Nation and the Passamaquoddy Tribe." 8 M.R.S. §1036(2-A)(D). If either the Passamaquoddy Tribe or the Penobscot Nation owns or receives funds from a slot machine facility or casino other than the 2 currently authorized casinos, that tribe will no longer be eligible to receive funding under the casino cascade; the funds otherwise allocated to that recipient may be retained by the operator of the Oxford Casino. §1036(2-A) (final paragraph).

D. Current tribal lands in Maine. Representative Wood requested information regarding the current reservation and trust lands of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. The geographic boundaries of the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are defined by the MIA. *See* 30 M.R.S. §6203(5) & (6). Additionally, in the Settlement Act, Congress appropriated the following land acquisition settlement funds: $26.8 million to be held in trust for the Passamaquoddy Tribe, $26.8 million to be held in trust for the Penobscot Nation and $900,000 to be held in trust for the Houlton Band of Maliseet Indians. *See* §5 & §14, 94 Stat. 1789, 1797. Under §5 of the Settlement Act, the first 150,000 acres of land purchased with these funds by the Secretary of Interior within the area described in the MIA for the Passamaquoddy Tribe and the first 150,000 acres of land purchased with these funds by the Secretary of Interior within the area described in the MIA for the Penobscot Nation will be held in trust by the United States for the benefit of the respective tribe. *Id.* §5. Section 6205 of the MIA describes the geographic areas in which the

Secretary of Interior is authorized to purchase the land to be held in trust for either the Passamaquoddy Tribe or the Penobscot Nation and imposes deadlines for the purchase of such trust lands. In addition, pursuant to §6205-A of the MIA, any land within the State purchased by the Secretary of Interior for the Houlton Band of Maliseet Indians using land acquisition funds will be held in trust for the benefit of the Houlton Band of Maliseet Indians, provided those purchases receive local approval.

Maps of current tribal lands for the 3 tribes affected by LD 554 are posted on the Task Force website (*See* Dec. 5, 2019 meeting materials).

Note: The Judiciary Committee is currently considering a bill that would extend until Jan. 31, 2030, the time limits for the purchase of Passamaquoddy Tribe and Penobscot Nation trust lands. *See* LD 159, *An Act To Extend Time Limits for Placing Land in Trust Status under the Maine Indian Claims Settlement.*

TECHNICAL ISSUES

Tribal approval of LD 554. If enacted, LD 554 would purport to represent an agreement of the State and the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians under §6(e) of the federal Settlement Act. Accordingly, the Committee may wish to consider adding a clause to the bill rendering its effectiveness contingent upon the agreement of the relevant tribal governments. *See, e.g.*, the contingent effective date clauses in LD 159, §3 (130th Legis. 2021) and LD 2094, §25 (129th Legis. 2020).

FISCAL IMPACT

Not yet determined.

Attachment 1: Excerpt from OFPR's "State of Maine Compendium of State Fiscal Information"

RACINO AND CASINO REVENUE – 8 M.R.S.A. c. 31

Racino and casino revenue is collected from slot machines and table game operation that are currently authorized to be located in Bangor and Oxford County. The Bangor facility (Hollywood Casino) was originally licensed in fiscal year 2005 as a racino. In fiscal year 2012, the facility was licensed as a ca and subsequently added table games. The Oxford facility (Oxford Casino) was licensed as a casino in fiscal year 2012 with both slot machines and table games. Under current law (8 MRSA §1036), Hollywood Casino is taxed at the rate of 1% of the gross slot income (the amount collected from slot machine players), 39% of the net slot machine income and 16% of the net table game income. Oxford Casino is taxed at the rate of 46% of net slot machine income and 16% of net table game income. The following chart summarizes the different tax bases and the distribution of funds for each facility in eff for fiscal year 2019.

Racino and Casino Revenue Distribution

	Hollywood Casino		Oxford Casino	
Tax Base and Purpose	**Slot**	**Table**	**Slot**	**Table**
% of Gross Machine Revenue:				
General Fund	1.0%	0.0%	0.0%	0.0%
% of Net Machine and Gaming Revenue: [1]				
General Fund [2]	4.0%	9.0%	3.0%	0.0%
Gambling Control Board	0.0%	3.0%	0.0%	3.0%
Fund for a Healthy Maine [3]	10.0%	0.0%	0.0%	0.0%
Fund to Supplement Harness Racing Purses	10.0%	0.0%	1.0%	0.0%
Sire Stakes Fund	3.0%	0.0%	1.0%	0.0%
Agricultural Fair Support Fund	3.0%	0.0%	1.0%	0.0%
Fund to Encourage Racing at Commercial Tracks	4.0%	0.0%	0.0%	0.0%
Fund to Stabilize Off-track Betting Facilities [4]	1.0%	0.0%	0.0%	0.0%
University of Maine System Scholarship Fund and Maine Maritime Academy scholarship program	2.0%	0.0%	4.0%	0.0%
Community College System Scholarship Fund	1.0%	0.0%	3.0%	0.0%
Department of Education, K-12 Education	0.0%	0.0%	25.0%	10.0%
Penobscot Nation and Passamaquoddy Tribe	0.0%	0.0%	4.0%	0.0%
Maine Dairy Farm Stabilization Fund	0.0%	0.0%	0.5%	0.0%
Dairy Improvement Fund	0.0%	0.0%	0.5%	0.0%
Coordinated Veterans Assistance Fund	0.0%	2.0%	0.0%	0.0%
Host County	0.0%	0.0%	1.0%	1.0%
Host Municipality	1.0%	2.0%	2.0%	2.0%
Host Municipality - Paid directly by Operator [5]	3.0%	0.0%	0.0%	0.0%

[1] Hollywood Casino's net machine income for the calculation of the other distributions includes the reduction of the 1% payment on gross slot machine income in addition to the player paybacks.

[2] Law requires the transfers of funds from the General Fund to the Gambling Addiction Prevention and Treatment Fund of $50,000 in fiscal years 2012 and 2013 and $100,000 annually beginning in fiscal year 2014.

[3] For fiscal years 2010, 2011 and 2012 the amount distributed to this Fund was capped at $4,500,000 with any excess amounts credited to the General Fund. For fiscal year 2013 the distribution to this Fund was eliminated.

[4] The amount distributed to this Fund was 2% until November 5, 2009, at which time it was reduced to 1% with the remaining 1% distributed to the General Fund.

[5] The City of Bangor receives 3% of the net slot machine income that does not pass through the state directly from Hollywood Casino.

Source: http://legislature.maine.gov/doc/4877

Attachment 1: Excerpt from OFPR's "State of Maine Compendium of State Fiscal Information"

In addition to the tax collected from the facilities, various licensing and registration fees are levied upon the private entities that own and operate the slot machines and table games. As required by the provisions of 8 M.R.S.A §1018, the following registration and licensing fees are deposited into the General Fund: A $100 initial and annual registration fee for both registered slot machines and table games; $200,000 for initial application fee for slot distributor license with an annual renewal fee of $75,000; $200,000 for initial application fee for slot machine operator license with an annual renewal fee of $75,000 plus a fee determined by rule; $225,000 for initial application fee for casino operator license with an annual renewal fee of $80,000 plus a fee determined by rule; $2,000 annual application fee for gambling services vendors; $5,000 initial application fee for table game distributor license with an annual renewal fee of $1,000 and $250 for the initial application fee for employee license with an annual renewal fee of $25. In addition, $25,000 of the annual renewal fee for slot machine operators and casino operators must be sent to the municipality where the facility is located.

Racino and Casino Revenue

Fiscal Year	General Fund	Fund for a Healthy Maine	Other Special Revenue Funds	Total All Funds
2011	$10,597,066	$4,500,000	$13,521,639	$28,618,705
2012	$12,424,557	$4,500,000	$14,489,306	$31,413,863
2013	$14,429,212	$0	$37,468,122	$51,897,334
2014	$8,671,537	$4,158,208	$41,482,585	$54,312,331
2015	$8,642,121	$4,107,614	$39,660,563	$52,410,298
2016	$8,753,125	$4,042,819	$41,659,730	$54,455,674
2017	$8,624,011	$3,797,297	$42,788,195	$55,209,503
2018	$8,367,971	$3,680,035	$45,037,133	$57,085,139
2019	$8,468,389	$3,640,004	$45,937,585	$58,045,978
2020	$6,542,913	$2,773,875	$34,754,907	$44,071,694

Revenue Notes – Racino and Casino Revenue

Fiscal year 2005 revenue represents license fee and background check reimbursement revenue, which accrue to the General Fund. A temporary facility opened in Bangor in November 2005 and slot machine revenue began to accrue in fiscal year 2006. A larger permanent slot machine facility opened in Bangor in July of 2008. The Bangor facility added table games in March of 2012 and fiscal year 2012 revenue reflects these games. Oxford Casino opened in June of 2012 with both slot machines and table games and accrued revenue in fiscal year 2012.

History – Racino and Casino Revenue

First authorized by IB 2003, c. 1, which was effective January 4, 2004, and enacted into law as 8 MRSA, c. 30. 8 MRSA c. 30 was repealed and replaced by PL 2003, c. 687, 8 MRSA c. 31, implementing several technical amendments. PL 2005, c. 11 and PL 2005, c. 663 also implemented some additional technical amendments. PL 2009, c. 462, Part H capped the amount credited to the Fund for a Healthy Maine at $4,500,000 for fiscal years 2010, 2011 and 2012 with any amounts in excess of that amount credited to the General Fund. PL 2009, c. 622, dedicates a portion, beginning in fiscal year 2012, of the 3% of the net slot machine income received by the General Fund to the Gambling Addiction Prevention and Treatment Fund. In fiscal years 2012 and 2013, $50,000 will be transferred to this Fund, and for fiscal year 2014 and each fiscal year thereafter, $100,000 will be transferred to this Fund. IB 2009, c. 2 established a casino in Oxford County which was ratified by the voters of Maine in November 2011. PL 2011, c. 417 allowed the Bangor facility to establish table games which was ratified by the Penobscot County voters in November 2011. PL 2011, c. 380, Part II extended the $4,500,000 cap on Fund for a Healthy Maine distributions to fiscal year 2013, c. 477 Part DD reduced the cap to $2,500,000 in fiscal year 2013 and c. 657 Part E eliminated the distribution to the Fund for a Healthy Maine during fiscal year 2013. PL 2011, c. 469 changed the distribution of license fees, effective fiscal year 2014, from the General Fund to the Gambling Control Board, Other Special Revenue Funds. PL 2011, c. 625 reduced, from 1% to ½%, the amount of Oxford Casino net slot machine revenue received by the Maine Dairy Farm Stabilization Fund with the remaining ½% deposited into the Dairy Improvement Fund (effective with fiscal years beginning July 1, 2013). PL 2013, c. 118 changes, effective October 9, 2013, the amount of slot income deposited from both casinos to the University of Maine Scholarship Fund to allow a portion to be deposited to Maine Maritime Academy based on the ratio of enrolled students.

Source: http://legislature.maine.gov/doc/4877