

MAINE STATE LEGISLATURE

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"B"

L.D. 585

Date: 4-14-22

(Filing No. H-1021)

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REPORT B
JUDICIARY

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

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

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

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

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

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

CHAPTER 376

TRIBAL-STATE COLLABORATION

§11051. Short title

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

§11052. Definitions

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

1. Agency. "Agency" means the following:

A. The Department of Agriculture, Conservation and Forestry;

B. The Department of Corrections;

C. The Department of Economic and Community Development;

D. The Department of Education;

E. The Department of Environmental Protection;

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- 1 F. The Department of Health and Human Services;
- 2 G. The Department of Inland Fisheries and Wildlife;
- 3 H. The Department of Labor;
- 4 I. The Department of Public Safety;
- 5 J. The Department of Administrative and Financial Services;
- 6 K. The Department of Professional and Financial Regulation;
- 7 L. The Department of Defense, Veterans and Emergency Management;
- 8 M. The Department of Marine Resources;
- 9 N. The Department of Transportation;
- 10 O. The Office of the Public Advocate; and
- 11 P. The Public Utilities Commission.

12 2. Indian tribe. "Indian tribe" means a federally recognized Indian tribe within the
13 State of Maine.

14 **§11053. Collaboration between agencies and Indian tribes**

15 1. Required policies. An agency shall develop and implement a policy that:

16 A. Promotes effective communication and collaboration between the agency and the
17 Indian tribes;

18 B. Promotes positive government-to-government relations between the State and the
19 Indian tribes;

20 C. Promotes cultural competency in the agency's interactions with the Indian tribes
21 and tribal members;

22 D. Establishes a process for collaboration between the agency and the Indian tribes
23 regarding the agency's programs, rules and services that substantially and uniquely
24 affect the Indian tribes or tribal members. In the context of emergency rulemaking
25 pursuant to section 8054, the policy must require notice and collaboration to the extent
26 practicable. Collaboration under this paragraph must be in addition to any process
27 available to members of the general public and must include:

28 (1) Providing the Indian tribes reasonable written notice of the contemplated
29 program, rule or service;

30 (2) Allowing the Indian tribes a reasonable opportunity to provide information,
31 advice and opinions on the contemplated program, rule or service;

32 (3) Requiring the agency to consider the information, advice and opinions it
33 receives from the Indian tribes under subparagraph (2); and

34 (4) Requiring the agency to make reasonable efforts to complete the collaboration
35 process before taking final action on the contemplated program or service or, in
36 the case of a rule, before publication of the proposed rule pursuant to section 8053,
37 subsection 5; and

38 E. Establishes a method for informing employees of the agency of the provisions of
39 this Act and the policy that the agency adopts pursuant to this section.

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

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

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

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

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

§11054. Mandatory training

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

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

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

3. Cultural competency. Cultural competency in tribal issues.

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

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

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

B. Implementation of the provisions of this Act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 **SUMMARY**

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

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Environmental Protection, the Department of Health and Human Services, the Department of Inland Fisheries and Wildlife, the Department of Labor, the Department of Public Safety, the Department of Administrative and Financial Services, the Department of Professional and Financial Regulation, the Department of Defense, Veterans and Emergency Management, the Department of Marine Resources, the Department of Transportation, the Office of the Public Advocate and the Public Utilities Commission each to designate a tribal liaison and to develop and implement 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 collaboration between the agency and Indian tribes regarding the agency's programs, rules and services that substantially and uniquely affect the Indian tribes or tribal members. The Act also directs the Governor to meet at least annually with the leaders of the Indian tribes in a Tribal-State Summit to address issues of mutual concern, including implementation of the Tribal-State Collaboration 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.

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.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



130th MAINE LEGISLATURE

LD 585

LR 1337(04)

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

Fiscal Note for Bill as Amended by Committee Amendment *B" (H 1021)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Highway Fund

Fiscal Detail and Notes

The Maine Indian Tribal-State Commission will incur additional costs as a result of the requirements of this bill. While the Commission has sufficient budgeted resources to cover these costs in the current 2022-2023 biennium as a result of one-time funding included in Public Law 2021, Chap. 398, ongoing costs from the bill could require additional funding in the 2024-2025 biennium.

Any additional costs to various departments and agencies from the provisions in this bill are expected to be minor and can be absorbed within existing budgeted resources.