

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 2, 2008 to March 31, 2008**

**FIRST SPECIAL SESSION**  
**April 1, 2008 to April 18, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 30, 2008**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 18, 2008**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2008**

- (1) An agreement to a different course of treatment by the primary treating physician and patient;
- (2) For a patient at a designated nonstate mental health institution, modification or vacation of the order by the director of the Office of Adult Mental Health Services within the department; or
- (3) An alteration or stay of the order entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under paragraph F.

F. The provisions of this paragraph apply to the review and appeal of an order of the clinical review panel entered under paragraph B.

- (1) The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.
- (2) The order of the clinical review panel at a designated nonstate mental health institution may be reviewed by the director of the Office of Adult Mental Health Services within the department or the designee of the director upon receipt of a written request from the patient submitted no later than one day after the patient receives the order of the clinical review panel. Within 3 business days of receipt of the request for review, the director or designee shall review the full clinical review panel record and issue a written decision. The decision of the director or designee may affirm the order, modify the order or vacate the order. The decision of the director or designee takes effect one business day after the director or designee issues a written decision. The decision of the director or designee is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

Effective April 24, 2008, unless otherwise indicated.

**CHAPTER 696  
H.P. 1551 - L.D. 2181**

**An Act To Protect Consumers'  
Gift Card Interests**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 33 MRSA §1953, sub-§1, ¶G,** as repealed and replaced by PL 2005, c. 357, §4, is amended to read:

G. A gift obligation or stored-value card, 2 years after December 31st of the year in which the obligation or the most recent transaction involving the obligation or stored-value card occurred, whichever is later, including the initial issuance and any subsequent addition of value to the obligation or stored-value card. A period of limitation may not be imposed on the owner's right to redeem the gift obligation or stored-value card. The amount unclaimed is 60% of the gift obligation's or stored-value card's face value. Notwithstanding section 1956, fees or charges may not be imposed on gift obligations or stored-value cards, except that the issuer may charge a transaction fee for the initial issuance and for each occurrence of adding value to an existing gift obligation or stored-value card. These transaction fees must be disclosed in a separate writing prior to the initial issuance or referenced on the gift obligation or stored-value card. Beginning November 1, 2008, if the gift obligation or stored-value card, other than a prepaid telephone service card, a gift obligation or nonreloadable stored-value card with an initial value of \$5 or less or a stored-value card that is not purchased but provided as a promotion or as a refund for merchandise returned without a receipt, is redeemed in person and a balance of less than \$5 remains following redemption, at the consumer's request the merchant redeeming the gift obligation or stored-value card must refund the balance in cash to the consumer. This paragraph does not apply to prefunded bank cards;

See title page for effective date.

**CHAPTER 697  
H.P. 1587 - L.D. 2221**

**An Act To Implement the  
Recommendations of the  
Tribal-State Work Group**

**Be it enacted by the People of the State of Maine as follows:**

**PART A**

**Sec. A-1. 30 MRSA §6209-C** is enacted to read:

**§6209-C. Jurisdiction of the Houlton Band of Maliseet Indians Tribal Court**

**1. Exclusive jurisdiction over certain matters.**

Except as provided in subsections 3 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Maliseet Indian territory by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians on the Maliseet Indian territory;

C. Civil actions between members of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians arising on the Maliseet Indian territory and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians under Title 22, section 2383 involving conduct on the Maliseet Indian territory by a member of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians;

D. Indian child custody proceedings to the extent authorized by applicable federal law; and

E. Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians, both of whom reside within the Maliseet Indian territory.

The governing body of the Houlton Band of Maliseet Indians shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. Until the Houlton Band of Maliseet Indians notifies the Attorney General that the band has decided whether to exercise the exclusive jurisdiction over criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes apply within the Maliseet Indian territory and the State has exclusive jurisdiction over those offenses and crimes.

**2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

**3. Lesser included offenses in state courts.** In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Houlton Band of Maliseet Indians constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.

**4. Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or juvenile crime over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Houlton Band of Maliseet Indians has exclusive jurisdiction under this sec-

tion. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.

**Sec. A-2. 30 MRSA §6212, sub-§1,** as amended by PL 1993, c. 600, Pt. A, §24 and affected by §25, is further amended to read:

**1. Commission created.** The Maine Indian Tribal-State Commission is established. The commission consists of ~~9~~ 13 members, ~~4~~ 6 to be appointed by the Governor, subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Houlton Band of Maliseet Indians, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term.

**Sec. A-3. 30 MRSA §6212, sub-§2,** as amended by PL 1993, c. 600, Pt. A, §24 and affected by §25, is further amended to read:

**2. Chair.** The commission, by a majority vote of its ~~8~~ 12 members, shall select an individual who is a resident of the State to act as chair. ~~When 8 members of the commission by majority vote are unable to select a chair within 120 days of the first meeting of the commission, the Governor, after consulting with the governors of the Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter.~~ In the event of the death, resignation, replacement or disability of the chair, the commission may select, by a majority vote of its ~~8~~ 12 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation, replacement or disability, the Governor, after consulting with the ~~governors~~ chiefs of the Houlton Band of Maliseet Indians, the Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.

**Sec. A-4. 30 MRSA §6212, sub-§3,** as amended by PL 1993, c. 600, Pt. A, §24 and affected by §25, is further amended to read:

**3. Responsibilities.** In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate.

~~Seven~~ Nine members constitute a quorum of the commission and a decision or action of the commission is not valid unless ~~5~~ 7 members vote in favor of the action or decision.

**Sec. A-5. Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 30, in the Title headnote, the words "municipalities and counties" are amended to read "municipalities, counties and federally recognized Indian tribes" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

**Sec. A-6. Contingent effective date.** This Part takes effect 120 days after adjournment of the First Special Session of the 123rd Legislature only if, within 90 days after the adjournment of the First Special Session of the 123rd Legislature, the Secretary of State receives written certification from the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of this Part, written certification from the Tribal Chief and the Council of the Penobscot Nation that the nation has agreed to the provisions of this Part and written certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Part pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.

## PART B

**Sec. B-1. Negotiations; report.** The Houlton Band of Maliseet Indians and the municipalities of Houlton and Littleton shall meet to discuss the implementation of the amendments included in Part C of this Act that may affect Houlton and Littleton. By March 1, 2009, the Houlton Band of Maliseet Indians and the municipalities shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters describing negotiations, agreements and implementation of any agreements reached by the band and the municipalities.

**Sec. B-2. Sustenance fishing.** By January 30, 2009, the Houlton Band of Maliseet Indians shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters detailing the band's discussions or agreements with inter-

ested parties regarding the effect of any exercise of sustenance fishing rights by members of the band on those parties and ways to balance the interests of both the band and the affected parties.

**Sec. B-3. Contingent effective date.** This Part takes effect 120 days after adjournment of the First Special Session of the 123rd Legislature only if, within 90 days after the adjournment of the First Special Session of the 123rd Legislature, the Secretary of State receives written certification from the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of this Part pursuant to 25 United States Code, Section 1725(e)(2), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.

### PART C

**Sec. C-1. 30 MRSA §6202, 6th ¶,** as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. ~~The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State~~ Except as otherwise provided in this Act, the Houlton Band of Maliseet Indians and its lands are subject to the laws of the State.

**Sec. C-2. 30 MRSA §6203, sub-§2-B** is enacted to read:

**2-B. Maliseet Indian territory.** "Maliseet Indian territory" means that territory described in section 6205, subsection 2-A.

**Sec. C-3. 30 MRSA §6205, sub-§2-A** is enacted to read:

**2-A. Maliseet Indian territory.** The following lands within the State are known as "the Maliseet Indian territory":

A. Lands transferred from Ralph E. Longstaff and Justina Longstaff to the United States of America in trust for the Houlton Band of Maliseet Indians, located in Houlton, Aroostook County and recorded in the Aroostook County South Registry of Deeds in Book 2144, Page 198; and

B. Lands transferred from F. Douglas Lowrey to the United States of America in trust for the Houlton Band of Maliseet Indians, located in Houlton and Littleton, Aroostook County and recorded in

the Aroostook County South Registry of Deeds in Book 2847, Page 114.

**Sec. C-4. 30 MRSA §6205, sub-§6** is enacted to read:

**6. Maliseet Indian territory; limitations.** Land held or acquired by or in trust for the Houlton Band of Maliseet Indians, other than those described in subsection 2-A, may not be included within or added to the Maliseet Indian territory, except on recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and the Governor, except that no lands within any city, town, village or plantation may be added to the Maliseet Indian territory without the approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

**Sec. C-5. 30 MRSA §6206,** as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

#### **§6206. Powers and duties of the Indian tribes within their respective Indian territories**

**1. General powers.** Except as otherwise provided in this Act, the Passamaquoddy Tribe ~~and~~, the Penobscot Nation, ~~and the Houlton Band of Maliseet Indians,~~ within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe ~~or~~, nation, ~~or band~~ the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe ~~and~~, the Penobscot Nation ~~and the Houlton Band of Maliseet Indians~~ shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory ~~or~~, the Penobscot Indian territory ~~or the Maliseet Indian territory~~ who is not a member of the respective tribe ~~or~~, nation or band nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe ~~or~~, nation ~~or band~~ or by the State, except those services which are provided exclusively to members of the respective tribe ~~or~~, nation ~~or band~~ pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.

**2. Power to sue and be sued.** The Passamaquoddy Tribe, the Penobscot Nation, the Houlton

Band of Maliseet Indians and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation or band and its officers and employees shall be immune from suit when the respective tribe or nation or band is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.

**3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have ~~has~~ exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall ~~have~~ ~~has~~ exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.

**4. Houlton Band of Maliseet Indians; ordinances.** The Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction within the Maliseet Indian territory over violations by members of the band of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section must be made by the tribal governing body. Should the band choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State has exclusive jurisdiction over violations of tribal ordinances by members of the band within the Maliseet Indian territory. The State has exclusive jurisdiction over violations of tribal ordinances by persons not members of the band.

**5. General municipal powers; transition.** This subsection applies to only the Maliseet Indian territory described in section 6205, subsection 2-A, paragraphs A and B. The ordinances of the municipalities in which the described Maliseet Indian territory is located that apply to the Maliseet Indian territory on April 1, 2008 continue to apply and may be enforced by the municipalities until the Houlton Band of Maliseet Indians certifies to the town clerk of the affected municipality that the band has adopted its own ordinances in substitution for the municipality's ordinances and the band is prepared to enforce the band's ordinances. A copy of the band's ordinances must be attached to the certification. Ordinances adopted or amended by the Houlton Band of Maliseet Indians may be no less strict than the municipal ordinances, unless the band and the affected municipality enter

into a written agreement accepting any differences. When a municipality in which the described Maliseet Indian territory is located amends its ordinances, the band shall consider amending the band's ordinances. This subsection does not affect the obligation of the municipalities to provide municipal services to the Maliseet Indian territory described in section 6205, subsection 2-A, paragraphs A and B before the band and each municipality enter into an agreement concerning provision of the services.

**Sec. C-6. 30 MRSA §6206-A,** as enacted by PL 1981, c. 675, §§3 and 8, is repealed.

**Sec. C-7. 30 MRSA §6206-B,** as enacted by PL 2005, c. 310, §1 and affected by §2, is amended to read:

**§6206-B. Law enforcement powers of Houlton Band of Maliseet Indians**

**1. Appointment of tribal law enforcement officers.** The Houlton Band of Maliseet Indians may appoint law enforcement officers who have the authority to enforce all the laws of the State within the Houlton Band Trust Land. This section does not limit the existing authority of tribal officers under tribal law or affect the performance of federal duties by tribal officers.

**2. Authority of state, county and local law enforcement officers.** State Except as provided in section 6210, subsection 1-A, state and county law enforcement officers and law enforcement officers appointed by the Town of Houlton have the authority to enforce all laws of the State within the Houlton Band Trust Land.

~~**3. Agreements for cooperation and mutual aid.** The Houlton Band of Maliseet Indians and any state, county or local law enforcement agency may enter into agreements for cooperation and mutual aid.~~

**4. Powers, duties and training requirements.** Law enforcement officers appointed by the Houlton Band of Maliseet Indians pursuant to this section possess the same powers, enjoy the same immunities and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

**5. Report to Legislature.** By January 1, 2010, the Houlton Band of Maliseet Indians shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters detailing the band's experience with the exercise of law enforcement authority under this section. The report must include observations and comments from the state and county law enforcement agencies providing law enforcement services in Aroostook County and from the Houlton Police Department.

**6. Repeal.** This section is repealed July 1, 2010.

**Sec. C-8. 30 MRSA §6207**, as amended by PL 1997, c. 739, §12 and affected by §§13 and 14, is further amended to read:

**§6207. Regulation of fish and wildlife resources**

**1. Adoption of ordinances by tribe.** Subject to the limitations of subsection 6, the Passamaquoddy Tribe ~~and~~ the Penobscot Nation and the Houlton Band of Maliseet Indians each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

- A. Hunting, trapping or other taking of wildlife; and
- B. Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.

Such ordinances shall be equally applicable, on a non-discriminatory basis, to all persons regardless of whether such person is a member of the respective tribe ~~or~~ nation or band provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe ~~or~~ the Penobscot Nation or the Houlton Band of Maliseet Indians. In addition to the authority provided by this subsection, the Passamaquoddy Tribe ~~and~~ the Penobscot Nation and the Houlton Band of Maliseet Indians, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

**2. Registration stations.** The Passamaquoddy Tribe ~~and~~ the Penobscot Nation and the Houlton Band of Maliseet Indians shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe ~~and~~ the Penobscot Nation and the Houlton Band of Maliseet Indians shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe ~~and~~ the Penobscot Nation and the Houlton Band of Maliseet Indians shall be available, at all times, for inspection and examination by the commissioner.

**3. Adoption of regulations by the commission.** Subject to the limitations of subsection 6, the commis-

sion shall have exclusive authority to promulgate fishing rules or regulations on:

- A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;
- B. Any section of a river or stream both sides of which are within Indian territory; and
- C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.

In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological inter-relationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.

Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe ~~or~~ the Penobscot Nation or the Houlton Band of Maliseet Indians. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe ~~and~~ the Penobscot Nation and the Houlton Band of Maliseet Indians. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.

Rules adopted by the commission under this subsection concerning the Maliseet Indian territory described in section 6205, subsection 2-A, paragraphs A and B are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**3-A. Horsepower and use of motors.** Subject to the limitations of subsection 6, the commission has exclusive authority to adopt rules to regulate the horsepower and use of motors on waters less than 200 acres in surface area and entirely within Indian territory.



**4. Sustenance fishing within the Indian reservations.** Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

**5. Posting.** Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

**6. Supervision by Commissioner of Inland Fisheries and Wildlife.** The Commissioner of Inland Fisheries and Wildlife, or ~~his~~ the commissioner's successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as ~~he~~ the commissioner is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe ~~or~~, nation or band and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians, ~~he~~ the commissioner shall inform the governing body of the tribe ~~or~~, nation or band or the commission, as is appropriate, of ~~his~~ the commissioner's opinion and attempt to develop appropriate remedial standards in consultation with the tribe ~~or~~, nation or band or the commission. If such efforts fail, ~~he~~ the commissioner may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the commission, ~~he~~ the commissioner may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting

any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.

**7. Transportation of game.** Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe ~~and~~, the Penobscot Nation and the Houlton Band of Maliseet Indians, may be transported within the State.

**8. Fish and wildlife on non-Indian lands.** The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe ~~and~~, the Penobscot Nation and the Houlton Band of Maliseet Indians and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the commission.

**9. Fish.** As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.

**10. Houlton Band of Maliseet Indians; ordinances; report.** The Houlton Band of Maliseet Indians may adopt ordinances governing firearms and crossbows only after prior notice to and discussion with the municipalities in which the Maliseet Indian territory described in section 6205, subsection 2-A, paragraphs A and B is located if those municipalities have conflicting ordinances.

By February 1, 2010, the Houlton Band of Maliseet Indians shall file a report with the joint standing committee of the Legislature having jurisdiction over judiciary matters regarding the assumption of authority by the Houlton Band of Maliseet Indians under this section. The report must include observations and comments from state, county and local law enforcement

agencies, the municipalities within which any land designated as Maliseet Indian territory is located and the Commissioner of Inland Fisheries and Wildlife.

**Sec. C-9. 30 MRSA §6208, sub-§2-A** is enacted to read:

**2-A. Payments in lieu authority.** Any municipality in which Maliseet Indian territory or Houlton Band Trust Land is located has the authority, at its sole discretion, to enter into agreements with the Houlton Band of Maliseet Indians to accept other funds or other things of value that are obtained by or for the Houlton Band of Maliseet Indians by reason of the trust status of the Maliseet Indian territory or Houlton Band Trust Land as replacement for payments in lieu of taxes.

Any agreement between the Houlton Band of Maliseet Indians and the municipality must be jointly executed by persons duly authorized by the Houlton Band of Maliseet Indians and the municipality and must set forth the jointly agreed value of the funds or other things identified serving as replacement of payments in lieu of taxes and the time period over which such funds or other things may serve in lieu of the obligations of the Houlton Band of Maliseet Indians provided in this section.

If the funds or other things of value are not made available to or for the benefit of the Houlton Band of Maliseet Indians as contemplated by its agreement with the municipality or if the provision of the funds or other things of value is terminated earlier than is contemplated by the agreement between the Houlton Band of Maliseet Indians and the municipality, the obligations of the Houlton Band of Maliseet Indians to make payments in lieu of taxes remains in full force and effect.

**Sec. C-10. 30 MRSA §6210**, as amended by PL 1995, c. 388, §7 and affected by §8, is further amended to read:

**§6210. Law enforcement on Indian reservations and within Indian territory**

**1. Exclusive authority of tribal law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

**1-A. Exclusive authority of Maliseet tribal law enforcement officers.** Law enforcement officers appointed by the Houlton Band of Maliseet Indians have

exclusive authority to enforce, within Maliseet Indian territory, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on Maliseet Indian territory, the criminal, juvenile, civil and domestic relations laws over which the Houlton Band of Maliseet Indians has jurisdiction under section 6209-C, subsection 1.

**2. Joint authority of tribal and state law enforcement officers.** Law enforcement officers appointed by the Passamaquoddy Tribe ~~or~~, the Penobscot Nation ~~or~~ the Houlton Band of Maliseet Indians have the authority within their respective Indian territories and state and county law enforcement officers have the authority within ~~both~~ Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce all laws of the State other than those over which the Passamaquoddy Tribe ~~or~~, the Penobscot Nation ~~or~~ the Houlton Band of Maliseet Indians has exclusive jurisdiction under section 6209-A, subsection 1 ~~and~~, section 6209-B, subsection 1, ~~and~~ section 6209-C, respectively.

**3. Agreements for cooperation and mutual aid.** This section does not prevent the Passamaquoddy Tribe ~~or~~, the Penobscot Nation ~~or~~ the Houlton Band of Maliseet Indians and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.

**4. Powers and training requirements.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation possess the same powers and are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

**Sec. C-11. 30 MRSA §6211**, as amended by PL 1997, c. 626, §§1 and 2 and affected by §3, is further amended to read:

**§6211. Eligibility of Indian tribes and state funding**

**1. Eligibility generally.** The Passamaquoddy Tribe ~~and~~, the Penobscot Nation ~~and~~ the Houlton Band of Maliseet Indians shall be eligible for participation and entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities as a matter of right. Such entitlement shall be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for ~~either~~ the Passamaquoddy Tribe ~~or~~, the Penobscot Nation ~~or~~ the Houlton Band of Maliseet Indians may be raised through any source of revenue available to the respective tribe ~~or~~, nation ~~or~~ band, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of moneys employs a factor for the municipal real property tax rate, and in the absence of such tax

within ~~either~~ the Indian territory, the formula applicable to such Indian territory shall be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of moneys employs a factor representing municipal valuation, the valuation applicable to such Indian territory shall be determined by the State Tax Assessor in the manner generally provided by the laws of the State, provided, however, that property owned by or held in trust for either tribe or nation and used for governmental purposes shall be treated for purposes of valuation as like property owned by a municipality.

**2. Limitation on eligibility.** In computing the extent to which either the Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds under subsection 1, other than funds in support of education, any money received by the respective tribe ~~or~~, nation or band from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, must be deducted in computing any payment to be made to the respective tribe ~~or~~, nation or band by the State. Unless otherwise provided by federal law, in computing the extent to which either the Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians is entitled to receive state funds for education under subsection 1, the state payment must be reduced by 15% of the amount of federal funds for school operations received by the respective tribe ~~or~~, nation or band within substantially the same period for which state funds are provided, and in excess of any local share ordinarily required by state law as a condition of state funding. A reduction in state funding for secondary education may not be made under this section except as a result of federal funds received within substantially the same period and allocated or allocable to secondary education.

**3. Eligibility for discretionary funds.** The Passamaquoddy Tribe ~~and~~, the Penobscot Nation and the Houlton Band of Maliseet Indians shall be eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.

**4. Eligibility of individuals for state funds.** Residents of ~~either the Indian territory~~ territories shall be eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State, provided, however, that in computing the extent to which any person is entitled to receive any such funds, any moneys re-

ceived by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State.

**Sec. C-12. 30 MRSA §6214**, as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

**§6214. Tribal school committees**

The Passamaquoddy Tribe ~~and~~, the Penobscot Nation and the Houlton Band of Maliseet Indians are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe ~~or~~, nation or band shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe ~~or~~, nation or band creates the tribal school committee authorized by this section.

**Sec. C-13. 30-A MRSA §5681, sub-§7**, as enacted by PL 1989, c. 871, §1 and affected by §22, is amended to read:

**7. Indian territory.** For purposes of state-municipal revenue sharing, the Indian territories of the Passamaquoddy Tribe and the Penobscot Nation Indian Territories and the Houlton Band of Maliseet Indians shall be treated as if they were municipalities. In the absence of a levy of real and personal property taxes in ~~either or both~~ the Indian territories, the property tax assessment is computed by multiplying the state valuation for the Indian territory for the period for which revenue sharing is being determined by the most current average equalized property tax rate of all municipalities in the State at that time as determined by the State Tax Assessor.

**Sec. C-14. Contingent effective date.** This Part takes effect October 1, 2009 only if, within 90 days after the adjournment of the First Special Session of the 123rd Legislature, the Secretary of State receives written certification from the Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions of this Part and that the band specifically consents to and agrees that the State may unilaterally amend without additional consent, agreement or approval from the band the amendments made in this Act to the Maine Revised Statutes, Title 30, section 6206, subsection 1 and section 6207 only if the unilateral amendments take effect on or before October 1, 2009, pursuant to 25 United States Code, Section 1725(e)(2). Copies of the written certification must be submitted by the Secretary of

State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.

See title page for effective date, unless otherwise indicated.

**CHAPTER 698**

**H.P. 1607 - L.D. 2246**

**An Act To Extend the ConnectME Authority**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 35-A MRSA §9215**, as enacted by PL 2005, c. 665, §3, is repealed.

See title page for effective date.

**CHAPTER 699**

**H.P. 1619 - L.D. 2257**

**An Act To Establish a Uniform Building and Energy Code**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §12004-G, sub-§5-A** is enacted to read:

**5-A.**

<u>Building Codes and Standards</u>	<u>Technical Building Codes and Standards Board</u>	<u>Expenses Only</u>	<u>10 MRSA c. 1103</u>
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**Sec. 2. 10 MRSA §1415-C, sub-§7** is enacted to read:

**7. Repeal.** This section is repealed July 1, 2010.

**Sec. 3. 10 MRSA §1415-D, sub-§2** is enacted to read:

**2. Repeal.** This section is repealed July 1, 2010.

**Sec. 4. 10 MRSA §1420, sub-§4** is enacted to read:

**4. Repeal.** This section is repealed July 1, 2010.

**Sec. 5. 10 MRSA §9707** is enacted to read:

**§9707. Repeal**

This chapter is repealed July 1, 2010.

**Sec. 6. 10 MRSA c. 1103** is enacted to read:

**CHAPTER 1103**

**MAINE UNIFORM BUILDING AND ENERGY CODE**

**§9721. Definitions**

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

**1. Board.** "Board" means the Technical Building Codes and Standards Board established in Title 5, section 12004-G, subsection 5-A.

**2. Maine Uniform Building and Energy Code.** "Maine Uniform Building and Energy Code" means the uniform statewide building and energy code adopted by the board pursuant to this chapter.

**§9722. Technical Building Codes and Standards Board**

**1. Establishment.** The Technical Building Codes and Standards Board, established in Title 5, section 12004-G, subsection 5-A and located within the Department of Public Safety, is established to adopt, amend and maintain the Maine Uniform Building and Energy Code, to resolve conflicts between the Maine Uniform Building and Energy Code and the fire and life safety codes in Title 25, sections 2452 and 2465 and to provide for training for municipal building officials, local code enforcement officers and 3rd-party inspectors.

**2. Membership.** The board consists of 11 voting members, appointed by the Governor:

A. The State Fire Marshal or a designee or a fire chief, recommended by the Maine Fire Chiefs' Association or its successor organization;

B. A municipal code enforcement officer employed by a municipality that is not a service center community under Title 30-A, chapter 187, recommended by the Maine Municipal Association or its successor organization;

C. A municipal code enforcement officer employed by a service center community under Title 30-A, chapter 187, recommended by the Maine Service Centers Coalition or its successor organization;

D. A residential builder recommended by a statewide or regional association of home builders and remodelers;

E. A commercial builder recommended by a statewide association of general contractors;

F. An architect licensed in the State who is accredited by a nationally recognized organization that administers credentialing programs related to environmentally sound building practices and