

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1771

H. P. 1380

House of Representatives, April 4, 1975

Referred to Committee on Human Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Binnette of Old Town.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Revising the Laws Pertaining to the Penobscot Indians of Maine.

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

Sec. 1. 22 MRSA § 4707 is amended to read:

§ 4707. Contracts of Indians for timber and grass

Contracts relating to the sale or disposal of trees, timber or grasses on the Indian lands, ~~excluding Penobscot Tribal and private Indian lands,~~ made with any Indian belonging to ~~either of said tribes~~ a Maine Indian Tribe, unless examined and allowed by the commissioner, are void.

Sec. 2. 22 MRSA § 4708 is amended to read:

§ 4708. Limitations on leases and contracts made by the commissioner

No lease of land or contract for trees, timber or grass ~~on Indian lands, excluding Penobscot Tribal lands~~ made by the commissioner has effect for more than one year; nor shall the commissioner, in any one year, sell or dispose of trees or timber of said Indians, to an amount exceeding \$500, ~~except as provided in sections 4775 to 4788~~ nor shall the commissioner have any authority to contract for trees, timber, grass or land belonging to the Penobscot Indian Tribe.

Sec. 3. 22 MRSA § 4761, sub-§ 1 is repealed and the following enacted in place thereof:

1. Birth. By birth to any Indian as defined in section 4701.

Sec. 4. 22 MRSA § 4770 is amended to read:

§ 4770. Removal of nonmembers from reservation

Any person residing or commorant upon the tribal reservation of the Penobscot Tribe of Indians, not being a member nor the husband, wife or legally adopted child of a member of said tribe, may be required to remove therefrom by a written notice given to him in hand under the signature of the ~~governor or, in his absence, the lieutenant governor, and the commissioner~~ Penobscot tribal governor and tribal council. A copy of such notice attested by said ~~commissioner~~ Penobscot tribal governor and tribal council, with a return of service thereon by any officer qualified to serve criminal precepts, or an affidavit of service by any other person, shall be filed with said ~~commissioner~~ Penobscot tribal governor and council and be sufficient evidence of such service. If the person so notified shall not remove from said reservation within 2 days after service of said notice upon him, the ~~commissioner~~ Penobscot tribal governor or any member of the tribe may make complaint to the proper officer of the District Court for Southern Penobscot, who shall cause a certified copy of said complaint with a notice of the time and place of hearing thereon to be given in hand to said person or left at his place of last and usual abode at least 2 days before the time fixed for said hearing, or may cause said person to be at once apprehended and brought before said court. After due hearing, the judge with the recommendation of the Penobscot tribal governor and council may order the respondent to remove within a specified time beyond the tribal reservation limits. If the respondent fails to obey said order, or if within one year after the service of said notice he shall again become resident or commorant upon any reservation of said tribe without the consent of said ~~commissioner and said governor or lieutenant governor~~ Penobscot tribal governor and council, said judge may cause such person to be apprehended and brought before said court and may punish him by a fine of not more than \$20 or by imprisonment for not more than 30 days, or by both. The costs of all such court proceedings under this section may be included in the order or sentence of said judge. If the respondent fails to pay the same, he may be committed to jail for not more than 30 days additional to any imprisonment otherwise imposed upon him. ~~In such case, or if the judge does not include said costs in his order or sentence, such costs shall be paid by said commissioner from the tribal fund. Costs shall be taxed as in ordinary proceedings upon complaint~~

Sec. 5. 22 MRSA § 4775 is amended to read :

§ 4775. Lease of islands

The islands belonging to said tribe may be leased ~~by the commissioner~~ for the benefit of such tribe for a term not exceeding 12 years, if such lease and the terms and conditions thereof are assented to by the ~~governor and lieutenant governor of the tribe and approved by the department~~ Penobscot tribal governor and lieutenant governor, and the tribal council. ~~If~~ No such lease ~~is~~ shall be on credit, it shall be at the risk of the commissioner, and accounted for as money and ~~The~~ the avails thereof shall be placed in ~~by him~~ in the State Treasury Tribal Fund, subject to the order of the department according to ~~law~~ to be disbursed by the Penobscot tribal governor and council.

Sec. 6. 22 MRSA § 4776 is amended to read :

§ 4776. Restrictions on sale of wood or timber

~~No Any~~ member of the Penobscot Tribe of Indians shall be permitted to sell any standing wood or timber ~~on his own land growing located~~ on any islands or lands in the Penobscot River within the limits of the Indian reservation, except to members of the tribe for firewood only ~~nor~~. ~~No shall any~~ member of said tribe ~~may~~ lease any portion of his lands or islands within the limits of said reservation for the purpose of permitting any standing wood or timber to be cut and removed therefrom, except with the consent and approval of the ~~commissioner~~ Penobscot tribal governor and council.

Sec. 7. 22 MRSA § 4777 is amended to read:

§ 4777. Conveyances

Any Indian holding lands under a certificate issued under authority of ~~chapter 137 of~~ the public laws of 1883, **chapter 137**, or by virtue of any assignment under the laws for the apportionment of the lands of said Penobscot Tribe, may sell and convey the same to any member of the same tribe ~~with the approval of the commissioner~~. No Indian shall purchase lands upon the reservation of said Penobscot Tribe beyond his fair proportion of such reservation.

Sec. 8. 22 MRSA § 4778 is amended to read:

§ 4778. Lots not to be sold or leased

No such Indian shall sell or lease his lot except as provided by law. ~~If he carries~~ He shall not carry off the growth faster than is necessary for cultivation, ~~except by permission of the commissioner, or~~ nor shall he ~~commit~~ strip or waste the land, ~~he shall be dealt with as a trespasser~~ except by permission of the Penobscot tribal governor and council.

Sec. 9. 22 MRSA § 4779 is repealed and the following enacted in place thereof:

§ 4779. Surveys; tribal use of waters and timberlands

Surveys of the islands in Penobscot River from Old Town Falls to Mattawamkeag Point and field notes thereof, as made under the public laws of 1839, chapter 158 and the public laws of 1839, chapter 396, plans of which were returned to the land office and to the Indian agent, shall be deemed authentic in all matters to which they relate. The water privileges belonging to said islands valuable for mills, booms, fisheries, tracts of wood and timberland and other lots indicated on said plans as reserved for public use, with the consent of the Penobscot tribal governor and council, except the public farm which is subject to allotment by the private and special laws of 1878, chapter 22, are not subject to assignment or distribution to members of said tribe, but shall remain for the benefit of the whole tribe.

Sec. 10. 22 MRSA § 4780, 1st sentence, as amended by PL 1973, c. 625, § 126, is further amended to read:

The ~~commissioner~~ Penobscot tribal governor and council, on application of any Penobscot Indian thereof, male or female, 18 years of age or more, to whom his proportion of the tribe's lands has never been assigned, or has never come by inheritance or who does not already hold by assignment, pur-

chase or otherwise his fair share of said lands, may cause a lot suitable for cultivation to be surveyed to such applicant from the unassigned lands of the tribe, if any, and may assign the same to him and designate the same upon the plan aforesaid.

Sec. 11. 22 MRSA § 4781, as last amended by PL 1967, c. 494, § 17-E, is further amended to read:

§ 4781. Certificate of governor; form

The assignments mentioned in section 4780 shall be accompanied by a certificate from the ~~commissioner~~ **Penobscot tribal governor and council** to be recorded as in section 4784, in form substantially as follows:

“Know all men by these presents, that I, ~~Commissioner of Indian Affairs~~ **Penobscot Tribal Governor of the Penobscot Indian Tribe**, have caused to be surveyed and set off to, a **Penobscot Indian**, a portion of the lands belonging to said tribe on the islands in the Penobscot River, as contemplated by Acts of the Legislature, bounded and described as follows, viz:

To have and to hold to him, his heirs and assigns, as contemplated by said Acts.

In witness whereof I have hereunto set my hand and seal as ~~Commissioner of Indian Affairs~~ **Penobscot Tribal Governor**, this day of, nineteen hundred and

Sec. 12. 22 MRSA § 4784, sub-§ 1, 1st sentence, as repealed and replaced by PL 1973, c. 209, is amended to read:

Conveyance made by virtue of section 4777 shall be by release deed, quitclaim deed, quitclaim deed with covenant, warranty deed, warranty deed with covenant, executed and acknowledged, and the approval of the ~~Commissioner of Indian Affairs or his designee~~ **Penobscot tribal governor and council** shall be written thereon.

Sec. 13. 22 MRSA § 4784, sub-§ 2, 1st sentence, as last amended by PL 1973, c. 788, § 97, is further amended to read:

All deeds heretofore made prior to May 3, 1973 for the conveyance of real property pursuant to subsection 1, and duly recorded in the Penobscot County registry of deeds, and otherwise valid except that the same was not in the form of a release deed as required by said subsection 1, are validated regardless of whether or not they are in the form of a quitclaim deed, quitclaim deed with covenant, warranty deed, warranty deed with covenant or such other form sufficient to pass title under the laws of the State of Maine, and whether or not said deeds contain the approval of the ~~Commissioner of Indian Affairs~~ **Penobscot tribal governor and council** as required by subsection 1.

Sec. 14. 22 MRSA § 4787 is repealed.

Sec. 15. 22 MRSA § 4788 is repealed.

STATEMENT OF FACT

The intent of this bill is to restore authority governing Penobscot tribal and private Indian lands to the Penobscot Indians.