

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1550

H.P. 1061

House of Representatives, April 16, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CASHMAN of Old Town.
Cosponsored by Senator PEARSON of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Amend the Maine Indian Claims Settlement Laws to Clarify
Land Use in Indian Territory.**



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

4 Sec. 1. 30 MRSA §6206, sub-§4 is enacted to read:

6 4. Land use within the Penobscot Indian territory. The
8 Penobscot Nation has the power to manage land use within the
10 Penobscot Indian territory subject to the following.

12 A. Subject to paragraph B, the Penobscot Nation may
14 administer and enforce its plan for the management of land
16 use within the Penobscot Indian territory after it submits
18 to the Maine Land Use Regulation Commission the following:

20 (1) A plan for the management of one or more forms of
22 land use within all or any part of the Penobscot Indian
24 territory under its jurisdiction as long as the plan is
26 approved by the secretary in accordance with 25 United
28 States Code, Section 1724(h);

30 (2) A map showing the boundaries of the area subject
32 to management control under the plan; and

34 (3) Provisions for monitoring the land use activities
36 controlled under the plan and for judicial enforcement
38 of the plan.

40 B. If the Maine Land Use Regulation Commission at any time
42 has reasonable grounds to believe that the land use
44 activities permitted by the Penobscot Nation are adversely
46 affecting or likely to adversely affect the lands or natural
48 resources outside the boundaries of the Penobscot Indian
50 territory, the Maine Land Use Regulation Commission shall
52 inform the governing body of the Penobscot Nation of its
opinion and attempt to develop appropriate remedial measures
or standards in consultation with the Penobscot Nation. If
those efforts fail, the Maine Land Use Regulation Commission
may call a public hearing to further investigate the
matter. This hearing must be conducted in a manner
consistent with the laws of the State applicable to
adjudicative hearings. If, after the hearing, the Maine
Land Use Regulation Commission determines that a specific
land use activity is causing or likely to cause a
significant adverse effect on lands or natural resources
outside the boundaries of the Penobscot Indian territory, it
may adopt appropriate remedial measures for the specific
land use activity determined to be the cause of the
significant adverse effect. Remedial measures may not be
more restrictive than those applicable to lands within the
Maine Land Use Regulation Commission's jurisdiction.

C. If the governing body of the Penobscot Nation at any
time has reasonable grounds to believe that the land use

2 activity permitted by the Maine Land Use Regulation
3 Commission is adversely affecting or likely to adversely
4 affect the lands or natural resources within the boundaries
5 of the Penobscot Indian territory, the governing body of the
6 Penobscot Nation shall inform the Maine Land Use Regulation
7 Commission of its opinion and the Maine Land Use Regulation
8 Commission shall attempt to develop appropriate remedial
9 measures or standards in consultation with the Penobscot
10 Nation. If those efforts fail, the Maine Land Use
11 Regulation Commission shall call a public hearing to further
12 investigate the matter. The hearing must be conducted in a
13 manner consistent with the laws of the State applicable to
14 adjudicative hearings. If, after the hearing, the Maine
15 Land Use Regulation Commission determines that the land use
16 activity is causing or likely to cause a significant adverse
17 effect on lands within the Penobscot Indian territory
18 pursuant to its plan, the Maine Land Use Regulation
19 Commission shall adopt appropriate remedial measures.

20 D. The decision of the Maine Land Use Regulation Commission
21 may be appealed in the manner provided for by the laws of
22 the State for judicial review of administrative action and
23 may be sustained only if supported by substantial evidence.
24 In any administrative proceeding under this subsection, the
25 burden of proof is on the Maine Land Use Regulation
26 Commission.

28 **Sec. 2. Effective date.** This Act is not effective unless,
29 within 60 days of the adjournment of the Legislature, the
30 Secretary of State receives written notification by the Governor
31 of the Penobscot Nation and the Penobscot Reservation Tribal
32 Council that the Penobscot Nation has agreed to the provisions of
33 25 United States Code, Section 1725(e)(1), copies of which must
34 be submitted by the Secretary of State to the Secretary of the
35 Senate and the Clerk of the House of Representatives, except that
36 this Act does not become effective until 90 days after the
37 adjournment of the Legislature.

40 STATEMENT OF FACT

42 The purpose of this bill is to amend the law to recognize
43 that land ownership and land use are fundamentally different in
44 the Penobscot Indian territory than in any other part of the
45 State. Penobscot Nation lands are held in trust by the Federal
46 Government for the Penobscot Nation and can not be sold or
47 otherwise alienated. In addition, the federal Maine Indian
48 Claims Settlement Act of 1980 specifies that trust territories
49 must be managed in accordance with terms established by the
50 Penobscot Nation and approved by the Secretary of the Interior of
51 the United States under the federal Indian Self-Determination Act
52

and other federal law. In recognition of this, the bill provides
2 for greater flexibility in land use management than is currently
provided for under state law. The bill also provides a mechanism
4 addressing remedial solutions by the State and the Penobscot
Nation. The bill further provides a mechanism for allowing the
6 State certain review powers over Penobscot Indian territory.
This review power is similar to that which is provided for
8 hunting and trapping under the terms of the Act to Implement the
Maine Indian Claims Settlement.