

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1403, L.D. 1961, Bill, "An Act to Implement the Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 30 MRSA §6207-A is enacted to read:

§6207-A. Land use regulation

1. Legislative intent. It is the intent of the Legislature that this section establish the process by which the Passamaquoddy Tribe and the Penobscot Nation, consistent with this chapter and in particular with sections 6204 and 6206, may control land use and development and provide for natural resources protection within their respective territories, as defined in section 6205, other than reservation lands defined in section 6203, subsections 5 and 8, to the extent those lands were acquired within the unorganized and deorganized areas of the State.

A. Consistent with section 6204, this section does not affect the application of any state laws and rules regulating land use or management, conservation or environmental protection in Indian territory, including, without limitation, the following, as each are amended by the Legislature and agencies of the State:

**COMMITTEE AMENDMENT**

- 2           (1) The mandatory shoreland zoning laws, Title 38,  
          chapter 3, subchapter I, article 2-B;
- 4           (2) The subdivision laws, Title 30-A, chapter 187,  
6           subchapter IV;
- 8           (3) The minimum lot size laws, Title 12, chapter 423-A;
- 10          (4) The natural resources protection laws, Title 38,  
          chapter 3, subchapter I, article 5-A; and
- 12          (5) The site location of development laws, Title 38,  
14          chapter 3, subchapter I, article 6.

16          B. Nothing in this section authorizes tribal regulation of  
18          lands or natural resources or the activities of an entity or  
          person not a member of the respective tribe or nation  
20          outside of Indian territory.

22          C. This section is intended to address only the unique  
          field of local land use regulation and does not amend the  
24          Act to Implement the Maine Indian Claims Settlement in any  
          other respect.

26          2. Procedure. The Passamaquoddy Tribe and the Penobscot  
28          Nation may each submit one or more comprehensive land use plans  
          and implementing ordinances to the Maine Indian Tribal-State  
30          Commission. A comprehensive land use plan may be submitted for  
          any one or more blocks of contiguous land acquired from within  
32          the unorganized and deorganized areas of the State and included  
          in section 6205 as Indian territory of the respective tribe or  
34          nation. Each block of contiguous land must consist of at least  
          500 acres. The plan must cover all lands within each block of  
          land so held on the date the plan is submitted.

36          3. Submission. To submit a comprehensive land use plan and  
38          implementing ordinance, the Passamaquoddy Tribe or the Penobscot  
          Nation shall file 10 complete sets of the plan, including all  
40          maps, and implementing land use ordinance with the commission.  
          At its option, the tribe or nation may submit the implementing  
42          land use ordinance after the comprehensive land use plan is first  
          submitted and approved, but in no case may the implementing land  
44          use ordinance be approved before the approval and adoption of a  
          corresponding comprehensive land use plan. Following approval by  
46          the commission of a comprehensive land use plan or implementing  
          ordinance, the tribe or nation shall submit for approval  
48          amendments to the approved plan or implementing ordinance to the  
          commission within 30 days after adoption of any amendment by the  
50          tribe or nation.

2           4. Public review. If the commission determines that a  
 4           comprehensive land use plan or implementing ordinance, or any  
 6           amendment to an approved plan or ordinance, constitutes a matter  
 8           of public interest, the commission shall conduct a public hearing  
 10          on the plan, ordinance or amendment. The commission shall  
 12          provide notice by publication in the same manner as for state  
 14          agency rules under Title 5, section 8053, subsection 5, at the  
 16          cost of the tribe or nation and shall request comments from the  
 Maine Land Use Regulation Commission. The commission may also  
 request comments or technical assistance from appropriate  
 agencies of State Government and from other public and private  
 sources. The commission's decision in reviewing a plan or  
 ordinance must otherwise conform to Title 5, chapter 375,  
 subchapter V and is subject to review under Title 5, chapter 375,  
 subchapter VII.

18           5. Decision. The commission shall determine whether the  
 20          comprehensive land use plan, implementing ordinance or amendment  
 22          meets the criteria established in this subsection. The  
 24          commission shall approve the plan, ordinance or amendment if,  
 taking into consideration the traditional cultural values and  
 uses of the tribe or nation, the commission determines the plan,  
 ordinance or amendment taken as a whole:

26           A. Demonstrates principles of sound land use planning and  
 28           zoning in the affected areas. In making this determination,  
 30           the commission shall consider the goals contained in Title  
 32           30-A, section 4312, subsection 3 and whether the plan or  
 34           implementing ordinance is at least as protective of existing  
 36           natural, recreational and historic resources as the plan and  
 38           land use standards and regulations adopted by the Maine Land  
 40           Use Regulation Commission;

36           B. Preserves public health, safety and general welfare;

38           C. Regulates residential, recreational, commercial and  
 40           industrial uses;

42           D. Protects by appropriate means the ecological and natural  
 44           values of the affected lands and surrounding areas;

46           E. Prevents the despoliation and pollution of surface  
 48           waters and groundwater;

50           F. Prevents undue adverse impacts on lands surrounding  
 those covered by the plan, ordinance or amendment and on  
 residents and businesses occupying those surrounding lands;  
 and

2 G. Otherwise conforms to environmental, land use and  
3 resource protection laws applicable to municipalities in  
4 this State as provided in this chapter.

6 6. Tribal administration. With respect to Indian territory  
7 covered by a comprehensive land use plan and implementing  
8 ordinances approved by the commission:

10 A. The Maine Land Use Regulation Commission has no  
11 jurisdiction over Indian territory governed by a  
12 comprehensive land use plan and implementing ordinances  
13 approved by the commission;

14 B. The Passamaquoddy Tribe or the Penobscot Nation shall  
15 employ or have available by contract a code enforcement  
16 officer, certified under Title 30-A, section 4451, who shall  
17 enforce all implementing ordinances applicable to that land;

18 C. Pursuant to section 6206, subsection 3, the  
19 Passamaquoddy Tribe and the Penobscot Nation each have the  
20 right to exercise exclusive jurisdiction within their  
21 respective Indian territory over violations by members of  
22 either the tribe or nation of implementing ordinances  
23 approved under this section. The state courts have  
24 exclusive jurisdiction over enforcement actions for  
25 violations of implementing ordinances by persons who are not  
26 members of either the tribe or nation. Fines collected as a  
27 result of violations of implementing ordinances approved  
28 under this section must be returned to the tribe or nation  
29 in whose territory the violation occurred after deducting  
30 any court filing fee or surcharge.

32 7. Impacts on Indian territory. When considering the  
33 adoption of or amendment to its land use districts or standards  
34 under Title 12, section 685-A or any development proposal under  
35 section 685-B for which approval has not been delegated to its  
36 staff, or amendment to its comprehensive land use plan under  
37 section 685-C, if the proposed action involves land that is  
38 within the same or an adjoining township as Passamaquoddy Indian  
39 territory or Penobscot Indian territory, the Maine Land Use  
40 Regulation Commission shall cause notice and other rights to be  
41 given to the respective tribal government in the same manner as  
42 if it were an abutting property owner.

44 8. Repeal. This section is repealed January 1, 2004.

46 **Sec. 2. Effective date.** This Act does not take effect as to the  
47 Passamaquoddy Tribe, unless within 90 days after adjournment of  
48 the Legislature, the Secretary of State receives written  
49 notification from the Joint Tribal Council of the  
50

Passamaquoddy Tribe that the tribe has agreed to the provisions of this Act. Copies of that notification must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives.

This Act does not take effect as to the Penobscot Nation, unless within 90 days after adjournment of the Legislature, the Secretary of State receives written notification from the Tribal Chief and Council of the Penobscot Nation that the nation has agreed to the provisions of this Act. Copies of that notification must be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives.

In no event may this Act become effective until 90 days after adjournment of the Legislature.'

Further amend the bill by inserting at the end before the summary the following:

#### FISCAL NOTE

The Maine Indian Tribal-State Commission will incur some minor additional costs to review certain land use plans. The Land Use Regulation Commission within the Department of Conservation will also incur some minor additional costs to advise the Maine Indian Tribal-State Commission on certain land use issues. These costs can be absorbed within the existing budgeted resources of these agencies.'

#### SUMMARY

This amendment replaces the bill.

This amendment establishes, consistent with the Act to Implement the Maine Indian Claims Settlement, the process by which the Passamaquoddy Tribe and the Penobscot Nation may control land use and development and protect natural resources within their respective Indian territory acquired from within the unorganized and deorganized areas of the State. It applies to blocks of contiguous lands that contain at least 500 acres. The tribal reservations, as defined, and any Indian territory not included in contiguous blocks of land of at least 500 acres, remain subject to the laws and regulations in effect at the time of this Act as amended from time to time by the Legislature and agencies of the State.

Under this amendment, the Passamaquoddy Tribe and the Penobscot Nation each may submit a comprehensive land use plan

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2 and implementing ordinances to the Maine Indian Tribal-State  
 4 Commission. Upon receipt of a plan, the Maine Indian  
 6 Tribal-State Commission is required to solicit public review and  
 8 comment, including the comments of the Maine Land Use Regulation  
 10 Commission, to hold a public hearing if the proposal is of public  
 12 interest and to determine whether the plan satisfies planning and  
 14 land use management criteria set forth in this amendment. Indian  
 territory lands governed by a plan and ordinances are not within  
 the jurisdiction of the Maine Land Use Regulation Commission.  
 The application of other state environmental and land use laws to  
 Indian territory, consistent with the Act to Implement the Maine  
 Indian Claims Settlement, the Maine Revised Statutes, Title 30,  
 section 6204, are not affected by this amendment.

16 In considering zoning changes or development permits  
 18 elsewhere in the unorganized and deorganized areas of the State,  
 the Maine Land Use Regulation Commission is directed to provide  
 notice to the tribe or nation when the action is located in the  
 same or an adjacent township as the Indian territory.

20 The amendment adds a repeal date of January 1, 2004 to Title  
 22 30, section 6207-A.

24 The amendment does not apply to the Passamaquoddy Tribe  
 26 unless the Passamaquoddy Tribe agrees to its provisions. The  
 amendment does not apply to the Penobscot Nation unless the  
 28 Penobscot Nation agrees to its provisions.

The amendment also adds a fiscal note to the bill.