

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

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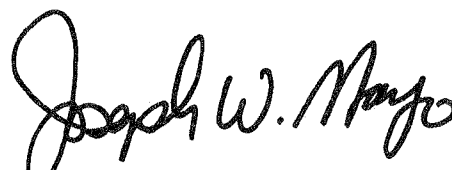
H.P. 1403

House of Representatives, January 7, 1998

**An Act to Implement the Recommendations of the Maine Indian
Tribal-State Commission Relating to Tribal Land Use Regulation.**

Reported by Representative THOMPSON for the Maine Indian Tribal-State Commission pursuant to Resolve 1997, chapter 45.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

2
4 **Sec. 1. 12 MRSA c. 206-A, sub-c. V** is enacted to read:

6 **SUBCHAPTER V**

8 **PASSAMAQUODDY AND PENOBSCOT INDIAN TERRITORIES**

10 **§691. Legislative intent; definition; application**

12 It is the intent of the Legislature that this subchapter
14 establish the process by which the Passamaquoddy Tribe and the
16 Penobscot Nation, consistent with the Act to Implement the Maine
18 Indian Claims Settlement, and in particular Title 30, sections
20 6204 and 6206, may control land use and development and provide
22 for natural resources protection within their respective
24 territories as defined in Title 30, section 6205 only to the same
26 extent as municipalities have such authority and to the extent
28 that those lands were acquired from within the unorganized and
 deorganized areas of the State. Any contiguous block of Indian
 territory consisting of less than 500 acres, the plan for which
 allows for development activity other than natural resources
 management activities and noncommercial uses by tribal members,
 is not covered by this subchapter. For the purposes of this
 subchapter, acreages that are not contiguous but are sufficiently
 proximate to each other to be managed as a single unit are deemed
 to be a contiguous block.

30 Nothing in this subchapter may be construed to apply to
32 lands within the Passamaquoddy Indian Reservation, defined in
 Title 30, section 6203, subsection 5, or the Penobscot Indian
 Reservation, defined in Title 30, section 6203, subsection 8.

34 This subchapter is intended to clarify the implementation of
36 the Act to Implement the Maine Indian Claims Settlement in the
 unique field of local land use regulation and is not an amendment
 of the Act.

38 **§692. Procedure**

40 The Passamaquoddy Tribe and the Penobscot Nation each may
42 submit a comprehensive land use plan and implementing ordinances
44 to the Maine Indian Tribal-State Commission. A comprehensive
46 land use plan may be submitted for any one or more blocks of
48 contiguous land acquired from within the unorganized and
 deorganized areas of the State and included in Title 30, section
 6205 as Indian territory of the respective tribe or nation. The
 plan must cover all lands within each block of land so held on
 the date the plan is submitted.

2 1. Submission. To submit its comprehensive land use plan
and implementing ordinances, the Passamaquoddy Tribe or the
4 Penobscot Nation must file 10 complete sets of the plan,
including all maps and implementing land use ordinances, to the
6 Maine Indian Tribal-State Commission. At its option, the tribe
or nation may submit the implementing land use ordinances after
8 the comprehensive land use plan first is submitted and approved,
but in no case may the implementing land use ordinances be
10 approved before the approval and adoption of a comprehensive land
use plan. Following approval by the Maine Indian Tribal-State
12 Commission of a tribal comprehensive land use plan or
implementing ordinances, the tribe or nation shall submit
14 amendments to the approved plan or implementing ordinances to the
Maine Indian Tribal-State Commission within 30 days after
16 adoption of any amendment by the tribe or nation.

18 2. Public review. If the Maine Indian Tribal-State
Commission determines that a tribal plan or implementing
20 ordinances or any amendment to an approved plan or implementing
ordinances constitutes a matter of substantial public interest,
22 the Maine Indian Tribal-State Commission may conduct a public
hearing on the plan or amendment. Whether or not a hearing is
24 anticipated, the Maine Indian Tribal-State Commission shall
provide notice by publication in the same manner as for state
26 agency rules under Title 5, section 8053, subsection 5, at the
cost of the tribe or nation, and shall request comments from the
28 staff of the Maine Land Use Regulation Commission. In addition,
the Maine Indian Tribal-State Commission may request comments
30 from other private or public sources. The Maine Indian
Tribal-State Commission's decision in reviewing a tribal plan and
32 implementing ordinances must otherwise conform to the procedures
in Title 5, chapter 375, subchapter V.

34 3. Decision. The Maine Indian Tribal-State Commission
shall determine whether the plan or any implementing ordinances
36 meet the criteria established in this subsection. The Maine
Indian Tribal-State Commission shall vote to accept the plan or
38 implementing ordinances, if, taking into consideration the values
and objectives of the tribe or nation, the Maine Indian
40 Tribal-State Commission determines that the plan or ordinances
taken as a whole:

42 A. Demonstrate principles of sound land use planning and
44 zoning in the affected areas. In making this determination,
the Maine Indian Tribal-State Commission shall consider
46 goals such as are contained in Title 30-A, section 4312,
subsection 3 and standards such as are applied by the Maine
48 Land Use Regulation Commission in the protection of existing
natural, recreational and historic resources in lands under
50 its jurisdiction;

- 2 B. Preserve public health, safety and general welfare;
- 4 C. Regulate residential, recreational, commercial and
6 industrial uses;
- 8 D. Protect by appropriate means the ecological and natural
10 values of the affected lands and surrounding areas;
- 12 E. Prevent the despoliation and pollution of surface waters
14 and groundwater;
- 16 F. Prevent undue adverse impacts on lands surrounding the
18 lands covered by the plan, plan amendment or implementing
20 ordinances and on residents and businesses occupying those
22 surrounding lands; and
- 24 G. Otherwise conform to environmental, land use and
26 resource protection laws applicable to municipalities in the
28 State as provided in the Act to Implement the Maine Indian
30 Claims Settlement.

32 §693. Tribal administration

34 1. Jurisdiction. The Maine Land Use Regulation Commission
36 has no jurisdiction over Indian territory governed by a tribal
38 comprehensive land use plan and implementing ordinances approved
40 by the Maine Indian Tribal-State Commission if the adoption of
42 the plan and ordinances by the Passamaquoddy Tribe or the
44 Penobscot Nation, as appropriate, is certified to the Secretary
46 of State according to the certification procedures established in
48 Title 3, section 601, the Maine Land Use Regulation Commission
50 has been notified of those actions in writing, and the terms of
 subsection 2 are met.

2. Code enforcement officer. The Passamaquoddy Tribe or
 Penobscot Nation shall employ or have available by contract a
 Code Enforcement Officer certified under Title 30-A, section
 4451, who shall enforce all implementing ordinances.

3. Violations of ordinances. Pursuant to Title 30, section
 6206, subsection 3, 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 implementing
 ordinances adopted pursuant to this subchapter. The state courts
 have exclusive jurisdiction over enforcement actions for
 violations of implementing ordinances by persons who are not
 members of either the tribe or the nation. Fines collected as a
 result of violations of implementing ordinances adopted pursuant

2 to this subchapter must be returned to the tribe or nation in
whose territory the violation occurred.

4 **§694. Impacts on Indian territory**

6 When considering the adoption of or amendment to its land
8 use districts or standards under section 685-A or any development
10 proposal under section 685-B for which approval has not been
12 delegated to its staff, or amendment to its comprehensive land
14 use plan under section 685-C, the Maine Land Use Regulation
16 Commission shall consider whether the proposed action would have
18 a significant adverse effect, or be likely to have a significant
20 adverse effect, on the lands or natural resources within
22 Passamaquoddy Indian territory or Penobscot Indian territory, as
24 defined in Title 30, section 6205, subsection 1 or 2, or the
existing uses of those lands or natural resources. If any
adverse impact within Indian territory is foreseeable, the Maine
Land Use Regulation Commission shall cause notice and other
rights to be given to the tribal government of the potentially
affected tribe or nation in the same manner as if the
Passamaquoddy Tribe or Penobscot Nation were the owner of
property directly affected by the action under consideration or
as an abutting property owner, as appropriate.

26 **Sec. 2. Effective date.** This Act does not take effect as to the
28 Passamaquoddy Tribe, unless within 90 days after adjournment of
the Legislature, the Secretary of State receives written
30 notification from the Joint Tribal Council of the Passamaquoddy
Tribe that that tribe has agreed to the provisions of this Act.
32 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.

34 This Act does not take effect as to the Penobscot Nation,
36 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
38 agreed to the provisions of this Act. Copies of that
notification must be submitted by the Secretary of State to the
40 Secretary of the Senate and the Clerk of the House of
Representatives.

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

46 **SUMMARY**

48 This bill establishes, consistent with the Act to Implement
50 the Maine Indian Claims Settlement, the process by which the

2 Passamaquoddy Tribe and the Penobscot Nation may control land use
and development and protect natural resources within their
4 respective Indian territory acquired from within the unorganized
and deorganized areas of the State. They may do this only to the
6 same extent as municipalities have such authority. Any
contiguous block of Indian Territory consisting of less than 500
8 acres, the plan for which allows for development activity other
than natural resources management activities and noncommercial
10 uses by tribal members, is not covered by this bill. Acreages
that are not contiguous but are sufficiently proximate to each
12 other to be managed as a single unit are considered to be a
contiguous block.

14 Under the bill, the Passamaquoddy Tribe and the Penobscot
Nation each may submit a comprehensive land use plan and
16 implementing ordinances to the Maine Indian Tribal-State
Commission. Upon receipt of a plan, the Maine Indian
18 Tribal-State Commission is required to solicit public review and
comment, including the comments of the Maine Land Use Regulation
20 Commission, and to determine whether the plan satisfies planning
and land use management criteria set forth in the bill. Indian
22 territory lands governed by a plan and ordinances are not within
the jurisdiction of the Maine Land Use Regulation Commission.

24 In considering zoning changes or development permits
26 elsewhere in the unorganized and deorganized areas of the State,
the Maine Land Use Regulation Commission is directed to consider
28 any potential significant adverse impacts on the Passamaquoddy or
Penobscot Indian territory and to provide notice to the tribe or
30 nation when direct adverse impacts may be anticipated.

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