

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1753

S.P. 575

In Senate, March 27, 2001

**An Act Regarding the Treatment of American Indian Tribes Under the
Federal Unemployment Tax Act.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator EDMONDS of Cumberland. (GOVERNOR'S BILL).
Cosponsored by Representative MATTHEWS of Winslow.

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

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Sec. 1. 26 MRSA §1221-B is enacted to read:

§1221-B. Treatment of Indian tribes

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Employing unit," as defined in this chapter, includes any Indian tribe for which service in employment is performed.

B. "Employment" includes service performed in the employ of an Indian tribe, as defined in the Federal Unemployment Tax Act, 26 United States Code, Chapter 23, Section 3306(u), 2000, referred to in this section as "FUTA," as long as that service is excluded from the definition of employment as defined in 26 United States Code, Section 3306(c) solely by reason of 26 United States Code, Section 3306(c)(7) and is not otherwise excluded from the definition of employment under this chapter. For purposes of this paragraph, the exclusions from employment in section 1043, subsection 11, paragraph F, subparagraph (21), division (i), subdivisions (i), (ii), (iii), (iv) and (v) are applicable to services performed in the employ of an Indian tribe.

C. "Indian tribe" means an Indian tribe or tribal unit, including a subdivision, subsidiary or business enterprise wholly owned by an Indian tribe subject to this chapter.

2. Benefits. Benefits based on service in employment are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter.

3. Payments in lieu of contributions. Contributions by Indian tribes for unemployment tax purposes are controlled by this subsection.

A. An Indian tribe shall pay contributions under the same terms and conditions as all other subject employers unless that Indian tribe elects to pay into the fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

B. An Indian tribe electing to make payments in lieu of contributions shall make that election in the same manner and under the same conditions as provided in section 1221,

2 subsection 11 for the State and local governments and
3 nonprofit organizations subject to this chapter. An Indian
4 tribe shall determine if reimbursement for benefits paid
5 will be elected by the Indian tribe as a whole, by an
6 individual tribal unit or by a combination of individual
7 tribal units.

8 C. An Indian tribe or tribal unit must be billed for the
9 full amount of benefits attributable to service in the
10 employ of the Indian tribe or tribal unit on the same
11 schedule as other employing units that have elected to make
12 payments in lieu of contributions.

13 D. At the discretion of the commissioner, an Indian tribe
14 that elects to become liable for payments in lieu of
15 contributions shall, within 60 days after the effective date
16 of its election:

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18 (1) Execute and file with the commissioner a surety
19 bond approved by the commissioner; or

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21 (2) Deposit with the commissioner money or securities
22 on the same basis as other employers with the same
23 election option.
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25 4. Failure to make payments. An Indian tribe that fails to
26 make the required payment is subject to this subsection.
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28 A. An Indian tribe that fails to make the payments required
29 by this chapter, including assessments of interest and
30 penalty, within 90 days of receipt of the bill loses the
31 option to make payments in lieu of contributions, as
32 described in subsection 3, for the following tax year unless
33 payment in full is received before contribution rates for
34 the next tax year are computed.
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36 B. An Indian tribe that loses the option to make payments
37 in lieu of contributions due to late payment or nonpayment,
38 as described in paragraph A, regains the option if, after a
39 period of one year, all contributions have been made on time
40 and no contributions, payments in lieu of contributions for
41 benefits paid, interest or penalties remain outstanding.
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43 C. Notwithstanding subsection 1, paragraph B, if the Indian
44 tribe fails to make required payments, including assessments
45 of interest and penalty, after all collection activities
46 considered necessary by the commissioner have been
47 exhausted, services performed for that Indian tribe are not
48 considered employment for purposes of subsection 1,
49 paragraph B.
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51 D. An Indian tribe that loses coverage due to paragraph C
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2 may have services performed for that Indian tribe included
3 as employment at the discretion of the commissioner, once
4 all contributions, payments in lieu of contributions,
5 interest and penalties have been paid.

6 5. Notices to Indian tribes. The commissioner shall
7 provide notification in notices of payment and reporting
8 delinquency to Indian tribes that failure to make full payment
9 within the prescribed time frame:

10 A. Will cause the Indian tribe to be liable for taxes under
11 FUTA;

12 B. Will cause the Indian tribe to lose the option to make
13 payments in lieu of contributions; and

14 C. Could cause services in the employ of the Indian tribe
15 to be excepted from employment for purposes of obtaining
16 benefits under the Employment Security Law.

17 6. Notices to Federal Government. If an Indian tribe fails
18 to make payments required under this section, including
19 assessments of interest and penalties, within 90 days of a final
20 notice of delinquency, the commissioner shall notify immediately
21 the United States Internal Revenue Service and the United States
22 Department of Labor.

23 7. Extended benefits. Extended benefits paid that are
24 attributable to service in the employ of an Indian tribe and not
25 reimbursed by the Federal Government must be financed in their
26 entirety by that Indian tribe.

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34 **SUMMARY**

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36 The "Consolidated Appropriations Act, 2001," P.L. 106-554
37 (12/21/2000), amended federal law to allow Indian tribes to
38 exercise the same election provided to state and local
39 governments as well as nonprofit organizations with regard to the
40 Federal Unemployment Tax Act (FUTA). Under the Consolidated
41 Appropriations Act, services performed in the employ of American
42 Indian tribes are no longer subject to FUTA and must now be
43 covered under state unemployment laws. Currently, Maine law
44 covers these services for unemployment insurance purposes.
45 However, Indian tribes are only permitted to meet their
46 unemployment insurance obligations by payment of a contribution
47 to the Unemployment Compensation Fund. This bill clarifies that
48 Indian tribes would now be offered the contribution and direct
49 reimbursement options as part of the Federal-State Unemployment
50 Compensation Program, similar to municipalities, for example.