

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2005

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Legislative Document

No. 1569

H.P. 1107

House of Representatives, April 12, 2005

### An Act To Abolish the Maine Indian Tribal-State Commission

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MOORE of the Passamaquoddy Tribe.

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

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**Sec. 1. 3 MRSA §959, sub-§1, ¶H,** as amended by PL 2003, c. 600, §1, is further amended to read:

H. The joint standing committee of the Legislature having jurisdiction over judiciary matters shall use the following list as a guideline for scheduling reviews:

- (2) Maine Human Rights Commission in 2009; and
- ~~(3) --Maine-Indian-Tribal-State-Commission-in-2011;-and~~
- (4) Department of the Attorney General in 2011.

**Sec. 2. 5 MRSA §1710-K, sub-§1, ¶F,** as amended by PL 1997, c. 764, §1, is further amended to read:

F. "State agency" means an executive department, executive agency, independent agency, organization, corporation or association that receives a direct appropriation or allocation from the State or is required to comply with chapter 149, except that for the purposes of this chapter "state agency" does not include ~~the-Maine-Sardine-Council,~~ the Maine Lobster Promotion Council, the Maine Potato Board, the Maine Dairy Promotion Board, the Maine Dairy and Nutrition Council, the Maine Blueberry Commission or the ~~Maine---~~Indian Intergovernmental Tribal-State Commission Board. "State agency" does not include the legislative branch or the judicial branch.

**Sec. 3. 5 MRSA §12002, sub-§1, ¶G,** as enacted by PL 1993, c. 489, §3, is amended to read:

G. The ~~Maine---~~Indian Intergovernmental Tribal-State Commission Board, as established in Title 30, section 6212, subsection 1, as part of the Maine Indian Claims Settlement.

**Sec. 4. 12 MRSA §685-C, sub-§10,** as enacted by PL 1997, c. 739, §1, is amended to read:

**10. Operating personal watercraft.** Operating a personal watercraft is prohibited on the following categories of great ponds:

A. Great ponds located entirely or partly within the jurisdiction of the commission that are identified in an official comprehensive land use plan adopted by the commission pursuant to subsection 1 as being not accessible within 1/4 mile by 2-wheel drive vehicles, with less than

2 one development unit per mile, and at least one outstanding  
resource value;

4 B. Great ponds located entirely or partly within the  
jurisdiction of the commission that are identified in an  
6 official comprehensive land use plan adopted by the  
commission as being accessible within 1/4 mile by 2-wheel  
8 drive vehicles, with less than one development unit per  
mile, with 2 or more outstanding resource values in  
10 fisheries, wildlife, scenic or shore character;

12 C. Great ponds and smaller ponds located entirely or partly  
within the jurisdiction of the commission that are  
14 identified in an official comprehensive land use plan  
adopted by the commission as being not accessible within 1/2  
16 mile by 2-wheel drive vehicles, with no more than one  
noncommercial remote camp and with a cold water game  
18 fishery; and

20 D. Great ponds with less than all but more than 2/3 of  
their surface area in or partly in the jurisdiction of the  
22 commission that are identified as being of statewide  
significance in the "Maine Wildlands Lake Assessment" dated  
24 June 1, 1987 prepared by the commission, with 2 or more  
outstanding resource values in fisheries, wildlife, scenic  
26 or shore character and with more than 1/2 of their shoreline  
in public and private conservation ownership with guaranteed  
28 public access for low-impact public recreation.

30 The commission shall implement this subsection by rule adopted in  
accordance with section 685-A. Rules adopted to implement this  
32 subsection are routine technical rules pursuant to Title 5,  
chapter 375, subchapter II-A 2-A.

34 ~~This section does not apply to any waters subject to regulation  
36 by the Maine Indian Tribal State Commission under Title 30,  
section 6207, subsection 3-A.~~

38 **Sec. 5. 12 MRSA §12603**, as affected by PL 2003, c. 614, §9  
40 and amended by c. 655, Pt. B, §267 and affected by §422, is  
further amended to read:

42 **§12603. Failure to observe Intergovernmental Tribal-State Board**  
44 **rules and regulations**

46 1. **Prohibition.** A person may not fish in any pond or in  
that portion of any river or stream subject to the authority of  
48 the Maine-Indian Intergovernmental Tribal-State Commission Board  
created by Title 30, Part 4 in violation of the rules or  
50 regulations of the commission board.

2           **2. Penalty.** The following penalties apply to violations of  
this section.

4  
6           A. A person who violates subsection 1 commits a civil  
violation for which a fine of not less than \$100 nor more  
than \$500 may be adjudged.

8  
10          B. A person who violates subsection 1 after having been  
adjudicated as having committed 3 or more civil violations  
12          under this Part within the previous 5-year period commits a  
Class E crime.

14          **Sec. 6. 30 MRSA §6203, sub-§1,** as enacted by PL 1979, c. 732,  
§§1 and 31, is amended to read:

16           **1. Board.** "Commission Board" means the Maine--Indian  
18          Intergovernmental Tribal-State Commission Board created by  
section 6212.

20          **Sec. 7. 30 MRSA §6205, sub-§5,** as enacted by PL 1979, c. 732,  
22          §§1 and 31, is amended to read:

24           **5. Limitations.** No lands held or acquired by or in trust  
for the Passamaquoddy Tribe or the Penobscot Nation, other than  
26          those described in subsections 1, 2, 3 and 4, ~~shall~~ may be  
included within or added to the Passamaquoddy Indian territory or  
28          the Penobscot Indian territory except upon recommendation of the  
~~commission board~~ and approval of the State to be given in the  
30          manner required for the enactment of laws by the Legislature and  
Governor of Maine, provided, however, that no lands within any  
32          city, town, village or plantation ~~shall~~ may be added to either  
the Passamaquoddy Indian territory or the Penobscot Indian  
34          territory without approval of the legislative body of said city,  
town, village or plantation in addition to the approval of the  
36          State.

38          Any lands within the Passamaquoddy Indian territory or the  
Penobscot Indian territory, the fee to which is transferred to  
40          any person who is not a member of the respective tribe or nation,  
shall cease to constitute a portion of Indian territory and shall  
42          revert to its status prior to the inclusion thereof within Indian  
territory.

44          **Sec. 8. 30 MRSA §6207, sub-§3,** as enacted by PL 1979, c. 732,  
46          §§1 and 31, is amended to read:

48           **3. Adoption of regulations by board.** Subject to the  
limitations of subsection 6, the ~~commission board~~ shall have  
50          exclusive authority to ~~premulgate~~ adopt fishing rules or  
regulations on:

- 2           A. Any pond other than those specified in subsection 1,  
4           paragraph B, 50% or more of the linear shoreline of which is  
            within Indian territory;
- 6           B. Any section of a river or stream both sides of which are  
            within Indian territory; and
- 8           C. Any section of a river or stream one side of which is  
10          within Indian territory for a continuous length of 1/2 mile  
            or more.

12           In ~~promulgating~~ adopting such rules ~~or regulations~~ the ~~commission~~  
14          board shall consider and balance the need to preserve and protect  
16          existing and future sport and commercial fisheries, the  
18          historical non-Indian fishing interests, the needs or desires of  
20          the tribes to establish fishery practices for the sustenance of  
22          the tribes or to contribute to the economic independence of the  
24          tribes, the traditional fishing techniques employed by and  
            ceremonial practices of Indians in Maine and the ecological  
            interrelationship between the fishery regulated by the ~~commission~~  
            board and other fisheries throughout the State. Such regulation  
            may include without limitation provisions on the method, manner,  
            bag and size limits and season for fishing.

26          Said ~~The~~ rules ~~or regulations shall be~~ are equally applicable on  
28          a nondiscriminatory basis to all persons regardless of whether  
30          such person is a member of the Passamaquoddy Tribe or Penobscot  
32          Nation. Rules ~~and regulations promulgated~~ adopted by the  
34          ~~commission~~ board may include the imposition of fees and permits  
            or license requirements on users of such waters other than  
            members of the Passamaquoddy Tribe and the Penobscot Nation. In  
            adopting rules ~~or regulations~~ pursuant to this subsection, the  
            ~~commission~~ board shall comply with the Maine Administrative  
            Procedure Act.

36           In order to provide an orderly transition of regulatory  
38           authority, all fishing laws and rules and regulations of the  
40           State shall remain applicable to all waters specified in this  
42           subsection until such time as the ~~commission~~ board certifies to  
            the commissioner that it has met and voted to adopt its own rules  
            and ~~regulations~~ in substitution for such laws and rules and  
            regulations of the State.

44           The legislative members of the board may not participate in the  
46          adoption of rules under this subsection.

48           **Sec. 9. 30 MRSA §6207, sub-§3-A**, as enacted by PL 1997, c.  
50          739, §12 and affected by §§13 and 14, is repealed.

2           **Sec. 10. 30 MRSA §6207, sub-§§4 to 8,** as enacted by PL 1979, c.  
732, §§1 and 31, are amended to read:

4           **4. Sustenance fishing within Indian reservations.**  
Notwithstanding any rule ~~ex-regulation-promulgated~~ adopted by the  
6           ~~commission~~ board or any other law of the State, the members of  
the Passamaquoddy Tribe and the Penobscot Nation may take fish,  
8           within the boundaries of their respective Indian reservations,  
for their individual sustenance subject to the limitations of  
10           subsection 6.

12           **5. Posting.** Lands or waters subject to regulation by the  
~~commission~~ board, the Passamaquoddy Tribe or the Penobscot Nation  
14           shall ~~must~~ be conspicuously posted in such a manner as to provide  
reasonable notice to the public of the limitations on hunting,  
16           trapping, fishing or other use of such lands or waters.

18           **6. Supervision by Commissioner of Inland Fisheries and  
Wildlife.** The Commissioner of Inland Fisheries and Wildlife, ~~or  
20           his successor, shall be~~ is entitled to conduct fish and wildlife  
surveys within the Indian territories and on waters subject to  
22           the jurisdiction of the ~~commission~~ board to the same extent as ~~he~~  
the commissioner is authorized to do so in other areas of the  
24           State. Before conducting any such survey the commissioner shall  
provide reasonable advance notice to the respective tribe or  
26           nation and afford it a reasonable opportunity to participate in  
such survey. If the commissioner, at any time, has reasonable  
28           grounds to believe that a tribal ordinance or ~~commission~~  
~~regulation~~ board rule adopted under this section, or the absence  
30           of such a tribal ordinance or ~~commission-regulation~~ board rule,  
is adversely affecting or is likely to adversely affect the stock  
32           of any fish or wildlife on lands or waters outside the boundaries  
of land or waters subject to regulation by the ~~commission~~ board,  
34           the Passamaquoddy Tribe or the Penobscot Nation, ~~he~~ the  
commissioner shall inform the governing body of the tribe or  
36           nation or the ~~commission~~ board, as is appropriate, of ~~his~~ the  
commissioner's opinion and attempt to develop appropriate  
38           remedial standards in consultation with the tribe or nation or  
the ~~commission~~ board. If such efforts fail, ~~he~~ the commissioner  
40           may call a public hearing to investigate the matter further. Any  
such hearing shall ~~must~~ be conducted in a manner consistent with  
42           the laws of the State applicable to adjudicative hearings. If,  
after hearing, the commissioner determines that any such  
44           ordinance, ~~or~~ rule ~~ex-regulation~~, or the absence of an ordinance,  
~~or~~ rule ~~ex-regulation~~, is causing, or there is a reasonable  
46           likelihood that it will cause, a significant depletion of fish or  
wildlife stocks on lands or waters outside the boundaries of  
48           lands or waters subject to regulation by the Passamaquoddy Tribe,  
the Penobscot Nation or the ~~commission~~ board, ~~he~~ the commissioner  
50           may adopt appropriate remedial measures including rescission of

any such ordinance, ~~or rule or regulation~~ and, in lieu thereof,  
2 order the enforcement of the generally applicable laws ~~or~~  
3 ~~regulations~~ of the State. In adopting any remedial measures the  
4 ~~commissioner~~ board shall utilize the least restrictive means  
5 possible to prevent a substantial diminution of the stocks in  
6 question and shall take into consideration the effect that  
7 non-Indian practices on non-Indian lands or waters are having on  
8 such stocks. In no event shall ~~may~~ such remedial measure be more  
9 restrictive than those ~~which~~ that the commissioner could impose  
10 if the area in question was ~~were~~ not within Indian territory or  
11 waters subject to ~~commissioner~~ regulation under this section.

12  
13 In any administrative proceeding under this section the burden of  
14 proof shall ~~be~~ is on the commissioner. The decision of the  
15 commissioner may be appealed in the manner provided by the laws  
16 of the State for judicial review of administrative action and  
17 shall ~~may~~ be sustained only if supported by substantial evidence.

18  
19 **7. Transportation of game.** Fish lawfully taken within  
20 Indian territory or in waters subject to ~~commissioner~~ board  
21 regulation under this section and wildlife lawfully taken within  
22 Indian territory and registered pursuant to ordinances adopted by  
23 the Passamaquoddy Tribe and the Penobscot Nation, may be  
24 transported within the State.

25  
26 **8. Fish and wildlife on non-Indian lands.** The ~~commissioner~~  
27 board shall undertake appropriate studies, consult with the  
28 Passamaquoddy Tribe and the Penobscot Nation and landowners and  
29 state officials, and make recommendations to the commissioner and  
30 the Legislature with respect to implementation of fish and  
31 wildlife management policies on non-Indian lands in order to  
32 protect fish and wildlife stocks on lands and water subject to  
33 regulation by the Passamaquoddy Tribe, the Penobscot Nation or  
34 the ~~commissioner~~ board.

35  
36 **Sec. 11. 30 MRSA §6212**, as amended by PL 2001, c. 173, §1 and  
37 affected by §2, is further amended to read:

38  
39 **§6212. Intergovernmental Tribal-State Board**

40  
41 **1. Board created.** The ~~Maine--Indian~~ Intergovernmental  
42 Tribal-State Commissioner Board is established. The ~~commissioner~~  
43 board consists of 9 14 members, 4 to be appointed by the  
44 Governor, subject to review by the Joint Standing Committee on  
45 Judiciary and to confirmation by the Legislature, 2 to be  
46 appointed by the Passamaquoddy Tribe, 2 to be appointed by the  
47 Penobscot Nation and ~~a chair, to be selected in accordance with~~  
48 subsection 2, 2 to be appointed by the Houlton Band of Maliseet  
49 Indians, 2 to be appointed by the Attorney General, subject to  
50 review by the Joint Standing Committee on Judiciary and to



2 confirmation by the Legislature, one member of the Senate to be  
3 appointed by the President of the Senate and one member of the  
4 House of Representatives to be appointed by the Speaker of the  
5 House. The members of the ~~commission, other than the chair,~~ board  
6 each serve for a term of 3 years and may be reappointed. In the  
7 event of the death, resignation or disability of a member, the  
8 appointing authority may fill the vacancy for the unexpired term.

9  
10 **2. Chair.** The ~~commission board,~~ by a majority vote of its  
11 8 ~~14~~ members, shall select ~~an individual who is a resident of the~~  
12 ~~State to act as the~~ chair from among the members. When ~~8~~ members  
13 ~~of the commission by majority vote are unable to select a chair~~  
14 ~~within 120 days of the first meeting of the commission, the~~  
15 ~~Governor, after consulting with the governors of the Penobscot~~  
16 ~~Nation and the Passamaquoddy Tribe, shall appoint an interim~~  
17 ~~chair for a period of one year or for the period until the~~  
18 ~~commission selects a chair in accordance with this section,~~  
19 ~~whichever is shorter. In the event of the death, resignation or~~  
20 ~~disability of the chair, the commission may select, by a majority~~  
21 ~~vote of its 8 remaining members, a new chair. When the commission~~  
22 ~~is unable to select a chair within 120 days of the death,~~  
23 ~~resignation or disability, the Governor, after consulting with~~  
24 ~~the governors of the Penobscot Nation and the Passamaquoddy~~  
25 ~~Tribe, shall appoint an interim chair for a period of one year~~  
26 ~~or for the period until the commission selects a chair in~~  
27 ~~accordance with this section, whichever is shorter. The chair is~~  
28 ~~a full voting member of the commission and, except when appointed~~  
29 ~~for an interim term, shall serve for 4 years. The term of the~~  
30 chair is 2 years. The chair must alternate between tribal  
31 members and members appointed by state appointing authorities.

32 **3. Responsibilities.** In addition to the responsibilities  
33 set forth in this Act, the ~~commission board~~ shall continually  
34 review the effectiveness of this Act and the social, economic and  
35 legal relationship between the Passamaquoddy Tribe and, the  
36 Penobscot Nation, the Houlton Band of Maliseet Indians and the  
37 State and shall make such reports and recommendations to the  
38 Legislature, the Passamaquoddy Tribe and, the Penobscot Nation  
39 and the Houlton Band of Maliseet Indians as it determines  
40 appropriate.

41 ~~Seven~~ Eight members constitute a quorum of the ~~commission board~~  
42 and a decision or action of the ~~commission board~~ is not valid  
43 unless 5 members vote in favor of the action or decision.  
44

45 **4. Personnel; fees; expenses.** The ~~commission board~~ may  
46 employ personnel as it considers necessary and desirable in order  
47 to effectively discharge its duties and responsibilities. These  
48 employees are not subject to state personnel laws or rules.  
49  
50

2 The commission board members are entitled to receive \$75 per day  
for their services and to reimbursement for reasonable expenses,  
including travel.

4  
6 **5. Interagency cooperation.** In order to facilitate the work  
of the commission board, all other agencies of the State shall  
cooperate with the commission board and make available to it  
8 without charge information and data relevant to the  
responsibilities of the commission board.

10  
12 **6. Funding.** The commission board may receive and accept,  
from any source, allocations, appropriations, loans, grants and  
contributions of money or other things of value to be held, used  
14 or applied to carry out this chapter, subject to the conditions  
upon which the loans, grants and contributions may be made,  
16 including, but not limited to, appropriations, allocations,  
loans, grants or gifts from a private source, federal agency or  
18 governmental subdivision of the State or its agencies.  
Notwithstanding Title 5, chapter 149, upon receipt of a written  
20 request from the commission board, the State Controller shall pay  
the commission's board's full state allotment for each fiscal  
22 year to meet the estimated annual disbursement requirements of  
the commission board.

24  
26 **Sec. 12. Contingent effective date.** This Act does not take  
effect unless, within 60 days after the adjournment of the  
Legislature, the Secretary of State receives written  
28 certification from the Joint Tribal Council of the Passamaquoddy  
Tribe, the governor and council of the Penobscot Nation and the  
30 Houlton Band of Maliseet Indians that the tribe, nation and band  
have agreed to the provisions of this Act pursuant to 25 United  
32 States Code, Section 1725(e)(1), copies of which must be  
submitted by the Secretary of State to the Secretary of the  
34 Senate, the Clerk of the House and the Revisor of Statutes,  
except that in no event may this Act take effect until 90 days  
36 after adjournment of the Legislature.

38  
40 **SUMMARY**

42 This bill abolishes the Maine Indian Tribal-State Commission  
and creates in its place the Intergovernmental Tribal-State  
44 Board. The board consists of 2 members appointed by the  
Passamaquoddy Tribe, 2 members appointed by the Penobscot Nation,  
2 members appointed by the Houlton Band of Maliseet Indians, 4  
46 members appointed by the Governor and subject to review by the  
Joint Standing Committee on Judiciary and confirmation by the  
48 Legislature, 2 members appointed by the Attorney General subject  
to review by the Joint Standing Committee on Judiciary and  
50 confirmation by the Legislature, one member of the Senate

2 appointed by the President of the Senate and one member of the  
House of Representatives appointed by the Speaker of the House.  
4 The members must select a chair from among the membership. The  
board has the same responsibilities that the Maine Indian  
6 Tribal-State Commission was assigned under the Act to Implement  
the Maine Indian Claims Settlement. The legislative members will  
not participate in rule-making functions of the board.

8  
10 This bill does not take effect until approved by the  
Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of  
Maliseet Indians.