

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST SPECIAL SESSION-2005

Legislative Document

No. 1573

H.P. 1111

House of Representatives, April 13, 2005

An Act To Authorize a Tribal Commercial Track and Slot Machines in Washington County

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative MOORE of the Passamaquoddy Tribe.
Cosponsored by Senator RAYE of Washington and
Representatives: BIERMAN of Sorrento, DUGAY of Cherryfield, EMERY of Cutler,
McFADDEN of Dennysville, PATRICK of Rumford, PERRY of Calais, Senators: GAGNON
of Kennebec, PLOWMAN of Penobscot.

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

2
4 **Sec. 1. 8 MRSA §271, sub-§9**, as reallocated by RR 1997, c. 1, §7, is amended to read:

6 **9. Previous year's dates.** Beginning with licenses issued
8 for calendar year 1996, notwithstanding any other provision of
10 this chapter, every commercial track or tribal commercial track
12 that is licensed for a specific calendar year must be assigned
14 all of the race dates that it requests for that year if it
conducted live racing on those dates during the immediately
preceding calendar year. For the purposes of this section, a
race date is the same from year to year if it is the closest
calendar date that falls on the same day of the week.

16 **Sec. 2. 8 MRSA §275-A, sub-§12** is enacted to read:

18 **12. Tribal commercial track.** "Tribal commercial track"
20 means a harness racing track, operated by a tribe federally
recognized as a tribe in Maine as of January 1, 2005, that:

22 A. Is located more than 90 miles from an existing
24 commercial track but within 45 miles of the operating
tribe's tribal land held in trust by a federally recognized
Indian tribe in Maine; and

26 B. Conducts racing on more than 25 days each calendar year
28 after being granted a license to conduct harness racing.

30 **Sec. 3. 8 MRSA §275-C, sub-§2**, as enacted by PL 1997, c. 390,
32 §1, is amended to read:

34 **2. Payments to agricultural fairs conducting live racing.**
A commercial track or tribal commercial track located within a
36 35-mile radius of an agricultural fair track may not present a
simulcast on a day when the commercial track or tribal commercial
38 track is not conducting live racing and the agricultural fair
track is conducting live racing unless the commercial track or
tribal commercial track pays the agricultural fair track 2% of
40 the wagers made at the commercial track or tribal commercial
track at the time live racing is being conducted at the
42 agricultural fair track and 1% of the wagers on the other races
44 conducted on a day when live racing is being conducted at the
agricultural fair track.

46 **Sec. 4. 8 MRSA §275-D, sub-§3**, as amended by PL 2003, c. 401,
48 §12, is further amended to read:

50 **3. Notice to commercial racetracks or tribal commercial**
tracks; objections. An applicant shall send written notice of

2 its application for an off-track betting license to any
3 commercial racetrack or tribal commercial track in whose market
4 area the facility will be located and shall present proof to the
5 commission that it has provided the notice. The notice must
6 include all information contained in the application except
7 information described in subsection 2, paragraph Q. A
8 commercial racetrack or tribal commercial track shall notify the
9 commission within 30 days of receiving notice if the racetrack
10 objects to the location of the facility based on adverse impact
11 to the commercial track or tribal commercial track. The
12 commission shall suspend consideration of the application for the
13 30-day objection period. If the commission receives an objection
14 from a racetrack in whose market area the facility would be
15 located within the 30-day period, the commission shall reject the
16 application. If the commission does not receive an objection
17 within that period, the commission may proceed to consider the
18 application. For purposes of this subsection, the market area is
19 determined by measuring a distance of 50 miles from the center of
20 the racetrack along the most commonly used roadway adjacent to
21 the racetrack, as determined by the Department of Transportation,
22 drawing a circle around the center of the racetrack using that
23 50-mile measurement.

24 **Sec. 5. 8 MRSA §275-D, sub-§6, ¶D**, as enacted by PL 1993, c.
25 388, §8, is amended to read:

26 D. No commercial racetrack, tribal commercial track or
27 off-track betting facility in whose market area the facility
28 would be located has filed a written objection to the
29 facility within the time period prescribed in subsections 3
30 and 4.

31 **Sec. 6. 8 MRSA §275-N**, as amended by PL 2003, c. 401, §14, is
32 further amended to read:

33 **§275-N. Limitations on off-track betting facilities**

34 The commission may not allow interstate simulcasting or
35 license any off-track betting facility for any calendar year
36 unless during the preceding 2 calendar years there were at least
37 150 race dates on which live racing actually was conducted at the
38 commercial tracks or tribal commercial track. Interstate
39 simulcasting always must be allowed at any commercial track or
40 tribal commercial track that conducted at least 136 race dates
41 during the immediately preceding 2 calendar years or at an
42 existing commercial track as defined in section 275-A, subsection
43 1, paragraph B or tribal commercial track as defined in section
44 275-A, subsection 12 at which at least 35 race dates were
45 conducted during the preceding 2 years if the interstate
46 simulcasting at the commercial track or tribal commercial track

is conducted during the regular meeting. For the purposes of this section, any race date that the commission determines was canceled due to a natural or other disaster must be counted as a race date. For the purposes of this section and for the purpose of meeting the requirements of section 275-A, subsection 1, any race date that is canceled at a commercial race track due to the inability to meet the requirements of section 275-A, subsection 9-A because of a horse shortage, as verified by the state steward, is counted as a race date.

Sec. 7. 8 MRSA §286, sub-§2, ¶¶A and B, as enacted by PL 1997, c. 528, §46, are amended to read:

A. On exotic wagers:

(1) The state share is 2.248% for an off-track betting facility located in the same municipality as a commercial track or tribal commercial track and 2.578% for all other facilities;

(2) The Sire Stakes Fund share is 1.551%;

(3) The Stipend Fund share is 1.169%;

(4) The Harness Racing Promotional Fund share is 0.25%;

(5) The horsemen's purse share is 7.871%;

(6) The track share is 7.922%; and

(7) The off-track betting facility share is 4.659%.

B. On regular wagers:

(1) The state share is 0.493% for an off-track betting facility located in the same municipality as a commercial track or tribal commercial track and 0.823% for all other facilities;

(2) The Sire Stakes Fund share is 0.072%;

(3) The Stipend Fund share is 1.186%;

(4) The Harness Racing Promotional Fund share is 0.25%;

(5) The horsemen's purse share is 5.062%;

(6) The track share is 7.899%; and

(7) The off-track betting facility share is 2.718%.

2 **Sec. 8. 8 MRSA §287, sub-§5**, as amended by PL 1999, c. 622,
§1, is further amended to read:

4
5. **Definition.** For the purposes of this section,
6 "improvements" means the amount paid out for new buildings or for
permanent improvements made to improve the facilities utilized by
8 the licensee for conducting its racing meetings; or the amount
expended in restoring property or in improving the facility or
10 any part of the facility that results in the addition,
replacement or substantial enhancement or restoration of a fixed
12 asset or of a movable asset that is important to efficient
operation of the racing meetings. In general, the amounts
14 referred to as improvements include amounts paid that add to the
value, improve or substantially prolong the useful life of the
16 racetrack and moveable assets utilized by the licensee for
conducting its racing meetings. Amounts paid or incurred for
18 routine repairs and maintenance of property, interest expense or
lease payments in connection with the capital improvements are
20 not improvements within the meaning of this section. In order to
qualify as an improvement, a substantial enhancement or
22 restoration of an asset must cost at least \$2,000 and must be an
expenditure that would qualify for depreciation under the United
24 States Internal Revenue Code. A moveable asset may be considered
important to the efficient operation of a race meeting if the
26 asset will remain at the commercial track or tribal commercial
track or at the offices of the licensee throughout its use and if
28 that asset is directly associated with running races,
accommodating patrons of the race meet, conducting pari-mutuel
30 wagering or paying purses.

32 **Sec. 9. 8 MRSA §287, sub-§7**, as enacted by PL 1999, c. 622,
§2, is amended to read:

34
7. **Interim payments to commercial tracks or tribal**
36 **commercial track.** If during the course of any calendar year the
commission finds that wagers placed at facilities licensed under
38 this chapter for the year are likely to exceed \$35,000,000, it
may, if reasonably necessary for improvements to be effected
40 expeditiously, direct the Treasurer of State to make interim
payments to a commercial track or tribal commercial track in
42 amounts as the commission finds the commercial track or tribal
commercial track is likely to be entitled to receive under this
44 section. If a commercial track or tribal commercial track
receives interim payments under this subsection that exceed the
46 total amount the commercial track or tribal commercial track is
entitled to receive for the calendar year, the Treasurer of State
48 shall reimburse the General Fund for this excess by retaining
money otherwise due to that commercial track or tribal commercial
50 track pursuant to section 295.

2 **Sec. 10. 8 MRSA §300-A** is enacted to read:

4 **§300-A. Tribal Commercial Track Development Fund**

6 **1. Fund created.** The Tribal Commercial Track Development
8 Fund is established to provide revenues to be used for
10 development, administration and infrastructure maintenance of the
12 tribal commercial track and development and funding of a
14 vocational education program focusing on harness racing in
16 Washington County.

18 **2. Distribution.** On January 30th, May 30th and September
20 30th all amounts credited to the fund established by this
22 section, pursuant to section 1036, subsection 3, paragraph H, as
24 of the last day of the preceding month must be distributed to a
26 tribal commercial track.

28 **Sec. 11. 8 MRSA §1001, sub-§43-A** is enacted to read:

30 **43-A. Tribal commercial track.** "Tribal commercial track"
32 has the same meaning as in section 275-A, subsection 12.

34 **Sec. 12. 8 MRSA §1011, sub-§§2 and 3,** as enacted by PL 2003, c.
36 687, Pt. A, §5 and affected by Pt. B, §11, are amended to read:

38 **2. Eligible persons.** The board may accept applications for
40 a license to operate slot machines from a person licensed to
42 operate a tribal commercial track. The board may also accept
44 applications for a license to operate slot machines from any
46 person who is licensed to operate a commercial track that
48 satisfies the following criteria:

 A. The commercial track is located at or within a 5-mile
 radius of the center of a commercial track that conducted
 harness racing with pari-mutuel wagering on more than 25
 days during calendar year 2002; and

 B. The operation of slot machines at the commercial track
 is approved by the voters of the municipality in which the
 commercial track to be licensed is located by referendum
 election held at any time after December 31, 2002 and before
 December 31, 2003.

3. Requirements for license; continued commercial track or
46 **tribal commercial track licensure.** The board may not issue a
48 license to operate slot machines to any person unless that person
 demonstrates compliance with the qualifications set forth in
 sections 1016 and 1019. A person who is granted a license to

operate slot machines must maintain a license to operate a commercial track or a tribal commercial track, without lapse, suspension or revocation for the duration of the slot machine operator's license.

Sec. 13. 8 MRSA §1012, first ¶, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

An application for renewal of a slot machine operator license must first be approved under this section by the municipal officers of the municipality in which the commercial track or tribal commercial track with slot machines is located or, if the commercial track or tribal commercial track is in an unincorporated place, the application must be approved by the county commissioners of the county in which the commercial track or tribal commercial track with slot machines is located.

Sec. 14. 8 MRSA §1012, sub-§1, ¶B, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

B. Municipal officers or county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing, at the applicant's prepaid expense, a notice stating the name and place of the hearing to appear on at least 3 consecutive days before the date of the hearing in a daily newspaper having general circulation in the municipality where the premises of the commercial track or tribal commercial track with slot machines are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

Sec. 15. 8 MRSA §1012, sub-§2, ¶¶A and C, as enacted by PL 2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, are amended to read:

A. Noncompliance of the commercial track or tribal commercial track licensed to operate slot machines with any local zoning ordinance or other land use ordinance not directly related to slot machine operations;

C. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the premises of the commercial track or tribal commercial track with slot machines and caused by persons patronizing or employed by the commercial track or tribal commercial track licensed to operate slot machines; and

2 **Sec. 16. 8 MRSA §1012, sub-§3**, as enacted by PL 2003, c. 687,
Pt. A, §5 and affected by Pt. B, §11, is amended to read:

4 **3. Appeal to board.** Any applicant aggrieved by the
6 decision of the municipal officers or county commissioners under
this section may appeal to the board within 15 days of the
8 receipt of the written decision of the municipal officers or
county commissioners. The board shall hold a public hearing in
10 the city, town or unincorporated place where the premises of the
commercial track or tribal commercial track with slot machines
12 are situated. In acting on such an appeal, the board may
consider all licensure requirements and findings referred to in
14 subsection 2. If the decision appealed is an application denial,
the board may issue the license only if it finds by clear and
16 convincing evidence that the decision was without justifiable
cause.

18 **Sec. 17. 8 MRSA §1016, sub-§1, ¶B**, as enacted by PL 2003, c.
687, Pt. A, §5 and affected by Pt. B, §11, is amended to read:

20 B. The person has sufficient financial assets and
22 responsibility to meet any financial obligations imposed by
this chapter and, if applying for a slot machine operator
24 license or slot machine operator license renewal, has
sufficient financial assets and responsibility to continue
26 operation of a commercial track or tribal commercial track;

28 **Sec. 18. 8 MRSA §1020, sub-§3, ¶¶A and B**, as enacted by PL
2003, c. 687, Pt. A, §5 and affected by Pt. B, §11, are amended
30 to read:

32 A. The total number of slot machines registered in the
State may not exceed ~~1,500~~ 3,000; and

34 B. A slot machine operator may not operate more than 1,500
36 slot machines at any one commercial track or tribal
commercial track.

38 **Sec. 19. 8 MRSA §1035**, as enacted by PL 2003, c. 687, Pt. A,
40 §5 and affected by Pt. B, §11, is amended to read:

42 **§1035. Location of slot machines**

44 Slot machines may be located only on the premises of a
commercial track or tribal commercial track.

46 **Sec. 20. 8 MRSA §1036, sub-§2**, as enacted by PL 2003, c. 687,
48 Pt. A, §5 and affected by Pt. B, §11, are amended to read:

2 **2. Distribution from commercial track or tribal commercial**
3 **track.** A slot machine operator shall collect and distribute 39%
4 of the total gross slot machine income from slot machines
5 operated by the slot machine operator to the board for
6 distribution by the board as follows:

7 A. Three percent of the total gross slot machine income
8 must be deposited to the General Fund for administrative
9 expenses of the board, including gambling addiction
10 counseling services, in accordance with rules adopted by the
11 board;

12 B. Ten percent of the total gross slot machine income must
13 be forwarded by the board to the Treasurer of State, who
14 shall credit the money to the fund established in section
15 298 to supplement harness racing purses;

16 C. Three percent of the total gross slot machine income
17 must be credited by the board to the Sire Stakes Fund
18 created in section 281;

19 D. Three percent of the total gross slot machine income
20 must be forwarded by the board to the Treasurer of State,
21 who shall credit the money to the Agricultural Fair Support
22 Fund established in Title 7, section 77;

23 E. Ten percent of the total gross slot machine income must
24 be forwarded by the board to the State Controller to be
25 credited to the Fund for a Healthy Maine established by
26 Title 22, section 1511 and segregated into a separate
27 account under Title 22, section 1511, subsection 11, with
28 the use of funds in the account restricted to the purposes
29 described in Title 22, section 1511, subsection 6, paragraph
30 E;

31 F. Two percent of the total gross slot machine income must
32 be forwarded by the board to the University of Maine System
33 Scholarship Fund created in Title 20-A, section 11631. The
34 amount from a tribal commercial track allocated in
35 accordance with this paragraph must fund scholarships at the
36 University of Maine campuses in Washington County;

37 G. One percent of the total gross slot machine income must
38 be forwarded by the board to the board of trustees of the
39 Maine Community College System to be applied by the board of
40 trustees to fund its scholarships program under Title 20-A,
41 section 12716, subsection 1. The amount from a tribal
42 commercial track allocated in accordance with this paragraph
43 must fund scholarships at the community college in
44 Washington County;

2 H. Four percent of the total gross slot machine income must
4 be forwarded by the board to the Treasurer of State, who
6 shall credit the money to the Fund to Encourage Racing at
8 Maine's Commercial Tracks, established in section 299,
10 except that the percentage from a tribal commercial track
12 allocated in accordance with this paragraph must be credited
14 by the Treasurer of State to the Tribal Commercial Track
16 Development Fund established in section 300-A; however, the
18 payment required by this paragraph to be deposited into the
20 fund established by section 299 is terminated when all
22 commercial tracks have obtained a license to operate slot
24 machines in accordance with this chapter;

16 I. Two percent of the total gross slot machine income,
18 except income from slot machines operated at a tribal
20 commercial track, must be forwarded by the board to the
22 Treasurer of State, who shall credit the money to the Fund
24 to Stabilize Off-track Betting Facilities established by
26 section 300, as long as a facility has conducted off-track
28 wagering operations for a minimum of 250 days during the
30 preceding 12-month period in which the first payment to the
32 fund is required. After 48 months of receiving an
34 allocation of the total gross slot machine income from a
36 licensed operator, the percent of total slot machine income
38 forwarded to the Fund to Stabilize Off-track Betting
40 Facilities is reduced to 1% with the remaining 1% to be
42 forwarded to the State in accordance with subsection 1; and

30 J. One percent of the total gross slot machine income must
32 be forwarded directly to the municipality in which the slot
34 machines are located.;

34 K. One percent of the total gross slot machine income from
36 a tribal commercial track must be forwarded directly to the
38 Washington County Development Authority; and

38 L. One percent of the total gross slot machine income from
40 a tribal commercial track must be forwarded directly to the
42 career and technical education centers located in Washington
44 County.

44 **Sec. 21. 17 MRSA §314-A, sub-§5-A is enacted to read:**

46 5-A. Games on nontribal land. Notwithstanding subsection
48 5, upon proper application, the department may issue a
high-stakes beano license to a federally recognized Indian tribe
to operate games on nontribal land in Washington County. The
department may issue a high-stakes beano license in accordance

2 with this section to all federally recognized Indian tribes in
3 the State jointly.

4

6 SUMMARY

6

8 This bill defines "tribal commercial track." A tribal
9 commercial track would be operated by a federally recognized
10 Indian tribe in this State. It authorizes the Department of
11 Public Safety, Gambling Control Board to issue a license to
12 operate up to 3,000 slot machines to a tribal commercial track.
13 The slot machine facility operated at a tribal commercial track
14 would be subject to the regulatory structure currently provided
15 in law. The distribution of income from slot machines is the
16 same as currently provided in law with the following exceptions.

16

17 1. The percentage of income designated for scholarships at
18 Maine's community colleges would go directly to a community
19 college in Washington County.

20

21 2. Instead of distribution of off-track betting facilities,
22 the tribal commercial track slot machine facility would
23 distribute that percentage to a development authority and career
24 and technical education center in Washington County.