

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Handwritten: R.O.S.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Date: 4/17/08

L.D. 2221
(Filing No. H-1043)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221, Bill, "An Act To Implement the Recommendations of the Tribal-State Work Group"

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

PART A

Sec. A-1. 30 MRSA §6209-C is enacted to read:

§6209-C. Jurisdiction of the Houlton Band of Maliseet Indians Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Maliseet Indian territory by a member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Houlton Band of Maliseet Indians under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians on the Maliseet Indian territory;

C. Civil actions between members of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians arising on the Maliseet Indian territory and cognizable as small claims under the laws of the State, and civil actions

COMMITTEE AMENDMENT

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1 against a member of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton
2 Band of Maliseet Indians under Title 22, section 2383 involving conduct on the
3 Maliseet Indian territory by a member of the Passamaquoddy Tribe, the Penobscot
4 Nation or the Houlton Band of Maliseet Indians;

5 D. Indian child custody proceedings to the extent authorized by applicable federal
6 law; and

7 E. Other domestic relations matters, including marriage, divorce and support,
8 between members of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton
9 Band of Maliseet Indians, both of whom reside within the Maliseet Indian territory.

10 The governing body of the Houlton Band of Maliseet Indians shall decide whether to
11 exercise or terminate the exercise of the exclusive jurisdiction authorized by this
12 subsection. Until the Houlton Band of Maliseet Indians notifies the Attorney General that
13 the band has decided whether to exercise the exclusive jurisdiction over criminal,
14 juvenile, civil and domestic matters described in this subsection, the State has exclusive
15 jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to
16 exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile,
17 civil and domestic matters described in this subsection, the State has exclusive
18 jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the
19 State relating to criminal offenses and juvenile crimes apply within the Maliseet Indian
20 territory and the State has exclusive jurisdiction over those offenses and crimes.

21 **2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction
22 under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed
23 to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the
24 criminal offenses and juvenile crimes and the punishments applicable to those criminal
25 offenses and juvenile crimes over which the Houlton Band of Maliseet Indians has
26 exclusive jurisdiction under this section are governed by the laws of the State. Issuance
27 and execution of criminal process are also governed by the laws of the State. The
28 procedures for the establishment and operation of tribal forums created to effectuate the
29 purposes of this section are governed by federal statute, including, without limitation, the
30 provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations
31 generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal
32 Indian reservations.

33 **3. Lesser included offenses in state courts.** In any criminal proceeding in the courts
34 of the State in which a criminal offense under the exclusive jurisdiction of the Houlton
35 Band of Maliseet Indians constitutes a lesser included offense of the criminal offense
36 charged, the defendant may be convicted in the courts of the State of the lesser included
37 offense. A lesser included offense is as defined under the laws of the State.

38 **4. Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or
39 juvenile crime over which the Houlton Band of Maliseet Indians has exclusive
40 jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile
41 crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A
42 prosecution for a criminal offense or juvenile crime over which the State has exclusive
43 jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out
44 of the same conduct, over which the Houlton Band of Maliseet Indians has exclusive
45 jurisdiction under this section. The determination of an issue of fact in a criminal or

1 of 5

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1 juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in
2 a criminal or juvenile proceeding conducted in a state court. The determination of an
3 issue of fact in a criminal or juvenile proceeding conducted in a state court does not
4 constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal
5 forum.

6 **Sec. A-2. 30 MRSA §6212, sub-§1**, as amended by PL 1993, c. 600, Pt. A, §24
7 and affected by §25, is further amended to read:

8 **1. Commission created.** The Maine Indian Tribal-State Commission is established.
9 The commission consists of ~~9~~ 13 members, ~~4~~ 6 to be appointed by the Governor, subject
10 to review by the Joint Standing Committee on Judiciary and to confirmation by the
11 Legislature, 2 to be appointed by the Houlton Band of Maliseet Indians, 2 to be appointed
12 by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation and a chair, to
13 be selected in accordance with subsection 2. The members of the commission, other than
14 the chair, each serve for a term of 3 years and may be reappointed. In the event of the
15 death, resignation or disability of a member, the appointing authority may fill the vacancy
16 for the unexpired term.

17 **Sec. A-3. 30 MRSA §6212, sub-§2**, as amended by PL 1993, c. 600, Pt. A, §24
18 and affected by §25, is further amended to read:

19 **2. Chair.** The commission, by a majority vote of its ~~8~~ 12 members, shall select an
20 individual who is a resident of the State to act as chair. ~~When 8 members of the~~
21 ~~commission by majority vote are unable to select a chair within 120 days of the first~~
22 ~~meeting of the commission, the Governor, after consulting with the governors of the~~
23 ~~Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a~~
24 ~~period of one year or for the period until the commission selects a chair in accordance~~
25 ~~with this section, whichever is shorter.~~ In the event of the death, resignation, replacement
26 or disability of the chair, the commission may select, by a majority vote of its ~~8~~ 12
27 remaining members, a new chair. When the commission is unable to select a chair within
28 120 days of the death, resignation, replacement or disability, the Governor, after
29 consulting with the governors chiefs of the Houlton Band of Maliseet Indians, the
30 Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a
31 period of one year or for the period until the commission selects a chair in accordance
32 with this section, whichever is shorter. The chair is a full-voting member of the
33 commission and, except when appointed for an interim term, shall serve for 4 years.

34 **Sec. A-4. 30 MRSA §6212, sub-§3**, as amended by PL 1993, c. 600, Pt. A, §24
35 and affected by §25, is further amended to read:

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

42 ~~Seven~~ Nine members constitute a quorum of the commission and a decision or action of
43 the commission is not valid unless ~~5~~ 7 members vote in favor of the action or decision.

RAIS

1 **Sec. A-5. Maine Revised Statutes headnote amended; revision clause.** In
2 the Maine Revised Statutes, Title 30, in the Title headnote, the words "municipalities and
3 counties" are amended to read "municipalities, counties and federally recognized Indian
4 tribes" and the Revisor of Statutes shall implement this revision when updating,
5 publishing or republishing the statutes.

6 **Sec. A-6. Contingent effective date.** This Part takes effect 120 days after
7 adjournment of the First Special Session of the 123rd Legislature only if, within 90 days
8 after the adjournment of the First Special Session of the 123rd Legislature, the Secretary
9 of State receives written certification from the Houlton Band Council of the Houlton
10 Band of Maliseet Indians that the band has agreed to the provisions of this Part, written
11 certification from the Tribal Chief and the Council of the Penobscot Nation that the
12 nation has agreed to the provisions of this Part and written certification from the Joint
13 Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of
14 this Part pursuant to 25 United States Code, Section 1725(e), copies of which must be
15 submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House
16 and the Revisor of Statutes.

17

PART B

18 **Sec. B-1. Negotiations; report.** The Houlton Band of Maliseet Indians and the
19 municipalities of Houlton and Littleton shall meet to discuss the implementation of the
20 amendments included in Part C of this Act that may affect Houlton and Littleton. By
21 March 1, 2009, the Houlton Band of Maliseet Indians and the municipalities shall file a
22 report with the joint standing committee of the Legislature having jurisdiction over
23 judiciary matters describing negotiations, agreements and implementation of any
24 agreements reached by the band and the municipalities.

25 **Sec. B-2. Sustenance fishing.** By January 30, 2009, the Houlton Band of
26 Maliseet Indians shall file a report with the joint standing committee of the Legislature
27 having jurisdiction over judiciary matters detailing the band's discussions or agreements
28 with interested parties regarding the effect of any exercise of sustenance fishing rights by
29 members of the band on those parties and ways to balance the interests of both the band
30 and the affected parties.

31 **Sec. B-3. Contingent effective date.** This Part takes effect 120 days after
32 adjournment of the First Special Session of the 123rd Legislature only if, within 90 days
33 after the adjournment of the First Special Session of the 123rd Legislature, the Secretary
34 of State receives written certification from the Houlton Band Council of the Houlton
35 Band of Maliseet Indians that the band has agreed to the provisions of this Part pursuant
36 to 25 United States Code, Section 1725(e)(2), copies of which must be submitted by the
37 Secretary of State to the Secretary of the Senate, the Clerk of the House and the Revisor
38 of Statutes.

39

PART C

40 **Sec. C-1. 30 MRSA §6202, 6th ¶,** as enacted by PL 1979, c. 732, §§1 and 31, is
41 amended to read:

R.013

1 The foregoing agreement between the Indian claimants and the State also represents a
2 good faith effort by the Indian claimants and the State to achieve a just and fair resolution
3 of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot
4 Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and
5 the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent
6 provided in this Act. ~~The Houlton Band of Maliseet Indians and its lands will be wholly~~
7 ~~subject to the laws of the State~~ Except as otherwise provided in this Act, the Houlton
8 Band of Maliseet Indians and its lands are subject to the laws of the State.

9 **Sec. C-2. 30 MRSA §6203, sub-§2-B** is enacted to read:

10 **2-B. Maliseet Indian territory.** "Maliseet Indian territory" means that territory
11 described in section 6205, subsection 2-A.

12 **Sec. C-3. 30 MRSA §6205, sub-§2-A** is enacted to read:

13 **2-A. Maliseet Indian territory.** The following lands within the State are known as
14 "the Maliseet Indian territory":

15 A. Lands transferred from Ralph E. Longstaff and Justina Longstaff to the United
16 States of America in trust for the Houlton Band of Maliseet Indians, located in
17 Houlton, Aroostook County and recorded in the Aroostook County South Registry of
18 Deeds in Book 2144, Page 198; and

19 B. Lands transferred from F. Douglas Lowrey to the United States of America in
20 trust for the Houlton Band of Maliseet Indians, located in Houlton and Littleton,
21 Aroostook County and recorded in the Aroostook County South Registry of Deeds in
22 Book 2847, Page 114.

23 **Sec. C-4. 30 MRSA §6205, sub-§6** is enacted to read:

24 **6. Maliseet Indian territory; limitations.** Land held or acquired by or in trust for
25 the Houlton Band of Maliseet Indians, other than those described in subsection 2-A, may
26 not be included within or added to the Maliseet Indian territory, except on
27 recommendation of the commission and approval of the State to be given in the manner
28 required for the enactment of laws by the Legislature and the Governor, except that no
29 lands within any city, town, village or plantation may be added to the Maliseet Indian
30 territory without the approval of the legislative body of said city, town, village or
31 plantation in addition to the approval of the State.

32 **Sec. C-5. 30 MRSA §6206**, as enacted by PL 1979, c. 732, §§1 and 31, is
33 amended to read:

34 **§6206. Powers and duties of the Indian tribes within their respective Indian**
35 **territories**

36 **1. General powers.** Except as otherwise provided in this Act, the Passamaquoddy
37 Tribe ~~and~~ the Penobscot Nation, ~~and the Houlton Band of Maliseet Indians,~~ within their
38 respective Indian territories, shall have, exercise and enjoy all the rights, privileges,
39 powers and immunities, including, but without limitation, the power to enact ordinances
40 and collect taxes, and shall be subject to all the duties, obligations, liabilities and
41 limitations of a municipality of and subject to the laws of the State, provided, however,
42 that internal tribal matters, including membership in the respective tribe or, nation, or

R.013

1 band the right to reside within the respective Indian territories, tribal organization, tribal
2 government, tribal elections and the use or disposition of settlement fund income shall not
3 be subject to regulation by the State. The Passamaquoddy Tribe ~~and~~, the Penobscot
4 Nation and the Houlton Band of Maliseet Indians shall designate such officers and
5 officials as are necessary to implement and administer those laws of the State applicable
6 to the respective Indian territories and the residents thereof. Any resident of the
7 Passamaquoddy Indian territory ~~or~~, the Penobscot Indian territory or the Maliseet Indian
8 territory who is not a member of the respective tribe ~~or~~, nation or band nonetheless shall
9 be equally entitled to receive any municipal or governmental services provided by the
10 respective tribe ~~or~~, nation or band or by the State, except those services which are
11 provided exclusively to members of the respective tribe ~~or~~, nation or band pursuant to
12 state or federal law, and shall be entitled to vote in national, state and county elections in
13 the same manner as any tribal member residing within Indian territory.

14 **2. Power to sue and be sued.** The Passamaquoddy Tribe, the Penobscot Nation, the
15 Houlton Band of Maliseet Indians and their members may sue and be sued in the courts
16 of the State to the same extent as any other entity or person in the State provided,
17 however, that the respective tribe ~~or~~, nation or band and its officers and employees shall
18 be immune from suit when the respective tribe ~~or~~, nation or band is acting in its
19 governmental capacity to the same extent as any municipality or like officers or
20 employees thereof within the State.

21 **3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each shall have
22 the right to exercise exclusive jurisdiction within its respective Indian territory over
23 violations by members of either tribe or nation of tribal ordinances adopted pursuant to
24 this section or section 6207. The decision to exercise or terminate the jurisdiction
25 authorized by this section shall be made by each tribal governing body. Should either
26 tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as
27 authorized by this section or section 6207, the State ~~shall have~~ has exclusive jurisdiction
28 over violations of tribal ordinances by members of either tribe or nation within the Indian
29 territory of that tribe or nation. The State ~~shall have~~ has exclusive jurisdiction over
30 violations of tribal ordinances by persons not members of either tribe or nation.

31 **4. Houlton Band of Maliseet Indians; ordinances.** The Houlton Band of Maliseet
32 Indians has the right to exercise exclusive jurisdiction within the Maliseet Indian territory
33 over violations by members of the band of tribal ordinances adopted pursuant to this
34 section or section 6207. The decision to exercise or terminate the jurisdiction authorized
35 by this section must made by the tribal governing body. Should the band choose not to
36 exercise, or to terminate its exercise of, jurisdiction as authorized by this section or
37 section 6207, the State has exclusive jurisdiction over violations of tribal ordinances by
38 members of the band within the Maliseet Indian territory. The State has exclusive
39 jurisdiction over violations of tribal ordinances by persons not members of the band.

40 **5. General municipal powers; transition.** This subsection applies to only the
41 Maliseet Indian territory described in section 6205, subsection 2-A, paragraphs A and B.
42 The ordinances of the municipalities in which the described Maliseet Indian territory is
43 located that apply to the Maliseet Indian territory on April 1, 2008 continue to apply and
44 may be enforced by the municipalities until the Houlton Band of Maliseet Indians
45 certifies to the town clerk of the affected municipality that the band has adopted its own
46 ordinances in substitution for the municipality's ordinances and the band is prepared to

12.03.

1 enforce the band's ordinances. A copy of the band's ordinances must be attached to the
2 certification. Ordinances adopted or amended by the Houlton Band of Maliseet Indians
3 may be no less strict than the municipal ordinances, unless the band and the affected
4 municipality enter into a written agreement accepting any differences. When a
5 municipality in which the described Maliseet Indian territory is located amends its
6 ordinances, the band shall consider amending the band's ordinances. This subsection
7 does not affect the obligation of the municipalities to provide municipal services to the
8 Maliseet Indian territory described in section 6205, subsection 2-A, paragraphs A and B
9 before the band and each municipality enter into an agreement concerning provision of
10 the services.

11 **Sec. C-6. 30 MRSA §6206-A**, as enacted by PL 1981, c. 675, §§3 and 8, is
12 repealed.

13 **Sec. C-7. 30 MRSA §6206-B**, as enacted by PL 2005, c. 310, §1 and affected by
14 §2, is amended to read:

15 **§6206-B. Law enforcement powers of Houlton Band of Maliseet Indians**

16 **1. Appointment of tribal law enforcement officers.** The Houlton Band of Maliseet
17 Indians may appoint law enforcement officers who have the authority to enforce all the
18 laws of the State within the Houlton Band Trust Land. This section does not limit the
19 existing authority of tribal officers under tribal law or affect the performance of federal
20 duties by tribal officers.

21 **2. Authority of state, county and local law enforcement officers.** State Except as
22 provided in section 6210, subsection 1-A, state and county law enforcement officers and
23 law enforcement officers appointed by the Town of Houlton have the authority to enforce
24 all laws of the State within the Houlton Band Trust Land.

25 ~~**3. Agreements for cooperation and mutual aid.** The Houlton Band of Maliseet~~
26 ~~Indians and any state, county or local law enforcement agency may enter into agreements~~
27 ~~for cooperation and mutual aid.~~

28 **4. Powers, duties and training requirements.** Law enforcement officers appointed
29 by the Houlton Band of Maliseet Indians pursuant to this section possess the same
30 powers, enjoy the same immunities and are subject to the same duties, limitations and
31 training requirements as other corresponding law enforcement officers under the laws of
32 the State.

33 **5. Report to Legislature.** By January 1, 2010, the Houlton Band of Maliseet
34 Indians shall file a report with the joint standing committee of the Legislature having
35 jurisdiction over judiciary matters detailing the band's experience with the exercise of law
36 enforcement authority under this section. The report must include observations and
37 comments from the state and county law enforcement agencies providing law
38 enforcement services in Aroostook County and from the Houlton Police Department.

39 **6. Repeal.** This section is repealed July 1, 2010.

40 **Sec. C-8. 30 MRSA §6207**, as amended by PL 1997, c. 739, §12 and affected by
41 §§13 and 14, is further amended to read:

12.013

1 §6207. Regulation of fish and wildlife resources

2 1. Adoption of ordinances by tribe. Subject to the limitations of subsection 6, the
3 Passamaquoddy Tribe and, the Penobscot Nation and the Houlton Band of Maliseet
4 Indians each shall have exclusive authority within their respective Indian territories to
5 promulgate and enact ordinances regulating:

- 6 A. Hunting, trapping or other taking of wildlife; and
- 7 B. Taking of fish on any pond in which all the shoreline and all submerged lands
8 are wholly within Indian territory and which is less than 10 acres in surface area.

9 Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons
10 regardless of whether such person is a member of the respective tribe or, nation or band
11 provided, however, that subject to the limitations of subsection 6, such ordinances may
12 include special provisions for the sustenance of the individual members of the
13 Passamaquoddy Tribe or, the Penobscot Nation or the Houlton Band of Maliseet Indians.
14 In addition to the authority provided by this subsection, the Passamaquoddy Tribe and,
15 the Penobscot Nation and the Houlton Band of Maliseet Indians, subject to the limitations
16 of subsection 6, may exercise within their respective Indian territories all the rights
17 incident to ownership of land under the laws of the State.

18 2. Registration stations. The Passamaquoddy Tribe and, the Penobscot Nation and
19 the Houlton Band of Maliseet Indians shall establish and maintain registration stations for
20 the purpose of registering bear, moose, deer and other wildlife killed within their
21 respective Indian territories and shall adopt ordinances requiring registration of such
22 wildlife to the extent and in substantially the same manner as such wildlife are required to
23 be registered under the laws of the State. These ordinances requiring registration shall be
24 equally applicable to all persons without distinction based on tribal membership. The
25 Passamaquoddy Tribe and, the Penobscot Nation and the Houlton Band of Maliseet
26 Indians shall report the deer, moose, bear and other wildlife killed and registered within
27 their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of
28 the State at such times as the commissioner deems appropriate. The records of
29 registration of the Passamaquoddy Tribe and, the Penobscot Nation and the Houlton Band
30 of Maliseet Indians shall be available, at all times, for inspection and examination by the
31 commissioner.

32 3. Adoption of regulations by the commission. Subject to the limitations of
33 subsection 6, the commission shall have exclusive authority to promulgate fishing rules
34 or regulations on:

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

41 In promulgating such rules or regulations the commission shall consider and balance the
42 need to preserve and protect existing and future sport and commercial fisheries, the
43 historical non-Indian fishing interests, the needs or desires of the tribes to establish

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1008

1 fishery practices for the sustenance of the tribes or to contribute to the economic
2 independence of the tribes, the traditional fishing techniques employed by and ceremonial
3 practices of Indians in Maine and the ecological interrelationship between the fishery
4 regulated by the commission and other fisheries throughout the State. Such regulation
5 may include without limitation provisions on the method, manner, bag and size limits and
6 season for fishing.

7 Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all
8 persons regardless of whether such person is a member of the Passamaquoddy Tribe or,
9 the Penobscot Nation or the Houlton Band of Maliseet Indians. Rules and regulations
10 promulgated by the commission may include the imposition of fees and permits or license
11 requirements on users of such waters other than members of the Passamaquoddy Tribe
12 and the Penobscot Nation and the Houlton Band of Maliseet Indians. In adopting rules or
13 regulations pursuant to this subsection, the commission shall comply with the Maine
14 Administrative Procedure Act.

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

20 Rules adopted by the commission under this subsection concerning the Maliseet Indian
21 territory described in section 6205, subsection 2-A, paragraphs A and B are major
22 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

23 **3-A. Horsepower and use of motors.** Subject to the limitations of subsection 6, the
24 commission has exclusive authority to adopt rules to regulate the horsepower and use of
25 motors on waters less than 200 acres in surface area and entirely within Indian territory.

26 **4. Sustenance fishing within the Indian reservations.** Notwithstanding any rule or
27 regulation promulgated by the commission or any other law of the State, the members of
28 the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries
29 of their respective Indian reservations, for their individual sustenance subject to the
30 limitations of subsection 6.

31 **5. Posting.** Lands or waters subject to regulation by the commission, the
32 Passamaquoddy Tribe or, the Penobscot Nation or the Houlton Band of Maliseet Indians
33 shall be conspicuously posted in such a manner as to provide reasonable notice to the
34 public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

35 **6. Supervision by Commissioner of Inland Fisheries and Wildlife.** The
36 Commissioner of Inland Fisheries and Wildlife, or his the commissioner's successor, shall
37 be entitled to conduct fish and wildlife surveys within the Indian territories and on waters
38 subject to the jurisdiction of the commission to the same extent as he the commissioner is
39 authorized to do so in other areas of the State. Before conducting any such survey the
40 commissioner shall provide reasonable advance notice to the respective tribe or, nation or
41 band and afford it a reasonable opportunity to participate in such survey. If the
42 commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or
43 commission regulation adopted under this section, or the absence of such a tribal
44 ordinance or commission regulation, is adversely affecting or is likely to adversely affect

COMMITTEE AMENDMENT

12.03

1 the stock of any fish or wildlife on lands or waters outside the boundaries of land or
2 waters subject to regulation by the commission, the Passamaquoddy Tribe ~~or~~, the
3 Penobscot Nation or the Houlton Band of Maliseet Indians, ~~he~~ the commissioner shall
4 inform the governing body of the tribe ~~or~~, nation or band or the commission, as is
5 appropriate, of ~~his~~ the commissioner's opinion and attempt to develop appropriate
6 remedial standards in consultation with the tribe or, nation or band or the commission. If
7 such efforts fail, ~~he~~ the commissioner may call a public hearing to investigate the matter
8 further. Any such hearing shall be conducted in a manner consistent with the laws of the
9 State applicable to adjudicative hearings. If, after hearing, the commissioner determines
10 that any such ordinance, rule or regulation, or the absence of an ordinance, rule or
11 regulation, is causing, or there is a reasonable likelihood that it will cause, a significant
12 depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or
13 waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation, the
14 Houlton Band of Maliseet Indians or the commission, ~~he~~ the commissioner may adopt
15 appropriate remedial measures including rescission of any such ordinance, rule or
16 regulation and, in lieu thereof, order the enforcement of the generally applicable laws or
17 regulations of the State. In adopting any remedial measures the commission shall utilize
18 the least restrictive means possible to prevent a substantial diminution of the stocks in
19 question and shall take into consideration the effect that non-Indian practices on non-
20 Indian lands or waters are having on such stocks. In no event shall such remedial measure
21 be more restrictive than those which the commissioner could impose if the area in
22 question was not within Indian territory or waters subject to commission regulation.

23 In any administrative proceeding under this section the burden of proof shall be on the
24 commissioner. The decision of the commissioner may be appealed in the manner
25 provided by the laws of the State for judicial review of administrative action and shall be
26 sustained only if supported by substantial evidence.

27 **7. Transportation of game.** Fish lawfully taken within Indian territory or in waters
28 subject to commission regulation and wildlife lawfully taken within Indian territory and
29 registered pursuant to ordinances adopted by the Passamaquoddy Tribe ~~and~~, the
30 Penobscot Nation and the Houlton Band of Maliseet Indians, may be transported within
31 the State.

32 **8. Fish and wildlife on non-Indian lands.** The commission shall undertake
33 appropriate studies, consult with the Passamaquoddy Tribe ~~and~~, the Penobscot Nation and
34 the Houlton Band of Maliseet Indians and landowners and state officials, and make
35 recommendations to the commissioner and the Legislature with respect to implementation
36 of fish and wildlife management policies on non-Indian lands in order to protect fish and
37 wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the
38 Penobscot Nation, the Houlton Band of Maliseet Indians or the commission.

39 **9. Fish.** As used in this section, the term "fish" means a cold blooded completely
40 aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body
41 usually covered with scales and includes inland fish and anadromous and catadromous
42 fish when in inland water.

43 **10. Houlton Band of Maliseet Indians; ordinances; report.** The Houlton Band of
44 Maliseet Indians may adopt ordinances governing firearms and crossbows only after prior
45 notice to and discussion with the municipalities in which the Maliseet Indian territory

12013

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1 described in section 6205, subsection 2-A, paragraphs A and B is located if those
2 municipalities have conflicting ordinances.

3 By February 1, 2010, the Houlton Band of Maliseet Indians shall file a report with the
4 joint standing committee of the Legislature having jurisdiction over judiciary matters
5 regarding the assumption of authority by the Houlton Band of Maliseet Indians under this
6 section. The report must include observations and comments from state, county and local
7 law enforcement agencies, the municipalities within which any land designated as
8 Maliseet Indian territory is located and the Commissioner of Inland Fisheries and
9 Wildlife.

10 **Sec. C-9. 30 MRSA §6208, sub-§2-A** is enacted to read:

11 **2-A. Payments in lieu authority.** Any municipality in which Maliseet Indian
12 territory or Houlton Band Trust Land is located has the authority, at its sole discretion, to
13 enter into agreements with the Houlton Band of Maliseet Indians to accept other funds or
14 other things of value that are obtained by or for the Houlton Band of Maliseet Indians by
15 reason of the trust status of the Maliseet Indian territory or Houlton Band Trust Land as
16 replacement for payments in lieu of taxes.

17 Any agreement between the Houlton Band of Maliseet Indians and the municipality must
18 be jointly executed by persons duly authorized by the Houlton Band of Maliseet Indians
19 and the municipality and must set forth the jointly agreed value of the funds or other
20 things identified serving as replacement of payments in lieu of taxes and the time period
21 over which such funds or other things may serve in lieu of the obligations of the Houlton
22 Band of Maliseet Indians provided in this section.

23 If the funds or other things of value are not made available to or for the benefit of the
24 Houlton Band of Maliseet Indians as contemplated by its agreement with the municipality
25 or if the provision of the funds or other things of value is terminated earlier than is
26 contemplated by the agreement between the Houlton Band of Maliseet Indians and the
27 municipality, the obligations of the Houlton Band of Maliseet Indians to make payments
28 in lieu of taxes remains in full force and effect.

29 **Sec. C-10. 30 MRSA §6210**, as amended by PL 1995, c. 388, §7 and affected by
30 §8, is further amended to read:

31 **§6210. Law enforcement on Indian reservations and within Indian territory**

32 **1. Exclusive authority of tribal law enforcement officers.** Law enforcement
33 officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive
34 authority to enforce, within their respective Indian territories, ordinances adopted under
35 section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian
36 reservations, the criminal, juvenile, civil and domestic relations laws over which the
37 Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209-A,
38 subsection 1 and section 6209-B, subsection 1, respectively.

39 **1-A. Exclusive authority of Maliseet tribal law enforcement officers.** Law
40 enforcement officers appointed by the Houlton Band of Maliseet Indians have exclusive
41 authority to enforce, within Maliseet Indian territory, ordinances adopted under section
42 6206 and section 6207, subsection 1, and to enforce, on Maliseet Indian territory, the

COMMITTEE AMENDMENT

2.0.03

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1 criminal, juvenile, civil and domestic relations laws over which the Houlton Band of
2 Maliseet Indians has jurisdiction under section 6209-C, subsection 1.

3 **2. Joint authority of tribal and state law enforcement officers.** Law enforcement
4 officers appointed by the Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton
5 Band of Maliseet Indians have the authority within their respective Indian territories and
6 state and county law enforcement officers have the authority within ~~both~~ Indian territories
7 to enforce rules or regulations adopted by the commission under section 6207, subsection
8 3 and to enforce all laws of the State other than those over which the Passamaquoddy
9 Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians has exclusive
10 jurisdiction under section 6209-A, subsection 1 ~~and~~, section 6209-B, subsection 1, and
11 section 6209-C, respectively.

12 **3. Agreements for cooperation and mutual aid.** This section does not prevent the
13 Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians
14 and any state, county or local law enforcement agency from entering into agreements for
15 cooperation and mutual aid.

16 **4. Powers and training requirements.** Law enforcement officers appointed by the
17 Passamaquoddy Tribe and the Penobscot Nation possess the same powers and are subject
18 to the same duties, limitations and training requirements as other corresponding law
19 enforcement officers under the laws of the State.

20 **Sec. C-11. 30 MRSA §6211**, as amended by PL 1997, c. 626, §§1 and 2 and
21 affected by §3, is further amended to read:

22 **§6211. Eligibility of Indian tribes and state funding**

23 **1. Eligibility generally.** The Passamaquoddy Tribe ~~and~~, the Penobscot Nation and
24 the Houlton Band of Maliseet Indians shall be eligible for participation and entitled to
25 receive benefits from the State under any state program which provides financial
26 assistance to all municipalities as a matter of right. Such entitlement shall be determined
27 using statutory criteria and formulas generally applicable to municipalities in the State.
28 To the extent that any such program requires municipal financial participation as a
29 condition of state funding, the share for ~~either~~ the Passamaquoddy Tribe ~~or~~, the
30 Penobscot Nation or the Houlton Band of Maliseet Indians may be raised through any
31 source of revenue available to the respective tribe ~~or~~, nation or band, including but
32 without limitation taxation to the extent authorized within its respective Indian territory.
33 In the event that any applicable formula regarding distribution of moneys employs a
34 factor for the municipal real property tax rate, and in the absence of such tax within ~~either~~
35 the Indian territory, the formula applicable to such Indian territory shall be computed
36 using the most current average equalized real property tax rate of all municipalities in the
37 State as determined by the State Tax Assessor. In the event any such formula regarding
38 distribution of moneys employs a factor representing municipal valuation, the valuation
39 applicable to such Indian territory shall be determined by the State Tax Assessor in the
40 manner generally provided by the laws of the State, provided, however, that property
41 owned by or held in trust for either tribe or nation and used for governmental purposes
42 shall be treated for purposes of valuation as like property owned by a municipality.

43 **2. Limitation on eligibility.** In computing the extent to which either the
44 Passamaquoddy Tribe ~~or~~, the Penobscot Nation or the Houlton Band of Maliseet Indians

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1 is entitled to receive state funds under subsection 1, other than funds in support of
2 education, any money received by the respective tribe or nation or band from the United
3 States within substantially the same period for which state funds are provided, for a
4 program or purpose substantially similar to that funded by the State, and in excess of any
5 local share ordinarily required by state law as a condition of state funding, must be
6 deducted in computing any payment to be made to the respective tribe or nation or band
7 by the State. Unless otherwise provided by federal law, in computing the extent to which
8 either the Passamaquoddy Tribe or the Penobscot Nation or the Houlton Band of
9 Maliseet Indians is entitled to receive state funds for education under subsection 1, the
10 state payment must be reduced by 15% of the amount of federal funds for school
11 operations received by the respective tribe or nation or band within substantially the
12 same period for which state funds are provided, and in excess of any local share
13 ordinarily required by state law as a condition of state funding. A reduction in state
14 funding for secondary education may not be made under this section except as a result of
15 federal funds received within substantially the same period and allocated or allocable to
16 secondary education.

17 **3. Eligibility for discretionary funds.** The Passamaquoddy Tribe and the
18 Penobscot Nation and the Houlton Band of Maliseet Indians shall be eligible to apply for
19 any discretionary state grants or loans to the same extent and subject to the same
20 eligibility requirements, including availability of funds, applicable to municipalities in the
21 State.

22 **4. Eligibility of individuals for state funds.** Residents of either the Indian territory
23 territories shall be eligible for and entitled to receive any state grant, loan, unemployment
24 compensation, medical or welfare benefit or other social service to the same extent as and
25 subject to the same eligibility requirements applicable to other persons in the State,
26 provided, however, that in computing the extent to which any person is entitled to receive
27 any such funds, any moneys received by such person from the United States within
28 substantially the same period of time for which state funds are provided and for a
29 program or purpose substantially similar to that funded by the State, shall be deducted in
30 computing any payment to be made by the State.

31 **Sec. C-12. 30 MRSA §6214**, as enacted by PL 1979, c. 732, §§1 and 31, is
32 amended to read:

33 **§6214. Tribal school committees**

34 The Passamaquoddy Tribe and the Penobscot Nation and the Houlton Band of
35 Maliseet Indians are authorized to create respective tribal school committees, in
36 substitution for the committees heretofore provided for under the laws of the State. Such
37 tribal school committees shall operate under the laws of the State applicable to school
38 administrative units. The presently constituted tribal school committee of the respective
39 tribe or nation or band shall continue in existence and shall exercise all the authority
40 heretofore vested by law in it until such time as the respective tribe or nation or band
41 creates the tribal school committee authorized by this section.

42 **Sec. C-13. 30-A MRSA §5681, sub-§7**, as enacted by PL 1989, c. 871, §1 and
43 affected by §22, is amended to read:

R.D.S.

1 7. **Indian territory.** For purposes of state-municipal revenue sharing, the Indian
2 territories of the Passamaquoddy Tribe and, the Penobscot Nation Indian Territories and
3 the Houlton Band of Maliseet Indians shall be treated as if they were municipalities. In
4 the absence of a levy of real and personal property taxes in ~~either or both~~ the Indian
5 territories, the property tax assessment is computed by multiplying the state valuation for
6 the Indian territory for the period for which revenue sharing is being determined by the
7 most current average equalized property tax rate of all municipalities in the State at that
8 time as determined by the State Tax Assessor.

9 **Sec. C-14. Contingent effective date.** This Part takes effect October 1, 2009
10 only if, within 90 days after the adjournment of the First Special Session of the 123rd
11 Legislature, the Secretary of State receives written certification from the Houlton Band
12 Council of the Houlton Band of Maliseet Indians that the band has agreed to the
13 provisions of this Part and that the band specifically consents to and agrees that the State
14 may unilaterally amend without additional consent, agreement or approval from the band
15 the amendments made in this Act to the Maine Revised Statutes, Title 30, section 6206,
16 subsection 1 and section 6207 only if the unilateral amendments take effect on or before
17 October 1, 2009, pursuant to 25 United States Code, Section 1725(e)(2). Copies of the
18 written certification must be submitted by the Secretary of State to the Secretary of the
19 Senate, the Clerk of the House and the Revisor of Statutes.'

20 **SUMMARY**

21 This amendment replaces the bill.

22 This amendment is divided into 3 parts. Part A requires approval by the
23 Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians
24 before Part A can take effect. If the required approvals are received within 90 days after
25 adjournment of the First Special Session of the 123rd Legislature, Part A takes effect 120
26 days after adjournment. Part B requires approval by the Houlton Band of Maliseet
27 Indians before Part B can take effect. If the required approval is received within 90 days
28 after adjournment of the First Special Session of the 123rd Legislature, Part B takes effect
29 120 days after adjournment. Part C requires the approval of the Houlton Band of
30 Maliseet Indians before Part C can take effect. If the required approval is received within
31 90 days after adjournment of the First Special Session of the 123rd Legislature, Part C
32 takes effect October 1, 2009.

33 This amendment amends the membership of the Maine Indian Tribal-State
34 Commission to include 2 members appointed by the Houlton Band of Maliseet Indians
35 and 2 more appointed by the Governor. The amendment deletes language that pertained
36 to the selection of the first chair of the Maine Indian Tribal-State Commission that is no
37 longer necessary. It also includes provisions for the replacement of the chair of the
38 commission.

39 This amendment provides the Houlton Band of Maliseet Indians with the powers and
40 jurisdiction similar to that of the Passamaquoddy Tribe and the Penobscot Nation. It
41 defines Maliseet Indian territory to consist of the 2 parcels that are currently the band's
42 trust lands. This amendment also directs that the band engage in discussions and
43 negotiations to resolve transitional and other issues and directs that the band report to the

1003

COMMITTEE AMENDMENT "A" to H.P. 1587, L.D. 2221

1 joint standing committee of the Legislature having jurisdiction over judiciary matters on
2 the progress of such discussions.

3 This amendment revises the headnote of Title 30 to include Federally Recognized
4 Indian Tribes and directs the Revisor of Statutes to implement the change.

5 **FISCAL NOTE REQUIRED**
6 **(See attached)**



123rd MAINE LEGISLATURE

LD 2221

LR 3476(02)

An Act To Implement the Recommendations of the Tribal-State Work Group

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - Other Funds
Current biennium revenue increase - Other Funds

Fiscal Detail and Notes

Increasing membership for the Houlton Band of Maliseet Indians and the State will result in additional tribal revenue to the Maine Indian Tribal State Commission. It is anticipated that the Houlton Band of Maliseet Indians will contribute \$11,900 annually as tribal revenue once they are officially added to the Maine Indian Tribal State Commission. The commission will incur some additional costs for the four new additional members, including their per diem and travel expenses.

Additional costs to the Department of the Attorney General can be absorbed utilizing existing budgeted resources.