

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2221

H.P. 1587

House of Representatives, February 25, 2008

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

Reported by Representative SIMPSON of Auburn for the Tribal-State Work Group pursuant to Resolve 2007, chapter 142, section 8.

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 30 MRSA §6205-A**, as enacted by PL 1981, c. 675, §§2 and 8, is repealed.

3 **Sec. 2. 30 MRSA §6206-A**, as enacted by PL 1981, c. 675, §§3 and 8, is repealed.

4 **Sec. 3. 30 MRSA §6208-A**, as enacted by PL 1981, c. 675, §§7 and 8, is repealed.

5 **Sec. 4. 30 MRSA §6212**, as amended by PL 1993, c. 600, Pt. A, §24 and affected
6 by §25, is further amended to read:

7 **§6212. Maine Indian Tribal-State Commission**

8 **1. Commission created.** The Maine Indian Tribal-State Commission is established.
9 The commission consists of 9 17 members, 4 8 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 Passamaquoddy Tribe, 2 to be appointed by the
12 Penobscot Nation, 2 to be appointed by the Aroostook Band of Micmacs, 2 to be
13 appointed by the Houlton Band of Maliseet Indians and a chair, to be selected in
14 accordance with subsection 2. The members of the commission, other than the chair, each
15 serve for a term of 3 years and may be reappointed. In the event of the death, resignation
16 or disability of a member, the appointing authority may fill the vacancy for the unexpired
17 term.

18 **2. Chair.** The commission, by a majority vote of its 8 16 members, shall select an
19 individual who is a resident of the State to act as chair. When 8 16 members of the
20 commission by majority vote are unable to select a chair within 120 days of the first
21 meeting of the commission, the Governor, after consulting with the governors of the
22 Penobscot Nation ~~and~~, the Passamaquoddy Tribe, the Aroostook Band of Micmacs and
23 the Houlton Band of Maliseets, shall appoint an interim chair for a period of one year or
24 for the period until the commission selects a chair in accordance with this section,
25 whichever is shorter. In the event of the death, resignation or disability of the chair, the
26 commission may select, by a majority vote of its 8 16 remaining members, a new chair.
27 When the commission is unable to select a chair within 120 days of the death, resignation
28 or disability, the Governor, after consulting with the governors of the Penobscot Nation
29 ~~and~~, the Passamaquoddy Tribe, the Aroostook Band of Micmacs and the Houlton Band of
30 Maliseets, shall appoint an interim chair for a period of one year or for the period until
31 the commission selects a chair in accordance with this section, whichever is shorter. The
32 chair is a full-voting member of the commission and, except when appointed for an
33 interim term, shall serve for 4 years.

34 **3. Responsibilities.** In addition to the responsibilities set forth in this Act, the
35 commission shall continually review the effectiveness of this Act, The Micmac
36 Settlement Act and the Omnibus Tribal Sovereignty Act and the social, economic and
37 legal relationship between the Passamaquoddy Tribe ~~and~~, the Penobscot Nation, the
38 Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians and the State and
39 shall make ~~such reports~~ a report and recommendations to the Legislature, the
40 Passamaquoddy Tribe ~~and~~, the Penobscot Nation, the Houlton Band of Maliseet Indians

1 and the Aroostook Band of Micmacs by January 31st of every other year, beginning in
2 2009, or more often as it determines appropriate. The commission may propose to the
3 Legislature, at the start of each session, legislation necessary to implement its
4 recommendations.

5 ~~Seven~~ Eleven members constitute a quorum of the commission and a decision or action of
6 the commission is not valid unless 5 9 members vote in favor of the action or decision.

7 **4. Personnel, fees, expenses of commissioners.** The commission may employ
8 personnel as it considers necessary and desirable in order to effectively discharge its
9 duties and responsibilities. These employees are not subject to state personnel laws or
10 rules.

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

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

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

25 **7. Mandatory, nonbinding mediation.** Before the State or any of its political
26 subdivisions may commence litigation or an administrative action involving
27 interpretation of this Act, The Micmac Settlement Act or the Omnibus Tribal Sovereignty
28 Act, it must submit the dispute to the commission for mediation. The commission shall
29 mediate the dispute between the parties or shall designate a neutral 3rd party to conduct
30 the process. All parties to mediation before the commission or its designated neutral 3rd
31 party must make a good faith effort to inform the commission and the other parties
32 regarding the nature of the dispute and to resolve the dispute prior to commencement of
33 litigation or administrative action. Unless the parties otherwise agree, reasonable fees
34 and expenses incurred by the commission in connection with any mediation must be
35 apportioned and paid in equal shares by each party. Unless the commission consents to
36 an extension, all mediations must be commenced within 60 days, and completed within
37 90 days, of the commission's receipt of notice of dispute. At the conclusion of the
38 mediation, the commission shall indicate in writing whether the parties have resolved all
39 or parts of the dispute and shall describe the terms of the resolution. If no resolution is
40 reached, the commission shall indicate that fact in writing. Notwithstanding any law to
41 the contrary, any statute of limitations applicable to the issues included in the dispute is
42 tolled until the commission issues a written determination. The commission may adopt

1 rules to carry out this subsection. Rules adopted pursuant to this subsection are routine
2 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3 **Sec. 5. 30 MRSA §6215** is enacted to read:

4 **§6215. Legislative, regulatory and policy changes by the State**

5 A state agency shall provide for a timely and meaningful consultation with an Indian
6 tribe, nation or band before proposing, adopting or implementing legislation or
7 administrative measures that may materially affect the Indian tribe, nation or band.

8 **Sec. 6. 30 MRSA §7204**, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

9 **Sec. 7. 30 MRSA §7205**, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

10 **Sec. 8. 30 MRSA §7206**, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

11 **Sec. 9. 30 MRSA §7207**, as enacted by PL 1989, c. 148, §§3 and 4, is repealed.

12 **Sec. 10. 30 MRSA c. 605** is enacted to read:

13 **CHAPTER 605**

14 **OMNIBUS TRIBAL SOVEREIGNTY ACT OF 2008**

15 **§7501. Short title**

16 This chapter may be known and cited as "the Omnibus Tribal Sovereignty Act."

17 **§7502. Legislative finding and declaration of policy**

18 The Legislature finds and declares the following.

19 In 1980 the State enacted AN ACT to Implement the Maine Indian Claims
20 Settlement, referred to in this section as "the implementing act." The implementing act
21 included an agreement reached with the Passamaquoddy Tribe and the Penobscot Indian
22 Nation that settled a land claim asserted by the Indians.

23 State and federal courts have since interpreted the language of the implementing act
24 as removing the tribal sovereignty of the Passamaquoddy Tribe and the Penobscot Indian
25 Nation. It was not the intent of the State to remove the tribal sovereignty of these tribal
26 governments. While the implementing act confers state municipal status upon the
27 Passamaquoddy Tribe and the Penobscot Indian Nation, this status was intended to limit,
28 not terminate, the tribes' own inherent sovereign authorities.

29 The agreement entered into between the State and the Passamaquoddy Tribe and the
30 Penobscot Indian Nation also recognizes the ongoing relationship between the
31 Passamaquoddy Tribe and the Penobscot Indian Nation and the Federal Government, and

1 the implementing act should not be interpreted to interfere with or terminate that trust
2 relationship.

3 The Houlton Band of Maliseet Indians in 1980 and the Aroostook Band of Micmacs
4 in 1991 also settled land claims with the State. However, while the State agreed to
5 support federal recognition for both of these tribes, neither tribe was provided the same
6 jurisdictional authority over its lands that the Passamaquoddy Tribe and the Penobscot
7 Indian Nation have. The Aroostook Band of Micmacs and the Houlton Band of Maliseet
8 Indians have functioning governments and land in trust for the benefit of their members;
9 it is therefore fair and just, pursuant to the authority granted by Congress in 25 United
10 States Code, Section 1725(e)(2) and the federal Aroostook Band of Micmacs Settlement
11 Act, Public Law 102-171, Section 6(d), 105 Stat. 1143, 1148 (1991), to afford both of
12 these tribes the same jurisdictional settlement provided to the Passamaquoddy Tribe and
13 the Penobscot Indian Nation and to recognize their inherent sovereign authority.

14 In the years since the enactment of the implementing act, the tribes have developed
15 tribal governments that provide a substantial range of services to thousands of tribal
16 members. Also during that time considerable state and tribal resources have been
17 expended in legal disputes over the legal status of the tribes under the implementing act
18 and The Micmac Settlement Act. These disputes have caused a substantial economic and
19 social hardship for the tribes.

20 This chapter represents a good faith effort on the part of the Legislature to reevaluate
21 the effectiveness of the implementing act and The Micmac Settlement Act and provide
22 fair and just revisions. Determining the effectiveness of the implementing act and The
23 Micmac Settlement Act will require continuous and ongoing review. The revisions made
24 to the implementing act and The Micmac Settlement Act by the Second Regular Session
25 of the 123rd Legislature should not be construed as conclusive of any rights or
26 obligations of either the State or the tribes.

27 It is the purpose of this Act to clarify the sovereignty of the tribal governments.

28 **§7503. Powers, privileges and immunities**

29 **I. Applicable law.** The following provisions of AN ACT to Implement the Maine
30 Indian Claims Settlement apply to the Houlton Band of Maliseet Indians and the
31 Aroostook Band of Micmacs and their respective trust lands:

- 32 A. Section 6206;
- 33 B. Section 6207;
- 34 C. Section 6209-B;
- 35 D. Section 6210;
- 36 E. Section 6211; and
- 37 F. Section 6214.

1 and The Micmac Settlement Act that provide different powers, privileges and immunities
2 for the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs or that are
3 not consistent with federal law.

4 This bill expands the membership of the Maine Indian Tribal-State Commission to
5 include 2 representatives of the Aroostook Band of Micmacs and 2 representatives of the
6 Houlton Band of Maliseet Indians, as well as 4 additional representatives of the State. It
7 expands the duties of the commission to include a continual review of the effectiveness of
8 AN ACT to Implement the Maine Indian Claims Settlement, The Micmac Settlement Act
9 and the Omnibus Tribal Sovereignty Act. It authorizes the commission to submit
10 legislation directly to the Legislature. It also requires that before the State or any political
11 subdivision commences a court or administrative action involving interpretation of AN
12 ACT to Implement the Maine Indian Claims Settlement, The Micmac Settlement Act or
13 the Omnibus Tribal Sovereignty Act, the dispute must first be presented to the
14 commission for mediation. The mediation provisions are based on current Maine Rules
15 of Civil Procedure concerning mediation.

16 This bill requires every state agency to provide for a timely and meaningful
17 consultation with each Indian tribe, nation or band before proposing, adopting or
18 implementing legislation or administrative measures that may materially affect the Indian
19 tribe, nation or band.

20 This bill provides that the laws governing freedom of access do not apply to the
21 Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy
22 Tribe and the Penobscot Indian Nation.

23 This bill includes a contingent date section to provide that it does not take effect
24 unless approved by the Houlton Band of Maliseet Indians, the Aroostook Band of
25 Micmacs, the Penobscot Indian Nation and the Passamaquoddy Tribe within 90 days after
26 the adjournment of the Second Regular Session of the 123rd Legislature. If the bill is
27 approved as required it will take effect 120 days after adjournment of the Second Regular
28 Session of the 123rd Legislature.