

MAINE STATE LEGISLATURE

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EMG
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Date: 3/11/10

(Filing No. H-714)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
124TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 333, L.D. 445, Bill, "An Act To Improve Tribal-State Relations"

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

'PART A

Sec. A-1. 3 MRSA §1, 2nd ¶, as enacted by PL 1983, c. 481, is amended to read:

The Tribal Clerk of the Penobscot Indian Nation shall, on or before the day preceding the meeting of the Legislature, furnish to the Clerk of the preceding House of Representatives a certification, under the seal of the Nation, of the name and residence of the Representative-elect of the Penobscot Indian Nation to the Legislature. The Tribal Clerk of the Passamaquoddy Tribe of the reservation from which the Representative-elect of that tribe has been chosen shall, on or before the day preceding the meeting of the Legislature, furnish the Clerk of the preceding House of Representatives a certification of the name and residence of the Representative-elect of the Passamaquoddy Tribe to the Legislature. Beginning with the 126th Legislature, the Tribal Clerk of the Houlton Band of Maliseet Indians shall, on or before the day preceding the meeting of the Legislature, furnish to the Clerk of the preceding House of Representatives a certification of the name and residence of the Representative-elect of the Houlton Band of Maliseet Indians to the Legislature.

Sec. A-2. 3 MRSA §2, 8th ¶, as amended by PL 2009, c. 431, §1, is further amended to read:

The member of the Penobscot Indian Nation ~~and~~, the member of the Passamaquoddy Indian Tribe and, beginning with the Second Regular Session of the 125th Legislature, the member of the Houlton Band of Maliseet Indians elected to represent their tribes at the Legislature are entitled to receive a salary equal to the salary of members of the Senate and the House of Representatives, including a cost-of-living adjustment, for each regular session and allowance for meals, constituent service, housing and travel expenses

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1 to the same extent as members of the House of Representatives for attendance at each
2 legislative session or authorized committee meeting. For the duration of any special
3 session of the Legislature, they are entitled to receive the same per diem payment and
4 allowances, including housing, meal and travel expenses, as any member of the Senate
5 and House of Representatives.

6 **Sec. A-3. Initial Representative of the Houlton Band of Maliseet Indians.**
7 The Tribal Clerk of the Houlton Band of Maliseet Indians shall, on or before the day
8 preceding the meeting of the Second Regular Session of the 125th Legislature, furnish to
9 the Clerk of the House of Representatives a certification of the name and residence of the
10 Representative-elect of the Houlton Band of Maliseet Indians to the Legislature.

11 **PART B**

12 **Sec. B-1. 30 MRSA §6203, sub-§8,** as amended by PL 1987, c. 712, §§1 and 2,
13 is further amended to read:

14 **8. Penobscot Indian Reservation.** "Penobscot Indian Reservation" means the
15 islands in the Penobscot River reserved to the Penobscot Nation by agreement with the
16 States of Massachusetts and Maine consisting solely of Indian Island, also known as Old
17 Town Island, and all islands in that river northward thereof that existed on June 29, 1818,
18 excepting any island transferred to a person or entity other than a member of the
19 Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act.
20 If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the
21 secretary on its behalf, that land shall must be included within the Penobscot Indian
22 Reservation.

23 The "Penobscot Indian Reservation" includes the following parcels of land ~~which~~ that
24 have been or may be acquired by the Penobscot Nation from Bangor Pacific Hydro
25 Associates as compensation for flowage of reservation lands by the West Enfield dam: A
26 parcel located on the Mattagamom Gate Road and on the East Branch of the Penobscot
27 River in T.6 R.8 WELS, which is a portion of the "Mattagamom Lake Dam Lot" and has
28 an area of approximately 24.3 acres, and Smith Island in the Penobscot River, which has
29 an area of approximately one acre.

30 The "Penobscot Indian Reservation" also includes a certain parcel of land located in
31 Argyle, Penobscot County consisting of approximately 714 acres known as the Argyle
32 East Parcel and more particularly described as Parcel One in a deed from the Penobscot
33 Indian Nation to the United States of America dated November 22, 2005 and recorded at
34 the Penobscot County Registry of Deeds in Book 10267, Page 265.

35 **Sec. B-2. Effective date.** That section of this Part that amends the Maine Revised
36 Statutes, Title 30, section 6203, subsection 8 does not take effect unless, within 90 days
37 of the adjournment of the Second Regular Session of the 124th Legislature, the Secretary
38 of State receives written certification by the Tribal Chief and the Council of the
39 Penobscot Nation that the nation has agreed to the provisions of this Part, pursuant to 25
40 United States Code, Section 1725(e), copies of which must be submitted by the Secretary
41 of State to the Secretary of the Senate, the Clerk of the House of Representatives and the
42 Revisor of Statutes; except that in no event may that section of this Part that amends the

1 Maine Revised Statutes, Title 30, section 6203, subsection 8 become effective until 100
2 days after the adjournment of the Second Regular Session of the 124th Legislature.

3 **PART C**

4 **Sec. C-1. 5 MRSA §1664, sub-§3-B** is enacted to read:

5 **3-B. Maine Indian Tribal-State Commission appropriations or allocations.** If
6 the Governor submits legislation setting forth appropriations or allocations for the Maine
7 Indian Tribal-State Commission that differ from the full budget proposal developed under
8 Title 30, section 6212, subsection 6, the Governor shall simultaneously submit a report to
9 the joint standing committee of the Legislature having jurisdiction over appropriations
10 and financial affairs and the joint standing committee of the Legislature having
11 jurisdiction over judiciary matters explaining why the Governor's budget legislation
12 differs from that proposal.

13 **Sec. C-2. 5 MRSA §1665, sub-§1**, as amended by PL 2005, c. 601, §2, is further
14 amended to read:

15 **1. Expenditure and appropriation requirements.** On or before September 1st of
16 the even-numbered years, all departments and other agencies of the State Government
17 and corporations and associations receiving or desiring to receive state funds under the
18 provisions of law shall prepare, in the manner prescribed by the State Budget Officer, and
19 submit to the officer estimates of their expenditure and appropriation requirements for
20 each fiscal year of the ensuing biennium. The expenditure estimates must be classified to
21 set forth the data by funds, organization units, character and objects of expenditure. The
22 organization units may be subclassified by functions and activities, or in any other
23 manner, at the discretion of the State Budget Officer.

24 All departments and other agencies receiving or desiring to receive state funds from the
25 Highway Fund shall submit to the officer estimates of their expenditure and appropriation
26 requirements for each fiscal year of the ensuing biennium that do not exceed the Highway
27 Fund appropriation of the previous fiscal year multiplied by one plus the average real
28 personal income growth rate or 2.75%, whichever is less. The Highway Fund highway
29 and bridge improvement accounts are exempt from this spending limitation.

30 The State Budget Officer shall request that the Governor provide the budget proposal for
31 the Maine Indian Tribal-State Commission developed pursuant to Title 30, section 6212,
32 subsection 6.

33 **Sec. C-3. 30 MRSA §6212, sub-§6**, as enacted by PL 1993, c. 600, Pt. A, §24
34 and affected by §25, is amended to read:

35 **6. Funding.** The commission may receive and accept, from any source, allocations,
36 appropriations, loans, grants and contributions of money or other things of value to be
37 held, used or applied to carry out this chapter, subject to the conditions upon which the
38 loans, grants and contributions may be made, including, but not limited to,
39 appropriations, allocations, loans, grants or gifts from a private source, federal agency or
40 governmental subdivision of the State or its agencies. Notwithstanding Title 5, chapter
41 149, upon receipt of a written request from the commission, the State Controller shall pay

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1 the commission's full state allotment for each fiscal year to meet the estimated annual
2 disbursement requirements of the commission.

3 The Governor or the Governor's designee and the chief executive elected leader or the
4 chief executive elected leader's designee of the following tribes shall communicate to
5 produce a proposed biennial budget for the commission and to discuss any adjustments to
6 funding:

- 7 A. The Houlton Band of Maliseet Indians;
- 8 B. The Passamaquoddy Tribe; and
- 9 C. The Penobscot Nation.

10 **Sec. C-4. Effective date.** That section of this Part that amends the Maine Revised
11 Statutes, Title 30, section 6212, subsection 6 does not take effect unless, within 90 days
12 of the adjournment of the Second Regular Session of the 124th Legislature, the Secretary
13 of State receives the following:

14 1. Written certification by the Houlton Band Council of the Houlton Band of
15 Maliseet Indians that the band has agreed to the provisions of that section of this Part that
16 amends Title 30, section 6212, subsection 6, pursuant to 25 United States Code, Section
17 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of
18 the Senate, the Clerk of the House of Representatives and the Revisor of Statutes;

19 2. Written certification by the Joint Tribal Council of the Passamaquoddy Tribe that
20 the tribe has agreed to the provisions of that section of this Part that amends Title 30,
21 section 6212, subsection 6, pursuant to 25 United States Code, Section 1725(e), copies of
22 which must be submitted by the Secretary of State to the Secretary of the Senate, the
23 Clerk of the House of Representatives and the Revisor of Statutes; and

24 3. Written certification by the Tribal Chief and the Council of the Penobscot Nation
25 that the nation has agreed to the provisions of that section of this Part that amends Title
26 30, section 6212, subsection 6, pursuant to 25 United States Code, Section 1725(e),
27 copies of which must be submitted by the Secretary of State to the Secretary of the
28 Senate, the Clerk of the House of Representatives and the Revisor of Statutes.

29 In no event may that section of this Part that amends Title 30, section 6212,
30 subsection 6 become effective until 100 days after the adjournment of the Second Regular
31 Session of the 124th Legislature.

32 **PART D**

33 **Sec. D-1. 30-A MRSA §2201**, as amended by PL 2003, c. 696, §13, is further
34 amended to read:

35 **§2201. Purpose**

36 It is the purpose of this chapter to permit public agencies, ~~as defined in section 2202~~
37 of the State or any adjoining state, including, but not limited to, municipalities, counties,
38 and school administrative units, and state federal agencies, and Indian tribes and their
39 political subdivisions to make the most efficient use of their powers by enabling them to
40 cooperate on a basis of mutual advantage and thereby to provide services and facilities

1 within the State in a manner and pursuant to forms of governmental organization that will
2 accord best with geographic, economic, population and other factors influencing the
3 needs and development of communities.

4 **Sec. D-2. 30-A MRSA §2202, sub-§2** is enacted to read:

5 **2. Party.** "Party" means a public agency or the following federally recognized
6 Indian tribes or their political subdivisions:

7 A. The Passamaquoddy Tribe; and

8 B. The Penobscot Nation.

9 **Sec. D-3. 30-A MRSA §2203**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
10 §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
11 amended to read:

12 **§2203. Joint exercise of powers**

13 Any power or powers, privileges or authority exercised or capable of exercise by a
14 ~~public agency of the State party to an agreement under this chapter~~ may be exercised and
15 enjoyed jointly or cooperatively with any other ~~public agency of this State, or of the~~
16 ~~Federal Government party~~ to the extent that federal laws, when applicable, permit the
17 joint or cooperative exercise. When acting jointly or cooperatively with any ~~public~~
18 ~~agency party~~, any agency of State Government may exercise all of the powers, privileges
19 and authority conferred by this chapter upon a public agency.

20 **1. Agreement.** Any 2 or more ~~public agencies parties~~ may enter into agreements
21 with one another for joint or cooperative action under this chapter. The governing bodies
22 of the participating ~~public agencies parties~~ must take appropriate action by ordinance,
23 resolution or other action under law before any such agreement may become effective.

24 **2. Specifications.** Any agreement made under this chapter must specify the
25 following:

26 A. Its duration;

27 B. The precise organization, composition and nature of any separate legal or
28 administrative entity created by the agreement together with the powers delegated to
29 that entity, provided the entity may be legally created;

30 C. Its purpose;

31 D. The manner of financing the joint or cooperative undertaking and of establishing
32 and maintaining a budget for the undertaking;

33 E. The method to be used to partially or completely terminate the agreement and to
34 dispose of property upon termination; and

35 F. Any other necessary and proper matters.

36 **3. Additional items.** If the agreement does not establish a separate legal entity to
37 conduct the joint or cooperative undertaking, the agreement, in addition to the items listed
38 in subsection 2, must contain the following.

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1 A. It must provide for an administrator or a joint board responsible for
2 administering the joint or cooperative undertaking. In the case of a joint board, all
3 ~~public agencies party~~ parties to the agreement must be represented.

4 B. It must provide the manner of acquiring, holding and disposing of real and
5 personal property used in the joint or cooperative undertaking.

6 **4. Responsibility.** No agreement made under this chapter may relieve any ~~public~~
7 ~~agency party~~ of any obligation or responsibility imposed upon it by law except to the
8 extent of actual and timely performance by a joint board or other legal or administrative
9 entity created by an agreement made under this chapter. This performance may be
10 offered in satisfaction of the obligation or responsibility.

11 **5. Liability.** An action is maintainable against any ~~public agency party~~ whose
12 default, failure of performance or other conduct caused or contributed to the incurring of
13 damage or liability by the other ~~public agencies~~ parties jointly.

14 **6. Notice to regional councils.** Any agreement made under this chapter is subject to
15 the reporting requirements of section 2342, subsection 6, if applicable.

16 **7. Liberal construction.** It being the intent of the Legislature to avoid the
17 proliferation of special purpose districts and inflexible enabling laws, this chapter ~~shall~~
18 must be liberally construed toward that end.

19 **8. Limitation.** Notwithstanding any other provision of this chapter:

20 A. No powers, privileges or authority may be jointly or cooperatively exercised
21 unless each type of power, privilege or authority exercised is capable of being
22 exercised by at least one of the parties within the entire jurisdictional area of the
23 ~~contract agreement~~, or by each of the several parties within each of their several
24 jurisdictions if all of the several jurisdictions make up the total jurisdictional area of
25 the ~~contract agreement~~; or

26 B. No essential legislative powers, taxing authority or eminent domain power may
27 be delegated by ~~contract agreement~~ to a joint authority or administrative entity.

28 **Sec. D-4. 30-A MRSA §2206**, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C,
29 §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further
30 amended to read:

31 **§2206. Funds, personnel and services**

32 Any ~~public agency party~~ entering into an agreement under this chapter may
33 appropriate funds and may sell, lease, give or otherwise supply the administrative joint
34 board or other legal or administrative entity created to operate the joint or cooperative
35 undertaking by providing any personnel or services for that purpose that it may legally
36 furnish.

37 **Sec. D-5. 30-A MRSA §2208** is enacted to read:

1 **§2208. Agreements involving federally recognized Indian tribes**

2 This chapter does not apply to and has no effect on any agreement to which any
3 federally recognized Indian tribe is a party if the agreement has not been entered into
4 under the authority of this chapter.'

5 **SUMMARY**

6 This amendment replaces the bill.

7 Part A of this amendment makes statutory changes necessary to include a
8 representative of the Houlton Band of Maliseet Indians in the Maine House of
9 Representatives beginning with the Second Regular Session of the 125th Legislature in
10 January 2012.

11 This amendment requires the Tribal Clerk of the Houlton Band of Maliseet Indians to
12 furnish the outgoing Clerk of the House of Representatives with a certification of the
13 name and residence of the Representative-elect of the Houlton Band of Maliseet Indians
14 to the Legislature.

15 This amendment adds the Representative of the Houlton Band of Maliseet Indians to
16 the compensation language for members of the House of Representatives.

17 Part B of this amendment adds a 714-acre parcel of land located in a portion of the
18 unorganized territory known as Argyle East Parcel in Penobscot County to the Penobscot
19 Indian Reservation. This provision takes effect only if approved by the Penobscot Nation
20 and certification of the approval is received by the Secretary of State within 90 days of
21 the adjournment of the Second Regular Session of the 124th Legislature.

22 Part C of this amendment addresses the process of developing the budget for the
23 Maine Indian Tribal-State Commission. It amends the commission's funding language to
24 direct the chief executive elected leaders, or their designees, of the signatories to An Act
25 to Implement the Maine Indian Claims Settlement, referred to as the Maine Implementing
26 Act, to communicate to produce a proposed biennial budget and to discuss any budget
27 adjustments. The proposed budget is subject to each tribe's and the State's legislative
28 budget process. For the purposes of this budget process, the participants are the Houlton
29 Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation and the State.
30 These changes to the Maine Implementing Act take effect only if approved by the
31 Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation
32 and certification of the approval is received by the Secretary of State within 90 days of
33 the adjournment of the Second Regular Session of the 124th Legislature. Part C of this
34 amendment also provides that if the Governor submits legislation setting forth
35 appropriations or allocations for the Maine Indian Tribal-State Commission that differ
36 from the full budget proposal developed under the Maine Revised Statutes, Title 30,
37 section 6212, subsection 6, the Governor shall simultaneously submit a report to the joint
38 standing committees of the Legislature having jurisdiction over appropriations and
39 financial affairs and judiciary matters explaining why the Governor's budget legislation
40 differs from that proposal. It also requires the State Budget Officer to request that the
41 Governor provide the budget proposal for the Maine Indian Tribal-State Commission
42 developed pursuant to Title 30, section 6212, subsection 6.

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COMMITTEE AMENDMENT "B" to H.P. 333, L.D. 445

1 Part D of this amendment clarifies that the laws specifically addressing interlocal
2 cooperation agreements expressly include the federally recognized Indian tribes of the
3 Passamaquoddy Tribe and the Penobscot Nation. The Passamaquoddy Tribe and the
4 Penobscot Nation and their political subdivisions may participate in the activities
5 authorized under those laws as parties to such agreements. This amendment also clarifies
6 that those laws do not apply to and do not affect any agreement to which a federally
7 recognized Indian tribe is a party if the agreement has not been entered into under the
8 authority of those laws.

FISCAL NOTE REQUIRED
(See attached)



124th MAINE LEGISLATURE

LD 445

LR 1033(04)

An Act To Improve Tribal-State Relations

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

Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Net Cost (Savings)				
General Fund	\$0	\$0	\$81,553	\$45,844
Appropriations/Allocations				
General Fund	\$0	\$0	\$81,553	\$45,844

Fiscal Detail and Notes

This Legislature will incur additional General Fund costs totaling \$81,553 in fiscal year 2011-12 and \$45,844 in fiscal year 2012-13 for the costs associated with adding one tribal representative with compensation similar to other members of the House of Representatives starting with the 125th Legislature, 2nd Regular Session. The estimated amounts include \$45,000 for the costs of renovating the House Chamber to accommodate the additional member. This amount reflects the lower end of the range of estimated costs that will vary from \$45,000 to \$100,000 depending on the options chosen.

The additional costs to the Department of Administrative and Financial Services and the Executive Department can be absorbed utilizing existing budgeted resources.