

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1377

H.P. 967

House of Representatives, April 2, 2009

**An Act To Amend the 1980 Maine Implementing Act To Authorize
the Establishment of a Tribal Court for the Houlton Band of
Maliseet Indians and Related Matters**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CLEARY of Houlton.
Cosponsored by Senator BLISS of Cumberland and
Representatives: BEAULIEU of Auburn, BRYANT of Windham, DILL of Cape Elizabeth,
HILL of York, HUNT of Buxton, KRUGER of Thomaston, PRIEST of Brunswick, STEVENS
of Bangor.

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

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

4 **§6206-B. Law enforcement powers of Houlton Band of Maliseet Indians**

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

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

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

17 **4. Powers, duties and training requirements.** Law enforcement officers appointed
18 by the Houlton Band of Maliseet Indians pursuant to this section possess the same
19 powers, enjoy the same immunities and are subject to the same duties, limitations and
20 training requirements as other corresponding law enforcement officers under the laws of
21 the State.

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

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

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

30 **2-A. Payments in lieu of taxes; authority.** Any municipality in which Houlton
31 Band Trust Land is located has the authority, at its sole discretion, to enter into
32 agreements with the Houlton Band of Maliseet Indians to accept other funds or other
33 things of value that are obtained by or for the Houlton Band of Maliseet Indians by reason
34 of the trust status of the trust land as replacement for payments in lieu of taxes.

35 Any agreement between the Houlton Band of Maliseet Indians and the municipality must
36 be jointly executed by persons duly authorized by the Houlton Band of Maliseet Indians
37 and the municipality and must set forth the jointly agreed value of the funds or other
38 things identified serving as replacement of payments in lieu of taxes and the time period

1 over which such funds or other things may serve in lieu of the obligations of the Houlton
2 Band of Maliseet Indians provided in this section.

3 **Sec. 3. 30 MRSA §6209-C** is enacted to read:

4 **§6209-C. Jurisdiction of the Houlton Band of Maliseet Indians Tribal Court**

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

8 A. Criminal offenses for which the maximum potential term of imprisonment does
9 not exceed one year and the maximum potential fine does not exceed \$5,000 and that
10 are committed on the Houlton Band Trust Land by a member of any federally
11 recognized Indian tribe, nation, band or other group, except when committed against
12 a person who is not a member of any federally recognized Indian tribe, nation, band
13 or other group or against the property of a person who is not a member of any
14 federally recognized Indian tribe, nation, band or other group;

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

20 C. Indian child custody proceedings to the extent authorized by applicable federal
21 law; and

22 D. Other domestic relations matters, including marriage, divorce and support,
23 between members of the Houlton Band of Maliseet Indians, both of whom reside
24 within the Houlton Band Trust Land.

25 The governing body of the Houlton Band of Maliseet Indians shall decide whether to
26 exercise or terminate the exercise of the exclusive jurisdiction authorized by this
27 subsection. Until the Houlton Band of Maliseet Indians notifies the Attorney General that
28 the band has decided whether to exercise the exclusive jurisdiction over criminal,
29 juvenile, civil and domestic matters described in this subsection, the State has concurrent
30 jurisdiction over those matters. If the Houlton Band of Maliseet Indians chooses not to
31 exercise, or chooses to terminate its exercise of, exclusive jurisdiction over the criminal,
32 juvenile, civil and domestic matters described in this subsection, the State has concurrent
33 jurisdiction over those matters until the Houlton Band of Maliseet Indians chooses to
34 exercise its exclusive jurisdiction. While the State has concurrent jurisdiction, it shall
35 coordinate its law enforcement activities within the Houlton Band Trust Land with the
36 Houlton Band of Maliseet Indians authorities. If there is any conflict between state and
37 Houlton Band of Maliseet Indians law enforcement authorities regarding activities within
38 the Houlton Band Trust Land, state law enforcement authorities shall defer to the Houlton
39 Band of Maliseet Indians authorities. When the Houlton Band of Maliseet Indians
40 chooses to reassert jurisdiction it must first provide 30 days' notice to the Attorney
41 General. Except as provided in paragraphs A and B, all laws of the State relating to
42 criminal offenses and juvenile crimes apply within the Houlton Band Trust Land and the
43 State has exclusive jurisdiction over those offenses and crimes.

1 **2. Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction
2 under subsection 1, paragraphs A and B, the Houlton Band of Maliseet Indians is deemed
3 to be enforcing tribal law of the Houlton Band of Maliseet Indians. The definitions of the
4 criminal offenses and juvenile crimes and the punishments applicable to those criminal
5 offenses and juvenile crimes over which the Houlton Band of Maliseet Indians has
6 exclusive jurisdiction under this section are governed by the laws of the State. Issuance
7 and execution of criminal process are also governed by the laws of the State. The
8 procedures for the establishment and operation of tribal forums created to effectuate the
9 purposes of this section are governed by federal statute, including, without limitation, the
10 provisions of 25 United States Code, Sections 1301 to 1303 and rules and regulations
11 generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal
12 Indian reservations.

13 **3. Lesser included offenses in state courts.** In any criminal proceeding in the courts
14 of the State in which a criminal offense under the exclusive jurisdiction of the Houlton
15 Band of Maliseet Indians constitutes a lesser included offense of the criminal offense
16 charged, the defendant may be convicted in the courts of the State of the lesser included
17 offense. A lesser included offense is as defined under the laws of the State.

18 **4. Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or
19 juvenile crime over which the Houlton Band of Maliseet Indians has exclusive
20 jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile
21 crime arising out of the same conduct over which the State has exclusive jurisdiction. A
22 prosecution for a criminal offense or juvenile crime over which the State has exclusive
23 jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out
24 of the same conduct, over which the Houlton Band of Maliseet Indians has exclusive
25 jurisdiction under this section. The determination of an issue of fact in a criminal or
26 juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in
27 a criminal or juvenile proceeding conducted in a state court. The determination of an
28 issue of fact in a criminal or juvenile proceeding conducted in a state court does not
29 constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal
30 forum.

31 **5. Indian child custody proceeding in Houlton Band of Maliseet Indians Tribal**
32 **Court.** When an Indian child custody proceeding that is authorized by applicable federal
33 law and this chapter is properly before the Houlton Band of Maliseet Indians Tribal Court
34 and one or more parties reside further than 50 miles from the Houlton Band of Maliseet
35 Indians administrative office in Littleton, upon agreement by all the parties and the court,
36 the Houlton Band of Maliseet Indians Tribal Court may sit in any appropriate location
37 within the State to hear the Indian child custody proceeding.

38 **Sec. 4. 30 MRSA §6210,** as amended by PL 1995, c. 388, §7 and affected by §8,
39 is further amended to read:

40 **§6210. Law enforcement on Indian reservations, within Indian territory and trust**
41 **lands**

42 **1. Exclusive authority of tribal law enforcement officers.** Law enforcement
43 officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive

1 authority to enforce, within their respective Indian territories, ordinances adopted under
2 section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian
3 reservations, the criminal, juvenile, civil and domestic relations laws over which the
4 Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209-A,
5 subsection 1 and section 6209-B, subsection 1, respectively.

6 **1-A. Exclusive authority of Maliseet tribal law enforcement officers.** Law
7 enforcement officers appointed by the Houlton Band of Maliseet Indians have exclusive
8 authority to enforce on Houlton Band Trust Land the criminal, juvenile, civil and
9 domestic relations laws over which the Houlton Band of Maliseet Indians has jurisdiction
10 under section 6209-C, subsection 1.

11 **2. Joint authority of tribal and state law enforcement officers.** Law enforcement
12 officers appointed by the Passamaquoddy Tribe or the Penobscot Nation have the
13 authority within their respective Indian territories and the Houlton Band of Maliseet
14 Indians have the authority within their trust lands and state and county law enforcement
15 officers have the authority within both Indian territories and the Houlton Band Trust Land
16 to enforce rules or regulations adopted by the commission under section 6207, subsection
17 3 and to enforce all laws of the State other than those over which the Passamaquoddy
18 Tribe or the Penobscot Nation or the Houlton Band of Maliseet Indians has exclusive
19 jurisdiction under section 6209-A, subsection 1 and, section 6209-B, subsection 1, and
20 section 6209-C, respectively.

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

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

29 **Sec. 5. 30 MRSA §6211,** as amended by PL 1997, c. 626, §§1 and 2 and affected
30 by §3, is further amended to read:

31 **§6211. Eligibility of Indian tribes and state funding**

32 **1. Eligibility generally.** The Passamaquoddy Tribe ~~and, the~~ Penobscot Nation shall
33 be and the Houlton Band of Maliseet Indians are eligible for participation and entitled to
34 receive benefits from the State under any state program ~~which that~~ provides financial
35 assistance to all municipalities as a matter of right. Such entitlement shall must be
36 determined using statutory criteria and formulas generally applicable to municipalities in
37 the State. To the extent that any such program requires municipal financial participation
38 as a condition of state funding, the share for ~~either~~ the Passamaquoddy Tribe or the
39 Penobscot Nation or the Houlton Band of Maliseet Indians may be raised through any
40 source of revenue available to the respective tribe or nation or band, including but
41 without limitation taxation to the extent authorized within its respective Indian territory.
42 In the event that any applicable formula regarding distribution of ~~moneys~~ money employs

1 a factor for the municipal real property tax rate, and in the absence of such tax within
2 ~~either the~~ Indian territory, the formula applicable to such Indian territory ~~shall~~ must be
3 computed using the most current average equalized real property tax rate of all
4 municipalities in the State as determined by the State Tax Assessor. In the event any
5 such formula regarding distribution of ~~moneys~~ money employs a factor representing
6 municipal valuation, the valuation applicable to such Indian territory ~~shall~~ must be
7 determined by the State Tax Assessor in the manner generally provided by the laws of the
8 State, ~~provided, however, that~~ as long as property owned by or held in trust for ~~either a~~
9 ~~tribe or, nation or band~~ and used for governmental purposes ~~shall be~~ is treated for
10 purposes of valuation as like property owned by a municipality.

11 **2. Limitation on eligibility.** In computing the extent to which either the
12 Passamaquoddy Tribe ~~or, the Penobscot Nation or the Houlton Band of Maliseet Indians~~
13 is entitled to receive state funds under subsection 1, other than funds in support of
14 education, any money received by the respective tribe ~~or, nation or band~~ from the United
15 States within substantially the same period for which state funds are provided, for a
16 program or purpose substantially similar to that funded by the State, and in excess of any
17 local share ordinarily required by state law as a condition of state funding, must be
18 deducted in computing any payment to be made to the respective tribe ~~or, nation or band~~
19 by the State. Unless otherwise provided by federal law, in computing the extent to which
20 either the Passamaquoddy Tribe ~~or, the Penobscot Nation or the Houlton Band of~~
21 Maliseet Indians is entitled to receive state funds for education under subsection 1, the
22 state payment must be reduced by 15% of the amount of federal funds for school
23 operations received by the respective tribe ~~or, nation or band~~ within substantially the
24 same period for which state funds are provided, and in excess of any local share
25 ordinarily required by state law as a condition of state funding. A reduction in state
26 funding for secondary education may not be made under this section except as a result of
27 federal funds received within substantially the same period and allocated or allocable to
28 secondary education.

29 **3. Eligibility for discretionary funds.** The Passamaquoddy Tribe ~~and, the~~
30 Penobscot Nation ~~shall be~~ and the Houlton Band of Maliseet Indians are eligible to apply
31 for any discretionary state grants or loans to the same extent and subject to the same
32 eligibility requirements, including availability of funds, applicable to municipalities in the
33 State.

34 **4. Eligibility of individuals for state funds.** Residents of ~~either the~~ Indian territory
35 ~~shall be~~ territories or Houlton Band Trust Land are eligible for and entitled to receive any
36 state grant, loan, unemployment compensation, medical or welfare benefit or other social
37 service to the same extent as and subject to the same eligibility requirements applicable to
38 other persons in the State, ~~provided, however, that~~ as long as in computing the extent to
39 which any person is entitled to receive any such funds, any ~~moneys~~ money received by
40 such person from the United States within substantially the same period of time for which
41 state funds are provided and for a program or purpose substantially similar to that funded
42 by the State, ~~shall be~~ is deducted in computing any payment to be made by the State.

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

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

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

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

27 **Sec. 8. 30 MRSA §6212, sub-§3**, as amended by PL 1993, c. 600, Pt. A, §24 and
28 affected by §25, is further amended to read:

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

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

37 **Sec. 9. Contingent effective date.** This Act takes effect October 1, 2009 only if,
38 within 90 days after the adjournment of the First Regular Session of the 124th
39 Legislature, the Secretary of State receives written certification from the Houlton Band
40 Council of the Houlton Band of Maliseet Indians that the band has agreed to the
41 provisions of this Act, pursuant to 25 United States Code, Section 1725(e)(2). Copies of
42 the written certification must be submitted by the Secretary of State to the Secretary of
43 the Senate, the Clerk of the House and the Revisor of Statutes.

1 **SUMMARY**

2 This bill provides the Houlton Band of Maliseet Indians with Tribal Court authority.
3 This bill removes the sunset on the authority of law enforcement of the Houlton Band of
4 Maliseet Indians. This bill provides for eligibility for state funding for the Houlton Band
5 of Maliseet Indians.

6 This bill amends the membership of the Maine Indian Tribal-State Commission to
7 include 2 members appointed by the Houlton Band of Maliseet Indians and 2 more
8 appointed by the Governor. The bill deletes language that pertained to the selection of
9 the first chair of the Maine Indian Tribal-State Commission, as that is no longer
10 necessary. It also includes provisions for the replacement of the chair of the commission.