

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 766

H.P. 571

House of Representatives, February 12, 2019

**An Act Regarding the Penobscot Nation's and Passamaquoddy
Tribe's Authority To Exercise Jurisdiction under the Federal Tribal
Law and Order Act of 2010 and the Federal Violence Against
Women Reauthorization Act of 2013**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator CARPENTER of Aroostook and
Representatives: BAILEY of Saco, COLLINGS of Portland, EVANGELOS of Friendship,
MARTIN of Greene, NEWELL of the Passamaquoddy Tribe, Senators: CHIPMAN of
Cumberland, LIBBY of Androscoggin, VITELLI of Sagadahoc.

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

2 **PART A**

3 **Sec. A-1. 30 MRSA §6206, sub-§3**, as enacted by PL 1979, c. 732, §§1 and 31,
4 is amended to read:

5 **3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each ~~shall~~
6 have has the right to exercise exclusive jurisdiction within its respective Indian territory
7 over violations by members of either tribe or nation of tribal ordinances adopted pursuant
8 to this section or section 6207. The decision to exercise or terminate the jurisdiction
9 authorized by this section ~~shall~~ must be made by each tribal governing body. ~~Should~~ If
10 either tribe or nation ~~choose~~ chooses not to exercise, or to terminate its exercise of,
11 jurisdiction as authorized by this section or section 6207, the State ~~shall have~~ has
12 exclusive jurisdiction over violations of tribal ordinances by members of either tribe or
13 nation within the Indian territory of that tribe or nation. ~~The State shall have exclusive~~
14 ~~jurisdiction over violations of tribal ordinances by persons not members of either tribe or~~
15 ~~nation.~~ The tribe and the nation each has jurisdiction within its respective territory over a
16 person who is not a member of either tribe or nation in accord with and to the extent
17 authorized by federal law.

18 **Sec. A-2. Effective date; certification.** This Part does not take effect unless,
19 within 60 days of the adjournment of the First Regular Session of the 129th Legislature,
20 the Secretary of State receives written certification by the Governor and Council of the
21 Penobscot Nation and the Joint Tribal Council of the Passamaquoddy Tribe and that the
22 nation and the tribe have agreed to the provisions of this Part pursuant to 25 United States
23 Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the
24 Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of
25 Statutes; except that in no event may this Part become effective until 90 days after the
26 adjournment of the First Regular Session of the 129th Legislature.

27 **PART B**

28 **Sec. B-1. 30 MRSA §6209-B, sub-§1, ¶A**, as amended by PL 1997, c. 595, §1
29 and affected by §2, is further amended to read:

30 A. Criminal offenses for which the maximum potential term of imprisonment does
31 not exceed ~~one year~~ 3 years and the maximum potential fine does not exceed ~~\$5,000~~
32 \$15,000 and that are committed on the Indian reservation of the Penobscot Nation by
33 a member of any federally recognized Indian tribe, nation, band or other group,
34 except when committed against a person who is not a member of any federally
35 recognized Indian tribe, nation, band or other group or against the property of a
36 person who is not a member of any federally recognized Indian tribe, nation, band or
37 other group;

38 **Sec. B-2. 30 MRSA §6209-B, sub-§4**, as enacted by PL 1995, c. 388, §6 and
39 affected by §8, is amended to read:

1 **4. Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or
2 juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this
3 section does not bar a prosecution for a criminal offense or juvenile crime, arising out of
4 the same conduct, over which the State has exclusive jurisdiction. A prosecution for a
5 criminal offense or juvenile crime over which the State has exclusive jurisdiction does
6 not bar a prosecution for a criminal offense or juvenile crime, arising out of the same
7 conduct, over which the Penobscot Nation has exclusive jurisdiction under this section.
8 The determination of an issue of fact in a criminal or juvenile proceeding conducted in a
9 tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding
10 conducted in a state court. The determination of an issue of fact in a criminal or juvenile
11 proceeding conducted in a state court does not constitute collateral estoppel in a criminal
12 or juvenile proceeding conducted in a tribal forum. For purposes of this subsection, the
13 Penobscot Nation has concurrent jurisdiction with the State over a criminal offense as
14 authorized by 25 United States Code, Section 1304 or successor provision.

15 **Sec. B-3. Effective date; certification.** This Part does not take effect unless,
16 within 60 days of the adjournment of the First Regular Session of the 129th Legislature,
17 the Secretary of State receives written certification by the Governor and Council of the
18 Penobscot Nation that the nation has agreed to the provisions of this Part pursuant to 25
19 United States Code, Section 1725(e), copies of which must be submitted by the Secretary
20 of State to the Secretary of the Senate, the Clerk of the House of Representatives and the
21 Revisor of Statutes; except that in no event may this Part become effective until 90 days
22 after the adjournment of the First Regular Session of the 129th Legislature.

23 **SUMMARY**

24 This bill amends the Act To Implement the Maine Indian Claims Settlement by:

25 1. Transferring jurisdiction over violations of a tribal ordinance from the State to the
26 Passamaquoddy Tribe and the Penobscot Nation over a person who is not a member of
27 either tribe or nation in accord with and to the extent authorized by federal law;

28 2. Increasing the level of certain criminal offenses from a maximum period of
29 imprisonment of one year and a maximum amount of \$5,000 to a maximum period of
30 imprisonment of 3 years and a maximum amount of \$15,000 over which the Penobscot
31 Nation has the right to exercise exclusive jurisdiction as authorized by the federal Tribal
32 Law and Order Act of 2010; and

33 3. Clarifying that the Penobscot Nation has concurrent jurisdiction with the State
34 over criminal offenses as authorized by the federal Violence Against Women
35 Reauthorization Act of 2013.