

# MAINE STATE LEGISLATURE

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L.D. 1835

Date: 3/25/24

Majority

(Filing No. H-853)

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JUDICIARY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
131ST LEGISLATURE  
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1167, L.D. 1835, "An Act to Require the State to Notify Indian Tribes and Indian Nations When New Laws Are Enacted That Need to Be Certified"

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

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PART A

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Sec. A-1. 3 MRSA §601, as amended by PL 1989, c. 148, §§1 and 4 and affected by PL 2023, c. 369, Pt. A, §§2 and 5, is repealed and the following enacted in its place:

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§601. Approval of legislation

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This section applies when the agreement of an Indian tribe, nation or band to state legislation is required by the federal Maine Indian Claims Settlement Act of 1980, Public Law 96-420, formerly codified at 25 United States Code, Section 1725(e); the federal Aroostook Band of Micmacs Settlement Act, Public Law 102-171; or other act of Congress.

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1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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A. "Indian tribe, nation or band" means the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or the Mi'kmaq Nation.

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B. "Legislation" means state legislation to which this section applies.

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2. Deadline for certifying agreement. The legislation must expressly provide that it will not take effect, in whole or in part, unless each Indian tribe, nation or band whose agreement is required by federal law certifies its agreement to the legislation. Any deadline included in the legislation for the Indian tribe, nation or band to transmit the certification of its agreement to the legislation to the Secretary of State in accordance with subsection 4 may not be less than 120 days after final adjournment of the legislative session during which the legislation was enacted. For purposes of this section, legislation is enacted on the date that the Governor signs the legislation, the date that the unsigned legislation has the same force and effect pursuant to the Constitution of Maine, Article IV, Part Third.

COMMITTEE AMENDMENT

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Section 2 as if the Governor had signed it or the date that the Governor's veto of the legislation is overridden.

3           **3. Notice.** Within 15 business days after final adjournment of a legislative session, the  
4 Secretary of State shall notify the chief or chiefs of an Indian tribe, nation or band, or the  
5 person designated by the chief or chiefs pursuant to section 602 or 603, of each item of  
6 legislation enacted during the legislative session for which the certification of the  
7 agreement of the Indian tribe, nation or band is required by federal law. The notice must  
8 inform the chief or the chief's designee of the deadline, if any, set forth in the legislation  
9 for transmittal of the certification of the agreement of the Indian tribe, nation or band in  
10 accordance with subsection 4.

11 Between 60 and 75 business days after final adjournment of a legislative session, the  
12 Secretary of State shall send a 2nd notice to the person to whom the Secretary of State sent  
13 an initial notice under this subsection identifying each item of legislation for which the  
14 certification of the agreement of the Indian tribe, nation or band is required by federal law  
15 but has not been received. The notice must inform the person of the deadline, if any, set  
16 forth in each item of legislation for transmittal of the certification of the agreement of the  
17 Indian tribe, nation or band in accordance with subsection 4.

18           **4. Certification of agreement.** The chief or chiefs of an Indian tribe, nation or band  
19 whose agreement is required by federal law, or the person designated by the chief or chiefs  
20 pursuant to section 602 or 603, may certify the agreement of the Indian tribe, nation or band  
21 to the legislation in writing to the Secretary of State. The certification must state the date  
22 and manner in which the Indian tribe, nation or band agreed to the legislation and is prima  
23 facie evidence of agreement if submitted in accordance with the requirements of this  
24 subsection and within the transmittal deadline, if any, established in accordance with  
25 subsection 2. The Secretary of State shall transmit certified copies of the certification of  
26 agreement to the Secretary of the Senate, the Clerk of the House of Representatives and the  
27 Revisor of Statutes.

28           **Sec. A-2. 3 MRSA §602**, as amended by PL 1985, c. 672, §§1 and 4, is repealed  
29 and the following enacted in its place:

30 **§602. Designees; notification to Secretary of State**

31           The Chief of the Penobscot Nation and the Chief of the Houlton Band of Maliseet  
32 Indians may each designate, and the Chief of the Passamaquoddy Tribe at Sipayik and the  
33 Chief of the Passamaquoddy Tribe at Motahkomikuk may jointly designate, by name and  
34 title, a person to whom the Secretary of State must send any notices required under section  
35 601, subsection 3 and who is authorized to certify an agreement to legislation in accordance  
36 with section 601, subsection 4. The designation, if any, must be in writing and filed with  
37 the Secretary of State. The Secretary of State shall transmit certified copies of each  
38 designation to the Secretary of the Senate, the Clerk of the House of Representatives and  
39 the Revisor of Statutes. A designation remains in effect until the Chief of the Penobscot  
40 Nation or the Chief of the Houlton Band of Maliseet Indians rescinds the designation or  
41 makes a new designation or until the Chief of the Passamaquoddy Tribe at Sipayik and the  
42 Chief of the Passamaquoddy Tribe at Motahkomikuk jointly rescind the designation or  
43 jointly make a new designation.

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2 **Sec. A-3. 3 MRSA §603**, as enacted by PL 1989, c. 148, §§2 and 4 and amended  
3 by PL 2023, c. 369, Pt. A, §4 and affected by c. 369, Pt. A, §§2 and 5, is repealed and the  
4 following enacted in its place:

5 **§603. Mi'kmaq Nation designee; notification to Secretary of State**

6 The Chief of the Mi'kmaq Nation may designate, by name and title, a person to whom  
7 the Secretary of State must send any notices required under section 601, subsection 3 and  
8 who is authorized to certify an agreement to legislation in accordance with section 601,  
9 subsection 4. A designation, if any, must be in writing and filed with the Secretary of State.  
10 The Secretary of State shall transmit certified copies of the designation to the Secretary of  
11 the Senate, the Clerk of the House of Representatives and the Revisor of Statutes. The  
12 designation remains in effect until the Chief of the Mi'kmaq Nation rescinds the designation  
13 or makes a new designation.

14 **PART B**

15 **Sec. B-1. PL 2023, c. 369, Pt. C, §6** is amended to read:

16 **Sec. C-6. Contingent effective date.** This Part takes effect ~~120~~ 150 days after  
17 adjournment of the ~~First Special~~ Second Regular Session of the 131st Legislature only if,  
18 within ~~90~~ 120 days after adjournment of the ~~First Special~~ Second Regular Session of the  
19 131st Legislature, the Secretary of State receives written certification from the ~~Governor~~  
20 ~~and the Council~~ Chief of the Penobscot Nation, ~~or the chief's designee under the Maine~~  
21 ~~Revised Statutes, Title 3, section 602,~~ that the nation has agreed to the provisions of this  
22 Part, copies of which must be submitted by the Secretary of State to the Secretary of the  
23 Senate, the Clerk of the House of Representatives and the Revisor of Statutes.

24 **Sec. B-2. PL 2023, c. 369, Pt. E, §5** is amended to read:

25 **Sec. E-5. Contingent effective date.** This Part takes effect ~~120~~ 150 days after  
26 adjournment of the ~~First Special~~ Second Regular Session of the 131st Legislature only if;  
27 ~~within 90 days after adjournment of the First Special Session of the 131st Legislature, the~~  
28 ~~Secretary of State receives written certification from the Joint Tribal Council of the~~  
29 ~~Passamaquoddy Tribe that the tribe has agreed to the provisions of this Part and from the~~  
30 ~~Governor and the Council of the Penobscot Nation that the nation has agreed to the~~  
31 ~~provisions of this Part, copies of which must be submitted by the Secretary of State to the~~  
32 ~~Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.;~~

33 1. Notwithstanding the Maine Revised Statutes, Title 3, section 601, subsection 2,  
34 within 90 days after adjournment of the First Special Session of the 131st Legislature, the  
35 Secretary of State receives written certification from the Joint Tribal Council of the  
36 Passamaquoddy Tribe that the tribe has agreed to the provisions of this Part, copies of  
37 which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk  
38 of the House of Representatives and the Revisor of Statutes; and

39 2. Within 120 days after adjournment of the Second Regular Session of the 131st  
40 Legislature, the Secretary of State receives written certification from the Chief of the  
41 Penobscot Nation, or the chief's designee under the Maine Revised Statutes, Title 3, section  
42 602, that the nation has agreed to the provisions of this Part, copies of which must be  
43 submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House  
of Representatives and the Revisor of Statutes.

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**Sec. B-3. PL 2023, c. 370, §2** is amended to read:

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**Sec. 2. Contingent effective date.** This Act takes effect ~~120~~ 150 days after adjournment of the ~~First Special~~ Second Regular Session of the 131st Legislature only if, within ~~90~~ 120 days after adjournment of the ~~First Special~~ Second Regular Session of the 131st Legislature, the Secretary of State receives written certification from the ~~Joint Tribal Council Chief of the Passamaquoddy Tribe at Sipayik and the Chief of the Passamaquoddy Tribe at Motahkomikuk, or the chiefs' designee under the Maine Revised Statutes, Title 3, section 602,~~ that the tribe has agreed to the provisions of this Act; from the ~~Governor and the Council Chief of the Penobscot Nation, or the chief's designee under Title 3, section 602,~~ that the nation has agreed to the provisions of this Act; and from the ~~Houlton Band Council Chief of the Houlton Band of Maliseet Indians, or the chief's designee under Title 3, section 602,~~ that the band has agreed to the provisions of this Act, copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes.

**PART C**

**Sec. C-1. 30 MRSA §6209-A, sub-§1-A,** as enacted by PL 2019, c. 621, Pt. D, §2 and affected by §5, is amended to read:

**1-A. Concurrent jurisdiction over certain criminal offenses.** The Passamaquoddy Tribe has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by a person on the Passamaquoddy Indian Reservation or on lands taken into trust by the secretary for the benefit of the Passamaquoddy Tribe, now or in the future, for which the potential maximum term of imprisonment does not exceed one year and the potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A ~~and~~ Title 19-A, section 4113 and Title 19-A, former section 4011. The concurrent jurisdiction authorized by this subsection does not include an offense committed by a juvenile or a criminal offense committed by a person who is not a member of any federally recognized Indian tribe, nation, band or other group against the person or property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, the Passamaquoddy Tribe may not deny to any criminal defendant prosecuted under this subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and 1304(d) and all other rights whose protection is necessary under the United States Constitution in order for the State to authorize concurrent jurisdiction under this subsection. If a criminal defendant prosecuted under this subsection moves to suppress statements on the ground that they were made involuntarily, the prosecution has the burden to prove beyond a reasonable doubt that the statements were made voluntarily.

In exercising the concurrent jurisdiction authorized by this subsection, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Passamaquoddy Tribe has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

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**Sec. C-2. Contingent effective date.** This Part takes effect 150 days after adjournment of the Second Regular Session of the 131st Legislature only if, within 120 days after adjournment of the Second Regular Session of the 131st Legislature, the Secretary of State receives written certification from the Chief of the Passamaquoddy Tribe at Sipayik and the Chief of the Passamaquoddy Tribe at Motahkomikuk, or the chiefs' designee under the Maine Revised Statutes, Title 3, section 602, that the Passamaquoddy Tribe has agreed to the provisions of this Part, copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes.

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**PART D**

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**Sec. D-1. 30 MRSA §6209-B, sub-§1-A,** as enacted by PL 2019, c. 621, Pt. C, §1 and affected by §4, is amended to read:

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**1-A. Concurrent jurisdiction over certain criminal offenses.** The Penobscot Nation has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by a person on the Penobscot Indian Reservation or on lands taken into trust by the secretary for the benefit of the Penobscot Nation now or in the future, for which the potential maximum term of imprisonment does not exceed one year and the potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and, Title 19-A, section 4113 and Title 19-A, former section 4011. The concurrent jurisdiction authorized by this subsection does not include an offense committed by a juvenile or a criminal offense committed by a person who is not a member of any federally recognized Indian tribe, nation, band or other group against the person or property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group.

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The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, the Penobscot Nation may not deny to any criminal defendant prosecuted under this subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and 1304(d) and all other rights whose protection is necessary under the United States Constitution in order for the State to authorize concurrent jurisdiction under this subsection. If a criminal defendant prosecuted under this subsection moves to suppress statements on the ground that they were made involuntarily, the prosecution has the burden to prove beyond a reasonable doubt that the statements were made voluntarily.

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In exercising the concurrent jurisdiction authorized by this subsection, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Penobscot Nation has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

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**Sec. D-2. Contingent effective date.** This Part takes effect 150 days after adjournment of the Second Regular Session of the 131st Legislature only if, within 120 days after adjournment of the Second Regular Session of the 131st Legislature, the Secretary of State receives written certification from the Chief of the Penobscot Nation, or the chief's designee under the Maine Revised Statutes, Title 3, section 602, that the nation

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1 has agreed to the provisions of this Part, copies of which must be submitted by the Secretary  
2 of State to the Secretary of the Senate, the Clerk of the House of Representatives and the  
Revisor of Statutes.

**PART E**

5 **Sec. E-1. 30 MRSA §7208, sub-§2**, as enacted by PL 1989, c. 148, §§3 and 4 and  
6 affected by PL 2023, c. 369, Pt. A, §§2 and 5, is amended to read:

7 **2. Concurrent jurisdiction over certain criminal offenses.** The Mi'kmaq Nation  
8 has the right to exercise jurisdiction, concurrently with the State, over the following Class  
9 D crimes committed by a person within Mi'kmaq Nation Jurisdiction Land or on lands  
10 taken into trust by the secretary for the benefit of the Mi'kmaq Nation, now or in the future,  
11 for which the potential maximum term of imprisonment does not exceed one year and the  
12 potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C  
13 and 211-A ~~and~~, Title 19-A, section 4113 and Title 19-A, former section 4011. The  
14 concurrent jurisdiction authorized by this subsection does not include an offense committed  
15 by a juvenile or a criminal offense committed by a person who is not a member of any  
16 federally recognized Indian tribe, nation, band or other group against the person or property  
17 of a person who is not a member of any federally recognized Indian tribe, nation, band or  
18 other group.

19 The governing body of the Mi'kmaq Nation shall decide whether to exercise or terminate  
20 the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 3,  
21 the Mi'kmaq Nation may not deny to any criminal defendant prosecuted under this  
22 subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and  
23 protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and  
24 1304(d) and all other rights whose protection is necessary under the United States  
25 Constitution in order for the State to authorize concurrent jurisdiction under this subsection.  
26 If a criminal defendant prosecuted under this subsection moves to suppress statements on  
27 the ground that they were made involuntarily, the prosecution has the burden to prove  
28 beyond a reasonable doubt that the statements were made voluntarily.

29 In exercising the concurrent jurisdiction authorized by this subsection, the Mi'kmaq Nation  
30 is deemed to be enforcing Mi'kmaq tribal law. The definitions of the criminal offenses and  
31 the punishments applicable to those criminal offenses over which the Mi'kmaq Nation has  
32 concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance  
33 and execution of criminal process also are governed by the laws of the State.

34 **Sec. E-2. Contingent effective date.** This Part takes effect 150 days after  
35 adjournment of the Second Regular Session of the 131st Legislature only if, within 120  
36 days after adjournment of the Second Regular Session of the 131st Legislature, the  
37 Secretary of State receives written certification from the Chief of the Mi'kmaq Nation, or  
38 the chief's designee under the Maine Revised Statutes, Title 3, section 603, that the  
39 Mi'kmaq Nation has agreed to the provisions of this Part, copies of which must be  
40 submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House  
41 of Representatives and the Revisor of Statutes.'

42 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
43 number to read consecutively.

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**SUMMARY**

This amendment, which is the majority report of the committee, replaces the bill.

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Part A requires the Secretary of State, within 15 business days after the final adjournment of a legislative session, to notify the chiefs of the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Mi'kmaq Nation, or the relevant designees, of each item of legislation enacted during the legislative session that, pursuant to federal law, will not take effect unless the Secretary of State receives written certification that the nation, tribe or band agrees to the legislation. The notice must inform the chief or designee of each nation, tribe or band of any deadline included in the legislation for transmittal of a written certification of agreement; the deadline may not be less than 120 days after final adjournment of the legislative session. The Secretary of State must send a 2nd notice between 60 and 75 business days after final adjournment of the legislative session to the chief or designee of each nation, tribe or band, identifying each item of legislation for which a certification of agreement from the nation, tribe or band has not been received.

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Part B extends the deadline for the Chief of the Penobscot Nation, or the chief's designee, to certify the nation's agreement to Public Law 2023, chapter 369, Parts C and E, An Act to Amend the Laws Regarding the Mi'kmaq Nation and to Provide Parity to the Wabanaki Nations. It also extends the deadline for the Chief of the Penobscot Nation or the chief's designee, the Chief of the Passamaquoddy Tribe at Sipayik and the Chief of the Passamaquoddy Tribe at Motahkomikuk or the chiefs' designee and the Chief of the Houlton Band of Maliseet Indians or the chief's designee to certify their respective agreements to Public Law 2023, chapter 370, An Act Regarding the Maine Indian Tribal-State Commission.

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Parts C, D and E correct cross-references to the protection from abuse statutes. Because Parts C, D and E amend An Act to Implement the Maine Indian Claims Settlement, commonly known as the Maine Implementing Act, and the Mi'kmaq Nation Restoration Act, the effectiveness of Parts C, D and E is contingent on the agreement of the Passamaquoddy Tribe, the Penobscot Nation and the Mi'kmaq Nation, respectively.

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





# 131st MAINE LEGISLATURE

LD 1835

LR 1580(02)

**An Act to Require the State to Notify Indian Tribes and Indian Nations When New Laws Are Enacted That Need to Be Certified**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (H-853)**

**Committee: Judiciary**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Any additional costs to the Department of Secretary of State associated with this legislation are expected to be minor and can be absorbed within existing budgeted resources.