

MAINE STATE LEGISLATURE

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Date 6/20/23 Majority

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H P 1284, L D 2004, "An Act to Restore Access to Federal Laws Beneficial to the Wabanaki Nations"

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

'Sec. 1. 30 MRSA §6215 is enacted to read

§6215. Application of statutes and regulations of the United States to the Passamaquoddy Tribe

1. Further legislative findings regarding the application of statutes and regulations of the United States to the Passamaquoddy Tribe. Sections 6(h) and 16(b) of United States Public Law 96-420 provide that the laws and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this State unless such law or regulation affects or preempts the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws of this State relating to land use or environmental matters

A. The amendments to this Act enacted in 2023 modify the application of the laws of this State with respect to the Passamaquoddy Tribe and its Indian territory or trust land to the limited extent that such laws, in the absence of these amendments, would be affected or preempted by the application of the statutes and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians, except as otherwise provided by these amendments

B. The amendments to this Act enacted in 2023 confirm, establish and enable, with respect to the Passamaquoddy Tribe and its Indian territory or trust land, the operation, application and implementation in this State of the statutes and regulations of the United States that are generally applicable to Indians, Indian nations or tribes or bands

COMMITTEE AMENDMENT

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of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians, including such statutes and regulations enacted for the benefit of Indians, Indian nations or tribes or bands of Indians and statutes and regulations that accord a special status or right to or that relate to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land or other natural resources held in trust for Indians, except as otherwise provided by these amendments

C The amendments to this Act enacted in 2023 do not

(1) Extend the general body of federal common law known as federal Indian law to the Passamaquoddy Tribe and its Indian territory or trust land, or

(2) Adjust the jurisdictional relationship set forth in this Act and in United States Public Law 96-420 between this State and the Passamaquoddy Tribe, except as provided by these amendments

2. Federal statutes and regulations apply to the Passamaquoddy Tribe.

Notwithstanding any provision of this Act to the contrary

A The State and the Passamaquoddy Tribe agree and intend pursuant to United States Public Law 96-420 that any law of this State that would be affected or preempted by the operation, application or implementation of any statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians does not apply to the Passamaquoddy Tribe, except as provided in subsection 4.

B The State and the Passamaquoddy Tribe agree and intend pursuant to United States Public Law 96-420 that any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians is applicable to the Passamaquoddy Tribe within this State, without regard to any effect on the application of the laws of this State, except as provided in subsection 4, and

C Modification of the application of the laws of this State to the Passamaquoddy Tribe under this section is limited to those particular circumstances in which the application of the laws of this State to the Passamaquoddy Tribe would conflict or interfere with the actual operation, application or implementation of a statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians. If the operation, application or implementation of any statute or regulation of the United States to the Passamaquoddy Tribe would result in the absence of any law or regulation applicable to the Passamaquoddy Tribe relating to a matter of public health or safety, including without limitation laws relating to land use or environmental matters, the corresponding laws of the State with respect to that health or safety matter must apply to the Passamaquoddy Tribe to fill any regulatory gap. For the purposes of this paragraph, "corresponding laws of the State" means laws of the State that apply to

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similar activities outside of Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians

3. Notice regarding applicability of federal and state law to the Passamaquoddy Tribe. Whenever the Passamaquoddy Tribe believes that a law of this State does not apply to the Passamaquoddy Tribe, its citizens or its tribal territory or trust lands as a result of subsection 2 and the application of a statute or regulation of the United States, the Passamaquoddy Tribe shall provide written notice to the Attorney General. The Attorney General shall use reasonable efforts to respond in writing to the Passamaquoddy Tribe within 30 days if the State disagrees with the Passamaquoddy Tribe's position regarding the application of the laws of the State. The failure of the Passamaquoddy Tribe to provide notice under this subsection does not limit the application to the Passamaquoddy Tribe of any statute or regulation of the United States. The failure of the Attorney General to provide notice under this subsection does not limit the authority of the State to dispute the application of any statute or regulation of the United States or the application of any law of this State to the Passamaquoddy Tribe.

4. Gaming activities; criminal jurisdiction; environmental laws; application to the Passamaquoddy Tribe. Notwithstanding any provision of this Act to the contrary:

A. The Passamaquoddy Tribe may conduct gaming activities only in accordance with the laws of this State and may not conduct gaming activities under the authority of the federal Indian Gaming Regulatory Act or under any regulations promulgated under the federal Indian Gaming Regulatory Act by the chair of the National Indian Gaming Commission or its successor organization.

B. The laws of this State applicable to the crimes and juvenile crimes described in this Act apply to the Passamaquoddy Tribe as provided in this Act. The statutes and regulations of the United States that conflict with or affect or preempt the jurisdiction of this State over crimes and juvenile crimes described in this Act do not apply to the Passamaquoddy Tribe, unless such provisions are specifically applicable within the State of Maine. The federal laws identified in Section 6(c) of United States Public Law 96-420 do not apply to the Passamaquoddy Tribe, and

C. The provisions of the federal Clean Water Act, the federal Water Quality Act of 1987, the federal Clean Air Act and the federal Indian Mineral Development Act of 1982, including all future amendments and reauthorizations of those Acts, do not apply with respect to the Passamaquoddy Tribe and its Indian territory or trust land to the extent the provisions affect or preempt the application of the laws of this State and directly or indirectly extend the jurisdiction of the Passamaquoddy Tribe beyond its Indian territory or trust land, unless such provisions are specifically made applicable within the State of Maine.

5. Powers of Passamaquoddy Tribe relating to federal statutes and regulations. Notwithstanding any provision of law to the contrary, the State and the Passamaquoddy Tribe agree and intend pursuant to United States Public Law 96-420 that the Passamaquoddy Tribe has the power to enact laws and ordinances relating to the operation, application and implementation of any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands,

1 Indian reservations, Indian country, Indian territory or land held in trust for Indians, except
2 as otherwise provided in subsection 4

3 6. Contingent repeal. Notwithstanding Title 1, section 71, subsection 8, this section
4 is repealed if a court of competent jurisdiction enters a final judgment concluding that no
5 part of this section is effective in causing the statutes and regulations of the United States
6 that are generally applicable to or enacted for the benefit of Indians or relate to a special
7 status or right of Indian nations or tribes or bands of Indians or to lands owned by or held
8 in trust for Indians, Indian nations or tribes or bands of Indians to apply to the
9 Passamaquoddy Tribe and its Indian territory or trust land For purposes of this subsection,
10 "final judgment" does not include a judgment that is the subject of a pending appeal or for
11 which the time period for taking an appeal has not yet expired If this contingency is met,
12 the Attorney General or the Joint Tribal Council of the Passamaquoddy Tribe shall notify
13 the Secretary of State, the Secretary of the Senate, the Clerk of the House of
14 Representatives and the Revisor of Statutes

15 **Sec. 2. 30 MRSA §6216** is enacted to read
16 **§6216 Application of statutes and regulations of the United States to the Penobscot**
17 **Nation**

18 **1. Further legislative findings regarding the application of statutes and**
19 **regulations of the United States to the Penobscot Nation. Sections 6(h) and 16(b) of**
20 **United States Public Law 96-420 provide that the laws and regulations of the United States**
21 **that are generally applicable to or enacted for the benefit of Indians or relate to a special**
22 **status or right of Indian nations or tribes or bands of Indians or to lands owned by or held**
23 **in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this**
24 **State unless such law or regulation affects or preempts the civil, criminal or regulatory**
25 **jurisdiction of this State, including, without limitation, laws of this State relating to land**
26 **use or environmental matters**

27 **A. The amendments to this Act enacted in 2023 modify the application of the laws of**
28 **this State with respect to the Penobscot Nation and its Indian territory or trust land to**
29 **the limited extent that such laws, in the absence of these amendments, would be**
30 **affected or preempted by the application of the statutes and regulations of the United**
31 **States that are generally applicable to or enacted for the benefit of Indians or relate to**
32 **a special status or right of Indian nations or tribes or bands of Indians or to lands owned**
33 **by or held in trust for Indians, Indian nations or tribes or bands of Indians, except as**
34 **otherwise provided by these amendments**

35 **B. The amendments to this Act enacted in 2023 confirm, establish and enable, with**
36 **respect to the Penobscot Nation, the operation, application and implementation in this**
37 **State of the statutes and regulations of the United States that are generally applicable**
38 **to Indians, Indian nations or tribes or bands of Indians or to lands owned by or held in**
39 **trust for Indians, Indian nations or tribes or bands of Indians, including such statutes**
40 **and regulations enacted for the benefit of Indians, Indian nations or tribes or bands of**
41 **Indians and statutes and regulations that accord a special status or right to or that relate**
42 **to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian**
43 **lands, Indian reservations, Indian country, Indian territory or land or other natural**
44 **resources held in trust for Indians, except as otherwise provided by these amendments**

45 **C. The amendments to this Act enacted in 2023 do not**

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(1) Extend the general body of federal common law known as federal Indian law to the Penobscot Nation and its Indian territory or trust land, or

(2) Adjust the jurisdictional relationship set forth in this Act and in United States Public Law 96-420 between this State and the Penobscot Nation, except as provided by these amendments

2. Federal statutes and regulations apply to the Penobscot Nation.
Notwithstanding any provision of this Act to the contrary

A The State and the Penobscot Nation agree and intend pursuant to United States Public Law 96-420 that any law of this State that would be affected or preempted by the operation, application or implementation of any statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians does not apply to the Penobscot Nation, except as provided in subsection 4.

B The State and the Penobscot Nation agree and intend pursuant to United States Public Law 96-420 that any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians is applicable to the Penobscot Nation within this State, without regard to any effect on the application of the laws of this State, except as provided in subsection 4, and

C Modification of the application of the laws of this State to the Penobscot Nation under this section is limited to those particular circumstances in which the application of the laws of this State to the Penobscot Nation would conflict or interfere with the actual operation, application or implementation of a statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians. If the operation, application or implementation of any statute or regulation of the United States to the Penobscot Nation would result in the absence of any law or regulation applicable to the Penobscot Nation relating to a matter of public health or safety, including without limitation laws relating to land use or environmental matters, the corresponding laws of the State with respect to that health or safety matter must apply to the Penobscot Nation to fill any regulatory gap. For the purposes of this paragraph, "corresponding laws of the State" means laws of the State that apply to similar activities outside of Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians

3. Notice regarding applicability of federal and state law to the Penobscot Nation.
Whenever the Penobscot Nation believes that a law of this State does not apply to the Penobscot Nation, its citizens or its tribal territory or trust lands as a result of subsection 2 and the application of a statute or regulation of the United States, the Penobscot Nation shall provide written notice to the Attorney General. The Attorney General shall use reasonable efforts to respond in writing to the Penobscot Nation within 30 days if the State disagrees with the Penobscot Nation's position regarding the application of the laws of the

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State The failure of the Penobscot Nation to provide notice under this subsection does not limit the application to the Penobscot Nation of any statute or regulation of the United States The failure of the Attorney General to provide notice under this subsection does not limit the authority of the State to dispute the application of any statute or regulation of the United States or the application of any law of this State to the Penobscot Nation

4. Gaming activities; criminal jurisdiction; environmental laws; application to the Penobscot Nation. Notwithstanding any provision of this Act to the contrary

A The Penobscot Nation may conduct gaming activities only in accordance with the laws of this State and may not conduct gaming activities under the authority of the federal Indian Gaming Regulatory Act or under any regulations promulgated under the federal Indian Gaming Regulatory Act by the chair of the National Indian Gaming Commission or its successor organization.

B The laws of this State applicable to the crimes and juvenile crimes described in this Act apply to the Penobscot Nation as provided in this Act The statutes and regulations of the United States that conflict with or affect or preempt the jurisdiction of the State over crimes and juvenile crimes described in this Act do not apply to the Penobscot Nation, unless such provisions are specifically applicable within the State of Maine The federal laws identified in Section 6(c) of United States Public Law 96-420 do not apply to the Penobscot Nation, and

C The provisions of the federal Clean Water Act, the federal Water Quality Act of 1987, the federal Clean Air Act and the federal Indian Mineral Development Act of 1982, including all future amendments and reauthorizations of those Acts, do not apply with respect to the Penobscot Nation and its Indian territory or trust land to the extent the provisions affect or preempt the application of the laws of this State and directly or indirectly extend the jurisdiction of the Penobscot Nation beyond its Indian territory or trust land, unless such provisions are specifically made applicable within the State of Maine

5. Powers of Penobscot Nation relating to federal statutes and regulations. Notwithstanding any provision of law to the contrary, the State and the Penobscot Nation agree and intend pursuant to United States Public Law 96-420 that the Penobscot Nation has the power to enact laws and ordinances relating to the operation, application and implementation of any statute or regulation of the United States enacted before, on or after October 10, 1980 that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, except as otherwise provided in subsection 4.

6. Contingent repeal. Notwithstanding Title 1, section 71, subsection 8, this section is repealed if a court of competent jurisdiction enters a final judgment concluding that no part of this section is effective in causing the statutes and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians to apply to the Penobscot Nation and its Indian territory or trust land For purposes of this subsection, "final judgment" does not include a judgment that is the subject of a pending appeal or for which the time period for taking an appeal has not yet expired If this contingency is met, the

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1 Attorney General or the Governor and the Council of the Penobscot Nation shall notify the
2 Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives
3 and the Revisor of Statutes

4 **Sec. 3. 30 MRSA §6217** is enacted to read

5 **§6217 Application of statutes and regulations of the United States to the Houlton**
6 **Band of Maliseet Indians**

7 **1. Further legislative findings regarding the application of statutes and**
8 **regulations of the United States to the Houlton Band of Maliseet Indians. Sections**
9 **6(h) and 16(b) of United States Public Law 96-420 provide that the laws and regulations**
10 **of the United States that are generally applicable to or enacted for the benefit of Indians or**
11 **relate to a special status or right of Indian nations or tribes or bands of Indians or to lands**
12 **owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are**
13 **applicable within this State unless such law or regulation affects or preempts the civil,**
14 **criminal or regulatory jurisdiction of this State, including, without limitation, laws of this**
15 **State relating to land use or environmental matters**

16 A The amendments to this Act enacted in 2023 modify the application of the laws of
17 this State with respect to the Houlton Band of Maliseet Indians and its Indian territory
18 or trust land to the limited extent that such laws, in the absence of these amendments,
19 would be affected or preempted by the application of the statutes and regulations of the
20 United States that are generally applicable to or enacted for the benefit of Indians or
21 relate to a special status or right of Indian nations or tribes or bands of Indians or to
22 lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians,
23 except as otherwise provided by these amendments

24 B The amendments to this Act enacted in 2023 confirm, establish and enable, with
25 respect to the Houlton Band of Maliseet Indians and its Indian territory or trust land,
26 the operation, application and implementation in this State of the statutes and
27 regulations of the United States that are generally applicable to Indians, Indian nations
28 or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian
29 nations or tribes or bands of Indians, including such statutes and regulations enacted
30 for the benefit of Indians, Indian nations or tribes or bands of Indians and statutes and
31 regulations that accord a special status or right to or that relate to a special status or
32 right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
33 reservations, Indian country, Indian territory or land or other natural resources held in
34 trust for Indians, except as otherwise provided by these amendments

35 C The amendments to this Act enacted in 2023 do not

36 (1) Extend the general body of federal common law known as federal Indian law
37 to the Houlton Band of Maliseet Indians and its Indian territory or trust land, or

38 (2) Adjust the jurisdictional relationship set forth in this Act and in United States
39 Public Law 96-420 between this State and the Houlton Band of Maliseet Indians,
40 except as provided by these amendments

41 **2. Federal statutes and regulations apply to the Houlton Band of Maliseet Indians**
42 **Notwithstanding any provision of this Act to the contrary**

43 A The State and the Houlton Band of Maliseet Indians agree and intend pursuant to
44 United States Public Law 96-420 that any law of this State that would be affected or

1 preempted by the operation, application or implementation of any statute or regulation
 2 of the United States that accords a special status or right to or relates to a special status
 3 or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
 4 reservations, Indian country, Indian territory or land held in trust for Indians does not
 5 apply to the Houlton Band of Maliseet Indians, except as provided in subsection 4.

6 B The State and the Houlton Band of Maliseet Indians agree and intend pursuant to
 7 United States Public Law 96-420 that any statute or regulation of the United States
 8 enacted before, on or after October 10, 1980 that accords a special status or right to or
 9 relates to a special status or right of any Indian, Indian nation, tribe or band of Indians,
 10 Indian lands, Indian reservations, Indian country, Indian territory or land held in trust
 11 for Indians is applicable to the Houlton Band of Maliseet Indians within this State,
 12 without regard to any effect on the application of the laws of this State, except as
 13 provided in subsection 4, and

14 C Modification of the application of the laws of this State to the Houlton Band of
 15 Maliseet Indians under this section is limited to those particular circumstances in which
 16 the application of the laws of this State to the Houlton Band of Maliseet Indians would
 17 conflict or interfere with the actual operation, application or implementation of a statute
 18 or regulation of the United States that accords a special status or right to or relates to a
 19 special status or right of any Indian, Indian nation, tribe or band of Indians, Indian
 20 lands, Indian reservations, Indian country, Indian territory or land held in trust for
 21 Indians If the operation, application or implementation of any statute or regulation of
 22 the United States to the Houlton Band of Maliseet Indians would result in the absence
 23 of any law or regulation applicable to the Houlton Band of Maliseet Indians relating to
 24 a matter of public health or safety, including without limitation laws relating to land
 25 use or environmental matters, the corresponding laws of the State with respect to that
 26 health or safety matter must apply to the Houlton Band of Maliseet Indians to fill any
 27 regulatory gap For the purposes of this paragraph, "corresponding laws of the State"
 28 means laws of the State that apply to similar activities outside of Indian lands, Indian
 29 reservations, Indian country, Indian territory or land held in trust for Indians

30 **3 Notice regarding applicability of federal and state law to the Houlton Band of**
 31 **Maliseet Indians.** Whenever the Houlton Band of Maliseet Indians believes that a law of
 32 this State does not apply to the Houlton Band of Maliseet Indians, its citizens or its tribal
 33 territory or trust lands as a result of subsection 2 and the application of a statute or
 34 regulation of the United States, the Houlton Band of Maliseet Indians shall provide written
 35 notice to the Attorney General The Attorney General shall use reasonable efforts to
 36 respond in writing to the Houlton Band of Maliseet Indians within 30 days if the State
 37 disagrees with the Houlton Band of Maliseet Indians' position regarding the application of
 38 the laws of the State The failure of the Houlton Band of Maliseet Indians to provide notice
 39 under this subsection does not limit the application to the Houlton Band of Maliseet Indians
 40 of any statute or regulation of the United States The failure of the Attorney General to
 41 provide notice under this subsection does not limit the authority of the State to dispute the
 42 application of any statute or regulation of the United States or the application of any law of
 43 this State to the Houlton Band of Maliseet Indians

44 **4. Gaming activities; criminal jurisdiction; environmental laws; application to**
 45 **the Houlton Band of Maliseet Indians.** Notwithstanding any provision of this Act to the
 46 contrary

1 A The Houlton Band of Maliseet Indians may conduct gaming activities only in
 2 accordance with the laws of this State and may not conduct gaming activities under the
 3 authority of the federal Indian Gaming Regulatory Act or under any regulations
 4 promulgated under the federal Indian Gaming Regulatory Act by the chair of the
 5 National Indian Gaming Commission or its successor organization.

6 B The laws of this State applicable to the crimes and juvenile crimes described in this
 7 Act apply to the Houlton Band of Maliseet Indians as provided in this Act. The statutes
 8 and regulations of the United States that conflict with or affect or preempt the
 9 jurisdiction of the State over crimes and juvenile crimes described in this Act do not
 10 apply to the Houlton Band of Maliseet Indians, unless such provisions are specifically
 11 made applicable within the State of Maine. The federal laws identified in Section 6(c)
 12 of United States Public Law 96-420 do not apply to the Houlton Band of Maliseet
 13 Indians.

14 C The provisions of the federal Clean Water Act, the federal Water Quality Act of
 15 1987, the federal Clean Air Act and the federal Indian Mineral Development Act of
 16 1982, including all future amendments and reauthorizations of those Acts, do not apply
 17 with respect to the Houlton Band of Maliseet Indians and its Indian territory or trust
 18 land to the extent the provisions affect or preempt the application of the laws of this
 19 State and directly or indirectly extend the jurisdiction of the Houlton Band of Maliseet
 20 Indians beyond its Indian territory or trust land, unless such provisions are specifically
 21 made applicable within the State of Maine.

22 **5. Powers of Houlton Band of Maliseet Indians relating to federal statutes and**
 23 **regulations.** Notwithstanding any provision of law to the contrary, the State and the
 24 Houlton Band of Maliseet Indians agree and intend pursuant to United States Public Law
 25 96-420 that the Houlton Band of Maliseet Indians has the power to enact laws and
 26 ordinances relating to the operation, application and implementation of any statute or
 27 regulation of the United States enacted before, on or after October 10, 1980 that accords a
 28 special status or right to or relates to a special status or right of any Indian, Indian nation,
 29 tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory
 30 or land held in trust for Indians, except as otherwise provided in subsection 4.

31 **6. Contingent repeal.** Notwithstanding Title 1, section 71, subsection 8, this section
 32 is repealed if a court of competent jurisdiction enters a final judgment concluding that no
 33 part of this section is effective in causing the statutes and regulations of the United States
 34 that are generally applicable to or enacted for the benefit of Indians or relate to a special
 35 status or right of Indian nations or tribes or bands of Indians or to lands owned by or held
 36 in trust for Indians, Indian nations or tribes or bands of Indians to apply to the Houlton
 37 Band of Maliseet Indians and its Indian territory or trust land. For purposes of this
 38 subsection, "final judgment" does not include a judgment that is the subject of a pending
 39 appeal or for which the time period for taking an appeal has not yet expired. If this
 40 contingency is met, the Attorney General or the Houlton Band Council of the Houlton Band
 41 of Maliseet Indians shall notify the Secretary of State, the Secretary of the Senate, the Clerk
 42 of the House of Representatives and the Revisor of Statutes.

43 **Sec. 4. 30 MRS c. 605** is enacted to read

44 **CHAPTER 605**

MI'KMAQ NATION§7301 Federal statutes and regulations

1. Application of statutes and regulations of the United States. Sections 6(h) and 16(b) of United States Public Law 96-420 provide that the laws and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable within this State unless such law or regulation affects or preempts the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws of this State relating to land use or environmental matters.

A This section modifies the application of the laws of this State with respect to the Mi'kmaq Nation and its Indian territory or trust land to the limited extent that such laws, in the absence of the provisions of this section, would be affected or preempted by the application of the statutes and regulations of the United States that are generally applicable to or enacted for the benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians, except as otherwise provided by this section.

B This section confirms, establishes and enables, with respect to the Mi'kmaq Nation and its Indian territory or trust land, the operation, application and implementation in this State of the statutes and regulations of the United States that are generally applicable to Indians, Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands of Indians, including such statutes and regulations enacted for the benefit of Indians, Indian nations or tribes or bands of Indians and statutes and regulations that accord a special status or right to or that relate to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land or other natural resources held in trust for Indians, except as otherwise provided by this section.

C This section does not

(1) Extend the general body of federal common law known as federal Indian law to the Mi'kmaq Nation and its Indian territory or trust land; or

(2) Adjust the jurisdictional relationship set forth in United States Public Law 102-171 between this State and the Mi'kmaq Nation except as provided by this section.

2. Federal statutes and regulations apply Notwithstanding any provision of this section to the contrary, the State and the Mi'kmaq Nation agree and intend pursuant to United States Public Law 102-171 that

A Any law of this State that would be affected or preempted by the operation, application or implementation of any statute or regulation of the United States that accords a special status or right to or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians does not apply to the Mi'kmaq Nation, except as otherwise provided in subsection 4.

1 B Any statute or regulation of the United States enacted before, on or after October
 2 10, 1980 that accords a special status or right to or relates to a special status or right of
 3 any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations,
 4 Indian country, Indian territory or land held in trust for Indians is applicable to the
 5 Mi'kmaq Nation, without regard to any effect on the application of the laws of this
 6 State, except as provided in subsection 4,

7 C This modification of the application of the laws of this State to the Mi'kmaq Nation
 8 under this section is limited to those particular circumstances in which the application
 9 of the laws of this State to the Mi'kmaq Nation would conflict or interfere with the
 10 actual operation, application or implementation of a statute or regulation of the United
 11 States that accords a special status or right to or relates to a special status or right of
 12 any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations,
 13 Indian country, Indian territory or land held in trust for Indians, and

14 D If the operation, application or implementation of any statute or regulation of the
 15 United States to the Mi'kmaq Nation would result in the absence of any law or
 16 regulation applicable to the Mi'kmaq Nation relating to a matter of public health or
 17 safety, including without limitation laws relating to land use or environmental matters,
 18 the corresponding laws of the State with respect to that health or safety matter must
 19 apply to the Mi'kmaq Nation to fill any regulatory gap For the purposes of this
 20 paragraph, "corresponding laws of the State" means laws of the State that apply to
 21 similar activities outside of Indian lands, Indian reservations, Indian country, Indian
 22 territory or land held in trust for Indians

23 3. Notice regarding applicability of federal and state law. Whenever the Mi'kmaq
 24 Nation believes that a law of this State does not apply to the Mi'kmaq Nation, its citizens
 25 or its tribal territory or trust land as a result of subsection 2 and the application of a statute
 26 or regulation of the United States, the Mi'kmaq Nation shall provide written notice to the
 27 Attorney General The Attorney General shall use reasonable efforts to respond in writing
 28 to the Mi'kmaq Nation within 30 days if the State disagrees with the Mi'kmaq Nation's
 29 position regarding the application of the laws of this State The failure of the Mi'kmaq
 30 Nation to provide notice under this subsection does not limit the application to the Mi'kmaq
 31 Nation of any statute or regulation of the United States The failure of the Attorney General
 32 to provide notice under this subsection does not limit the authority of the State to dispute
 33 the application of any statute or regulation of the United States or the application of any
 34 law of this State

35 4 Gaming activities; criminal jurisdiction; environmental laws. Notwithstanding
 36 any provision of this section to the contrary.

37 A The Mi'kmaq Nation may conduct gaming activities only in accordance with the
 38 laws of this State and may not conduct gaming activities under the authority of the
 39 federal Indian Gaming Regulatory Act or under any regulations promulgated under the
 40 federal Indian Gaming Regulatory Act by the chair of the National Indian Gaming
 41 Commission or its successor organization.

42 B The laws of this State applicable to crimes and juvenile crimes apply to the Mi'kmaq
 43 Nation The statutes and regulations of the United States that conflict with or affect or
 44 preempt the jurisdiction of this State over crimes and juvenile crimes do not apply to
 45 the Mi'kmaq Nation, unless such provisions are specifically made applicable within the

1 State of Maine The federal laws identified in Section 6(c) of United States Public Law
 2 96-420 do not apply in this State, and

3 C The provisions of the federal Clean Water Act, the federal Water Quality Act of
 4 1987, the federal Clean Air Act and the federal Indian Mineral Development Act of
 5 1982, including all future amendments and reauthorizations of those Acts, do not apply
 6 with respect to the Mi'kmaq Nation and its Indian territory or trust land to the extent
 7 the provisions affect or preempt the application of the laws of this State and directly or
 8 indirectly extend the jurisdiction of the Mi'kmaq Nation beyond its Indian territory or
 9 trust land, unless such provisions are specifically made applicable within the State of
 10 Maine

11 **5. Powers of Mi'kmaq Nation relating to federal statutes and regulations.**
 12 Notwithstanding any provision of law to the contrary, the State and the Mi'kmaq Nation
 13 agree and intend pursuant to United States Public Law 102-171 that the Mi'kmaq Nation
 14 has the power to enact laws and ordinances relating to the operation, application and
 15 implementation of any statute or regulation of the United States enacted before, on or after
 16 October 10, 1980 that accords a special status or right to or relates to a special status or
 17 right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
 18 reservations, Indian country, Indian territory or land held in trust for Indians, except as
 19 otherwise provided in subsection 4

20 **6. Contingent repeal.** Notwithstanding Title 1, section 71, subsection 8, this section
 21 is repealed if a court of competent jurisdiction enters a final judgment concluding that no
 22 part of this section is effective in causing the statutes and regulations of the United States
 23 that are generally applicable to or enacted for the benefit of Indians or relate to a special
 24 status or right of Indian nations or tribes or bands of Indians or to lands owned by or held
 25 in trust for Indians, Indian nations or tribes or bands of Indians to apply to the Mi'kmaq
 26 Nation and its Indian territory or trust land For purposes of this subsection, "final
 27 judgment" does not include a judgment that is the subject of a pending appeal or for which
 28 the time period for taking an appeal has not yet expired If this contingency is met, the
 29 Attorney General or the Mi'kmaq Nation Tribal Council shall notify the Secretary of State,
 30 the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of
 31 Statutes

32 **Sec. 5. Contingent effective date.** That section of this Act that enacts the Maine
 33 Revised Statutes, Title 30, section 6215 takes effect 120 days after adjournment of the First
 34 Special Session of the 131st Legislature only if, within 90 days after adjournment of the
 35 First Special Session of the 131st Legislature, the Secretary of State receives written
 36 certification from the Joint Tribal Council of the Passamaquoddy Tribe that the tribe has
 37 agreed to the provisions of that section, copies of which must be submitted by the Secretary
 38 of State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes

39 That section of this Act that enacts the Maine Revised Statutes, Title 30, section 6216
 40 takes effect 120 days after adjournment of the First Special Session of the 131st Legislature
 41 only if, within 90 days after adjournment of the First Special Session of the 131st
 42 Legislature, the Secretary of State receives written certification from the Governor and the
 43 Council of the Penobscot Nation that the nation has agreed to the provisions of that section,
 44 copies of which must be submitted by the Secretary of State to the Secretary of the Senate,
 45 the Clerk of the House and the Revisor of Statutes

1 That section of this Act that enacts the Maine Revised Statutes, Title 30, section 6217
 2 takes effect 120 days after adjournment of the First Special Session of the 131st Legislature
 3 only if, within 90 days after adjournment of the First Special Session of the 131st
 4 Legislature, the Secretary of State receives written certification from the Houlton Band
 5 Council of the Houlton Band of Maliseet Indians that the band has agreed to the provisions
 6 of that section, copies of which must be submitted by the Secretary of State to the Secretary
 7 of the Senate, the Clerk of the House and the Revisor of Statutes Upon such written
 8 certification by the Houlton Band Council of the Houlton Band of Maliseet Indians, section
 9 6217 constitutes a jurisdictional agreement for purposes of the federal Maine Indian Claims
 10 Settlement Act of 1980, United States Public Law 96-420, Section 6(e)(2) Such written
 11 certification by the Houlton Band Council of the Houlton Band of Maliseet Indians does
 12 not constitute an agreement that the contingencies in Public Law 1981, chapter 675 were
 13 met or that the provisions of Public Law 1981, chapter 675 ever took effect

14 That section of this Act that enacts the Maine Revised Statutes, Title 30, chapter 605
 15 takes effect 120 days after adjournment of the First Special Session of the 131st Legislature
 16 only if, within 90 days after adjournment of the First Special Session of the 131st
 17 Legislature, the Secretary of State receives written certification from the Mi'kmaq Nation
 18 Tribal Council that the nation has agreed to the provisions of that chapter, copies of which
 19 must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the
 20 House and the Revisor of Statutes Upon such written certification by the Mi'kmaq Nation
 21 Tribal Council, chapter 605 constitutes a jurisdictional agreement for purposes of the
 22 Aroostook Band of Micmacs Settlement Act, United States Public Law 102-171, Section
 23 6(d) Such written certification by the Mi'kmaq Nation Tribal Council does not constitute
 24 an agreement that the contingencies in Public Law 1989, chapter 148 were met or that the
 25 provisions of Public Law 1989, chapter 148 ever took effect '

26 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 27 number to read consecutively

28 **SUMMARY**

29 This amendment strikes and replaces the bill It does the following

30 1 Establishes new findings within the Maine Implementing Act to distinguish
 31 legislative findings relevant to this bill from the findings made during the enactment of the
 32 original 1980 Implementing Act Separate but identical findings are included for the
 33 Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians These
 34 findings describe the effect of section 6(h) and 16(b) of the federal Settlement Act, United
 35 States Public Law 96-420, in precluding the Passamaquoddy Tribe, Penobscot Nation and
 36 Houlton Band of Maliseet Indians from benefiting from federal laws and regulations that
 37 are generally applicable to or enacted for the benefit of Indians or relate to a special status
 38 or right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust
 39 for Indians, Indian nations or tribes or bands of Indians if such law or regulation affects or
 40 preempts the civil, criminal or regulatory jurisdiction of this State, including, without
 41 limitation, laws of this State relating to land use or environmental matters The findings
 42 describe the purposes of the amendments to the Maine Implementing Act included in this
 43 legislation as regards the application of state and federal law to the Passamaquoddy Tribe,
 44 Penobscot Nation and Houlton Band of Maliseet Indians,

1 2 Adds separate but identical sections to the Maine Implementing Act that apply to
 2 the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseet Indians and
 3 that describe the application of federal and state law to each. Regarding state law, the
 4 language provides that any law of this State that would be affected or preempted by the
 5 operation, application or implementation of any statute or regulation of the United States
 6 that accords a special status or right to or relates to a special status or right of any Indian,
 7 Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country,
 8 Indian territory or land held in trust for Indians does not apply, except as specifically
 9 provided in the Act,

10 3 Regarding federal law, the language provides that any statute or regulation of the
 11 United States enacted before, on or after October 10, 1980 that accords a special status or
 12 right to or relates to a special status or right of any Indian, Indian nation, tribe or band of
 13 Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in
 14 trust for Indians is applicable within this State, without regard to any effect on the
 15 application of the laws of this State, except as specifically provided,

16 4 Provides that modification of the application of the laws of this State is limited to
 17 those particular circumstances in which the application of the laws of this State would
 18 conflict or interfere with the actual operation, application or implementation of a statute or
 19 regulation of the United States that accords a special status or right to or relates to a special
 20 status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
 21 reservations, Indian country, Indian territory or land held in trust for Indians. If the
 22 operation, application or implementation of any statute or regulation of the United States
 23 in this State would result in the absence of any law or regulation applicable to a matter of
 24 public health or safety, including without limitation laws relating to land use or
 25 environmental matters, the corresponding laws of the State with respect to that health or
 26 safety matter apply to fill any regulatory gap,

27 5 Describes a process by which the Passamaquoddy Tribe, Penobscot Nation and
 28 Houlton Band of Maliseet Indians are to notify the Attorney General in the event they
 29 believe that a law of this State does not apply by virtue of the amendments proposed by
 30 this legislation,

31 6 Provides that the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band
 32 of Maliseet Indians may conduct gaming activities only in accordance with the laws of this
 33 State and may not conduct gaming activities under the authority of the federal Indian
 34 Gaming Regulatory Act or under any regulations promulgated under the federal Indian
 35 Gaming Regulatory Act by the chair of the National Indian Gaming Commission or its
 36 successor organization,

37 7 Provides that the laws of this State applicable to the crimes and juvenile crimes
 38 described in this legislation apply to the Passamaquoddy Tribe, the Penobscot Nation and
 39 the Houlton Band of Maliseet Indians as provided in this legislation, the statutes and
 40 regulations of the United States that conflict with or affect or preempt the jurisdiction of
 41 this State over crimes and juvenile crimes described in this legislation do not apply in this
 42 State, and the federal laws identified in Section 6(c) of United States Public Law 96-420
 43 do not apply in this State,

44 8 Provides that the federal Clean Water Act, the federal Water Quality Act of 1987,
 45 the federal Clean Air Act and the federal Indian Mineral Development Act of 1982, as well

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COMMITTEE AMENDMENT "A" to H P 1284, L D 2004

1 as all future amendments to those laws, do not apply to the Passamaquoddy Tribe, the
2 Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation and their
3 Indian territory or trust land to the extent the provisions affect or preempt the application
4 of the laws of this State and extend the jurisdiction of the tribe, nation or band beyond their
5 Indian territory or trust land, unless such provisions are specifically made applicable within
6 the State of Maine,

7 9 Provides that, notwithstanding any provision of law to the contrary, the State, the
8 Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians
9 agree and intend that each tribe, nation or band has the power to enact laws and ordinances
10 relating to the operation, application and implementation of any statute or regulation of the
11 United States enacted before, on or after October 10, 1980 that accords a special status or
12 right to or relates to a special status or right of any Indian, Indian nation, tribe or band of
13 Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in
14 trust for Indians, except as otherwise provided,

15 10 Creates a new chapter pertaining to the Mi'kmaq Nation with provisions that mirror
16 those applicable to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band
17 of Maliseet Indians,

18 11 Adds contingent effective date language specific to each tribe, nation or band, and

19 12 Adds contingent repeal language

20 **FISCAL NOTE REQUIRED**

21 (See attached)



131st MAINE LEGISLATURE

LD 2004

LR 1325(02)

An Act to Restore Access to Federal Laws Beneficial to the Wabanaki Nations

Fiscal Note for Bill as Amended by Committee Amendment "A" (658)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases that may be filed in the state court system does not require additional funding at this time

Fiscal Detail and Notes

Additional costs to the Office of the Attorney General for litigation associated with the provisions of this bill can be absorbed within existing budgeted resources