

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

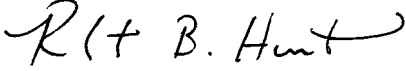
No. 2004

H.P. 1284

House of Representatives, May 30, 2023

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

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland.
Cosponsored by Senator BRAKEY of Androscoggin and
Representatives: ANDREWS of Paris, DANA of the Passamaquoddy Tribe, FAULKINGHAM
of Winter Harbor, MOONEN of Portland, Senators: BAILEY of York, BENNETT of Oxford,
CARNEY of Cumberland, President JACKSON of Aroostook.

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

2 **Sec. 1. 12 MRSA §6302-A, sub-§2**, as amended by PL 2013, c. 254, §2, is further
3 amended by amending the first blocked paragraph to read:

4 For purposes of this subsection, "sustenance use" means all noncommercial consumption
5 or noncommercial use by any person within Passamaquoddy Indian territory, as defined in
6 Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30,
7 section 6205, subsection 2, Aroostook Band Trust Land, as defined in Title 30, section
8 7202, subsection 2, or Houlton Band Trust Land, as defined in Title 30, section 6203,
9 subsection 2-A 2-B, or at any location within the State by a tribal member, by a tribal
10 member's immediate family or within a tribal member's household. The term "sustenance
11 use" does not include the sale of marine organisms.

12 **Sec. 2. 30 MRSA §6202, sub-§1** is enacted to read:

13 **1. Application of statutes and regulations of the United States.** The purpose of
14 the amendments to this Act enacted in 2023 is to adjust the jurisdiction of and the
15 application of the laws of this State with respect to the Passamaquoddy Tribe, the Penobscot
16 Nation and the Houlton Band of Maliseet Indians and their Indian territory or trust land in
17 order to confirm, establish and remove any doubt that the statutes and regulations of the
18 United States that are generally applicable to or enacted for the benefit of Indians or relate
19 to a special status or right of Indian nations or tribes or bands of Indians or to lands owned
20 by or held in trust for Indians, Indian nations or tribes or bands of Indians are applicable
21 within this State.

22 Sections 6(h) and 16(b) of United States Public Law 96-420 provide generally that the laws
23 and regulations of the United States that are generally applicable to or enacted for the
24 benefit of Indians or relate to a special status or right of Indian nations or tribes or bands of
25 Indians or to lands owned by or held in trust for Indians, Indian nations or tribes or bands
26 of Indians are applicable within this State unless such law or regulation affects or preempts
27 the civil, criminal or regulatory jurisdiction of this State, including, without limitation, laws
28 of this State relating to land use or environmental matters. The purpose of the amendments
29 to this Act enacted in 2023 is to modify and withdraw the jurisdiction of and the application
30 of the laws of this State to the limited extent that such laws otherwise would be affected or
31 preempted by the application of the statutes and regulations of the United States that are
32 generally applicable to or enacted for the benefit of Indians or relate to a special status or
33 right of Indian nations or tribes or bands of Indians or to lands owned by or held in trust
34 for Indians, Indian nations or tribes or bands of Indians.

35 By modifying the jurisdiction of and the application of the laws of this State in this limited
36 manner, the State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band
37 of Maliseet Indians agree and intend pursuant to United States Public Law 96-420 to
38 confirm, establish, enable, facilitate and adopt the operation and application in this State of
39 the statutes and regulations of the United States that are generally applicable to Indians,
40 Indian nations or tribes or bands of Indians or to lands owned by or held in trust for Indians,
41 Indian nations or tribes or bands of Indians, including such statutes and regulations enacted
42 for the benefit of Indians, Indian nations or tribes or bands of Indians and statutes and
43 regulations that accord a special status or right to or that relate to a special status or right
44 of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations,
45 Indian country, Indian territory or land or other natural resources held in trust for Indians.

1 **Sec. 3. 30 MRSA §6203, sub-§2-A**, as enacted by PL 1981, c. 675, §§1 and 8, is
2 repealed.

3 **Sec. 4. 30 MRSA §6203, sub-§2-B** is enacted to read:

4 **2-B. Houlton Band Trust Land.** "Houlton Band Trust Land" means land or other
5 natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians
6 pursuant to the federal Houlton Band of Maliseet Indians Supplementary Claims Settlement
7 Act of 1986 or pursuant to any other applicable federal Indian law.

8 **Sec. 5. 30 MRSA §6203, sub-§2-C** is enacted to read:

9 **2-C. Indian territory or trust land.** "Indian territory or trust land" means:

10 A. With respect to the Passamaquoddy Tribe, the Passamaquoddy Indian territory;

11 B. With respect to the Penobscot Nation, the Penobscot Indian territory; and

12 C. With respect to the Houlton Band of Maliseet Indians, Houlton Band Trust Land.

13 **Sec. 6. 30 MRSA §6215** is enacted to read:

14 **§6215. Federal statutes and regulations apply; gaming activities**

15 Notwithstanding any provision of this Act to the contrary, the State, the
16 Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians
17 agree and intend pursuant to United States Public Law 96-420 that any law of this State,
18 including, without limitation, laws of this State relating to land use or environmental
19 matters, that is contrary to or that would be affected or preempted by the operation of or
20 the application of any statute or regulation of the United States that accords a special status
21 or right to or relates to a special status or right of any Indian, Indian nation, tribe or band
22 of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held
23 in trust for Indians does not apply, except for laws of this State applicable to the crimes and
24 juvenile crimes described in this Act. Except for statutes and regulations of the United
25 States that conflict with or affect or preempt the jurisdiction of this State over crimes and
26 juvenile crimes described in this Act and except for federal laws identified in Section 6(c)
27 of United States Public Law 96-420, the State, the Passamaquoddy Tribe, the Penobscot
28 Nation and the Houlton Band of Maliseet Indians further agree and intend pursuant to
29 United States Public Law 96-420 that any statute or regulation of the United States enacted
30 before, on or after October 10, 1980 that accords a special status or right to or relates to a
31 special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands,
32 Indian reservations, Indian country, Indian territory or land held in trust for Indians is
33 applicable within this State, without regard to any effect on the jurisdiction of or the
34 application of the laws of this State.

35 Notwithstanding any provision of this Act to the contrary, the Passamaquoddy Tribe,
36 the Penobscot Nation and the Houlton Band of Maliseet Indians may conduct gaming
37 activities only in accordance with the laws of this State and may not conduct gaming
38 activities under the authority of the federal Indian Gaming Regulatory Act or under any
39 regulations promulgated under the federal Indian Gaming Regulatory Act by the chair of
40 the National Indian Gaming Commission or its successor organization.

41 **Sec. 7. 30 MRSA §6216** is enacted to read:

42 **§6216. Powers of Indian tribes relating to federal statutes and regulations**

1 to or enacted for the benefit of Indians or relate to a special status or right of Indian nations
2 or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations
3 or tribes or bands of Indians.

4 By modifying the jurisdiction of and the application of the laws of this State in this limited
5 manner, the State and the Mi'kmaq Nation agree and intend pursuant to United States Public
6 Law 102-171 to confirm, establish, enable, facilitate and adopt the operation and
7 application in this State of the statutes and regulations of the United States that are generally
8 applicable to Indians, Indian nations or tribes or bands of Indians or to lands owned by or
9 held in trust for Indians, Indian nations or tribes or bands of Indians, including such statutes
10 and regulations enacted for the benefit of Indians, Indian nations or tribes or bands of
11 Indians and statutes and regulations that accord a special status or right to or that relate to
12 a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian lands,
13 Indian reservations, Indian country, Indian territory or land or other natural resources held
14 in trust for Indians.

15 **3. Federal statutes and regulations apply; gaming activities.** Notwithstanding any
16 provision of this section to the contrary, the State and the Mi'kmaq Nation agree and intend
17 pursuant to United States Public Law 102-171 that any law of this State, including, without
18 limitation, laws of this State relating to land use or environmental matters, that is contrary
19 to or that would be affected or preempted by the operation of or the application of any
20 statute or regulation of the United States that accords a special status or right to or relates
21 to a special status or right of any Indian, Indian nation, tribe or band of Indians, Indian
22 lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians
23 does not apply, except for laws of this State applicable to the crimes and juvenile crimes
24 described in An Act to Implement the Maine Indian Claims Settlement. Except for statutes
25 and regulations of the United States that conflict with or affect or preempt the jurisdiction
26 of this State over crimes and juvenile crimes described in An Act to Implement the Maine
27 Indian Claims Settlement and except for federal laws identified in Section 6(c) of United
28 States Public Law 96-420, the State and the Mi'kmaq Nation further agree and intend
29 pursuant to United States Public Law 102-171 that any statute or regulation of the United
30 States enacted before, on or after October 10, 1980 that accords a special status or right to
31 or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians,
32 Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for
33 Indians is applicable within this State, without regard to any effect on the jurisdiction of or
34 the application of the laws of this State.

35 Notwithstanding any provision of this section to the contrary, the Mi'kmaq Nation may
36 conduct gaming activities only in accordance with the laws of this State and may not
37 conduct gaming activities under the authority of the federal Indian Gaming Regulatory Act
38 or under any regulations promulgated under the federal Indian Gaming Regulatory Act by
39 the chair of the National Indian Gaming Commission or its successor organization.

40 **4. Powers of Indian tribes relating to federal statutes and regulations.**
41 Notwithstanding any provision of law to the contrary, the State and the Mi'kmaq Nation
42 agree and intend pursuant to United States Public Law 102-171 that the Mi'kmaq Nation
43 has the power to enact laws and ordinances relating to the operation, application and
44 implementation of any statute or regulation of the United States enacted before, on or after
45 October 10, 1980 that accords a special status or right to or relates to a special status or

1 right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
2 reservations, Indian country, Indian territory or land held in trust for Indians.

3 **Sec. 9. Contingent effective date.** This Act takes effect 120 days after adjournment
4 of the First Special Session of the 131st Legislature only if, within 90 days after
5 adjournment of the First Special Session of the 131st Legislature, the Secretary of State
6 receives written certification from the Joint Tribal Council of the Passamaquoddy Tribe
7 that the tribe has agreed to the provisions of this Act; from the Governor and the Council
8 of the Penobscot Nation that the nation has agreed to the provisions of this Act; from the
9 Houlton Band Council of the Houlton Band of Maliseet Indians that the band has agreed to
10 the provisions of this Act; and from the Mi'kmaq Nation Tribal Council that the nation has
11 agreed to the provisions of this Act, copies of which must be submitted by the Secretary of
12 State to the Secretary of the Senate, the Clerk of the House and the Revisor of Statutes.
13 Upon such written certification by the Houlton Band Council of the Houlton Band of
14 Maliseet Indians, each section of this Act regarding or affecting the Houlton Band of
15 Maliseet Indians and its lands constitutes a jurisdictional agreement for purposes of the
16 federal Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420,
17 Section 6(e)(2). Such written certification by the Houlton Band Council of the Houlton
18 Band of Maliseet Indians does not constitute an agreement that the contingencies in Public
19 Law 1981, chapter 675 were met or that the provisions of Public Law 1981, chapter 675
20 ever took effect. Upon such written certification by the Mi'kmaq Nation Tribal Council,
21 each section of this Act regarding or affecting the Mi'kmaq Nation and its lands constitutes
22 a jurisdictional agreement for purposes of the Aroostook Band of Micmac Settlement Act,
23 United States Public Law 102-171, Section 6(d). Such written certification by the Mi'kmaq
24 Nation Tribal Council does not constitute an agreement that the contingencies in Public
25 Law 1989, chapter 148 were met or that the provisions of Public Law 1989, chapter 148
26 ever took effect.

27 SUMMARY

28 This bill provides that the State, the Passamaquoddy Tribe, the Penobscot Nation and
29 the Houlton Band of Maliseet Indians agree and intend pursuant to United States Public
30 Law 96-420 and the State and the Mi'kmaq Nation agree and intend pursuant to United
31 States Public Law 102-171 that any law of this State, including, without limitation, laws of
32 this State relating to land use or environmental matters, that is contrary to or that would be
33 affected or preempted by the operation of or the application of any statute or regulation of
34 the United States that accords a special status or right to or relates to a special status or
35 right of any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian
36 reservations, Indian country, Indian territory or land held in trust for Indians does not apply,
37 except for laws of this State applicable to certain crimes and juvenile crimes. Except for
38 statutes and regulations of the United States that conflict with or affect or preempt the
39 jurisdiction of this State over certain enumerated crimes and juvenile crimes and except for
40 federal laws identified in Section 6(c) of United States Public Law 96-420, the State, the
41 Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and
42 the Mi'kmaq Nation further agree and intend pursuant to United States Public Law 96-420
43 and to United States Public Law 102-171, as applicable, that any statute or regulation of
44 the United States enacted before, on or after October 10, 1980 that accords a special status
45 or right to or relates to a special status or right of any Indian, Indian nation, tribe or band
46 of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held

1 in trust for Indians is applicable within this State, without regard to any effect on the
2 jurisdiction of or the application of the laws of this State.

3 The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet
4 Indians and the Mi'kmaq Nation may conduct gaming activities only in accordance with
5 the laws of this State and may not conduct gaming activities under the authority of the
6 federal Indian Gaming Regulatory Act or under any regulations promulgated under the
7 federal Indian Gaming Regulatory Act by the chair of the National Indian Gaming
8 Commission or its successor organization.

9 The State, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of
10 Maliseet Indians agree and intend pursuant to United States Public Law 96-420, and the
11 State and the Mi'kmaq Nation agree and intend pursuant to United States Public Law 102-
12 171, that each tribe, nation or band has the power to enact laws and ordinances relating to
13 the operation, application and implementation of any statute or regulation of the United
14 States enacted before, on or after October 10, 1980 that accords a special status or right to
15 or relates to a special status or right of any Indian, Indian nation, tribe or band of Indians,
16 Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for
17 Indians.