

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

AT THE

SECOND REGULAR SESSION

January 2, 1980 to April 3, 1980

AND AT THE

THIRD SPECIAL SESSION

May 22, 1980

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
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PUBLIC LAWS
OF THE
STATE OF MAINE
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Resources. The commissioner is authorized to transfer positions, lines, programs or accounts between bureaus and appropriations in order to carry out the intent of this Act.

Sec. 19. Revision clause. Wherever in the Revised Statutes the words "Department of Agriculture" appear or reference is made to that name, they shall be amended to read and mean the "Department of Agriculture, Food and Rural Resources."

Effective July 3, 1980

CHAPTER 732

S. P. 827 — L. D. 2037

AN ACT to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory.

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

Sec. 1. 30 MRSA Pt. 4 is enacted to read:

PART 4

INDIAN TERRITORIES

CHAPTER 601

MAINE INDIAN CLAIMS SETTLEMENT

§ 6201. Short title

This Act shall be known and may be cited as "AN ACT to Implement the Maine Indian Claims Settlement."

§ 6202. Legislative findings and declaration of policy

The Legislature finds and declares the following.

The Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians are asserting claims for possession of large areas of land in the State and for damages alleging that the lands in question originally were transferred in violation of the Indian Trade and Intercourse Act of 1790, 1 Stat. 137, or subsequent reenactments or versions thereof.

Substantial economic and social hardship could be created for large numbers of

landowners, citizens and communities in the State, and therefore to the State as a whole, if these claims are not resolved promptly.

The claims also have produced disagreement between the Indian claimants and the State over the extent of the state's jurisdiction in the claimed areas. This disagreement has resulted in litigation and, if the claims are not resolved, further litigation on jurisdictional issues would be likely.

The Indian claimants and the State, acting through the Attorney General, have reached certain agreements which represent a good faith effort on the part of all parties to achieve a fair and just resolution of those claims which, in the absence of agreement, would be pursued through the courts for many years to the ultimate detriment of the State and all its citizens, including the Indians.

The foregoing agreement between the Indian claimants and the State also represents a good faith effort by the Indian claimants and the State to achieve a just and fair resolution of their disagreement over jurisdiction on the present Passamaquoddy and Penobscot Indian reservations and in the claimed areas. To that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act. The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State.

It is the purpose of this Act to implement in part the foregoing agreement.

§ 6203. Definitions

As used in this Act, unless the context indicates otherwise, the following terms have the following meanings.

1. Commission. "Commission" means the Maine Indian Tribal-State Commission created by section 6212.

2. Houlton Band of Maliseet Indians. "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.

3. Land or other natural resources. "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including, but without limitation, minerals and mineral rights, timber and timber rights, water and water rights and hunting and fishing rights.

4. Laws of the State. "Laws of the State" means the Constitution and all statutes, rules or regulations and the common law of the State and its political subdivisions, and subsequent amendments thereto or judicial interpretations thereof.

5. **Passamaquoddy Indian Reservation.** "Passamaquoddy Indian Reservation" means those lands reserved to the Passamaquoddy Tribe by agreement with the State of Massachusetts dated September 19, 1794, excepting any parcel within such lands transferred to a person or entity other than a member of the Passamaquoddy Tribe subsequent to such agreement and prior to the effective date of this Act. If any lands reserved to the Passamaquoddy Tribe by the aforesaid agreement hereafter are acquired by the Passamaquoddy Tribe, or the secretary on its behalf, that land shall be included within the Passamaquoddy Indian Reservation. For purposes of this subsection, the lands reserved to the Passamaquoddy Tribe by the aforesaid agreement shall be limited to Indian Township in Washington County; Pine Island, sometimes referred to as Taylor's Island, located in Big Lake, in Washington County; 100 acres of land located on Nemcass Point, sometimes referred to as Governor's Point, located in Washington County and shown on a survey of John Gardner which is filed in the Maine State Archives, Executive Council Records, Report Number 264 and dated June 5, 1855; 100 acres of land located at Pleasant Point in Washington County as described in a deed to Captain John Frost from Theodore Lincoln, Attorney for Benjamin Lincoln, Thomas Russell, and John Lowell dated July 14, 1792, and recorded in the Washington County Registry of Deeds on April 27, 1801, at Book 3, Page 73; and those 15 islands in the St. Croix River in existence on September 19, 1794 and located between the head of the tide of that river and the falls below the forks of that river, both of which points are shown on a 1794 plan of Samuel Titcomb which is filed in the Maine State Archives in Maine Land Office Plan Book Number 1, page 33.

6. **Passamaquoddy Indian territory.** "Passamaquoddy Indian territory" means that territory defined by section 6205, subsection 1.

7. **Passamaquoddy Tribe.** "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate councils at the Indian Township and Pleasant Point Reservations.

8. **Penobscot Indian Reservation.** "Penobscot Indian Reservation" means the islands in the Penobscot River reserved to the Penobscot Nation by agreement with the States of Massachusetts and Maine consisting solely of Indian Island, also known as Old Town Island, and all islands in said river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818, and prior to the effective date of this Act. If any land within Nicatow Island is hereafter acquired by the Penobscot Nation, or the secretary on its behalf, that land shall be included within the Penobscot Indian Reservation.

9. **Penobscot Indian territory.** "Penobscot Indian territory" means that territory defined by section 6205, subsection 2.

10. **Penobscot Nation.** "Penobscot Nation" means the Penobscot Indian

Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented by the Penobscot Reservation Tribal Council.

11. Secretary. "Secretary" means the Secretary of the Interior of the United States.

12. Settlement Fund. "Settlement Fund" means the trust fund established for the Passamaquoddy Tribe and Penobscot Nation by the United States pursuant to congressional legislation extinguishing aboriginal land claims in Maine.

13. Transfer. "Transfer" includes, but is not necessarily limited to, any voluntary or involuntary sale, grant, lease, allotment, partition or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition or other conveyance; and any act, event or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or other natural resources.

§ 6204. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

§ 6205. Indian territory

1. Passamaquoddy Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Passamaquoddy Indian territory:"

A. The Passamaquoddy Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Passamaquoddy Tribe from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 1, 1983, are not held in common with any other person or entity and are certified by the secretary by January 1, 1983, as held for the benefit of the Passamaquoddy Tribe:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the

lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle.

2. Penobscot Indian territory. Subject to subsections 3, 4 and 5, the following lands within the State shall be known as the "Penobscot Indian territory:"

A. The Penobscot Indian Reservation; and

B. The first 150,000 acres of land acquired by the secretary for the benefit of the Penobscot Nation from the following areas or lands to the extent that those lands are acquired by the secretary prior to January 1, 1983, are not held in common with any other person or entity and are certified by the secretary by January 1, 1983 as held for the Penobscot Nation:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle.

3. Takings under the laws of the State.

A. Prior to any taking of land for public uses within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity proposing the taking, or, in the event of a taking proposed by a public utility, the Public Utilities Commission, shall be required to find that there is no reasonably feasible alternative to the proposed taking. In making this finding, the public entity or the Public Utilities Commission shall compare the cost, technical feasibility, and environmental and social impact of the available alternatives, if any, with the cost, technical feasibility and environmental and social impact of the proposed taking. Prior to making this finding, the public entity or Public Utilities Commission, after notice to the affected tribe or

nation, shall conduct a public hearing in the manner provided by the Maine Administrative Procedure Act, on the affected Indian reservation. The finding of the public entity or Public Utilities Commission may be appealed to the Maine Superior Court.

In the event of a taking of land for public uses within the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation, the public entity or public utility making the taking shall, at the election of the affected tribe or nation, and with respect to individually allotted lands, at the election of the affected allottee or allottees, acquire by purchase or otherwise for the respective tribe, nation, allottee or allottees a parcel or parcels of land equal in value to that taken; contiguous to the affected Indian reservation; and as nearly adjacent to the parcel taken as practicable. The land so acquired shall, upon written certification to the Secretary of State by the public entity or public utility acquiring such land describing the location and boundaries thereof, be included within the Indian Reservation of the affected tribe or nation without further approval of the State. For purposes of this section, land along and adjacent to the Penobscot River shall be deemed to be contiguous to the Penobscot Indian Reservation. The acquisition of land for the Passamaquoddy Tribe or the Penobscot Nation or any allottee under this subsection shall be full compensation for any such taking. If the affected tribe, nation, allottee or allottees elect not to have a substitute parcel acquired in accordance with this subsection, the moneys received for such taking shall be reinvested in accordance with the provisions of paragraph B.

B. If land within either the Passamaquoddy Indian Territory or the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation is taken for public uses in accordance with the laws of the State the money received for said land shall be reinvested in other lands within 2 years of the date on which the money is received. To the extent that any moneys received are so reinvested in land with an area not greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the lands so acquired by such reinvestment shall be included within the respective Indian territory without further approval of the State. To the extent that any moneys received are so reinvested in land with an area greater than the area of the land taken and located within an unorganized or unincorporated area of the State, the respective tribe or nation shall designate, within 30 days of such reinvestment, that portion of the land acquired by such reinvestment, not to exceed the area taken, which shall be included within the respective Indian territory. No land acquired pursuant to this paragraph shall be included within either Indian Territory until the Secretary of Interior has certified, in writing, to the Secretary of State the location and boundaries of the land acquired.

4. Taking under the laws of the United States. In the event of a taking of land within the Passamaquoddy Indian territory or the Penobscot Indian territory for public uses in accordance with the laws of the United States and the reinvestment of the moneys received from such taking within 2 years of the date on which the moneys are received, the status of the lands acquired by such reinvestment shall be determined in accordance with subsection 3, paragraph B.

5. **Limitations.** No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

Any lands within the Passamaquoddy Indian territory or the Penobscot Indian territory, the fee to which is transferred to any person who is not a member of the respective tribe or nation, shall cease to constitute a portion of Indian territory and shall revert to its status prior to the inclusion thereof within Indian territory.

§ 6206. **Powers and duties of the Indian tribes within their respective Indian territories**

1. **General Powers.** Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian territories, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. The Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State applicable to the respective Indian territories and the residents thereof. Any resident of the Passamaquoddy Indian territory or the Penobscot Indian territory who is not a member of the respective tribe or nation nonetheless shall be equally entitled to receive any municipal or governmental services provided by the respective tribe or nation or by the State, except those services which are provided exclusively to members of the respective tribe or nation pursuant to state or federal law, and shall be entitled to vote in national, state and county elections in the same manner as any tribal member residing within Indian territory.

2. **Power to sue and be sued.** The Passamaquoddy Tribe, the Penobscot Nation and their members may sue and be sued in the courts of the State to the same extent as any other entity or person in the State provided, however, that the respective tribe or nation and its officers and employees shall be immune from suit when the respective tribe or nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State.

3. **Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each shall have the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section shall be made by each tribal governing body. Should either tribe or nation choose not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State shall have exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State shall have exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.

§ 6207. Regulation of fish and wildlife resources

1. **Adoption of ordinances by tribe.** Subject to the limitations of subsection 6, the Passamaquoddy Tribe and the Penobscot Nation each shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating:

A. **Hunting, trapping or other taking of wildlife; and**

B. **Taking of fish on any pond in which all the shoreline and all submerged lands are wholly within Indian territory and which is less than 10 acres in surface area.**

Such ordinances shall be equally applicable, on a nondiscriminatory basis, to all persons regardless of whether such person is a member of the respective tribe or nation provided, however, that subject to the limitations of subsection 6, such ordinances may include special provisions for the sustenance of the individual members of the Passamaquoddy Tribe or the Penobscot Nation. In addition to the authority provided by this subsection, the Passamaquoddy Tribe and the Penobscot Nation, subject to the limitations of subsection 6, may exercise within their respective Indian territories all the rights incident to ownership of land under the laws of the State.

2. **Registration stations.** The Passamaquoddy Tribe and the Penobscot Nation shall establish and maintain registration stations for the purpose of registering bear, moose, deer and other wildlife killed within their respective Indian territories and shall adopt ordinances requiring registration of such wildlife to the extent and in substantially the same manner as such wildlife are required to be registered under the laws of the State. These ordinances requiring registration shall be equally applicable to all persons without distinction based on tribal membership. The Passamaquoddy Tribe and the Penobscot Nation shall report the deer, moose, bear and other wildlife killed and registered within their respective Indian territories to the Commissioner of Inland Fisheries and Wildlife of the State at such times as the commissioner deems appropriate. The records of registration of the Passamaquoddy Tribe and the Penobscot Nation shall be available, at all times, for inspection and examination by the commissioner.

3. Adoption of regulations by the commission. Subject to the limitations of subsection 6, the commission shall have exclusive authority to promulgate fishing rules or regulations on:

A. Any pond other than those specified in subsection 1, paragraph B, 50% or more of the linear shoreline of which is within Indian territory;

B. Any section of a river or stream both sides of which are within Indian territory; and

C. Any section of a river or stream one side of which is within Indian territory for a continuous length of 1/2 mile or more.

In promulgating such rules or regulations the commission shall consider and balance the need to preserve and protect existing and future sport and commercial fisheries, the historical non-Indian fishing interests, the needs or desires of the tribes to establish fishery practices for the sustenance of the tribes or to contribute to the economic independence of the tribes, the traditional fishing techniques employed by and ceremonial practices of Indians in Maine and the ecological interrelationship between the fishery regulated by the commission and other fisheries throughout the State. Such regulation may include without limitation provisions on the method, manner, bag and size limits and season for fishing.

Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. Rules and regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the Penobscot Nation. In adopting rules or regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

In order to provide an orderly transition of regulatory authority, all fishing laws and rules and regulations of the State shall remain applicable to all waters specified in this subsection until such time as the commission certifies to the commissioner that it has met and voted to adopt its own rules and regulations in substitution for such laws and rules and regulations of the State.

4. Sustenance fishing within the Indian reservations. Notwithstanding any rule or regulation promulgated by the commission or any other law of the State, the members of the Passamaquoddy Tribe and the Penobscot Nation may take fish, within the boundaries of their respective Indian reservations, for their individual sustenance subject to the limitations of subsection 6.

5. Posting. Lands or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation shall be conspicuously posted in such a manner as to provide reasonable notice to the public of the limitations on hunting, trapping, fishing or other use of such lands or waters.

6. Supervision by Commissioner of Inland Fisheries and Wildlife. The Commissioner of Inland Fisheries and Wildlife, or his successor, shall be entitled to conduct fish and wildlife surveys within the Indian territories and on waters subject to the jurisdiction of the commission to the same extent as he is authorized to do so in other areas of the State. Before conducting any such survey the commissioner shall provide reasonable advance notice to the respective tribe or nation and afford it a reasonable opportunity to participate in such survey. If the commissioner, at any time, has reasonable grounds to believe that a tribal ordinance or commission regulation adopted under this section, or the absence of such a tribal ordinance or commission regulation, is adversely affecting or is likely to adversely affect the stock of any fish or wildlife on lands or waters outside the boundaries of land or waters subject to regulation by the commission, the Passamaquoddy Tribe or the Penobscot Nation, he shall inform the governing body of the tribe or nation or the commission, as is appropriate, of his opinion and attempt to develop appropriate remedial standards in consultation with the tribe or nation or the commission. If such efforts fail, he may call a public hearing to investigate the matter further. Any such hearing shall be conducted in a manner consistent with the laws of the State applicable to adjudicative hearings. If, after hearing, the commissioner determines that any such ordinance, rule or regulation, or the absence of an ordinance, rule or regulation, is causing, or there is a reasonable likelihood that it will cause, a significant depletion of fish or wildlife stocks on lands or waters outside the boundaries of lands or waters subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission, he may adopt appropriate remedial measures including rescission of any such ordinance, rule or regulation and, in lieu thereof, order the enforcement of the generally applicable laws or regulations of the State. In adopting any remedial measures the commission shall utilize the least restrictive means possible to prevent a substantial diminution of the stocks in question and shall take into consideration the effect that non-Indian practices on non-Indian lands or waters are having on such stocks. In no event shall such remedial measure be more restrictive than those which the commissioner could impose if the area in question was not within Indian territory or waters subject to commission regulation.

In any administrative proceeding under this section the burden of proof shall be on the commissioner. The decision of the commissioner may be appealed in the manner provided by the laws of the State for judicial review of administrative action and shall be sustained only if supported by substantial evidence.

7. Transportation of game. Fish lawfully taken within Indian territory or in waters subject to commission regulation and wildlife lawfully taken within Indian territory and registered pursuant to ordinances adopted by the Passamaquoddy Tribe and the Penobscot Nation, may be transported within the State.

8. Fish and wildlife on non-Indian lands. The commission shall undertake appropriate studies, consult with the Passamaquoddy Tribe and the Penobscot Nation and landowners and state officials, and make recommendations to the commissioner and the Legislature with respect to implementation of fish and wildlife management policies on non-Indian lands in order to protect fish and

wildlife stocks on lands and water subject to regulation by the Passamaquoddy Tribe, the Penobscot Nation or the commission.

9. Fish. As used in this section, the term "fish" means a cold blooded completely aquatic vertebrate animal having permanent fins, gills and an elongated streamlined body usually covered with scales and includes inland fish and anadromous and catadromous fish when in inland water.

§ 6208. Taxation

1. Settlement Fund income. The Settlement Fund and any portion of such funds or income therefrom distributed to the Passamaquoddy Tribe or the Penobscot Nation or the members thereof shall be exempt from taxation under the laws of the State.

2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State.

3. Other taxes. The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such.

§ 6209. Jurisdiction over criminal offenses, juvenile crimes, civil disputes and domestic relations

1. Exclusive jurisdiction in tribes over certain matters. Except as provided in subsections 3 and 4, the Passamaquoddy Tribe and the Penobscot Nation shall have the right to exercise exclusive jurisdiction separate and distinct from the State over:

- A. Criminal offenses against a person or property for which the maximum potential term of imprisonment does not exceed 6 months and the maximum potential fine does not exceed \$500 and which are committed on the Indian reservation of the respective tribe or nation by a member of either tribe or nation against another member of either tribe or nation or against the property of another member of either tribe or nation;**
- B. Juvenile crimes against a person or property involving conduct which, if committed by an adult, would fall, under paragraph A, within the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation, and juvenile crimes as defined in Title 15, section 3103, subsection 1, paragraphs B to D committed by a juvenile member of either tribe or nation on the Indian reservation of the respective tribe or nation;**
- C. Civil actions between members of either tribe or nation arising on the Indian reservation of the respective tribe or nation and which are cognizable as small claims under the laws of the State and civil actions against a member of either tribe or nation under Title 22, section 2383 involving conduct on the Indian reservation of the respective tribe or nation by a member of either tribe or nation;**
- D. Indian child custody proceedings to the extent authorized by applicable federal law; and**
- E. Other domestic relations matters including marriage, divorce and support between members of either tribe or nation both of whom reside on the Indian reservation of the respective tribe or nation.**

The decision to exercise or terminate the exercise of the jurisdiction authorized by this subsection shall be made by the tribal governing body. Should either tribe or nation choose not to exercise, or choose to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State shall have exclusive jurisdiction over those matters. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes shall apply within the Passamaquoddy and Penobscot Indian reservations and the State shall have exclusive jurisdiction over those offenses and crimes.

2. **Definitions of crimes; tribal procedures.** In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the respective tribe or nation shall be deemed to be enforcing tribal law, provided, however, the definitions of the criminal offenses and the juvenile crimes, and the punishments applicable thereto, over which the respective tribe or nation has exclusive jurisdiction under this section, shall be governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purpose of this section shall be governed by any and all federal statutes, including but without limitation the provisions of the United States Code, Title 25, sections 1301-03 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State wherein a criminal offense under the exclusive jurisdiction of either tribe or nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of such lesser included offense. A lesser included offense shall be as defined under the laws of the State.

4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under this section shall not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction shall not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which either tribe or nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum shall not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court shall not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum.

5. Future indian communities. Any 25 or more adult members of either the Passamaquoddy Tribe or the Penobscot Nation residing within their respective Indian territory and in reasonable proximity to each other may petition the commission for designation as an "extended reservation." If the commission determines, after investigation, that the petitioning tribal members constitute an "extended reservation", the commission shall establish the boundaries of this "extended reservation" and shall recommend to the Legislature that, subject to the approval of the governing body of the tribe or nation involved, it amend this Act to extend the jurisdiction of the respective tribe or nation to the "extended reservation." The boundaries of any "extended reservation" shall not exceed those reasonably necessary to encompass the petitioning tribal members.

§ 6210. Law enforcement on Indian reservations and within Indian territory

1. Exclusive authority of tribal law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209, subsection 1.

2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation shall have the authority within their respective Indian territories and state and county law enforcement officers shall have the authority within both Indian territories to enforce rules or regulations adopted by the commission under

section 6207, subsection 3 and to enforce, all laws of the State other than those over which the respective tribe or nation has exclusive jurisdiction under section 6209, subsection 1.

3. **Agreements for cooperation and mutual aid.** Nothing herein shall prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.

4. **Powers and training requirements.** Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall possess the same powers and shall be subject to the same duties, limitations and training requirements as municipal police officers under the laws of the State.

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

1. **Eligibility generally.** The Passamaquoddy Tribe and Penobscot Nation shall be eligible for participation and entitled to receive benefits from the State under any state program which provides financial assistance to all municipalities as a matter of right. Such entitlement shall be determined using statutory criteria and formulas generally applicable to municipalities in the State. To the extent that any such program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through any source of revenue available to the respective tribe or nation, including but without limitation taxation to the extent authorized within its respective Indian territory. In the event that any applicable formula regarding distribution of moneys employs a factor for the municipal real property tax rate, and in the absence of such tax within either Indian territory, the formula applicable to such Indian territory shall be computed using the most current average equalized real property tax rate of all municipalities in the State as determined by the State Tax Assessor. In the event any such formula regarding distribution of moneys employs a factor representing municipal valuation, the valuation applicable to such Indian territory shall be determined by the State Tax Assessor in the manner generally provided by the laws of the State, provided, however, that property owned by or held in trust for either tribe or nation and used for governmental purposes shall be treated for purposes of valuation as like property owned by a municipality.

2. **Limitation on eligibility.** In computing the extent to which either the Passamaquoddy Tribe or the Penobscot Nation is entitled to receive state funds under subsection 1, any moneys received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, shall be deducted in computing any payment to be made to the respective tribe or nation by the State.

3. **Eligibility for discretionary funds.** The Passamaquoddy Tribe and the

Penobscot Nation shall be eligible to apply for any discretionary state grants or loans to the same extent and subject to the same eligibility requirements, including availability of funds, applicable to municipalities in the State.

4. Eligibility of individuals for state funds. Residents of either Indian territory shall be eligible for and entitled to receive any state grant, loan, unemployment compensation, medical or welfare benefit or other social service to the same extent as and subject to the same eligibility requirements applicable to other persons in the State, provided, however, that in computing the extent to which any person is entitled to receive any such funds, any moneys received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State.

§ 6212. Maine Indian Tribal-State Commission

1. Commission created. There is hereby established a Maine Indian Tribal-State Commission. The commission shall consist of 9 members, 4 to be appointed by the Governor of the State subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 each to be appointed by the Passamaquoddy Tribe and the Penobscot Nation and a chairman to be selected in accordance with subsection 2. The members of the commission, other than the chairman shall each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of any member, the appointing authority may fill the vacancy for the unexpired term.

2. Chairman. The commission, by a majority vote of its 8 members, shall select a person to act as chairman from the Retired Judges of the Superior or Supreme Judicial Court, the Retired Judges of the United States District Court for the District of Maine, or from those Retired Judges of the United States Court of Appeals for the First Circuit or the United States Supreme Court who are residents of the State. In the event that 8 members of the commission by majority vote are unable to select a chairman within 120 days of the first meeting of the commission, the Governor shall appoint one of such retired judges to be interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section. In the event of the death, resignation or disability of the chairman, the commission may select, by a majority vote of its 8 remaining members, a chairman from such retired judges. In the event that the commission is unable to select a chairman within 120 days of such death, resignation or disability, the Governor shall appoint one of such retired judges to be interim chairman for a period of one year or until such time as the commission selects a chairman in accordance with this section. The chairman shall be a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years.

3. Responsibilities. In addition to the responsibilities set forth elsewhere in this Act, the commission shall continually review the effectiveness of this Act and

the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, the Passamaquoddy Tribe and the Penobscot Nation as it deems appropriate.

Seven members shall constitute a quorum of the commission and no decision or action of the commission shall be valid unless 5 members vote in favor of such action or decision.

4. Personnel, fees, expenses of commissioners. The commission shall have authority to employ such personnel as it deems necessary and desirable in order to effectively discharge its duties and responsibilities. Such employees shall not be subject to state personnel laws or rules.

The commission members shall be paid \$75 per day for their services and shall be reimbursed for reasonable expenses including travel.

5. Interagency cooperation. In order to facilitate the work of the commission, all other agencies of the State are directed to cooperate with the commission and shall make available to it without charge information and data relevant to the responsibilities of the commission.

§ 6213. Approval of prior transfers

1. Approval of tribal transfers. Any transfer of land or other natural resources located anywhere within the State, from, by, or on behalf of any Indian nation, or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any state, which transfer occurred prior to the effective date of this Act, shall be deemed to have been made in accordance with the laws of the State.

2. Approval of certain individual transfers. Any transfer of land or other natural resources located anywhere within the State, from, by or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, shall be deemed to have been made in accordance with the laws of the State.

§ 6214. Tribal school committees

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal school committees, in substitution for the committees heretofore provided for under the laws of the State. Such tribal school committees shall operate under the laws of the State applicable to school administrative units. The presently constituted tribal school committee of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal school committee authorized by this section.

Sec. 2. 1 MRSA § 2501, sub-§ 30, as amended by PL 1979, c. 663, § 2, is repealed.

Sec. 3. 2 MRSA § 6, sub-§ 7, as repealed and replaced by PL 1977, c. 697, § 1, is amended to read:

7. **Range 83.** The salaries of the following state officials and employees shall be within salary range 83:

~~Commissioner of Indian Affairs;~~

Deputy Adjutant General;

Secretary of Public Utilities Commission;

Chief Boiler Inspector and Supervising Elevator Inspector;

Dispute Resolution Specialist.

Sec. 4. 3 MRSA § 507, sub-§ 4, ¶¶ R, S and T, as repealed and replaced by PL 1977, c. 683, § 2, are repealed.

Sec. 5. 12 MRSA § 7001, sub-§ 17, as enacted by PL 1979, c. 420, § 1, is repealed.

Sec. 6. 12 MRSA § 7076, sub-§ 9, ¶ B, as enacted by PL 1979, c. 420, § 1, is repealed.

Sec. 7. 12 MRSA § 7406, sub-§§ 18 and 19, as enacted by PL 1979, c. 420, § 1, are repealed.

Sec. 8. 12 MRSA § 7432, sub-§§ 12 and 13, as enacted by PL 1979, c. 420, § 1, are repealed.

Sec. 9. 12 MRSA § 7453, as amended by PL 1979, c. 543, § 41, is repealed.

Sec. 10. 12 MRSA § 7454, sub-§ 1, as enacted by PL 1979, c. 420, § 1, is repealed.

Sec. 11. 12 MRSA § 7466, sub-§ 1, as enacted by PL 1979, c. 420, § 1, is repealed.

Sec. 12. 12 MRSA § 7655 is enacted to read:

§ 7655. **Prohibited acts in violation of rules or regulations of the Maine Indian Tribal-State Commission**

It shall be unlawful for any person to fish in any pond or in that portion of any river or stream subject to the authority of the Maine Indian Tribal-State

Commission in violation of the rules or regulations of the commission. For purposes of this section, the term "Maine Indian Tribal-State Commission" means that commission created by Title 30, Part 4.

Sec. 13. 20 MRSA § 4743, sub-§ 16, ¶ H, sub-¶ (4), as enacted by PL 1977, c. 625, § 8, is repealed.

Sec. 14. 21 MRSA § 1621, as amended by PL 1967, c. 422, is repealed.

Sec. 15. 21 MRSA § 1622, as last amended by PL 1975, c. 761, § 60 and c. 771, §§ 205 and 206, is repealed.

Sec. 16. 22 MRSA §§ 4701 to 4714, 4716 to 4719, 4722 to 4725, 4731 and 4732, as amended, are repealed.

Sec. 17. 22 MRSA § 4733, as repealed and replaced by PL 1967, c. 252, § 2, is repealed and the following enacted in its place:

§ 4733. Create respective tribal housing authorities

The Passamaquoddy Tribe and the Penobscot Nation are authorized to create respective tribal housing authorities. The respective tribe or nation shall prescribe the manner of selection of the members, their terms and grounds for removal. Except as otherwise provided in this chapter or clearly indicated otherwise, the Maine Housing Authorities Act shall apply to the tribal housing authorities which hereinafter may be referred to as "authority" or "authorities." The power of such tribal housing authorities may be exercised only within the Indian territory of the respective tribe or nation. Such tribal housing authorities shall be in substitution for any tribal housing authority heretofore existing under the laws of the State and shall assume all the rights and obligations of such predecessor housing authorities. The presently constituted tribal housing authority of the respective tribe or nation shall continue in existence and shall exercise all the authority heretofore vested by law in it until such time as the respective tribe or nation creates the tribal housing authority authorized by this section.

Sec. 18. 22 MRSA §§ 4734 to 4739, 4761 to 4794 and 4831 to 4836, as amended, are repealed.

Sec. 19. 23 MRSA §§ 1051 to 1053, as amended, are repealed.

Sec. 20. 28 MRSA § 103, first ¶, last sentence, as repealed and replaced by PL 1971, c. 622, § 89-A, is repealed.

Sec. 21. 30 MRSA § 4786, as amended by PL 1979, c. 570, § 2, and as repealed is reenacted to read:

§ 4786. Definitions

As used in this Article, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Housing.** "Housing" shall include but not be limited to any "project" or "housing project," as defined in section 4552, subsection 12.

2. **Housing Mortgage Insurance Fund.** "Housing Mortgage Insurance Fund" means any fund established by the Maine State Housing Authority for the purpose of providing insurance for payment of mortgage loans for housing in Maine.

3. **Indian Housing Mortgage Insurance Fund.** "Indian Housing Mortgage Insurance Fund" means any Housing Mortgage Insurance Fund established by the Maine State Housing Authority in cooperation with the Indian Housing Authorities for the purpose of providing insurance for payment of mortgage loans for housing on the several Indian reservations.

4. **Indian Housing Authority.** "Indian Housing Authority" means any housing authority created by the Maine Indian Housing Authority law.

5. **Indian Housing Mortgage Insurance Committee.** "Indian Housing Mortgage Insurance Committee" means a committee consisting of the Treasurer of State, the Director of the Maine State Housing Authority, the Commissioner of Finance and Administration and one person from the Passamaquoddy Tribe and one person from the Penobscot Nation to be chosen by the respective tribe or nation.

Sec. 22. 30 MRSA § 4787, sub-§ 2-A, as enacted by PL 1979, c. 570, § 3 and as repealed, is reenacted to read:

2-A. Limitation. Notwithstanding this section, the Maine State Housing Authority shall not make any contract or commitment of mortgage insurance without the approval of a majority of the Indian Housing Mortgage Insurance Committee.

Sec. 23. 30 MRSA § 4788, as amended by PL 1977, c. 163, is further amended by adding after the first sentence a new sentence to read:

Upon such request from the authority, the Treasurer of State shall issue such bonds as promptly as possible, but in any event not later than the next regularly scheduled bond issue of the State, unless prior thereto the amount so requested is provided to the Maine State Housing Authority by appropriation of the Legislature, by transfer from the State Contingency Account or otherwise.

Sec. 23-A. 30 MRSA § 4789, as enacted by PL 1979, c. 570, § 4 and as repealed, is reenacted to read:

§ 4789. **Rule making**

In order to implement and administer the Housing Mortgage Insurance Law, the

Maine State Housing Authority is authorized to enact, amend or repeal rules and regulations pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 24. 36 MRSA § 654, sub-§ 1, ¶ C, as amended by PL 1973, c. 66, § 8, is repealed.

Sec. 25. 36 MRSA § 1484, sub-§ 2, ¶ C, as last amended by PL 1975, c. 252, § 18, is repealed.

Sec. 26. 36 MRSA § 1484, sub-§ 3, ¶ A, as last amended by PL 1977, c. 244, § 1, is further amended to read:

A. If the motor vehicle is owned by an individual resident of this State, the excise tax shall be paid in the place where the owner resides ~~the excise tax for motor vehicles owned by the residents of the various Indian reservations shall be paid to the tribal clerks thereof.~~

Sec. 27. 36 MRSA § 1487, sub-§ 3, as enacted by PL 1967, c. 465, § 5, is repealed.

Sec. 28. 38 MRSA § 583-B, sub-§ 5, ¶ A, as enacted by PL 1979, c. 381, § 6, is repealed.

Sec. 29. Expenses of the Maine Indian Tribal-State Commission. The expenses of the Maine Indian Tribal-State Commission shall be paid out of the administrative account of the Department of Inland Fisheries and Wildlife. In no event shall those expenses exceed \$3,000 per year.

Sec. 30. Inseparability. In the event that any portion of Title 30, section 6204, is held invalid, it is the intent of the Legislature that the entire Act is invalidated. In the event that either Title 30, section 6209, subsections 3 or 4, is held invalid, it is the intent of the Legislature that all of Title 30, section 6209 is invalidated. In the event that any other section or provision of this Act, including Title 30, section 6209, is held invalid, it is the intent of the Legislature that the remaining sections of the Act shall continue in full force and effect.

Sec. 31. Effective date. This Act shall be effective only upon the enactment of legislation by the United States extinguishing aboriginal land claims and derivative claims of Indians in Maine and discharging all claims in pending litigation brought by the United States against the State on behalf of the Passamaquoddy Tribe and the Penobscot Nation, providing funds for the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians for such extinguishment, and ratifying and approving this Act without modifications, provided, however, that in no event shall this Act become effective until 90 days after adjournment of the Legislature, as required by the Constitution of Maine, Article IV, Part 3, Section 16.