

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

PUBLIC LAWS
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has agreed anew to act as postconviction surety following conviction.

Sec. 6. 15 MRSA §1093, sub-§2, as repealed and replaced by PL 1987, c. 870, §10, is amended to read:

2. Arrest. A law enforcement officer may arrest with a warrant or without a warrant pursuant to Title 17-A, section 15, any defendant who the law enforcement officer has probable cause to believe has failed to appear as required, has violated a condition of preconviction bail, or has been charged with a crime allegedly committed while released on preconviction bail. If the defendant is charged with new criminal conduct, a bail commissioner is authorized only to set bail for the new crimes in accordance with this chapter. Any A defendant under arrest pursuant to this subsection shall be brought before a any judge or justice of the same appropriate court. The judge or justice shall make a determination as to whether or not the setting of bail upon the violation is appropriate pending a the bail revocation proceeding.

See title page for effective date.

CHAPTER 148

S.P. 152 - L.D. 272

An Act to Implement the Aroostook Band of Micmacs Settlement Act

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

Sec. 1. 3 MRSA §601, as enacted by PL 1983, c. 497, §1, is amended to read:

§601. Approval of legislation

When approval of legislation by an Indian tribe or Indian nation is required by the United States Code, Title 25, Section 1725(e), or other act of Congress, certification of that approval shall be made to the Secretary of State by the officer of the affected Indian tribe or Indian nation designated in section 602 or 603. The certification shall state the date and manner of approval of the legislation and shall be prima facie evidence of approval. The Secretary of State shall forthwith transmit certified copies of the certification of approval to the Secretary of the Senate and the Clerk of the House of Representatives.

Sec. 2. 3 MRSA §603 is enacted to read:

§603. Designation of officer; Aroostook Band of Micmacs

The council of the Aroostook Band of Micmacs shall designate, by name and title, the officer authorized to execute the certificate of approval of legislation required by section 601. The designation shall be in writing and filed with the Secretary of State no later than the first Wednesday in January in the First Regular Session of the Legislature. The

Secretary of State shall forthwith transmit certified copies of the designation to the Secretary of the Senate and the Clerk of the House of Representatives. The designation shall remain in effect until the council of the Aroostook Band of Micmacs makes a new designation.

Sec. 3. 30 MRSA c. 603 is enacted to read:

CHAPTER 603

MICMAC SETTLEMENT ACT

§7201. Short title

This Act shall be known and may be cited as "The Micmac Settlement Act."

§7202. Definitions

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

1. Aroostook Band of Micmacs. "Aroostook Band of Micmacs" means the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Aroostook Band of Micmacs is represented, as of the date of enactment of this subsection, as to lands within the United States by the Aroostook Micmac Council.

2. Aroostook Band Trust Land. "Aroostook Band Trust Land" means land or natural resources acquired by the secretary in trust for the Aroostook Band of Micmacs, in compliance with the terms of this Act, with money from the original \$900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Aroostook Band of Micmacs pursuant to federal legislation concerning the Aroostook Band of Micmacs or with proceeds from a taking of Aroostook Band Trust Land for public uses pursuant to the laws of this State or the United States.

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

6. Transfer. "Transfer" includes, but is not 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.

§7203. Laws of the State to apply to Indian Lands

Except as otherwise provided in this Act, the Aroostook Band of Micmacs and all members of the Aroostook Band of Micmacs 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.

§7204. Acquisition of Aroostook Band Trust Land

1. Approval. The State of Maine approves the acquisition by the secretary of Aroostook Band Trust Land within the State of Maine provided as follows.

A. No land or natural resources acquired by the secretary may have the status of Aroostook Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing.

B. No land or natural resources may be acquired by the secretary for the Aroostook Band of Micmacs until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 7207, together with a letter stating that the secretary holds not less than \$50,000 in a trust account for the payment of obligations of the Aroostook Band of Micmacs, and a copy of the claim filing procedures the secretary has adopted.

C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Aroostook Band of Micmacs without the approval of the legislative body of the city, town, village or plantation.

2. Takings for public uses. Aroostook Band Trust Land may be taken for public uses in accordance with the laws of the State to the same extent as privately owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States court of competent jurisdiction.

3. Restraints on alienation. Any transfer of Aroostook Band Trust Land shall be void ab initio and without any validity in law or equity, except:

A. Takings for public uses pursuant to the laws of this State;

B. Takings for public uses pursuant to the laws of the United States;

C. Transfers of individual use assignments from one member of the Aroostook Band of Micmacs to another band member;

D. Transfers authorized by federal law ratifying and approving this Act; and

E. Transfers made pursuant to a special act of Congress.

If the fee to the Aroostook Band Trust Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Aroostook Band Trust Land.

§7205. Powers of the Aroostook Band of Micmacs

The Aroostook Band of Micmacs shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.

§7206. Taxation

1. Property taxes. The Aroostook Band of Micmacs shall make payments in lieu of taxes on Aroostook Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource.

§7207. Aroostook Band Tax Fund

1. Fund. The satisfaction of obligations, described in section 7206, owed to a governmental entity by the Aroostook Band of Micmacs shall be assured by a trust fund to be known as the Aroostook Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than \$50,000. The principal shall be formed with money transferred from the Land Acquisition Fund established for the Aroostook Band of Micmacs pursuant to federal legislation concerning the Aroostook Band of Micmacs. Any interest earned by the Aroostook Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of \$25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.

2. Claims. The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Aroostook Band of Micmacs is liable pursuant to section 7206, provided that such obligation is final and not subject to further direct administrative or judicial review

under the laws of the State. No payment of a valid claim may be satisfied with money from the fund unless the secretary finds, as a result of the secretary's own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Commissioner of Finance and the Commissioner of Administration and the Aroostook Band of Micmacs.

3. Distributions. If the unencumbered principal available for the payment of claims exceeds the sum of \$50,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Aroostook Band of Micmacs. The secretary shall give 30 days' written notice to the Commissioner of Finance and the Commissioner of Administration of a proposed transfer of excess principal to the Aroostook Band of Micmacs. Any distribution of excess principal to the Aroostook Band of Micmacs shall be exempt from taxation.

4. Other remedies. The existence of the Aroostook Band Tax Fund as a source for the payment of the obligations of the Aroostook Band of Micmacs shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.

Sec. 4. Effective date. This Act shall be effective only if:

1. The United States enacts legislation:

A. Ratifying and approving this Act without modification; and

B. Providing the consent of the United States for amendments to this Act, with respect to the Aroostook Band of Micmacs, provided that such amendment of this Act is made with the agreement of the Aroostook Band of Micmacs; and

2. Within 60 days of adjournment of the Legislature, the Secretary of State receives written certification by the Council of the Aroostook Band of Micmacs that the band has agreed to this Act, copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives, provided that in no event shall this Act become effective until 90 days after adjournment of the Legislature.

See title page for effective date, unless otherwise indicated.

CHAPTER 149

H.P. 24 - L.D. 19

An Act Concerning the Right to Install Utilities in Certain Easements or Rights-of-Way

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

33 MRSA §458 is enacted to read:

§458. Easements or rights-of-way; installation of utility services

1. Easements or rights-of-way established on or after January 1, 1990. The owner of an easement or right-of-way does not have the right by implication to install utility services on or under the easement or right-of-way if:

A. The easement or right-of-way is originally established in a written instrument executed on or after January 1, 1990; and

B. The instrument granting or reserving the easement or right-of-way does not expressly include the right to install utility services.

2. Definitions. As used in this section, the following terms have the following meanings.

A. "Easement or right-of-way" means the right of a person to pass over the land of another person.

B. "Utility services" includes facilities necessary for the transmission of electricity, gas, telephone communications, cable television, sewerage, water or similar services which are currently or may in the future become available.

See title page for effective date.

CHAPTER 150

H.P. 312 - L.D. 426

An Act to Provide for Division of Omitted Marital Property

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

19 MRSA §722-A, sub-§6 is enacted to read:

6. Omitted property. If a final divorce decree fails to set apart or divide marital property over which the court had jurisdiction, the omitted property is deemed held by both parties as tenants in common. On the motion of either party, which may be made at any time, the court may set aside or divide the omitted property between the parties, as justice may require.

See title page for effective date.