

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
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including tree farms. Notwithstanding this subsection, a permit from the commission is required for roads covering a ground area of 3 acres or more constructed in management districts, unless those roads are constructed and maintained in accordance with the guidelines of the commission's Land Use Handbook, Section 6, "Erosion Control on Logging Jobs," or as revised. The commission may require a person constructing a road to notify the commission of the location of the road within 21 days.

Land use standards adopted pursuant to this chapter must establish a minimum setback of 100 feet for all structures within a commercial sporting camp complex that are constructed solely for the housing of guests, including structures within a main sporting camp complex and an outpost camp. The standards must establish a minimum setback of 150 feet for all other structures within a sporting camp complex, including, but not limited to, a main lodge, a dining area, a workshop and a parking area.

In adopting district boundaries and land use standards, the commission shall give consideration to public and private planning reports and other data available to it, and shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use.

A permit from the commission is not required for the repair or maintenance of county-owned roads, bridges or culverts as long as the repair or maintenance is conducted in accordance with commission standards that pertain to these activities.

Sec. 3. 12 MRSA §685-B, sub-§7-A is enacted to read:

7-A. Reconstruction of commercial sporting camps. The commission may approve a permit for the reconstruction of a damaged or destroyed nonconforming commercial sporting camp that was a permissible use under commission standards at the time of the damage or destruction. The commission may, consistent with public health, safety and welfare, and to the minimum extent necessary, waive standards that made the original structure nonconforming. The reconstructed structure must replicate the original structure and use to the maximum extent possible and it must be on the same location and within the same footprint as the original structure. Reconstruction must occur within 2 years of the damage or destruction.

See title page for effective date.

CHAPTER 387

S.P. 432 - L.D. 1200

An Act to Establish Reciprocity in Determining the Lowest Responsible Bidder

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

Sec. 1. 5 MRSA §1825-B, sub-§§9 and 10 are enacted to read:

9. Determination of lowest bidder. In determining the lowest responsible bidder, the Director of the Bureau of General Services or any department or agency of the State shall, for the purpose of awarding a contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

10. List of state preferences published. The Director of the Bureau of General Services on or before January 1st of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The Director of the Bureau of General Services or any department or agency of the State may rely on the names of states and percentages as published in determining the lowest responsible bidder without incurring any liability to any bidder.

See title page for effective date.

CHAPTER 388

H.P. 944 - L.D. 1333

An Act Concerning the Jurisdiction of the Tribal Courts of the Passamaquoddy Tribe and the Penobscot Nation

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

Sec. 1. 4 MRSA §161, first ¶, as amended by PL 1991, c. 484, §1, is further amended to read:

The Chief Judge of the District Court may authorize any attorney-at-law, who is duly licensed to practice law in the State, to receive complaints and to issue process for the arrest of persons charged with offenses, to issue search warrants and to endorse certificates of commitment of the mentally ill, all in accordance with law, and to perform all other such acts and duties that are or may be authorized by law. The powers to issue process for the arrest of persons

charged with offenses and to issue search warrants extend to offenses subject to the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation under the terms of Title 30, section ~~6209~~ 6209-A or 6209-B. That attorney may be known as a justice of the peace.

Sec. 2. 4 MRSA §165, as amended by PL 1995, c. 65, Pt. A, §4 and affected by Pt. A, §153 and Pt. C, §15, is further amended to read:

§165. Criminal jurisdiction; fines, penalties and costs paid over

The District Court has jurisdiction, and, except as provided in Title 29-A, section 2602, concurrent jurisdiction with the Superior Court, of all crimes and offenses including violations of any statute or bylaw of a town, village corporation or local health officer, or breaches of the peace, not punishable by imprisonment in the State Prison, to issue process with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section ~~6209~~ 6209-A or 6209-B and over complaints for desertion and nonsupport or nonsupport of dependents where either the spouse, dependent or the respondent resides and may for ~~such~~ those crimes and offenses impose any of the fines or sentences provided by law to be imposed ~~therefor~~ for those crimes and offenses. All fines, penalties and costs imposed by ~~such~~ the courts paid to the jailer after commitment of a respondent must be paid over by the respondent monthly.

Sec. 3. 15 MRSA §55, as amended by PL 1991, c. 484, §5, is further amended to read:

§55. Search warrants; issuance by district judge or justice of the peace

A judge of the District Court or a justice of the peace shall issue search warrants for any place in the State for such purposes as the Constitution of the United States and the Constitution of Maine permit, including with respect to any violation over which the Passamaquoddy Tribe or the Penobscot Nation exercises exclusive jurisdiction under Title 30, section ~~6209~~ 6209-A or 6209-B. The evidence presented to the magistrate in support of the search warrant may consist of affidavits and other evidence under oath or affirmation that is capable of being reduced to a record for purposes of review. The Supreme Judicial Court shall by rule provide the procedure of the application for and issuance of search warrants; provided, that ~~where~~ when no procedure is specified, the judge or justice of the peace shall proceed in any reasonable manner that will allow the issuance of a search warrant for any constitutional purpose.

Sec. 4. 15 MRSA §702, as amended by PL 1991, c. 484, §6, is further amended to read:

§702. Justices, judges and justices of the peace may issue processes

The Justices of the Supreme Judicial Court and of the Superior Court, Judges of the District Court and justices of the peace may issue processes for the arrest of persons charged with offenses. For purposes of this section and section 706, full faith and credit must be given to offenses subject to the exclusive jurisdiction of the Passamaquoddy Tribe or the Penobscot Nation under the terms of Title 30, section ~~6209~~ 6209-A or 6209-B.

Sec. 5. 30 MRSA §6209, as amended by PL 1991, c. 766, §1 and affected by §2, is repealed.

Sec. 6. 30 MRSA §§6209-A and 6209-B are enacted to read:

§6209-A. Jurisdiction of the Passamaquoddy Tribal Court

1. Exclusive jurisdiction over certain matters.

Except as provided in subsections 3 and 4, the Passamaquoddy Tribe has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of either the Passamaquoddy Tribe or the Penobscot Nation, except when committed against a person who is not a member of either the Passamaquoddy Tribe or the Penobscot Nation or against the property of a person who is not a member of either the Passamaquoddy Tribe or the Penobscot Nation;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the reservation of the Passamaquoddy Tribe;

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Passamaquoddy Tribe and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Passamaquoddy

Tribe by a member of either the Passamaquoddy Tribe or the Penobscot 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 the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside within the Indian reservation of the Passamaquoddy Tribe.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has 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 apply within the Passamaquoddy Indian reservation and the State has 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 Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 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 in which a criminal offense under the exclusive jurisdiction of the Passamaquoddy Tribe constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is 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 has exclusive jurisdiction under this section does 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 does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does 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 does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.

5. Future Indian communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their 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 Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.

§6209-B. Jurisdiction of the Penobscot Nation Tribal Court

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

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group against another member of any federally recognized Indian tribe, nation, band or other group or against the property of another member of any federally recognized Indian tribe, nation, band or other group;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of either the Pas-

samaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot 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 the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile, civil and domestic matters described in this subsection, the State has 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 apply within the Penobscot Indian reservation and the State has 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 Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 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 in which a criminal offense under the exclusive jurisdiction of the Penobscot Nation constitutes a lesser

included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is 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 Penobscot Nation has exclusive jurisdiction under this section does 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 does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Penobscot 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 does 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 does 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 the Penobscot Nation residing within their 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 the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.

Sec. 7. 30 MRSA §6210, as amended by PL 1983, c. 498, §1, is further amended to read:

§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~~ 6209-A,

subsection 1 and section 6209-B, subsection 1, respectively.

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~~ Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section ~~6209~~ 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

3. Agreements for cooperation and mutual aid. ~~Nothing herein shall~~ This section does not 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~~ are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

Sec. 8. Effective date; certification. This Act does not take effect unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Governor and Council of the Penobscot Nation and the Joint Tribal Council of the Passamaquoddy Tribe that the nation and tribe have agreed to the provisions of this Act pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes; except that in no event may this Act become effective until 90 days after the adjournment of the Legislature.

See title page for effective date, unless otherwise indicated.

CHAPTER 389

S.P. 498 - L.D. 1357

An Act to Create the Propane and Natural Gas Professional Act of 1995

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

Sec. 1. 5 MRSA §12004-A, sub-§33-A is enacted to read:

33-A. Propane Expenses 32 MRSA
and Natural Gas Board Only §14803

Sec. 2. 10 MRSA §8001, sub-§§35 and 36, as repealed and replaced by PL 1991, c. 548, Pt. B, §1, are amended to read:

35. Board of Counseling Professionals Licensure. Counseling Professionals Licensure, Board of; ~~and~~

36. Board of Real Estate Appraisers. Real Estate Appraisers, Board of; ~~and~~

Sec. 3. 10 MRSA §8001, sub-§37 is enacted to read:

37. Propane and Natural Gas Board. Propane and Natural Gas Board.

Sec. 4. 32 MRSA c. 130 is enacted to read:

CHAPTER 130

THE PROPANE AND NATURAL GAS ACT

§14801. Short title

This Act may be known and cited as the Propane and Natural Gas Act.

§14802. Definitions

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

1. Board. "Board" means the Propane and Natural Gas Board.

2. Bulk plant. "Bulk plant" means a facility, the primary purpose of which is to distribute propane, that receives propane by tank car, tank truck or piping and distributes the propane to the end user by portable container delivery, by tank truck or through piping. A bulk plant has the bulk storage capacity of 2,000 gallons of water or more. "Bulk plant" includes a facility that transfers propane from tank cars on a private track directly into cargo tanks.

3. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

4. Delivery. "Delivery" means the transfer of propane, either by liquid transfer into a stationary container on the property of the consumer or by placing a portable propane container onto the property of the consumer.