

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
129<sup>TH</sup> LEGISLATURE  
FIRST SPECIAL AND SECOND REGULAR SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON JUDICIARY**

November 2020

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# STATE OF MAINE

129<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION



## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 129<sup>th</sup> Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

*CARRIED OVER*..... carried over to a subsequent session of the Legislature  
*CON RES XXX*..... chapter # of constitutional resolution passed by both houses  
*CONF CMTE UNABLE TO AGREE*..... Committee of Conference unable to agree; legislation died  
*DIED BETWEEN HOUSES*..... House & Senate disagreed; legislation died  
*DIED IN CONCURRENCE*..... defeated in each house, but on different motions; legislation died  
*DIED ON ADJOURNMENT*..... action incomplete when session ended; legislation died  
*EMERGENCY*..... enacted law takes effect sooner than 90 days after session adjournment  
*FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE*..... emergency failed to receive required 2/3 vote  
*FAILED, ENACTMENT or FINAL PASSAGE*..... failed to receive final majority vote  
*FAILED, MANDATE ENACTMENT*..... legislation proposing local mandate failed required 2/3 vote  
*HELD BY GOVERNOR*..... Governor has not signed; final disposition to be determined at subsequent session  
*LEAVE TO WITHDRAW*..... sponsor's request to withdraw legislation granted  
*NOT PROPERLY BEFORE THE BODY*..... ruled out of order by the presiding officer; legislation died  
*INDEF PP*..... indefinitely postponed; legislation died  
*ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X*... ought-not-to-pass report accepted; legislation died  
*P&S XXX*..... chapter # of enacted private & special law  
*PUBLIC XXX*..... chapter # of enacted public law  
*RESOLVE XXX*..... chapter # of finally passed resolve  
*VETO SUSTAINED*..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 129<sup>th</sup> Legislature is Thursday, September 19, 2019. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

*Joint Standing Committee on Judiciary*

**LD 2086      Resolve, To Create a Criminal Records Review Committee**

**CARRIED OVER**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
TALBOT ROSS R CLAXTON N		

This resolve establishes the Criminal Records Review Committee.

This bill, which had been voted but not yet reported out of committee, was carried over to any special session of the 129th Legislature by joint order, S.P. 788.

**LD 2094      An Act To Implement the Recommendations of the Task Force on  
Changes to the Maine Indian Claims Settlement Implementing Act**

**CARRIED OVER**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>

This bill was reported by the committee pursuant to Joint Order 2019, H.P. 1307, and then referred back to the committee for processing in the normal course. This bill implements the consensus recommendations of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, referred to in this summary as "the task force." The report was released on January 14, 2020 and is available online at <http://legislature.maine.gov/maine-indian-claims-tf>.

This bill does not address the relationship between the State and the Aroostook Band of Micmacs because that issue was specifically set aside by the task force.

In this summary, the Maine Revised Statutes, Title 30, chapter 601, which is titled An Act to Implement the Maine Indian Claims Settlement, enacted by Public Law 1979, chapter 732, is referred to as the "Maine Implementing Act" and the federal Maine Indian Claims Settlement Act of 1980, Public Law 96-420, formerly codified at 25 United States Code, Sections 1721 to 1735, is referred to as "the Settlement Act." The federal Settlement Act ratified the Maine Implementing Act, and both have an effective date of October 10, 1980.

The task force voted, in Consensus Recommendation #1, to establish an enhanced process for tribal-state collaboration and consultation as well as a process for alternative dispute resolution, but left the contours of those processes to be developed by stakeholders. The bill therefore does not contain language implementing this recommendation, but the task force anticipated that language putting the recommendation into effect would be developed during the legislative process and would be added by amendment or in additional legislation.

The Settlement Act, in Section 6(e)(1), provides federal consent for the State and the Passamaquoddy Tribe and the Penobscot Nation to agree to amend the Maine Implementing Act with respect to the enforcement or application of civil, criminal or regulatory laws of the tribes and the State within their respective jurisdictions, the allocation or determination of governmental responsibility of the State and the tribe or nation over specified subject matters or specified geographical areas, or both, including provisions for concurrent jurisdiction between the State and the tribe or nation, and the allocation of jurisdiction between tribal courts and state courts. The federal law also provides, in Section 6(e)(2), federal consent for the State and the Houlton Band of Maliseet Indians to execute agreements regarding the jurisdiction of the State over lands owned by or held in trust for the benefit of the band or its members. The task force, whose members represented the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, the Aroostook Band of Micmacs and the State, exercised the opportunity offered in the Settlement Act to reconsider the relationship between the Passamaquoddy Tribe, the Penobscot Nation, the

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Houlton Band of Maliseet Indians and the State. The statutory changes contained in this bill are the result of a collaborative effort to determine how best to focus efforts to develop mutually beneficial solutions that allow all of the State's citizenry, including its tribal citizenry, to prosper and progress.

The purpose of the reconsideration and rewriting of the Maine Implementing Act is to establish that the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians enjoy the rights, privileges, powers, duties and immunities similar to those of other federally recognized Indian tribes within the United States. This is a significant change from the current law, which provides the State with significant authority over Indian affairs. To carry out this significant change, many provisions of chapter 601 are repealed or amended to recognize that federal Indian law governs the rights, privileges, powers, duties and immunities of the tribe, nation and band.

Under the bill, except as otherwise specified in the Maine Implementing Act, federal Indian law applies with regard to the rights, privileges, powers, duties and immunities of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. "Federal Indian law" is the body of law that applies to almost all federally recognized Indian tribes, nations, bands or other groups in the United States and describes their relationship with the Federal Government and the states. Federal Indian law is defined in this bill as the United States Constitution and all federal statutes and regulations and subsequent amendments thereto or judicial interpretations thereof, relating to the rights, privileges, powers, duties and immunities of federally recognized Indian tribes within the United States, except those federally recognized Indian tribes subject to United States Public Law 83-280 or a specific treaty or settlement act. This definition explicitly recognizes that federal Indian law is not static, but evolves as federal laws are passed and amended and as federal courts interpret the relevant statutes and regulations and their application to federally recognized Indian tribes, nations, bands and other groups. Federal Indian law addresses myriad subjects, including criminal adjudicatory and legislative jurisdiction, civil adjudicatory and legislative jurisdiction, taxation, the right to sue and be sued, hunting and fishing rights, regulation of natural resources and land use, gaming and many other topics.

This bill newly defines the term "tribal lands" to describe the lands of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians over which the tribes may exert jurisdiction as described in Consensus Recommendation #2. Passamaquoddy Tribal Lands consist of the lands designated as Passamaquoddy reservation lands as well as all lands held in trust for the Passamaquoddy Tribe by the United States Secretary of the Interior. Penobscot Tribal Lands include the Penobscot reservation and all lands held in trust for the Penobscot Nation by the United States Secretary of the Interior. Houlton Band Tribal Lands include all lands held in trust by the United States Secretary of the Interior for the Houlton Band of Maliseet Indians. In addition, for each tribe, nation and band, tribal lands include land that, after the effective date of this legislation, is acquired and held in trust by the United States Secretary of the Interior for the respective tribe, nation or band.

The Maine Implementing Act currently limits the criminal jurisdiction of the Passamaquoddy Tribal Court and the Penobscot Nation Tribal Court as well as the potential criminal jurisdiction of the Houlton Band of Maliseet Indians Tribal Court. Federal Indian law provides broader jurisdiction for tribal courts. This bill repeals most of the state limitations and recognizes and adopts most of federal Indian law, including the Indian Civil Rights Act of 1968, the Tribal Law and Order Act of 2010 and other federal laws addressing tribal court jurisdiction and the obligations of the tribal courts. This bill amends the Maine Implementing Act to make equal the exclusive criminal jurisdiction of the Passamaquoddy Tribal Court and the Houlton Band of Maliseet Indians Tribal Court with the exclusive criminal jurisdiction of the Penobscot Nation Tribal Court over offenses committed by Indian defendants against Indian victims or for which there is no victim. This bill further amends the Maine Implementing Act to recognize the criminal jurisdiction of the Passamaquoddy Tribal Court, the Penobscot Nation Tribal Court and the Houlton Band Tribal Court to impose the maximum penalties other tribal courts are authorized to impose under the federal Tribal Law and Order Act of 2010, as long as the due process protections required by that Act are observed. This bill does not include the provisions regarding tribal court concurrent jurisdiction over criminal offenses committed by non-Indian defendants against Indian victims authorized under the Federal Violence Against Women Reauthorization Act of 2013 because this jurisdiction is addressed in the 129th Legislature's L.D. 766, An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority to Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013.

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This bill amends state law to recognize tribal court jurisdiction, concurrent with the state courts, over offenses committed on tribal lands by Indian defendants against non-Indian victims, subject to the maximum penalty provisions and due process requirements of the federal Tribal Law and Order Act of 2010.

This bill retains current law providing that the exclusive authority of the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians to exercise criminal jurisdiction over Indians on tribal lands remains at the discretion of the tribe, nation and band. To the extent that the tribe, nation or band does not exercise, or terminates its exercise of, exclusive criminal jurisdiction, the State has exclusive jurisdiction over those matters.

Unlike current law, this bill recognizes each tribal government's authority to define all crimes and juvenile offenses committed on its tribal lands over which the tribal court has exclusive or concurrent criminal jurisdiction. This bill, however, retains the authority of the State to define all crimes and juvenile offenses committed on tribal lands over which state courts have exclusive or concurrent jurisdiction.

This bill repeals the language of the Maine Implementing Act regarding the procedure for members of the Passamaquoddy Tribe or the Penobscot Nation living in their respective Indian territory to petition for an extended reservation in relation to tribal court jurisdiction. Those provisions are no longer necessary because this bill ensures that the law as amended recognizes the tribe's and nation's tribal court jurisdiction to cover the entirety of their tribal lands, not just reservations.

This bill recognizes federal Indian law regarding the exclusive jurisdiction of tribes to regulate fishing and hunting by tribal citizens of all federally recognized Indian tribes on tribal lands. This bill amends the Maine Implementing Act to restore and affirm the exclusive jurisdiction of tribes to regulate fishing and hunting by nontribal citizens on tribal lands, but does not cede to the State any authority of the Maine Indian Tribal-State Commission to regulate fishing on boundary waters under current law.

This bill relinquishes the State's jurisdiction with respect to the regulation of fishing and hunting by both tribal and nontribal citizens on tribal lands. The State, solely for conservation purposes, may regulate tribal members engaged in such activities off tribal lands to the extent permitted under general principles of federal Indian law and in a manner consistent with reserved tribal treaty rights.

This bill amends state law to recognize and adopt federal Indian law providing that: tribes have exclusive jurisdiction to tax tribal members and tribal entities on their respective tribal lands, including entities owned by a tribe or tribal member; tribes, tribal members and tribal entities are not subject to state and local sales taxation on tribal lands; tribal members who live on their respective tribal lands are not subject to state income tax for income earned on their respective tribal lands; tribal lands are not subject to state and local real property tax; tribes have concurrent jurisdiction to tax nonmembers on tribal lands; and the State and local governments have concurrent jurisdiction to tax nonmembers on tribal lands.

This bill amends state law to restore to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians the exclusive authority to exercise civil legislative jurisdiction over Indians and non-Indians on tribal lands. To the extent that the tribe, nation or band does not exercise, or terminates its exercise of, exclusive civil legislative jurisdiction, the State has exclusive jurisdiction over those matters.

This bill amends state law to restore to the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians the exclusive authority to exercise civil adjudicatory jurisdiction over Indians and non-Indians on tribal lands. To the extent that the tribe, nation or band does not exercise, or terminates its exercise of, exclusive civil adjudicatory jurisdiction, the State has exclusive jurisdiction over those matters.

This bill amends state law to explicitly provide that, for the purposes of the Settlement Act, Section 6(h), any law or

