An Act to Advance Self-determination for Wabanaki Nations

Reference to the Committee on Judiciary suggested and ordered printed.

Presented by Speaker TALBOT ROSS of Portland.
Be it enacted by the People of the State of Maine as follows:

CONCEPT DRAFT

SUMMARY

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to make substantial changes to the Maine Indian Claims Settlement Implementing Act to address some of 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," and make other changes regarding the Maine Indian Claims Settlement Implementing Act. The task force's report was released on January 14, 2020 and is available online at http://legislature.maine.gov/maine-indian-claims-tf. 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 federal Settlement Act." The federal Settlement Act ratified the Maine Implementing Act, and both have an effective date of October 10, 1980.

The purpose of the reconsideration and rewriting of the Maine Implementing Act would be to establish that the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation have the same rights to self-determination as other federally recognized Indian tribes within the United States. This bill would make changes to the Maine Implementing Act to restore back to the tribes many of the rights, privileges, powers, duties and immunities enjoyed by other federally recognized Indian tribes within the United States, which were restricted by the Maine Implementing Act. This would be 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 To carry out this significant change, many provisions of Title 30, chapter 601 would be repealed or amended to recognize that federal Indian law governs the rights, privileges, powers, duties and immunities of the tribe, nations and band.

Under the bill, except as otherwise specified in the Maine Implementing Act, federal Indian law would apply with regard to the rights, privileges, powers, duties and immunities of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation. "Federal Indian law" is defined for this summary to mean the United States Constitution and all generally applicable federal statutes, regulations and common law and case law interpreting, implementing, applying or enforcing those federal laws and regulations, and subsequent amendments thereto, relating to the rights, status, privileges, powers, duties and immunities of federally recognized Indian tribes and their members and land or other natural resources within the United States. This definition explicitly recognizes that federal Indian law is not static, but evolves as federal common law develops, 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.
This bill would incorporate within the Maine Implementing Act the definition of "Houlton Band Trust Land" from the federal Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986.

This bill would define "Mi'kmaq Nation Trust Land" to include land or other natural resources acquired by the United States Secretary of the Interior in trust for the Mi'kmaq Nation pursuant to federal Aroostook Band of Micmacs Settlement Act.

This bill would define "Indian territory or trust land" to include, with respect to the Passamaquoddy Tribe and the Penobscot Nation, the tribe's or nation's Indian territory, with respect to the Houlton Band of Maliseet Indians, Houlton Band Trust Land, and with respect to the Mi'kmaq Nation, Mi'kmaq Nation Trust Land. This phrase is used throughout the bill to describe the lands over which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation may exercise rights, privileges, powers, duties and immunities similar to those of other federally recognized Indian tribes within the United States.

This bill would restructure the procedures for addition of new land to tribal territories. The procedures required would depend upon the location of the land and the time of acquisition.

This bill would eliminate the language in the Maine Implementing Act regarding takings of tribal land for public use under state law.

This bill would provide that the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation, as well as their officers and employees, are immune from suit to the same extent as other federally recognized Indian tribes and their officers and employees under federal Indian law.

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 and the Mi'kmaq Nation Tribal Court. Federal Indian law provides broader jurisdiction for tribal courts. This bill would repeal most of the state limitations and recognize and adopt most of federal Indian law, including the Indian Civil Rights Act of 1968, the Tribal Law and Order Act of 2010, the tribal provisions of the Violence Against Women Act and other federal laws addressing tribal court jurisdiction and the obligations of the tribal courts. This bill would restore to the Passamaquoddy Tribal Court, the Penobscot Nation Tribal Court, the Houlton Band of Maliseet Indians Tribal Court and the Mi'kmaq Nation Tribal Court criminal jurisdiction over Indians and recognize the courts' authority 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 would amend 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 would retain current law providing that the exclusive authority of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation to exercise criminal jurisdiction over Indians on tribal lands remains at the discretion of the tribe, nations and band. To the extent that the tribe, nations or band
does not exercise, or terminates its exercise of, exclusive criminal jurisdiction, the State
would have exclusive jurisdiction over those matters.

This bill would provide that, when the tribal courts of the Passamaquoddy Tribe, the
Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation exercise
exclusive or concurrent criminal jurisdiction, the definitions of the criminal offenses and
the punishments applicable to those criminal offenses are governed by state law, except
that the punishments imposed by a tribal court may not exceed the maximum punishments
that a tribal court may impose under 25 United States Code, Section 1302(a)(7).

This bill would recognize 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 would amend 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 would 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 would relinquish 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, would be allowed to 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 would amend state law to restore to the Passamaquoddy Tribe, the Penobscot
Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation the exclusive
authority to exercise civil legislative jurisdiction over Indians on tribal lands and the
concurrent authority to exercise civil legislative jurisdiction over non-Indians on tribal
lands, including in the area of taxation, as provided by federal Indian law. This bill would
amend state law to restore to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton
Band of Maliseet Indians and the Mi'kmaq Nation the exclusive authority to exercise civil
adjudicatory jurisdiction over Indians on tribal lands and the concurrent authority to
exercise civil adjudicatory jurisdiction over non-Indians on tribal lands, as provided by
federal Indian law.

This bill would provide that, notwithstanding any provision of the Maine Implementing
Act to the contrary, the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of
Maliseet Indians and the Mi'kmaq Nation may conduct gaming activities only in
accordance with state law and may not conduct gaming activities under the authority of the
federal Indian Gaming Regulatory Act or under any regulations thereunder promulgated
by the chair of the National Indian Gaming Commission or its successor organization.

This bill would take effect 120 days after adjournment of the session during which it
was enacted only if, within 90 days after adjournment of that session, the Secretary of State
receives written certification from the Joint Tribal Council of the Passamaquoddy Tribe
that the tribe has agreed to its provisions; the Governor and the Council of the Penobscot
Nation that the nation has agreed to its provisions; the Houlton Band Council of the Houlton
Band of Maliseet Indians that the band has agreed to its provisions; and the Mi'kmaq Nation
Tribal Council that the nation has agreed to its provisions.

This bill would repeal or repeal and replace each provision of the Maine Implementing
Act that was enacted by Public Law 1981, chapter 675 and provide that, if the Houlton
Band Council of the Houlton Band of Maliseet Indians certifies its agreement to the
provisions of this legislation, upon such certification each provision of this legislation constitutes a jurisdictional agreement between the State and the Houlton Band of Maliseet Indians for purposes of Section 6(e)(2) of the federal Settlement Act but would not constitute an agreement by the Houlton Band of Maliseet Indians that the contingencies of Public Law 1981, chapter 675 were met or that the provisions of Public Law 1981, chapter 675 ever took effect.

This bill would repeal or repeal and replace each provision of Title 30, chapter 603 that was enacted by Public Law 1989, chapter 148 and provide that, if the Tribal Council of the Mi'kmaq Nation certifies its agreement to the provisions of this legislation, upon such certification each provision of this legislation constitutes a jurisdictional agreement between the State and the Mi'kmaq Nation for purposes of Section 6(d) of the federal Aroostook Band of Micmacs Settlement Act but would not constitute an agreement by the Mi'kmaq Nation that the contingencies of Public Law 1989, chapter 148 were met or that the provisions of Public Law 1989, chapter 148 ever took effect.