

12-6-2006

# Report of the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act. 2006

Maine Indian Tribal-State Commission

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*Maine Indian Tribal-State Commission*

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## Recommended Citation

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**REPORT of the  
TRIBAL-STATE WORK GROUP TO STUDY ISSUES  
ASSOCIATED WITH THE MAINE IMPLEMENTING ACT**

Created by  
**Executive Order 19 FY 06/07**

Presented to:

Chief Brenda Commander, Houlton Band of Maliseet Indians  
Chief Rick Doyle, Passamaquoddy Tribe @ Sipayik  
Chief Kirk Francis, Penobscot Nation  
Governor William Nicholas, Passamaquoddy Tribe @ Motahkokmikuk  
Chief William Phillips, Aroostook Band of Micmacs  
The Honorable Barry Hobbins, Senate Chair, Joint Standing Committee on Judiciary  
The Honorable Deborah Simpson, House Chair, Joint Standing Committee on Judiciary  
Governor John E. Baldacci  
The Honorable Beth Edmonds, President, Maine Senate  
The Honorable Glenn Cummings, Speaker, Maine House of Representatives

December 6, 2006

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## **Executive Summary**

The 13 members of the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act unanimously recommend continuation of the group. While the group achieved tangible accomplishments during its nearly five months of existence, it purposefully did not take up the most contentious issues connected to the Maine Implementing Act. Five months during an election year did not allow sufficient time to study, analyze, receive public input, and attempt to forge a consensus concerning possible resolution of issues that have been so extensively litigated and politicized.

However, the existing members want to continue working to address the most difficult issues, many of which are outlined in the Framework Document prepared for the May 8, 2006 Assembly of Governors and Chiefs (see appendix three.) The Work Group members believe that the best mechanism for continuing their work would be to constitute it as an official body of the Maine Legislature with a temporary existence in order to make possible legislative recommendations to the Second Session of the 123<sup>rd</sup> Legislature. A legislative resolve (see appendix eight) is proposed to fulfill this recommendation.

In order to resume the work of the Tribal-State Work Group as soon as possible, the members recommend that the resolve be passed as an emergency measure. Depending on the date of enactment, passing the resolve as an emergency measure will provide many more months of deliberations to resolve deep differences in legal and statutory interpretation that have intensified over 26 years. The Work Group members believe that State of Maine and Tribal interests will be advanced should conflicts stemming from the Maine Implementing Act get resolved.

The Work Group members are also intentionally including a fiscal note to fund the work of the Group. The Maine Indian Tribal-State Commission (MITSC) provided effective administrative and staff support to the Work Group. Unfortunately, MITSC is operating with a deficit. It cannot be directed to absorb the costs of the Work Group as it has no funds upon which to operate. The Work Group members believe an investment of \$15,000 is well worth the many benefits potentially accruing to the State of Maine and the Wabanaki should the most contentious issues connected to the Maine Implementing Act get resolved.

The Work Group members urge the appointing authorities to reappoint the existing members with the exception of any state legislators who may have lost their November election. In addition, the Work Group recommends adding the Tribal Representatives from the Passamaquoddy Tribe and Penobscot Nation and two additional members from the House of Representatives, one Democrat and one Republican.

Accomplishments of the Tribal-State Work Group include acting as a catalyst for including in-house and external briefing sessions on the Wabanaki, the Maine Implementing Act, and tribal-state relations in the official legislative orientation for the 123<sup>rd</sup> Maine Legislature, forging a consensus to recommend including seats for the Houlton Band of Maliseet Indians on the Maine Indian Tribal-State Commission, and drafting legislation to add the Maliseets to MITSC (see appendix seven).

## **Background**

The Maine Legislature passed An Act to Provide for Implementation of the Settlement of Claims by Indians in the State of Maine and Create the Passamaquoddy Indian Territory and Penobscot Indian Territory as P.L. 1979, ch. 732. The legislation is commonly referred to as the Maine Implementing Act (MIA). The US Congress passed companion legislation in 1980 known as the Maine Indian Claims Settlement Act (MICSA).

The State and Federal Acts settled land claims brought by the Houlton Band of Maliseet Indians, Passamaquoddy Tribe, and Penobscot Nation. The Passamaquoddy Tribe and Penobscot Nation forced the US Dept. of Justice to file a lawsuit on their behalf in the summer of 1972 to recover 12.5 million acres assessed at \$25 billion. Eventually, the lawsuit was settled in 1980 and produced the Maine Indian Claims Settlement Act and Maine Implementing Act. The Passamaquoddies and Penobscots received \$13.5 million and 150,000 acres each in exchange for forever relinquishing their claim to millions of acres they once called their own. The Houlton Band of Maliseets received a much smaller settlement of \$900,000.

Besides specifying the compensation to be paid to the Tribes, MICSA and MIA established a new legal relationship between the Tribes, the State of Maine and the US defining certain powers and jurisdiction belonging to each. Though enacted with the hope of settling these questions of powers and jurisdiction, over time certain provisions of the Settlement Act have become viewed by the Tribes as oppressive and unjust. Negotiators of the original agreement have expressed concern that its implementation has deviated from the understanding reached by the parties in 1980. In addition, MIA fails to take into account changes in the capabilities and capacities of the parties achieved over 26 years that warrant adjustments in the tribal-state relationship.

A major focus of the May 8, 2006 Assembly of Governor and Chiefs addressed the disputed interpretations involving the Maine Implementing Act. The State of Maine and the Wabanaki Tribes have extensively litigated certain provisions of MIA (see appendix five). All the parties express dissatisfaction with the outcome of litigation. Governor Baldacci stated at the May 8, 2006 Assembly:

While we are doing what we are doing, we need to create a new foundation for us and future chiefs and governors. I don't want to go to court. I want to get the relationship to a point without fear of what people are doing, why they are doing it.

The leaders assembled in Veazie May 8, 2006 agreed to create a process to examine possible changes to MIA. Governor Baldacci offered to issue an executive order (EO) creating a group consisting of Tribal and State representatives. He issued the executive order July 10, 2006 (see appendix one).

### **Tribal-State Work Group**

Governor Baldacci's Executive Order 19 FY 06/07 cites the differences in the interpretation of MIA and the other Settlements Acts pertaining to the Wabanaki "have resulted in excessive litigation," caused an "economic drain on the parties" involved, and acted as an "impediment to efforts to make social and economic improvements that could benefit both the Tribes and the State." The Executive Order states "a further analysis of the differences of interpretation or understanding of the Maine Implementing Act" and "an attempt at reconciling some of the differences is warranted."

EO 19 FY 06/07 directs the Tribal-State Work Group to "study differences in the interpretation and understanding of the Settlement Acts." It tasks the Work Group with developing "recommendations for how the 123<sup>rd</sup> Legislature might reconcile the issues in a manner that benefits both the Tribes and the State." The Work Group consists of 13 members:

1. Two members of the Senate, appointed by the President of the Senate;
2. Four members of the House of Representatives, appointed by the Speaker of the House;
3. The Governor of the Passamaquoddy Tribe at Indian Township, or a designee;
4. The Governor of the Passamaquoddy Tribe at Pleasant Point, or a designee;
5. The Chief of the Penobscot Nation, or a designee;
6. The Tribal Chief of the Houlton Band of Maliseet Indians, or a designee;
7. The Tribal Chief of the Aroostook Band of Micmacs, or a designee;
8. The Governor of the State of Maine, or the Governor's designee;
9. The Chair of the Maine Indian Tribal-State Commission, or a designee.

The EO requires the Tribal-State Work Group to issue a report by December 5, 2006 encompassing its findings, recommendations, and suggested legislation to the Joint Standing Committee on Judiciary.

### **Deliberations and Accomplishments of Tribal-State Work Group**

The Tribal State Work-Group met three times (see minutes in appendix four) on September 6, October 10, and November 14. At the initial meeting, the group adopted its operating procedures and elected Paul Bisulca, Chair of MITSC, to lead the Work Group. It also decided on September 6 to review the legislative record and other materials from the period when the Settlement Act was adopted by the Maine Legislature.

At the October 10 meeting, Paul Bisulca told the Work Group he did not believe sufficient time was available to adequately address the most disputed sections of the Maine Implementing Act. The other Work Group members agreed with him. The group decided to focus on including information on the Wabanaki, MIA, MICSA, and tribal-state relations in the official legislator orientation for the 123<sup>rd</sup> Legislature, recommend expansion of MITSC to include seats for the Houlton Band of Maliseet Indians, and examine how MITSC could be strengthened.

Paul Bisulca and John Dieffenbacher-Krall met with David Boulter, Executive Director, Legislative Council, and Laurie Lachance, President & CEO, Maine Development Foundation, on October 17 to discuss internal and external briefings for the incoming legislators. David Boulter oversees the legislator orientation program. The Maine Development Foundation organizes legislative bus tours as a component of the legislator orientation program to provide legislators with an opportunity to visit with businesses and public institutions that function as major employers and/or support economic development.

David Boulter agreed to the value of adding a program on the Wabanaki, MIA and MICSA, and the major issues affecting tribal-state relations to the 2007 legislator orientation program. The session dealing with these issues is scheduled for January 9 in the State House from 11 -1. The legislative members of the Tribal-State Work Group also wrote a letter to the presiding officers, Senate President Beth Edmonds and Speaker John Richardson, relaying the importance they see of briefing legislators on these subjects and encouraging their attendance at the sessions (see appendix six).

For the legislative bus tour, the Maine Development Foundation has incorporated visits with the Houlton Band of Maliseet Indians and Passamaquoddy Tribe. The Northern and Eastern Maine bus tour scheduled for January 10 – 12 will stop at the Maliseet reservation in the late afternoon on January 11 and will visit both Passamaquoddy Reservations during the morning of January 12. The Tribal-State Work Group ensured that contact information was exchanged and appropriate communications took place between the parties to schedule the legislative visits with the three Tribal Governments.

The Tribal-State Work Group voted at the October 10 meeting to recommend to the Passamaquoddy Tribe, Penobscot Nation, and State of Maine that MITSC be expanded to add two seats for the Houlton Band of Maliseet Indians and that the State of Maine receive two additional seats. The intent of the recommended expansion is to permit MITSC to formally represent the Houlton Band of Maliseet Indians and the State of Maine in their relationship under the Maine Implementing Act. This recommendation is not intended to diminish the Band's or the State's rights under that Act. At the November 14 meeting, the Work Group unanimously approved a bill draft to add the Maliseets to MITSC and to create two additional seats for the State of Maine (see appendix seven).

Tribal-State Work-Group members engaged in a far ranging discussion of MITSC's authority and responsibilities at the October 10 meeting. Many MITSC observers perceive the Commission as lacking genuine power to get things done. Work Group members discussed a number of approaches to fix this problem. Ultimately, the Work Group decided MITSC itself would be the best place to analyze its deficiencies and to suggest possible options to address them. These suggestions could be considered if the Tribal-State Work Group is continued as suggested.

### **Recommendations**

1. Pass a legislative resolve continuing the Tribal-State Work Group and expanding its membership by adding the Passamaquoddy and Penobscot Tribal Representatives and two additional members from the House.
2. Amend the Maine Implementing Act to add to MITSC two seats for the Houlton Band of Maliseet Indians and maintain the tribal-state balance by increasing the number of State seats from four to six.
3. Incorporate into the official legislator orientation for the 123<sup>rd</sup> Maine Legislature explicit information concerning the history, culture, and current governmental structure of the Wabanaki; review of the Maine Implementing Act, Maine Indian Claims Settlement Act, and other settlement acts pertinent to the Wabanaki; and overview of current tribal-state relations.



## Appendix 1

19 FY 06/07

July 10, 2006

### **AN ORDER TO CREATE A TRIBAL-STATE WORK GROUP TO STUDY ISSUES ASSOCIATED WITH THE MAINE IMPLEMENTING ACT**

**WHEREAS**, in Maine there are four federally recognized Indian tribes: the Penobscot Indian Nation, the Passamaquoddy Tribe, the Aroostook Band of Micmacs, and the Houlton Band of Maliseet Indians;

**WHEREAS**, in 1979, the Maine Legislature enacted AN ACT to Implement the Maine Indian Claims Settlement which implemented in part a settlement agreement between the State of Maine, and the Penobscot Indian Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians (“the Maine Implementing Act”);

**WHEREAS**, in 1980, the United States Congress ratified the Maine Implementing Act (“the Ratifying Act”);

**WHEREAS**, the Maine Legislature enacted the Micmac Settlement Act and the United States Congress enacted the Aroostook Band of Micmacs Settlement Act regarding the Aroostook Band of Micmacs (“the Micmac Acts”);

**WHEREAS**, the Maine Implementing Act, the Ratifying Act, and the Micmac Acts are collectively referred to herein as the “Settlement Acts”;

**WHEREAS**, the Maine Implementing Act established the Maine Indian Tribal State Commission (“MITSC”) which was charged with continually reviewing the effectiveness of the Maine Implementing Act and the social, economic and legal relationship between the Passamaquoddy Tribe and the Penobscot Indian Nation and the State;

**WHEREAS**, on May 8, 2006, the Assembly of Governors and Chiefs, with the assistance of the Maine Indian Tribal State Commission, identified several differences of interpretation or understanding of the Maine Implementing Act and the Ratifying Act;

**WHEREAS**, the Governors and Chiefs appointed an Ad Hoc group to further identify issues upon which the State and Tribes differed regarding the Settlement Acts;

**WHEREAS**, on May 31, 2006, the Ad Hoc group enumerated a list of those issues;

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**WHEREAS**, the differences of interpretation and understanding of the Settlement Acts have resulted in extensive litigation which has been an economic drain on the parties and often an impediment to efforts to make social and economic improvements that could benefit both the Tribes and the State; and

**WHEREAS**, a further analysis of the differences of interpretation or understanding of the Maine Implementing Act and the Ratifying Act, and an attempt at reconciling some of the differences, is warranted:

**NOW THEREFORE**, I, John E. Baldacci, Governor of the State of Maine, in consideration of all of the above, do hereby establish the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act ("the Work Group") as follows:

**1. Purpose**

The Work Group shall study differences in the interpretation and understanding of the Settlement Acts. The Work Group shall develop recommendations for how the 123rd Legislature might reconcile the issues in a manner that benefits both the Tribes and the State.

**2. Work Group Membership**

The Work Group shall consist of the following members:

1. Two members of the Senate, appointed by the President of the Senate;
2. Four members of the House of Representatives, appointed by the Speaker of the House;
3. The Governor of the Passamaquoddy Tribe at Indian Township, or a designee;
4. The Governor of the Passamaquoddy Tribe at Pleasant Point, or a designee;
5. The Chief of the Penobscot Nation, or a designee;
6. The Tribal Chief of the Houlton Band of Maliseet Indians, or a designee;
7. The Tribal Chief of the Aroostook Band of Micmacs, or a designee;
8. The Governor of the State of Maine, or the Governor's designee; and
9. The Chair of the Maine Indian Tribal State Commission, or a designee.

**3. Duties**

The Work Group shall consider the differences in interpretations of the Settlement Acts enumerated by the Ad Hoc group.

**4. Staff**

The MITSC shall provide necessary staffing services to the Work Group.

5. **Attorney General's Office**

The Maine Attorney General, or his designees, shall attend all meetings of the Work Group.

6. **Report**

No later than December 5, 2006, the Work Group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on the Judiciary.

7. **Implementation Costs**

The costs for implementing the duties included in this Executive Order shall be absorbed by the participating organizations.

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**Effective Date**

The effective date of this Executive Order is July10, 2006.

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John E. Baldacci, Governor



## Appendix 2

<b>Members of the Tribal-State Work Group to Study Issues Associated with the Maine Implementing Act EO 19 FY 06/07</b>				
Name	Address	Phone #s	Email	Appt. by
Brian Altvater	P.O. Box 406 Perry, ME 04667	(w) 853-6021	baltvater@ptc-me.net	Gov. Mark Altvater
Paul Bisulca	11 Briggs Lane Oxford, ME 04270	(h) 539-8219	bisulca@verizon.net	MITSC
Rep. Richard Blanchard	36 Fifth St. Old Town, ME 04468	(w) 287-1400	rdblanch@localnet.com	Speaker Richardson
Rep. Joan Bryant-Deschenes	339 Pleasant Pond Rd. Turner, ME 04282	(h) 224-2252	jdmaine@megalink.net	Speaker Richardson
Chief Brenda Commander	88 Bell Rd. Houlton, ME 04730	(w) 532-4273 ext. 218	tribal.chief@maliseets.com	Maliseets
Daryl Fort	1 State House Station Augusta, ME 04333	(w) 287-3531	Daryl.Fort@maine.gov	Governor Baldacci
Sen. Libby Mitchell	277 Cushnoc Rd. Vassalboro, ME 04989	(w) 287-1540	SenLibby.Mitchell@legislature.maine.gov	President Edmonds
Rep. Joan Nass	P.O. Box 174 Action, ME 04001	(w) 287-1400	notthymefarm@metrocast.net	Speaker Richardson
Tribal Council Member Elizabeth Neptune	7 North Eagle Point P.O. Box 102 Princeton, ME 04668	(h) 796-0822	lneptune@maineline.net	Governor Nicholas
Chief William Phillips	7 Northern Rd. Presque Isle, ME 04769	(w) 764-1972	stewileli@earthlink.net	Micmacs
Sen. Kevin Raye	63 Sunset Cove Rd. Perry, ME 04667	(w) 287-1540	SenatorRaye@downeast.net	President Edmonds
Tribal Council Member James Sappier	P.O. Box 344 Old Town, ME 04468	(h) 827-8660	jsappier@penobscotnation.org	Chief Francis
Rep. Deborah Simpson	551 Turner Street Auburn, ME 04210	(w) 287-1400	<a href="mailto:RepDeborah.Simpson@legislature.maine.gov">RepDeborah.Simpson@legislature.maine.gov</a>	Speaker Richardson



### **Appendix 3**

## **FRAMEWORK FOR DISCUSSION WABANAKI/STATE OF MAINE LEADERS MEETING Mutual Freedom, Partnership, and Prosperity: The Social, Economic and Legal Relationship between the Wabanaki Tribes and the State of Maine**

**May 8, 2006**

### **Rationale for meeting**

The approach most likely to enhance tribal-state relations consists of honest, open discussions in which each party to the discussions identifies problems in the relationship and recommends solutions after genuinely listening and attempting to understand each other's point of view. Decision makers entering the process must also be willing to use the power of their offices to work for the approval of any recommended changes with their respective governments.

For tribal-state relations to improve, the sovereign leaders must be willing to commit resources, including their personal time and that of appropriate staff, to support the committee work and other collaboration that will lead to concrete results. A safe space must be created in which the genuine issues causing differences between the parties are fully aired. We should recognize an inherent tension at the outset of the process between those who may wish to focus on less controversial issues that may provide opportunities for quicker resolution and others who want to engage in fundamental underlying issues at the core of the relationship. Neither view is exclusively right or wrong. The parties must be willing to allow themselves to trust in the process and in the individuals assigned to facilitate the process in order for the structured dialogue to work.

An assumption is that all the parties recognize the inherent worth of every other party to the deliberations and benefits from the existence and prosperity of the others. Governor Baldacci unequivocally stated his belief on January 23 that Maine is stronger because of the presence of the four Wabanaki Tribes. Though the Wabanaki people pre-existed the State of Maine by thousands of years, they do benefit from a positive government-to-government relationship with the State.

The MITSC Commissioners have identified five suggested topics for discussion after six months of deliberation and input from Tribal and State leaders. Careful consideration must be given to the order in which these issues are discussed. However, the trust and mutual confidence necessary to produce positive concrete results will not last unless there is a genuine willingness to eventually engage in all of the issues as they are identified by Wabanaki and State leaders.

While every Sovereign's issues must be heard and addressed, we cannot tackle every issue. Our challenge is to identify the most important issues. The set of issues may involve

some combination of areas where some collaboration and agreement already exist and areas in which the parties hold strongly divergent points of view.

### **I. Venue for resolution of disputes**

**Problem Statement:** Two of the sovereigns belonging to MITSC have consistently maintained that resolving disputes between the parties in the courts of the third sovereign, the State of Maine, is inherently unjust. An alternative dispute resolution process that could be independent of the judicial system of the State of Maine ought to be evaluated.

### **II. Internal Tribal Matters**

**Problem Statement:** The Tribes perceive a steady diminishment of what constitutes Internal Tribal Matters since enactment of the Settlement Act. Many individuals involved in the original Settlement Act negotiations contend that the status of Internal Tribal Matters as it exists today does not reflect the intent of the agreement signed in 1980. The Tribes want to return to their understanding of the original intent of the Settlement Act regarding the scope of their authority.

### **III. Municipal Language of the Settlement Act**

**Problem Statement:** One of the most contested provisions of the Maine Implementing Act involves the intent providing the Tribes with the powers of municipalities. Tribal negotiators consistently claim this language was introduced to allow the Tribes to seek the same funding opportunities as municipalities (see §6211). State negotiators, fearful of the creation of “a nation within a nation,” assert that the municipality language provided comfort to them with a recognizable model subject to control of the State (see §6206 subsection 1 General Powers). Several paper corporations successfully argued that the Tribes are subject to certain responsibilities under the Maine Freedom of Access Act as any Maine municipality (see *Great Northern Paper, Inc. et. al. v. Penobscot Nation et. al.* (2001)). On February 8, 2001 and May 17, 2002, MITSC publicly expressed its view that the Tribal deliberative process is part of “Tribal Government” and therefore an Internal Tribal Matter not subject to state laws applying to municipalities. From a Tribal perspective, attempting to shoehorn Tribal Governments into a municipal government model is a poor cultural and functional fit. Tribal Governments undertake many functions and possess many powers not applicable to municipalities.

### **IV. Maliseets, Micmacs relationships with MITSC/State of Maine**

**Problem Statement:** Though part of the Maine Indian Claims Settlement Act, the Maliseets were not granted seats on MITSC. The Micmacs obtained federal recognition at a later time and enjoy a different legal status vis-à-vis the State and Federal Government. Tribal-state relations might benefit from having a formal



structure in which all four Tribes could belong in order to assert concerns and or issues with the State of Maine and vice versa. One way this might be accomplished is including the Maliseets and Micmacs within MITSC. Recommendation #8 of the At Loggerheads report suggests adding Maliseet and Micmac representatives to MITSC. Another approach may be abolishing MITSC as was proposed in LD 1569 and replacing it with a new entity. The Maliseets and Micmacs must decide if they desire such membership.

## **V. New England intertribal college feasibility study**

**Problem Statement:** The United South and Eastern Tribes, Inc. (USET) and the New England Board of Higher Education (NEBHE) conducted a year-long feasibility study completed late last year examining the potential of creating a Tribal college more conveniently located for the eastern and southern Tribes. Currently, the only Tribal colleges east of the Mississippi River operate in far northern Michigan. The study was funded by the Office of Minority Health in the U.S. Department of Health and Human Services. It examined the feasibility of establishing an intertribal college initially focused on health sciences, technology and pre-medical education that will serve the Tribes located in the USET region. This new institution could include a physical hub campus with numerous satellite-learning centers located on reservations and in urban Indian centers. The potential exists to have the central hub campus located in Maine. The challenge is how do Tribal and State of Maine leaders work together to realize this opportunity.

## **VI. Next steps**

**Problem Statement:** A necessary prerequisite for the ultimate success of resolving tribal-state disagreements is a commitment from the five Wabanaki leaders and Governor Baldacci to follow-up work after the spring gathering. Clear steps should be outlined before the event ends Saturday so every person in attendance understands what will be done by whom. One of the surest ways to break trust is to argue about the process for change while engaged in making policy changes. Inevitably, someone will think one of the parties is seeking a negotiating advantage when specific process changes are recommended or attempts are made to clarify the process. All the parties would benefit from having a universally understood and accepted process on how Settlement Act changes are made before initiating the process for such changes. Whatever body or bodies that are created to continue the work identified by the governmental leaders should have their members identified, who is responsible for staffing them, desired work product specified, and deadlines agreed upon. Interim progress reports with firm reporting dates should also be outlined. A fall target date should be set for completion of the work with the leaders gathering to review and act on it.

## **Appendix 4**

### **Minutes**

**Initial Meeting of Tribal-State Work Group to Study Issues  
Associated with the Maine Implementing Act  
Executive Order (EO) 19 FY 06/07  
September 6, 2006  
Conference Room, Nick Sapiel Building, Indian Island**

Members in attendance: Passamaquoddy Tribal Council Member Brian Altvater, MITSC Chair Paul Bisulca, Rep. Dick Blanchard, Chief Brenda Commander, Daryl Fort, Office of Governor Baldacci, Sen. Libby Mitchell, Rep. Joan Nass, Chief James Sappier, Rep. Deb Simpson

Members absent: Rep. Joan Bryant-Deschenes, Chief William Phillips, Sen. Kevin Raye (the Passamaquoddy Tribe at Indian Township had not appointed a representative as of this meeting)

Others in attendance: Jerry Reid, Office of the Attorney General, Penobscot Tribal Council Member Kirk Francis, John Banks, MITSC, Maria Girouard, Paul Thibeault, Paul Jacques, MITSC, Donald Soctomah, Tribal Historian, Passamaquoddy Tribe and MITSC, Peter Sly, Penobscot Tribal Representative Michael Sockalexis, Greg Sample, Mark Chavaree, MITSC, Maliseet Tribal Council Member Clair Sabattis

Minutes recorded by John Dieffenbacher-Krall

Chief James Sappier began the meeting with an invocation. Paul Bisulca talked about a relationship (referring to that between the Tribes that reside in Maine and the State of Maine) that has been defined legally, yet relationships in practice don't work that way. Furthermore, laws often result in unintended consequences, consequences that the negotiators for the state and the tribes intended MITSC to address. The meeting today to consider comprehensive remedies to problems resulting from the Maine Implementing Act affecting tribal-state relations is the first time this has ever happened. MITSC has the responsibility to monitor the legal tribal-state relationship and to head things off before they go to court. He expects the group to look at some things in a new way, examine problems, see what can be done.

Paul Bisulca then reviewed with the group the booklet, *Governor's Work Group Maine Implementing Act: Mutual Freedom, Partnership and Prosperity*. This was followed by a review of the Executive Order that created the group. Paul Bisulca made a statement about the composition of the Work Group. He sees the panel as a State of Maine group. The Indian representatives' roles are to provide input to the State. MITSC sought to have representatives from each Tribe appointed to the panel. Nothing will happen without the support of the respective Tribal Governments.

The group then discussed possible structures for its organization. It opted for a single chair. Paul Bisulca was selected to serve as the chair.

The legislative appointees had questions about what led to the Tribal-State Work Group and its purpose. Paul Bisulca explained that the purposes of the Work Group included getting people familiar with the issues and to identify issues that lend themselves to near-term legislative or executive action.

Members of the Work Group involved with the May 8 Assembly of Governors and Chiefs and the May 31 review of the Maine Implementing Act (MIA) explained that Tribal leaders and Governor Baldacci had discussed a two-part process. Governor Baldacci would sign an Executive Order creating a Work Group (this body) to begin examining issues identified at the two May 2006 meetings and others suggested by the parties. For issues in which quick agreement was reached, the expectation was for the appropriate executive or legislative action to occur to address them.

For a set of potentially more difficult issues, people involved expected that the 123<sup>rd</sup> Maine Legislature would form a body, perhaps a blue ribbon commission, to work on those issues through the spring, summer and fall of 2007 with the expectation of action in the winter/spring of 2008. There was also the expectation that the legislators serving on the Tribal-State Work Group would form the nucleus of the future group tasked with working on the more difficult to resolve issues. Legislators appreciated the explanation.

Work Group members began to list potential issues for consideration on a large sheet of paper. They included legislator training in Indian-State relations, potential changes to MITSC including adding seats for the Houlton Band of Maliseet Indians and ex officio representatives from the Maine Legislature, the venue where legal disputes between the Tribes and the State are heard, the municipality language in the MIA, and the lack of a Maine Indian Policy. During the discussion of venue, members discussed the possibility of a memorandum of understanding or agreement being executed between the Tribes and the State to initially refer potential legal disputes to MITSC before resorting to the judicial system. Though it did not make it on the large sheet of paper, several members discussed the central importance of resolving the Internal Tribal Matters language of MIA.

In thinking about Internal Tribal Matters, Chief Sappier told the group it needs to consider the ancient and customary practices of the Tribes. Paul Bisulca pointed out that MITSC is required by MIA to consider culture in some aspects of its rulemaking.

For the next meeting, John Dieffenbacher-Krall was tasked to investigate the availability of the legislative record from 1979-1980 connected to the consideration and adoption of MIA. Members also thought distribution of the Loggerheads report to those who do not have it makes sense. In addition, members were interested in the MITSC meeting minutes from 2002-2003 in which specific language changes were considered to address problems such as the municipality language and Internal Tribal Matters.

The group decided to hold its next meeting October 10 from 10-3 in Augusta pending communications with the absent legislators to make sure they will be available. Paul Jacques offered the use of the Inland Fisheries & Wildlife conference room once the meeting date and time had been set.

**Minutes**  
**Meeting of Tribal-State Work Group to Study Issues**  
**Associated with the Maine Implementing Act**  
**Executive Order (EO) 19 FY 06/07**  
**October 10, 2006**  
**Conference Room, Inland Fisheries & Wildlife, Augusta**

Members in attendance: Passamaquoddy Tribal member @ Pleasant Point Brian Altvater, John Banks (sitting in for James Sappier), MITSC Chair Paul Bisulca, Rep. Dick Blanchard, Rep. Joan Bryant-Deschenes, Daryl Fort, Office of Governor Baldacci, Sen. Libby Mitchell, Rep. Joan Nass, Sen. Kevin Raye, Rep. Deb Simpson

Members absent: Chief Brenda Commander, Chief William Phillips, (the Passamaquoddy Tribe at Indian Township had not appointed a representative as of this meeting)

Others in attendance: Norma Bisulca, Tom Bulger, Greg Cunningham, MITSC, Bonnie Davis, Jerry Reid, Office of the Attorney General, Diana Scully, Donald Soctomah, Passamaquoddy Tribal Representative and MITSC, Toby Stanley

Minutes recorded by John Dieffenbacher-Krall

**I. Consideration of minutes from 9/6/06**

Dick Blanchard moved to accept the 9/6/06 meeting minutes as printed. Libby Mitchell seconded the motion. It carried unanimously.

**II. Review of Agenda**

Paul Bisulca explained he had decided to pare down the agenda. He concluded that the Work Group would never complete the work on the most difficult interpretation issues connected to the Maine Implementing Act by the reporting deadline of December 5, 2006. Instead of beginning that work only to have it all remain unresolved, he thought focusing on areas of consensus in which action could be taken was the best course of action to pursue. He expects the successor body to the Work Group to take up the most challenging issues.

John Banks requested permission from the chair to make a statement. John Banks said there is something wrong in Maine in the way it treats Indian people. I have been involved in Indian affairs for 26 years. I have been involved in national organizations. We are way behind the rest of the country. John referred to a meeting that occurred with Ed Cohen, Department of Interior Solicitor's office. During the meeting, Cohen said Maine State Government is the most anti-Indian in the country. John referenced the previous week's meeting of the National Congress of American Indians (NCAI). He heard a presentation by the chair of the National Indian Gaming Association. John Banks relayed figures he heard the chair of the National Indian Gaming Association present at the NCAI meeting. Indian gaming is generating impressive amounts of revenue, taxes and jobs.

- 1) In 2005 Indian gaming created 600,000 jobs, 75% of which are held by non-Indians
- 2) In 2005 Indian gaming brought in \$7.6 billion in federal revenues
- 3) In 2005 Indian gaming brought in \$2.2 Billion in State revenues
- 4) In 2005 Indian gaming brought in \$100 Million in local and municipal revenues.

John Banks emphatically declared this body can make a difference. We can set a new course for a more productive relationship. Let's work together as neighbors, as partners. Let's forget the past.

Libby Mitchell stated bad things happen when we don't understand nuances.

Paul Bisulca said it is symptomatic. When the Settlement occurred, Maine's Dept. of Indian Affairs disappeared. Indian questions get defaulted to the Attorney General. They do what soldiers do – fire and maneuver. These questions were not put in the political realm where they belong. The State has handled Tribes in a litigious way. Paul read from the State Senate record from April 2, 1980, page 718.

This bill, if enacted, will not become a general statute of the State. It will be a unique document that is similar to an agreement between the State and the Indian Tribes that has been authorized and ratified by the United States Congress. In enacting this bill the Legislature will be exercising in effect, an authority delegated by and subject to the Federal Government's authority over Indians.

Paul Bisulca continued that overall his reading of the legislative record and the *Report, Hearing Transcript and Related Memoranda of the Joint Select Committee on Indian Land Claims* produced no silver bullets. This is a relationship. We need to work that relationship to maximize the benefits to all parties. Both parties, the State and the Tribes, need to benefit from any changes made.

### **III. New/veteran legislator orientation 123<sup>rd</sup> Maine Legislature**

John Dieffenbacher-Krall reported on the progress to date of incorporating information about the Wabanaki, the Settlement Act, MITSC and the current state of tribal-state relations in the legislator orientation program for the 123<sup>rd</sup> Maine Legislature. John Dieffenbacher-Krall relayed to the group that he had already spoken to David Boulter, Executive Director of the Legislative Council, requesting that a specific session or sessions be held on the relevant aspects of tribal-state relations, the underlying laws delineating that relationship and an overview of the Wabanaki Tribes. John Dieffenbacher-Krall stated he and Paul Bisulca had a meeting scheduled with David Boulter and Laurie Lachance of the Maine Development Foundation on October 17 to explore incorporating stops at some of the Wabanaki Reservations as part of the legislative bus tours planned for January 2007.

Libby Mitchell suggested writing a letter addressed to all current legislative leaders supporting the bus tour idea and stating the need for an in-house Augusta briefing. Libby Mitchell also suggested that the committees of jurisdiction need a special briefing.

Dick Blanchard remarked several good ideas are floating around the table. We need to have an agenda when we start the second phase with the legislative commission. We need to be able to walk before we can run.

#### **IV. Maliseet accession to MITSC**

Paul Bisulca opened the discussion by stating that the Maliseets have wavered on this a long time. Chief Commander asked me to come up in August. Paul Bisulca along with John Dieffenbacher-Krall met with Chief Commander and the Maliseet Tribal Council. The Maliseet Tribal Council voted unanimously to join MITSC. Paul Bisulca asked Jerry Reid if you see any unforeseen circumstances related to the Maliseets potentially joining MITSC. Jerry Reid responded he had not given the matter any thought coming into this meeting. As a first consideration, I don't see any problems.

Kevin Raye suggested that the new representative and senator whose districts encompass the Maliseet reservation should be given the opportunity to be the lead sponsors for the Maliseet accession bill. Paul Bisulca agreed and added that he would like to see all legislators on this work group co-sponsor the bill.

The Tribal-State Work Group agreed to recommend to the signatories of the Settlement Act an amendment to MIA to add the Maliseets to MITSC. Libby Mitchell moved that the Tribal-State Work Group recommend to the Passamaquoddy Tribe, Penobscot Nation, and State of Maine that MITSC be expanded to add two seats for the Houlton Band of Maliseet Indians and that the State of Maine receive two additional seats. If the parties give their consent, legislation will be introduced to make the recommended change. Dick Blanchard seconded the motion. It passed unanimously.

#### **V. Changes to MITSC**

Paul Bisulca referred to page 26 of the *At Loggerheads – The State of Maine and the Wabanaki* report. The report contains a section "Is the MITSC Effective?" For Paul Bisulca, the first question is whether MITSC is a state agency. Jerry Reid responded Paul Bisulca asked me this question last week. You can't simply say yes or no. There is no single statute that lists or describes state agencies.

John Banks asked is MITSC subject to the Maine Administrative Procedures Act? Jerry Reid answered that is probably correct. Jerry Reid advised that MITSC should decide when it wants to be treated like a state agency, when it does not. You can't simply say it is or is not a state agency.

Deborah Simpson recalled statements from the last meeting of the Work Group in which people described situations when the State of Maine had issues with the Tribes, it sought resolution of them in court. The Tribes tend to bring things to MITSC. The State of Maine does not reciprocate.

Libby Mitchell asked what if MITSC were more like an administrative court? Paul Bisulca pointed out §6212 of the Maine Implementing Act contemplates that the signatories will bring issues to MITSC. Libby Mitchell said I would like to hear from Deb. What is within the realm of possibility regarding requiring parties to bring issues to MITSC? Deb Simpson answered I think that it has to be more of a loose statement. State agencies should consult with MITSC before proceeding to court. Paul Bisulca stated there should be consultation.

Dick Blanchard remarked that MITSC has no teeth. Libby Mitchell asked if the executive director could draft something to outline a MITSC with more authority. Kevin Raye asked is there anything beyond rulemaking? Deb Simpson said it is not just promulgating rules, it is interpreting and implementing them.

Greg Cunningham suggested we may want to designate to a subcommittee the question what should MITSC be? Libby Mitchell stated the fundamental question is MITSC's authority. John Banks said Paul Jacques said it best at the last meeting. The negotiators of the Settlement Act recognized there were many, many unresolved issues. The solution for the unresolved issues was MITSC.

Daryl Fort suggested that the Work Group would benefit from organizing its thinking a little better. It should task MITSC with wrestling with what authority it should have.

Brian Altvater said speaking to people in the community MITSC is viewed as a token body. There are no teeth. MITSC may have worked well back in 1980, but now it needs some modifications. We need to give it a bite. People don't take it seriously.

Dick Blanchard stated we don't need to reinvent the wheel. We just need some new spokes.

Greg Cunningham said MITSC could be the best place for this discussion. Deb Simpson advocated for a subcommittee of the Tribal-State Work Group to work on the issue. Instead of doing in-person meetings, rely on the phone and email. Daryl Fort said the subcommittee needs to develop a process for the conversation, developing the right questions that we need to ask.

**Minutes**  
**Meeting of Tribal-State Work Group to Study Issues**  
**Associated with the Maine Implementing Act**  
**Executive Order (EO) 19 FY 06/07**  
**November 14, 2006**  
**Room 202, Cross Office Building, Augusta**

Members in attendance: Passamaquoddy Tribal member @ Pleasant Point Brian Altvater, MITSC Chair Paul Bisulca, Rep. Dick Blanchard, Chief Brenda Commander, Houlton Band of Maliseet Indians, Daryl Fort, Office of Governor Baldacci, Sen. Libby Mitchell, Rep. Joan Nass, Passamaquoddy Tribe @ Indian Township Tribal Council Member Elizabeth Neptune, Sen. Kevin Raye, Penobscot Nation Tribal Council Member James Sappier, Rep. Deb Simpson

Members absent: Rep. Joan Bryant-Deschenes, Chief William Phillips

Others in attendance: John Banks, Penobscot Nation & MITSC, Chief Rick Doyle, Passamaquoddy Tribe @ Pleasant Point, Nancy Mullins, Dept. of Education, Jerry Reid, Office of the Attorney General, Clair Sabattis, Tribal Council Member, Houlton Band of Maliseet Indians, Peter Sly, Toby Stanley

Minutes recorded by John Dieffenbacher-Krall

### **I. Consideration of minutes from 10/10/06**

Rep. Dick Blanchard moved to accept the 10/10/06 meeting minutes as printed. James Sappier seconded the motion. It carried unanimously.

### **II. New/veteran legislator orientation 123<sup>rd</sup> Maine Legislature**

John Dieffenbacher-Krall reported on what had been scheduled to date. An in-house briefing is scheduled for January 9, 2007 from 11 – 1. Stops at the Houlton Band of Maliseet Indians Reservation and both Passamaquoddy Reservations have been incorporated into the legislative bus tour scheduled for January 10 – 12, 2007. Buses will stop at the Maliseet Reservation on January 11 at 3:45 pm for a visit lasting approximately 75 minutes. The tour will continue to Calais. Passamaquoddy Tribal Representative Donald Soctomah will make a presentation about Passamaquoddy petroglyphs after dinner on January 11. Legislators will visit Indian Township and Pleasant Point during the morning of January 12.

Rep. Deb Simpson reported she spoke to person at the National Conference of State Legislators (NCSL) concerning possible assistance with legislator orientation on tribal-state issues. The person contacted pledged on behalf of NCSL to offer assistance in any way possible.

Paul Bisulca asked the legislative members of the Work Group if they approved the letter to legislative leadership drafted on their behalf. The legislative members of the Work Group approved the letter to Senate President Beth Edmonds and Speaker Richardson. It was signed by all legislators in attendance. (Paul Bisulca stopped on his way home to present the letter to Rep. Joan Bryant-Deschenes for her signature.)

### **III. Maliseet accession to MITSC**

Brian Altvater moved, and James Sappier seconded a motion to accept the Maliseet accession bill as presented. The motion passed unanimously. Senator Mitchell suggested asking Senator-elect Roger Sherman to make Rep. Deb Simpson the lead House cosponsor in recognition of her position as House Chair of the Judiciary Committee and membership on the Work Group.

### **IV. Changes to MITSC**

Paul Bisulca introduced the subject. Sen. Mitchell asked if the Work Group was going to deal with this in the upcoming legislative session. If so, she noted the approaching cloture date. Paul Bisulca responded no.



## **V. Final report of Work Group**

John Dieffenbacher-Krall reminded the Work Group that the EO creating it requires a final report to be submitted by December 5. He relayed his intention to draft something 3-4 pages in length. The Work Group members expressed general approval.

## **VI. Creation of new body to continue work of Tribal-State Work Group**

John Dieffenbacher-Krall asked for Work Group input on continuing the work of the group. Sen. Mitchell suggested an option was to introduce a legislative resolve and have the group created by the resolve report back in January 2008. Rep. Blanchard agreed with Sen. Mitchell's suggestion. We don't want to close the book. If we get a resolve through, we will get the meat and potatoes on the table for January 2008. Rep. Nass also expressed her support for Sen. Mitchell's proposal.

Chief Doyle asked how was the Work Group formed? Chief Doyle expressed concern when John Dieffenbacher-Krall discussed the final report that he did not say that it would be transmitted to Tribal Governments. Chief Doyle declared Tribal leadership needs to decide if it wants to continue in this process. In response to Chief Doyle's question, Paul Bisulca provided the background describing the process that led to the issuance of the EO creating the Work Group in July 2006. Rep. Simpson said Chief Doyle's suggestion was a good one regarding consulting with Tribal leadership to ensure that the Tribes want to continue the Work Group process.

John Dieffenbacher-Krall asked the group about the merits of a resolve vs. a bill. Sen. Mitchell responded that a resolve continues the work of the Work Group and provides authority to introduce legislation. Paul Bisulca asked other Work Group members if they felt any adjustments should be made to the membership of the Work Group. Rep. Blanchard asked Daryl Fort if Governor Baldacci would prefer to keep the membership as currently constituted or would he be open to changes? Daryl Fort responded that we should figure out how to best move this forward. Sen. Mitchell's suggestion is a good one.

James Sappier stated I like the resolve approach. It reflects buy-in from the House, Senate, and Executive Branch of State Government. James Sappier asked is this Work Group a committee of MITSC? Paul Bisulca answered no.

Paul Bisulca asked the Work Group should we make any changes to the composition of this body? John Banks suggested adding the Tribal Representatives from the Passamaquoddy Tribe and Penobscot Nation. Chief Doyle said reading the EO Governor Baldacci appointed the Tribal leaders. Chief Doyle objects to the Governor of Maine making the Tribal appointments. Tribal leaders need to maintain their sovereignty.

Brian Altvater asked if we bring in any more Tribal representatives, do we need to bring in two more State representatives? Brian Altvater added we should check with Tribal Governments if this is acceptable to them. Rep. Simpson wanted to clarify what was before the group in terms of membership. She stated that the Tribes should decide if they want Tribal Representatives on the Work Group. Irregardless of what the Tribes decide, we should add two representatives from the Maine House, one Democrat and one Republican.

John Dieffenbacher-Krall was tasked with drafting the resolve to continue the Work Group and directed to circulate it via email to the Work Group members.

## Appendix 5

### TRIBAL-MAINE ISSUES

#### ISSUES THAT HAVE BEEN LITIGATED OR ARE IN LITIGATION

Whether Tribal-run beano games are subject to State regulation? *Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me. 1983); 30 M.R.S.A. §§ 6204 & 6206(1); 25 U.S.C. §§ 1725(a) & (b), 1725(h), 1735.

Whether the Tribes can conduct high-stakes casino gambling behind the shield of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721, 18 U.S.C. §§ 1166-1168. *Passamaquoddy Tribe v. State of Maine*, 75 F.3d 784 (1<sup>st</sup> Cir. 1996); 30 M.R.S.A. §§ 6204 & 6206(1); 25 U.S.C. §§ 1725(a) & (b), 1725(h), 1735.

Whether Maine's Freedom of Access Act, 1 M.R.S.A. §§ 401-410, applies to the Tribes? *Great Northern Paper v. Penobscot Nation*, 2001 ME 68, 770 A.2d 574; *Penobscot Nation v. Georgia Pacific*, 254 F.3d 317 (1<sup>st</sup> Cir. 2001); 30 M.R.S.A. §§ 6204 & 6206(1).

Whether the Maine Human Rights Act, 5 M.R.S.A. §§ 4551, *et seq*, applies to the Tribes? *Penobscot Nation v. Fellencer*, 164 F.3d 706 (1<sup>st</sup> Cir. 1999); *Houlton Band of Maliseet Indians v. Ryan*, 2006 U.S. Dist. LEXIS 4371, *aff'd*, 2006 U.S. Dist. LEXIS 17254 (D. Me. 2006); *Aroostook Band of Micmacs v. Ryan*, 403 F. Supp. 2d 114 (D. Me. 2005); 30 M.R.S.A. §§ 6204 & 6206(1), 6206-A, 7201-07.

What are the boundaries of the Penobscot Reservation? 30 M.R.S.A. § 6203(8).

Whether discharges from Tribal facilities into navigable waters are internal tribal matters? *State v. Johnson* and *Penobscot Nation v. USEPA* (1<sup>st</sup> Cir.); 30 M.R.S.A. §§ 6204 & 6206(1).

Whether the federal government has environmental trust responsibilities to regulate the discharges from Tribal facilities? *State v. Johnson* and *Penobscot Nation v. USEPA* (1<sup>st</sup> Cir.); 30 M.R.S.A. §§ 6204 & 6206(1).

Whether the federal government has environmental trust responsibilities to regulate Maine's water quality standards over Tribal territories? 30 M.R.S.A. §§ 6204 & 6206(1); 25 U.S.C. §§ 1725(a) & (b), 1724(h), 1725(h), 1735.

What is the nature and extent of Tribal sustenance fishing? 30 M.R.S.A. § 6207.

Whether newspapers can proceed against the Passamaquoddy Tribe (Pleasant Point Reservation) under the Maine Freedom of Access Laws to obtain information about the Tribe's proposed LNG project. *Winifred B. French Corp v. Passamaquoddy Pleasant Point Reservation* (Maine Supreme Judicial Court 2006)

Whether parties other than the Passamaquoddy Tribe have standing to claim that the state court lacks jurisdiction over "internal tribal matters." Francis v. Pleasant Point Reservation Housing Authority (Maine Supreme Judicial Court 1998)

**Provisions of Settlement Acts Implicated (may not be exhaustive):**

**MICSA – Maine Indian Claims Settlement Act**

25 USC 1722(i) – Definitions - Scope of Penobscot Indian Reservation

25 USC 1724(h) – Agreement on terms for management and administration of land or natural resources

25 USC 1725(a) – Civil and criminal jurisdiction of the State and courts of the State; laws of the State

25 USC 1725(b)(1) – Passamaquoddy Tribe, Penobscot Nation subject to jurisdiction of State as provided in Maine Implementing Act

25 USC 1725(h) – General laws and regulations affecting Indians applicable, but special laws and regulations inapplicable, in State of Maine

25 USC 1725(i) – Eligibility for Federal special programs and services regardless of reservation status

25 USC 1735(b) – General legislation

**MIA – Maine Implementing Act**

30 MRSA 6202 – Legislative findings and declaration of policy - substantive legal effect

30 MRSA 6203(8) - Scope of Penobscot Indian Reservation

30 MRSA 6204 - Laws of the State apply to Indian Lands

30 MRSA 6206(1) - "internal tribal matters" vs. application of state law/duties applicable to municipalities - this is the most contested provision

30 M.R.S.A 6206-A – Powers of the Houlton Band of Maliseet Indians

30 MRSA 6207(4) - Sustenance fishing within the Indian reservation

**Micmac Settlement Act**

30 MRSA 7201-7207

**ABMSA – Aroostook Band of Micmac Settlement Act**

5 (c) (1) and (2) – Condemnation by State of Maine and Political Subdivisions Thereof

6(a) – Federal Recognition

6(b) – Application of Federal Law

**Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986**

3(d)(1) and (2) – Criteria for Secretary of Interior payment

## Appendix 6

Legislative Members of the Tribal-State  
Work Group  
c/o John Dieffenbacher-Krall  
Executive Director  
Maine Indian Tribal-State Commission  
P.O. Box 186  
Hudson, ME 04449  
November 14, 2006

The Honorable Beth Edmonds  
Maine Senate  
3 State House Station  
Augusta, ME 04333-0003

The Honorable John Richardson  
Maine House of Representatives  
2 State House Station  
Augusta, ME 04333

Dear Beth and John:

We legislative members of the Tribal-State Work Group created by Executive Order 19 FY 06/07 want to stress the importance of encouraging all members of the House and Senate to attend upcoming legislator orientation programs addressing the Wabanaki, Maine Indian Claims Settlement Act, Maine Implementing Act, and current tribal-state relations.

As we have served on the Tribal-State Work Group, we have realized the urgency of educating ourselves and our fellow legislators concerning our neighbors, the four Wabanaki Tribes, and the pivotal legal agreements that delineate much of our government-to-government relationship. Without a basic knowledge of the history, culture and present-day governments of the Wabanaki and the legal agreements, especially the Maine Indian Claims Settlement Act, that outline our political relationship, legislators will have a difficult time understanding the legislation that we expect will come before the Legislature during the next two years affecting tribal-state relations.

We do intend to recommend to Governor Baldacci in our final report to make some initial changes to the Maine Implementing Act to include the Houlton Band of Maliseet Indians as members of Maine Indian Tribal-State Commission (MITSC). In addition, we anticipate that the Work Group will recommend the creation of a legislative entity to continue our work with a focus on the most contentious issues involving the Maine Implementing Act that have consistently strained tribal-state relations.

The first opportunity available to legislators to learn about the Wabanaki and current tribal-state relations will take place January 9 from 11 – 1 in the State House. The second opportunity will occur during the initial legislative bus tour coordinated in conjunction with the Maine Development Foundation scheduled for January 10 – 12. We urge you to use the power of your offices to inform all members of these opportunities and to encourage their participation.

We appreciate the responsiveness of David Boulter to our suggestions to incorporate this subject matter into the legislator orientation for the 123<sup>rd</sup> Maine Legislature. We will assist you in whatever manner you deem advisable to make these orientation sessions as well attended as possible.

Very truly yours,

Senator Libby Mitchell

Senator Kevin Raye

Representative Richard Blanchard

Representative Joan Bryant-Deschenes

Representative Joan Nass

Representative Deborah Simpson

## Appendix 7

### DRAFT

#### 123<sup>rd</sup> MAINE LEGISLATURE FIRST REGULAR SESSION-2007

An Act To Amend the Maine Implementing Act To Add Seats for the Houlton Band of Maliseet Indians and State of Maine

Presented by Senator SHERMAN of Aroostook  
Cosponsored by

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

**Sec. 1. 30 MRSA §6212, sub-§1**, is amended to read:

- 1. Commission created.** The Maine Indian Tribal-State Commission is established. The commission consists of ~~9~~ 13 members, ~~4~~ 6 to be appointed by the Governor, subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature, 2 to be appointed by the Houlton Band of Maliseet Indians, 2 to be appointed by the Passamaquoddy Tribe, 2 to be appointed by the Penobscot Nation and a chair, to be selected in accordance with subsection 2. The members of the commission, other than the chair, each serve for a term of 3 years and may be reappointed. In the event of the death, resignation or disability of a member, the appointing authority may fill the vacancy for the unexpired term. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]

**Sec. 2. 30 MRSA §6212, sub-§2**, is amended to read:

- 2. Chair.** The commission, by a majority vote of its ~~8~~ 12 members, shall select an individual who is a resident of the State to act as chair. When ~~8~~ 12 members of the commission by majority vote are unable to select a chair within 120 days of the first meeting of the commission, the Governor, after consulting with the ~~governors~~ chiefs of the Houlton Band of Maliseet Indians, Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. In the event of the death, resignation or disability of the chair, the commission may select, by a majority vote of its ~~8~~ 12 remaining members, a new chair. When the commission is unable to select a chair within 120 days of the death, resignation or disability, the Governor of Maine, after consulting with the ~~governors~~ chiefs of the Houlton Band of Maliseet Indians, Penobscot Nation and the Passamaquoddy Tribe, shall appoint an interim chair for a period of one year or for the period until the commission selects a chair in accordance with this section, whichever is shorter. The chair is a full-voting member of the commission and, except when appointed for an interim term, shall serve for 4 years. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]



**Sec. 3. 30 MRSA §6212, sub-§3,** is amended to read:

- 3. Responsibilities.** In addition to the responsibilities set forth in this Act, the commission shall continually review the effectiveness of this Act and the social, economic and legal relationship between the Houlton Band of Maliseet Indians, Passamaquoddy Tribe and the Penobscot Nation and the State and shall make such reports and recommendations to the Legislature, Houlton Band of Maliseet Indians, the Passamaquoddy Tribe and the Penobscot Nation as it determines appropriate. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]
- ~~Seven~~ **Nine** members constitute a quorum of the commission and a decision or action of the commission is not valid unless ~~5~~ **7** members vote in favor of the action or decision. [1993, c. 600, Pt. A, §24 (amd); §25 (aff).]

### SUMMARY

This bill expands membership in the Maine Indian Tribal-State Commission to create two new seats for the Houlton Band of Maliseet Indians and to add two additional seats for the State of Maine in order to maintain parity between the Tribes and the State. The bill also establishes a new quorum and decision threshold reflecting the increase in its membership. The bill will not take effect until approved by the Legislature, Houlton Band of Maliseet Indians, Passamaquoddy Tribe and Penobscot Nation.

## Appendix 8

### DRAFT

#### Resolve, To Create the Tribal-State Work Group

**Emergency Preamble. Whereas,** resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this resolve needs to take effect before the expiration of the 90-day period in order for the Tribal-State Work Group originally created by Executive Order 19 FY 06/07 to continue working during and after the First Session of the 123<sup>rd</sup> Legislature;

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following resolve as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Sec. 1. Tribal-State Work Group established. Resolved:** That the Tribal-State Work Group, referred to in this resolve as “the work group,” is established, and be it further

**Sec. 2. Work Group membership. Resolved:** That the work group consists of 17 members appointed as follows:

1. Two members of the Senate, one belonging to the political party holding the largest number of seats in the Senate and one belonging to the political party holding the 2<sup>nd</sup> largest number of seats in the Senate, appointed by the President of the Senate;

2. Six members of the House of Representatives, three belonging to the political party holding the largest number of seats in the House and three belonging to the political party holding the 2<sup>nd</sup> largest number of seats in the House, appointed by the Speaker of the House;

3. Seven members, one appointed by each of the top elected leaders of the five Wabanaki Tribal Governments, the Chief of the Aroostook Band of Micmacs, the Chief of the Houlton Band of Maliseet Indians, the Governor of the Passamaquoddy Tribe at Indian Township, the Chief of the Passamaquoddy Tribe at Pleasant Point and the Chief of the Penobscot Nation, one belonging to the Passamaquoddy Tribal Representative to be appointed by the Joint Tribal Council of the Passamaquoddy Tribe, and one belonging to the Penobscot Tribal Representative appointed by the Chief of the Penobscot Nation;

4. One member appointed by the Governor of Maine;

5. One representative of the Maine Indian Tribal-State Commission; and be it further

**Sec. 3. Cooperation and participation of the Attorney General. Resolved:** That the Attorney General is requested to have a representative attend all meetings of the work group and respond to requests during the work group's deliberations regarding the Attorney General's opinion concerning the constitutionality and legal interpretation of any possible changes to the Maine Implementing Act or related statutes and agreements; and be it further

**Sec. 4. Chair. Resolved:** That the first-named Senate member is the Senate chair of the work group and the first-named House of Representatives member is the House chair of the work group; and be it further

**Sec. 5. Duties. Resolved:** That the work group may hold up to 6 meetings and shall examine the following:

1. The issues identified in the framework document prepared for the Assembly of Governors and Chiefs held May 8, 2006, the minutes for that meeting, Tribal-Maine Issues: Issues That Have Been Litigated or Are in Litigation, and Tribal-Maine Issues: Macro Issues prepared for the May 31, 2006 review of the Maine Implementing Act, Maine Indian Claims Settlement Act and other settlement acts pertaining to the Wabanaki Tribes for the meeting held at Indian Island May 31, 2006, the minutes for the May 31, 2006 meeting and the final report of the Tribal-State Work Group created by Executive Order 19 FY 06/07.

**Sec. 6. Staff assistance. Resolved:** Upon adequate appropriation by the Maine Legislature that the Maine Indian Tribal-State Commission shall provide necessary staffing services to the work group; and be it further

**Sec. 7. Compensation. Resolved:** That the legislative members of the work group are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the work group. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a determination of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the work group; and be it further

**Sec. 8. Report. Resolved:** That no later than January 2, 2008, the work group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 123<sup>rd</sup> Legislature, the Governor of the State of Maine, the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Indian Township, the Passamaquoddy Tribe at Pleasant Point, and the Penobscot Nation. The work group is authorized to introduce a bill related to its report to the Second Regular Session of the 123<sup>rd</sup> Legislature at the time of submission of its report; and be it further

**Sec. 9. Extension. Resolved:** That, if the work group requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension; and be it further

**Sec. 10. Work group budget. Resolved:** That the chairs of the work group, with assistance from the chair and staff of the Maine Indian Tribal-State Commission, shall administer the work group's budget. Upon notice to the Executive Director of the Legislative Council that all seats on the work group have been filled, the personal services portion of the work group budget shall be paid in full to the Maine Indian Tribal-State Commission. The work group may not incur expenses that would result in the work group exceeding its approved budget. Upon request from the work group, the Executive Director of the Legislative Council shall promptly provide the work group chairs and staff with a status report on the work group's budget, expenditures incurred and paid and available funds; and be it further

**Sec. 11. Appropriations and allocations. Resolved:** That the following appropriations and allocations are made:

#### **MAINE INDIAN TRIBAL-STATE COMMISSION**

##### **Tribal-State Work Group**

Initiative: Provides funds for administrative and staffing support for the Tribal-State Work Group.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
Personal Services	\$0	\$4,400
All Other	\$0	\$670
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$5,070</b>

#### **LEGISLATURE**

##### **Tribal-State Work Group**

Initiative: Provides funds for the legislative per diem and other expenses for 6 meetings of the Tribal-State Work Group.

<b>GENERAL FUND</b>	<b>2005-06</b>	<b>2006-07</b>
Personal Services	\$0	\$9,930
All Other	\$0	\$670
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$9,930</b>

**Emergency clause.** In view of the emergency cited in the preamble, this Resolve takes effect when approved.

### **SUMMARY**

This resolve establishes the Tribal-State Work Group to continue the work of the body created by Executive Order 19 FY 06/07. The work group is charged with examining potential changes to the Maine Implementing Act and other issues affecting tribal-state relations. It is required to report its findings to the Legislature, Governor of Maine, and Wabanaki Tribes by January 2, 2008.