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Legislative Document

No. 2030

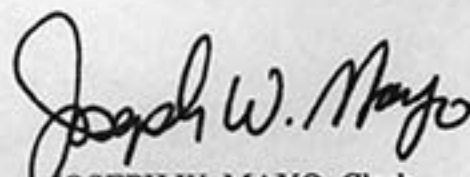
H.P. 1423

House of Representatives, March 24, 1999

An Act to Implement Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation.

Reported by Representative THOMPSON for the Maine Indian Tribal-State Commission, pursuant to Resolve 1997, chapter 45, section 3.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

2 Sec. 1. 12 MRSA §682, sub-§1, as amended by PL 1973, c. 569,
4 §2, is further amended to read:

6 1. Unorganized and deorganized areas. Unorganized and
8 deorganized areas shall include all areas located within the
jurisdiction of the State of Maine, except areas located within
10 organized cities and towns, and Indian reservations and Indian
territory established pursuant to Title 30, chapter 601, other
than Indian territory in Albany Township.

14 **SUMMARY**

16 This bill implements recommendations concerning tribal land
18 use regulation pursuant to Resolve 1997, chapter 45 to clarify
that the authority to regulate land use in Indian territory rests
20 with the Passamaquoddy Tribe and the Penobscot Nation. Land use
authority over tribal lands in Albany Township is excluded from
this bill.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 04/16/99
To: Joint Standing Committee on Judiciary
From: Peggy Reinsch, Legislative Analyst
LD 2030 **An Act to Implement Recommendations of the Maine Indian Tribal-State Commission Relating to Tribal Land Use Regulation**

SUMMARY

This bill amends the Land Use Regulation Commission's laws to remove from LURC jurisdiction Indian territory, other than Indian territory in Albany Township.

TESTIMONY

Proponents

- MITSC has been discussing LURC jurisdiction since 1987
- Recommendation from civil law review pursuant to Resolves 1997, chapter 45
- Bill excludes Indian territory (along with organized cities and towns and Indian reservations) from LURC's jurisdiction
- Because of pending litigation, Albany Township is excluded from the bill
- It does not amend the Settlement Act
- Tribes themselves will regulate their lands, like municipalities
- This relates just to LURC jurisdiction only, all other environmental laws apply
- Settlement Act gives tribes authority to regulate internal tribal matters including land use ordinances
- When LURC laws first passed, Indian "territory" didn't exist
- Passamaquoddy Tribe has been managing their lands since the settlement - our duty to take care of the land
- Maintaining a cultural significance to the land and the water has always been our lifestyle
- Tribes have significant capacity to carry

Opponents

- Concerned about removal from LURC without any comparable standards in place
- Assume that territories subject to LURC under Settlement Act
- Current law provides way to remove lands from LURC
- Lands scattered throughout Unorganized Territory
- Would decide themselves whether met own standards
- Not clear that Shoreland Zoning applies if remove lands from LURC

NEITHER FOR NOR AGAINST

- Suggested amendment re LURC jurisdiction over Albany Township
- Home Rule authority: municipality can adopt any ordinance that does not frustrate state law. Tribe adopting land use ordinance would frustrate Settlement Act
- Hearing transcript: Indian territory to be treated like new municipality
- Clear that zoning and planning subject to state law

- out land use planning
- All parcels, except Albany Township, consist of at least 500 acres, although some in two pieces
- Protect the natural resources, but have the right to develop consistent with protection of the environment
- Stewardship based upon a true respect and knowledge of the lands
- Once authority to manage Passamaquoddy land is again recognized by the State, the Passamaquoddy will be "good neighbors."
- Penobscot land use planning work is recognized as a model for tribes across the country
- Amend bill to state specifically what you mean
- A unique "municipality" - parcels scattered
- Tribe wears both the municipality hat and the major developer hat
- "Internal Indian affairs" expanded in federal court
- Other laws have changed based on assumption that within LURC jurisdiction

POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

FISCAL IMPACT: