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Clean Draft Committee Amendment “A” to

An Act To Facilitate the Establishment of Tribal Electric Utility Districts

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

Sec. 1. 35-A MRSA §3915, as amended by PL 1995, c. 254, §11, is further amended to read:

§ 3915. Existing service areas

Except as provided in this section, a municipal power district may not serve as a public utility, as defined in section 102, without consent from the commission in accordance with section 2102.

1. Legislative findings. The Legislature finds and declares the following:

A. The Passamaquoddy Tribe and the Penobscot Nation have inhabited this State as self-governing Indian tribal communities since long before the founding of the State of Maine or the United States, and each tribe continues to maintain its own tribal government.

B. In keeping with the native traditions and culture of the Penobscot Nation and Passamaquoddy Tribe, their respective “Indian territory” lands, as defined in section 6203 of Title 30, are communal property, owned and held in perpetuity for the benefit of the members of the respective tribes.

C. The public ownership of Indian territory deprives the Penobscot and Passamaquoddy tribal governments of the property tax revenues that are the financial foundation of Maine’s municipal governments, and makes these tribal governments critically dependent upon successfully developing a sustainable local economy.

D. Reliable and affordable electric power is often a primary factor in siting economic development, and in the judgment of the Legislature the opportunity of the Penobscot and Passamaquoddy tribes to acquire, develop, finance and distribute electric power within their respective Indian territories must be evaluated with due consideration to the heightened importance that a sustainable local economy has to these tribal communities.

E. It is the purpose of this legislation to clarify any uncertainty about the rights under this chapter of the Penobscot Nation and the Passamaquoddy Tribe derived from the Maine Implementing Act, and to make the formation of a tribal electric district serving all or parts of the Indian territory of either tribe subject to criteria appropriate to the unique circumstances of the tribal communities.

2. Tribal power districts. Under the authority specified in Title 30, section 6206, subsection 1 the Penobscot Nation and the Passamaquoddy Tribe may form a power district to serve as a public utility within their respective Indian territories upon approval of the commission pursuant to chapter 21 and this subsection. Acting in accordance with tribal law, the Nation or Tribe shall designate appropriate tribal officers and proceedings to implement the provisions of this Title in lieu of municipal officers and proceedings. Upon application by the Penobscot Nation or the Passamaquoddy Tribe for approval under section 2105 of a tribal power district to serve all or part of its Indian territory, the commission shall, in addition to the criteria specified in that section, consider the distinctive importance of economic development to the tribal communities and the potential of a tribal power district to improve tribal economic development opportunities. A tribal power district authorized by the commission under section 2105 shall have the same rights, powers and privileges of a municipal power district formed under this chapter, including without limitation the issuance of revenue obligation securities, exemption of its property from taxation under Title 36, section 651 and the right of eminent domain. Any taking of the fee interest in any Indian territory land is subject to the provisions of Title 30, section 6205.

SUMMARY

Under current law, the Passamaquoddy Tribe and the Penobscot Nation possess the authority of municipalities within their respective Indian territories. Municipalities are authorized to form municipal power districts. This bill directs the Public Utilities Commission, upon application by a tribal power district formed by the Passamaquoddy Tribe or Penobscot Nation, to consider the heightened importance of economic development to tribal communities and the potential of a tribal power district to improve tribal economic development opportunities as an integral part of its determination whether the tribal power district will be authorized to serve its respective Indian territory and to operate generally under the laws governing municipal power districts.

**LD 229, An Act To Facilitate the Establishment of Tribal Electric Utility Districts
Proposed Amendment – Presented by Rep. Loring (3/8/07)**

This amendment replaces the bill:

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

Sec. 1. 35-A MRSA §3915, as amended by PL 1995, c. 254, §11, is further amended to read:

§ 3915. Existing service areas

~~A-Except as provided in this section, a municipal power district may not serve as a public utility, as defined in section 102, without consent from the commission in accordance with section 2102.~~

1. Legislative findings. The Legislature finds and declares the following:

A. The Passamaquoddy Tribe and the Penobscot Nation have inhabited this State as self-governing Indian tribal communities since long before the founding of the State of Maine or the United States, and each tribe continues to maintain its own tribal government.

B. In keeping with the native traditions and culture of the Penobscot Nation and Passamaquoddy Tribe, their respective “Indian territory” lands, as defined in section 6203 of Title 30, are communal property, owned and held in perpetuity for the benefit of the members of the respective tribes.

C. The public ownership of Indian territory deprives the Penobscot and Passamaquoddy tribal governments of the property tax revenues that are the financial foundation of Maine’s municipal governments, and makes these tribal governments critically dependent upon successfully developing a sustainable local economy.

D. Reliable and affordable electric power is often a primary factor in siting economic development, and in the judgment of the Legislature the opportunity of the Penobscot and Passamaquoddy tribes to acquire, develop, finance and distribute electric power within their respective Indian territories must be evaluated with due consideration to the heightened importance that a sustainable local economy has to these tribal communities.

E. It is the purpose of this legislation to clarify any uncertainty about the rights under this chapter of the Penobscot Nation and the Passamaquoddy Tribe derived from the Maine Implementing Act, and to make the formation of a tribal electric district serving all or parts of the Indian territory of either tribe subject to criteria appropriate to the unique circumstances of the tribal communities.

2. Tribal power districts. Under the authority specified in Title 30, section 6206, subsection 1 the Penobscot Nation and the Passamaquoddy Tribe may form a power district to serve as a public utility within their respective Indian territories upon approval of the commission pursuant to chapter 21 and this subsection. For that purpose, and acting in accordance with tribal law, the Nation or Tribe

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shall designate appropriate tribal officers and proceedings to implement the provisions of this Title in lieu of municipal officers and proceedings. Upon application by a Penobscot or Passamaquoddy tribal power district for approval under sections 2102 and 2105 to furnish services to all or part of its Indian territory, the commission shall consider, as an integral part of its determination under section 2105, the distinctive importance of economic development to the tribal communities and the potential of a tribal power district to improve tribal economic development opportunities. A tribal power district established as provided in this section shall have the same rights, powers and privileges of a municipal power district formed under chapter 21 of this Title, including without limitation the issuance of revenue obligation securities, exemption of its property from taxation under Title 36, section 651 and the rights of eminent domain described in sections 3911 and 3136 of this Title. Any taking of the fee interest in any Indian territory land is subject to the provisions of Title 30, section 6205.

SUMMARY

This amendment replaces the bill. The amendment directs the Public Utilities Commission, upon application by a tribal power district formed by the Passamaquoddy Tribe or Penobscot Nation, to consider the heightened importance of economic development to tribal communities and the potential of a tribal power district to improve tribal economic development opportunities as an integral part of its determination whether the tribal power district will be authorized to serve its respective Indian territory and to operate generally under the laws governing municipal power districts.

LD 229, An Act To Facilitate the Establishment of Tribal Electric Utility Districts
Draft Amendment – Rep. Loring
3/28/2007

not subject to approval by the Commission under sections 2102 and 2105. Any application to form a tribal power district or to furnish transmission, distribution or supply services within the district shall identify the boundaries of the Indian territory affected. A tribal power district established as provided in this section shall have the same rights, powers, privileges, obligations and limitations of a municipal power district formed under this chapter, including without limitation the issuance of revenue obligation securities, exemption of its property from taxation under Title 36, section 651 and, in the case of a tribal power district which has obtained approval of the Commission under sections 2102 and 2105, the rights of eminent domain described in sections 3911 and 3136 of this Title. Any taking of the fee interest in any Indian territory land is subject to the provisions of Title 30, section 6205.

SUMMARY

This amendment replaces the bill. Municipalities are authorized to form municipal power districts under Chapter 39 of Title 35-A. Under laws implementing the Maine Indian Claims Settlement Act, the Passamaquoddy Tribe and the Penobscot Nation possess the rights and powers of Maine municipalities within their respective Indian territories. This amendment explicitly affirms the right of the Passamaquoddy Tribe and the Penobscot Nation to form and organize a tribal power district with the same rights, powers, privileges, obligations and limitations as a municipal power district, and clarifies the interaction of the pertinent statutes.

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Draft Amendment – Rep. Loring
3/28/2007**

Amend the bill by striking out everything after the enacting clause and inserting:

Sec. 1. 35-A MRSA §3916 is enacted to read:

§ 3916. Tribal Power Districts

COMMITTEE AMENDMENT TO LD 229

Draft talking points

- This is about tribes; not about Kennebunk Light & Power. “Slippery slope” or “precedent-setting” objections are weak.
- Tribe’s objective is lower power costs, to help attract industry and jobs to tribal lands. They are looking for any way and every way to do that.
- If there is no economic benefit in becoming a “transmission and distribution” utility, there is no reason for the Tribes to even apply for that authority. Fighting regulated public utilities is not a great business plan.
- If a tribal power district were to seek “T & D” authority, the PUC would need to consider the same factors they would for any municipal electric utility (financial and technical capacity, public convenience and necessity); for a tribal power district, the Commission would also consider:
 - the potential economic development benefits for the tribe, and
 - the unique importance of economic development to tribal communities having no tax base.
- Clarifying the ability of the Tribes to access revenue bonds under the municipal electric district law would be a significant boost to their ability to develop electric generating capacity on their own lands. If they could make lower cost power, they could use it in their communities.