



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 793

S.P. 275

In Senate, January 28, 1999

An Act to Confine Tribal Gaming to the Reservation of the Licensed Organization.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

4 **Sec. 1. 17 MRSA §314-A, sub-§5, as amended by PL 1991, c. 426,**
5 **§5, is further amended to read:**

6 **5. Restrictions.** No license may be transferred or
7 assigned. No more than one license may be issued under this
8 section to any federally recognized Indian tribe for any one
9 period. No more than one licensee may operate or conduct a beano
10 game or high-stakes beano game on the same premises on the same
11 date. All games must be conducted ~~within-the-Indian-Territory~~ on
12 the reservation of the licensed organization.

14
15 **SUMMARY**

16
17 This bill provides that high-stakes beano or bingo games
18 must be conducted on the reservation of the federally
19 recognized Indian tribe licensed to operate them.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 03/22/99
To: Joint Standing Committee on Judiciary
From: Deb Friedman, Legislative Analyst
LD 793 **An Act to Confine Tribal Gaming to the Reservation of the Licensed Organization**

SUMMARY

This bill provides that high-stakes Beano or bingo must be conducted on the reservation of a federally-recognized Indian tribe licensed to operate the game, rather than on Indian territory.

TESTIMONY

Proponents

- Concern about delegating to a segment of society the State's control over where to locate this type of activity (HSB)
- Most states that have opened the door to this type of activity have regretted it, to the detriment of society as a whole
- It's best to locate HSB where the most good - least harm can be done - that is not in Albany Twp.
- Help the Albany Twp. area by precluding the opportunity to use it as HSB location; people fear the HSB location
- People who are promoting this type of enterprise are not doing so in the interest of the tribes - they offer an unfair deal

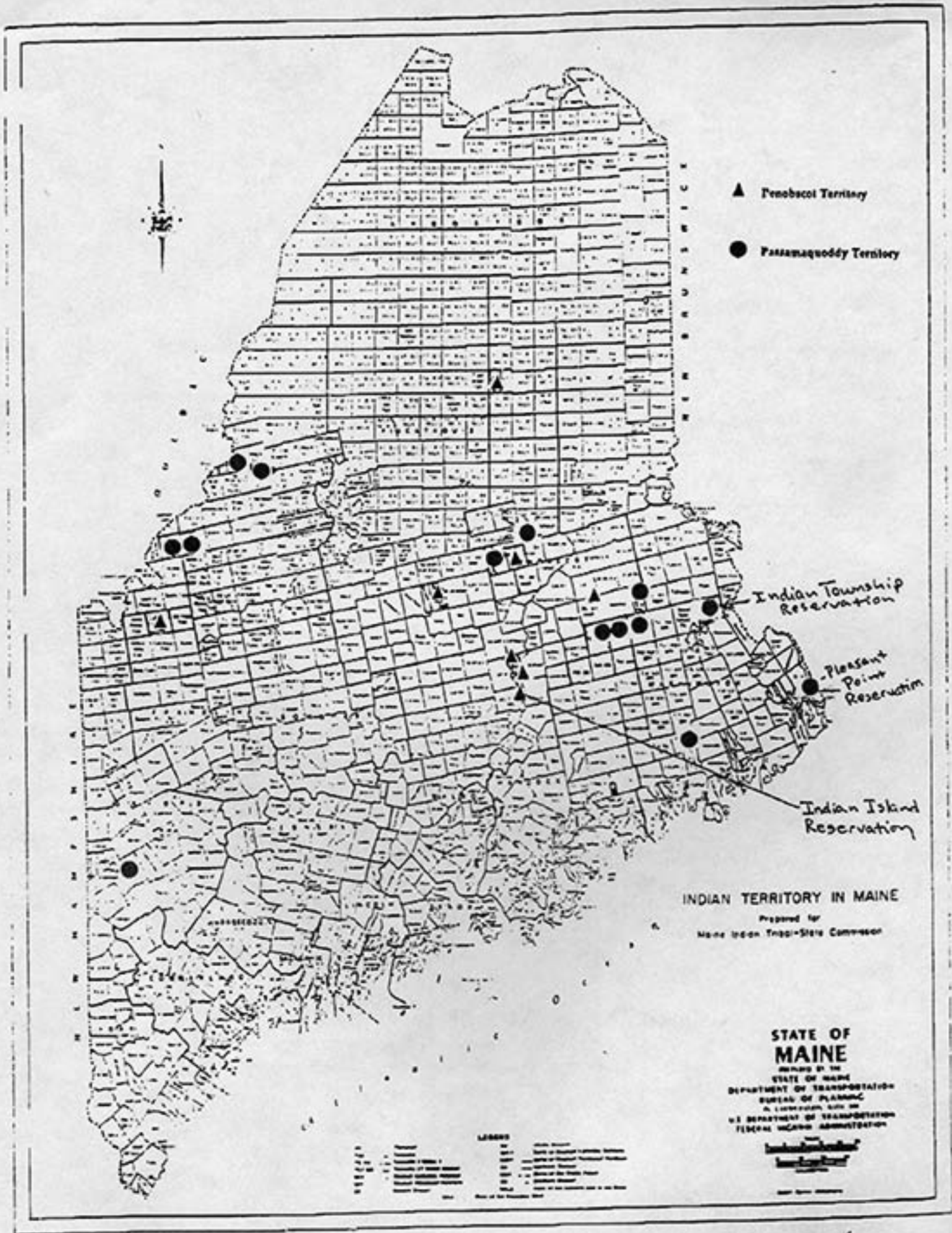
Opponents

- This is a matter of fairness - changing the law after developers have gone forward and spent money on plans based on existing law; over \$100,000 has been spent to get LURC permits, land evaluations, etc.
- The Indian tribes don't want a runaway enterprise - it's in their interest to work with the State to regulate HSB
- This bill circumvents the Judicial process - there is a case pending re: permit for land in Albany Twp. to conduct HSB
- Tribal reservation lands are too remote to have effective HSB game - need to be closer to population areas
- This bill results from a fear of casino gaming - this is not a casino

POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

LD 966, a bill to allow HSB on Indian territory or at commercial race tracks, was referred to the Legal & Veterans' Affairs Committee. It has not yet been scheduled for public hearing

FISCAL IMPACT: No fiscal impact



Timeline

1987

Maine law was amended to allow the operation of high-stakes Beano games by federally recognized Indian Tribes on reservation lands; limited to 18 non-consecutive weekends per year.

1988

Passamaquoddy Tribe acquired the 18-acre parcel in Albany Township that is proposed to be used for High-Stakes Beano

1991

Maine law was amended to allow High-Stakes Beano on Indian Territory rather than on the reservation; also increased the number of weekends allowed to 27 per year

1992

Maine law was amended to provide for the addition of the Albany Township land to Indian territory; the law added the land to the list of territory lands, but did not extend the deadline for the Secretary of the Interior to put the land in trust

1997 (February)

LD 964 introduced to the Maine Legislature to extend the deadline for the Secretary of the Interior to put into trust the Albany Township land previously acquired and any land contiguous to that land. The bill was carried over to the 2nd Regular Session; the committee then voted ONTP in February 1998

1997 (May)

Passamaquoddy Tribe filed a permit application with LURC, seeking (1) rezoning of the land; and (2) a Development Permit to build a Beano parlor for High-Stakes Beano

1997 (November)

LURC granted the rezoning request and the development permit

1997 (December)

Petitioners appealed the LURC rezoning and permit to the Superior Court on the grounds that they were improperly issued

1999 (January)

Kennebec County Superior Court Justice ruled that the LURC development permit had been improperly issued because the Albany Township land was not Indian territory and therefore it was not legal to operate High-Stakes Beano on that land

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Indian Territory = Reservation plus Trust lands

"Trust lands" are pieces of property which the Secretary of the Interior holds for the benefit of the Passamaquoddy Tribe. In exchange for relinquishing claims to vast stretches of Maine, the Passamaquoddy Tribe received, in part, funds with which to purchase land to be considered Indian Territory. The first 150,000 acres are to be considered "trust lands," and those lands are to be purchased within the specifically designated areas of the unorganized territory. The Implementing Act established the deadline as January 1, 1983. In 1983, both the Passamaquoddy Tribe and the Penobscot Nation asked to have the applicable deadlines moved to January 1, 1985. (PL 1983, c. 493 and c. 494.) The next year, the deadlines were extended again, this time to January 1, 1986. (PL 1983, c. 660 and 676.) In 1985, the Penobscot Nation asked that their deadline be moved to January 1, 1987. (PL 1985, c. 69.) Both asked that the deadlines be extended until April 1, 1988 the next year. (PL 1985, c. 639 and 747.) Again in 1987, the Passamaquoddy Tribe and the Penobscot Nation requested extensions, this time to January 31, 1991. (PL 1987, c. 153.) In 1992, the Penobscot Nation had the applicable deadline moved to January 31, 2001. (PL 1991, c. 721.) Current status: The deadline for trust land acquisition for the Passamaquoddy Tribe is January 31, 1991; the deadline for the Penobscot Nation is January 31, 2001.

- As both the Passamaquoddy Tribe and the Penobscot acquired property, some parcels became available for purchase that were outside the specifically designated areas. In 1986 and 1992, the Passamaquoddy Tribe asked the Legislature to amend the Implementing Act to include these new acquisitions as trust lands. (PL 1985, c. 747 and PL 1991, c. 720.) (See chart.) The Penobscot Nation added trusts lands in Williamsburg, Old Town and Lakeville. (PL 1983, c. 676; PL 1985, c. 639; and PL 1991, c. 721.) In 1993 the Legislature passed a law to include as Passamaquoddy

trust land property in Calais provided certain conditions were met. (PL 1993, c. 713.) (These conditions included the application of the federal Indian Gaming Regulatory Act to the Passamaquoddy Tribe, which the First Circuit Court of Appeals has refused to do.)

Background information:

THE PARCELS IN ALBANY TOWNSHIP

The Passamaquoddy Tribe currently owns two parcels of land in Albany Township, and holds options to purchase additional land there. The parcel currently considered trust land is about 18 acres. It was purchased by the Tribe from a Passamaquoddy Tribe member prior to January 1, 1991.

The Tribe also owns a parcel of about 50 acres that is contiguous to the 18-acre property. (Maine Revenue Services lists the parcel as 50.34 acres while the MITSC

minutes refer to it as 58 acres.) The Tribe owns the 50+-acre land in "fee simple absolute," but it is usually referred to as "fee land" as opposed to trust lands. Fee lands are subject to taxation and all other burdens and incidents of ownership, regardless of who owns them. "Trust lands" are not subject to taxes, but the Passamaquoddy Tribe is required to make payments in lieu of taxes of equal amount to the appropriate taxing authority (taxes are paid to the county in the unorganized territory). According to the Maine Revenue Services, Property Tax Division, the 50+-acre parcel is valued at \$24,960. The tax obligation for the most recent year was \$205.92.

PASSAMAQUODDY INDIAN TERRITORY

Passamaquoddy Indian territory consists of the Passamaquoddy Indian Reservation and lands held in trust by the Secretary of the Interior for the benefit of the Passamaquoddy Tribe. The Implementing Act authorizes the Secretary to hold up to 150,000 acres in trust for the Tribe. The total currently held is around 130,000 acres. Here are some of the aspects of what it means for land to be part of Passamaquoddy Indian Territory:

- **Subject to the laws of the State**
Section 6204 says "except as otherwise provided in this Act . . . any lands owned (by the Indian nations, tribes and bands or) held in trust for them . . . are subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State . . ." There is disagreement over the interpretation of this section.
- **Municipality**
Section 6206 states that the Passamaquoddy Tribe, within its Indian territory, has all the rights, privileges, powers and immunities and is subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State.
- **Internal tribal matters**
"Internal tribal matters" -- including membership and tribal government -- are not subject to regulation by the State.
- **Tribal ordinances**
The Passamaquoddy Tribe has the right to exercise exclusive jurisdiction within its Indian territory over violations by members of tribal ordinances.
- **Hunting, trapping and fishing**
The Passamaquoddy Tribe has authority to enact ordinances governing hunting, trapping and fishing within Indian territory, with some limitations. Fishing for individual sustenance is not subject to regulation.
The Maine Indian Tribal-State Commission has authority to adopt certain rules governing fishing in certain areas.
- **Tribal Court**
The Passamaquoddy Tribe has authority to establish a tribal court which exercises jurisdiction over certain crimes and civil actions. Crimes within the tribal court's jurisdiction include crimes comparable to Class D and Class E crimes, juvenile crimes and civil actions, depending on where the act took place and who the parties are.
- **Law enforcement**

The Passamaquoddy Tribe has exclusive authority to enforce the criminal, juvenile, civil and domestic relations laws within the Passamaquoddy Indian Territory.

LAND USE REGULATION COMMISSION DECISION

The Passamaquoddy Tribe applied (under protest) to the Land Use Regulation Commission (LURC) to rezone the 18.3 acre parcel in Albany Township ~~to permit~~ the construction and operation of a High Stakes Bingo Hall. LURC approved the request. Intervenor's have appealed the decision as a final agency action under the Administrative Procedures Act; the appeal is pending in Superior Court.

and to issue a permit to allow

There is a question about whether the 18 acres qualify as Passamaquoddy Indian Territory. The Attorney General's Office has advised LURC that, although the issue is not free from doubt, the Legislature intended that the property qualify as Indian territory. The problem in a nutshell: The Legislature amended §6205 to include the 18 acres ("land acquired in Albany Township prior to 1991") in 1992, but did not extend the deadline for the Secretary of the Interior to acquire trust lands (the deadline at that time was -- and currently is -- 1991). Because the Albany Township language was added to the law in 1992, it is impossible for the Secretary to have acquired it before the deadline of January 31, 1991. The AG has advised LURC that this was an oversight of the Legislature, and that the Legislature would not have gone through the process of amending the Implementing Act to add the Albany Township parcel if it thought the legislation would be ineffective. Quick perusal of the legislative files shows no discussion of the issue.

DOES THE INDIAN GAMING REGULATORY ACT APPLY?

The Indian Gaming Regulatory Act (IGRA) creates a three-tiered regulatory approach with respect to gambling activities on Indian lands. The First Circuit Court of Appeals ruled in 1996 that IGRA does not apply to the federally-recognized tribes in Maine. The Maine Indian Claims Settlement Act of 1980, 25 USC §§1721-1735 (the Settlement Act) prohibits the application to Maine of any subsequent federal law for the benefit of Indian tribes, nations or bands that would affect Maine laws unless the new federal law specifically mentions its applicability to Maine or the tribes, nations and bands in Maine. IGRA does not, and the Court ruled that it does not apply to the Passamaquoddy Tribe (upholding U.S. District Court for the District of Maine).

How much money has been invested
in the project to date?

by the Tribe

State oversight

licensed & regulated by the state police

Tribe will control going no further

Next meeting at 1:30 pm Wednesday

Sonata Mills

- implications

where beans can be located

State would have little control
on what area beans can be played.

Disturbed by Foxwood + Sullivan area

- facility plus for ECU dev

Solo top

Per Shing etc.

- Delegation a sign of a society which
we do not permit our society
w/o state being legislative control
our problems.

Most states reject using down to
casual gambling.

Solid concern

Jeff Rosenthal

1860s Russell - not Indiana territory

- ~~Co~~ developer of his facility

Tavin Super - Co-developer

Set up gambling facility

Sued to set contract

Dan Musley - (Stallan)

Tom Woodman