

LD 1626 FAQs

Questions and Answers

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Q. What do the phrases “tribal sovereignty” and “tribal self-determination” mean?

A. The term “sovereignty” originated in medieval Europe, describing the ruler (king or queen) of a nation as sovereign, having absolute power to make his/her own decisions unfettered by other powers. In fact, kings and queens of European nations have long been subject to the will of elected parliaments, although the term “sovereign”, referring to them, continues to be used.

As applied to Indigenous tribes in the United States, the concept of “tribal sovereignty” asserts an ideal that tribes should be able to make their own decisions, free of outside restrictions from settler governments. The term “tribal self-determination” likewise asserts that tribes can freely determine their own policies and practices, now and in the future. The two phrases are thus often used interchangeably.

Q. What does “inherent sovereignty” mean, and why do some people use this phrase?

A. The phrase “Inherent sovereignty” means that a tribe has had a right to make its own decisions free of outside restrictions since its creation, and that the right to make decisions is not conferred on the tribe by an outside power such as the United States government.

Tribes in what is now Maine have existed in this place for 12,000 years, since soon after the last ice age, far pre-dating the State of Maine (200 years) or the United States (245 years). The tribes have exercised the right to make their own decisions since their creation.

Q. What tribes are located within the State of Maine?

A. There are four federally-recognized tribes located within the State of Maine. They are: the Aroostook Band of Micmacs (which is in the process of changing its name to Mi’kmaq Nation), the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation.

There are still citizens of recognized Abenaki nations that live in their ancestral territory in Maine. The Abenaki and about 20 other tribes were either wiped out or displaced during colonization and the attempted genocide that followed.

Q. Why do some people use the term “nation” along with or in place of “tribe”?

A. The term “nation” is used around the world to convey the idea of a self-governing group of people with their own territory. Some people view the term “tribe” as constructed by White anthropologists and conveying many negative stereotypes (e.g. “savage”, “uncivilized”). However, the word “tribes” is not a

pejorative expression when used by Indigenous people. The negative connotations have been developed and used by those outside of Indigenous communities. Many Indigenous people feel empowered by both terms.

Q. Is it true that the tribes in Maine are the only tribes that have such restricted tribal sovereignty?

A. Yes. All federally recognized tribes located within the United States have to make decisions within the overall framework of federal Indian law. But in Maine, due to the provisions of the Settlement Acts, and the ways these acts have been interpreted by the State and by state and federal courts, the tribes are largely subject to Maine state law, which views them as little more than municipalities, and they do not have access to the rights and responsibilities of 150+ federal Indian laws (laws affecting Indigenous tribes or Indigenous individuals) passed since Oct. 10, 1980.

Q. What are some current issues related to tribal sovereignty/self-determination in Maine?

A. The tribes located in Maine seek to be wholly self-governing but are currently subject to Maine state laws and regulations in many aspects of their policies and practices. These include: regulation of hunting and fishing on tribal lands, management of natural resources on tribal lands, authority of tribal courts over many categories of crimes on tribal lands, income and sales taxes on tribal lands, economic development activities on tribal lands including but not limited to gaming, and transfer of purchased lands from “fee” lands (subject to state and local taxation) to “trust” lands (held by the federal government in trust for the tribes, and not subject to state and local taxation). The Penobscot Nation and Passamaquoddy Tribe have the authority to regulate fishing on their lands in ponds of ten acres or less. They also have exclusive authority to enact ordinances regulating hunting, trapping and other taking of wildlife. The Mailseets and Micmacs don’t have this authority under the Maine Implementing Act.

Q. How and why does the tribal sovereignty/self-determination of the tribes located within the State of Maine differ from that of tribes located elsewhere within the United States?

A. The federal Constitution, ratified in 1789, gives Congress the sole right to regulate commerce with Indian tribes. The federal Non-Intercourse Act of 1790 gives Congress, not the States, the sole authority to make treaties with the Indigenous tribes. In 49 of the 50 states, federal Indian law governs policy with respect to the tribes. Maine is the sole exception, with the State of Maine having much more authority over the tribes and tribal lands within its borders than any other state. In all other states, state law does not automatically apply on tribal lands. Rather, tribes and states negotiate over how tribal and state laws will intersect, within a framework provided by federal Indian law.

Q. What is “federal Indian law”?

A. Federal Indian law is the body of Constitutional provisions, Federal court cases (especially U.S. Supreme Court decisions), laws passed by Congress, and the regulations adopted to implement those laws, which have been developed over the past 245 years.

The U.S. Supreme Court, primarily through a set of precedents known as the “Marshall trilogy” (three decisions written by Chief Justice John Marshall in the early 19th century: *Johnson v. McIntosh* in 1823, *Cherokee Nation v. Georgia* in 1831, and *Worcester v. Georgia* in 1832), relegated tribes to the status of “domestic dependent nations” with rights of occupancy but not ownership of their lands. Most subsequent federal Indian law through the 1960s sought to seize control of Indian lands, restrict and even terminate the tribes, and assimilate Indigenous individuals into the dominant culture. However, beginning in the 1970s, federal Indian law has shifted in some ways to recognizing the rights of tribes. Examples are the Indian Child Welfare Act of 1978, the American Indian Religious Freedom Act of 1978, the Indian Gaming Regulatory Act of 1988, and the Native American Graves Protection and Repatriation Act of 1990. Other recent federal Indian laws are the Violence Against Women Act of 1994 and reauthorizations of VAWA, especially in 2005, the Tribal Law and Order Act of 2010, and Savanna’s Act of 2020, which addresses law enforcement regarding missing and murdered Indigenous people.

Q. Didn’t the Maine state Constitution, adopted when Maine became a state in 1820, protect the tribes in Maine?

A. No. The Maine Constitution of 1820 contained provisions requiring that the State of Maine assume the rights and responsibilities that the Commonwealth of Massachusetts acquired through treaties signed with the tribes between 1790 and 1820. But in fact, the State of Maine never lived up to its treaty obligations. And in the 1870s, the state redacted Article X, Section 5, the most important provision regarding the tribes, from its Constitution. “Redacted” means that that portion of the Constitution, while still in effect, would not be included in any subsequent printed copies of Maine’s Constitution. Out of sight, out of mind!

Q. What are the “Settlement Acts” with regard to Maine, and when were they enacted?

A. The Settlement Acts are the federal Maine Indian Claims Settlement Act of 1980, Public Law 96-420, also referred to as “the federal Settlement Act”, and the state’s An Act to Implement the Maine Indian Claims Settlement, Maine Revised Statutes Title 30, Chapter 601, also referred to as “the Maine Implementing Act”, both of which took effect on October 10, 1980.

The Aroostook Band of Micmacs is subject to the Aroostook Band of Micmacs Settlement (Public Law 102-171), enacted in 1991. LD 1626 does not address the Aroostook Band of Micmacs Settlement.

Q. Why were the Settlement Acts enacted?

A. During the 1790s and the first two decades of the 1800s, the Commonwealth of Massachusetts forced the Passamaquoddy Tribe and the Penobscot Nation, in

what was then the District (now the State) of Maine, to sign treaties in which the tribes ceded almost all of their lands to Massachusetts. When Maine became a separate state in 1820, it assumed, into its Constitution, the rights and responsibilities of Massachusetts with respect to those treaties. But Maine then treated individual indigenous people as wards of the state with no rights as citizens of either their own nations or the State, and subjected the tribes and their resources to control by state Indian agents.

In the 1970s, the Passamaquoddy Tribe, joined by the Penobscot Nation, challenged those treaties with Massachusetts, including the taking of their lands, as a violation of the federal Non-Intercourse Act of 1790. When federal courts sided with the tribes, asserting federal recognition of these two tribes, the tribes claimed two-thirds of the land in the State of Maine as rightfully theirs.

The Settlement Acts resolved the Passamaquoddy and Penobscot land claims by forcing these tribes to surrender their land claims in return for \$81 million with which to buy back, mostly from timber companies, a small portion of the lands that had originally been theirs. At the last moment, the Houlton Band of Maliseet Indians also received federal recognition and \$900,000 from the settlement funds with which to buy back land. However, the Maine Implementing Act also contains language referring to the Passamaquoddy and Penobscot tribes as “municipalities”, as well as similar language referring to the Maliseets. The Maine Implementing Act subjected these three tribes (and all other Indians, Indian nations, tribes and bands) to state law. They are not covered by any subsequent federal Indian law unless expressly included in the laws enacted by Congress. In effect, by agreeing to the Settlement Acts, the tribes lost the sovereignty that they had only recently regained.

Q. How successful have the Settlement Acts been since they were enacted in resolving conflicts between the tribes located in Maine and the State of Maine?

A. If the expectation of the Settlement Acts was to resolve outstanding differences between the State and the tribes, they have failed. Decades of litigation have ensued, with the tribes asserting their inherent sovereignty in areas not specifically addressed in the Settlement Acts, and the State maintaining that the tribes are no more than municipalities subject in every way to state law and regulation. State and federal courts have generally upheld the State’s positions in these litigations. The Maine Indian Tribal-State Commission (MITSC), designed as a dispute resolution mechanism with tribal and state commissioners, has been consistently ignored by the State of Maine despite stating in 2012 “The Acts have created structural inequities that have resulted in conditions that have risen to the level of human rights violations.”

Q. In what ways are the relationships between the State of Maine and the tribes here different from the relationships between other states and the tribes located in those states?

A. One of the major differences between Maine and other states is that the tribes in other states have many more opportunities for economic development, and they are much more often engaged in cooperative economic endeavors, such as

tourism, with the state and with the private sector, than here in Maine. Casinos are one visible expression of tribal economic development in other states, but if you look more closely, there are many other tribal economic enterprises as well, often collaborating with public and private entities. Maine's restrictions on the tribes here are stifling economic development for everyone, especially in rural Maine.

Q. Why are the tribes and their allies advocating for changes in the Maine Implementing Act?

A. The tribes and their allies maintain that after 40 years of litigation that has spilled over into other types of conflicts, it's time to create a more just relationship between the tribes and the State, and that this can be accomplished through state legislation altering the Maine Implementing Act. These changes would recognize tribal sovereignty/self-determination in various areas, and would allow the tribes to access the rights and responsibilities of other tribes throughout the United States under 150 laws affecting tribes and individual Indigenous people enacted since October 10, 1980.

Q. What was the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act?

A. The first session (2019) of the 129th Maine Legislature (2019-2020) created a Task Force on Changes to the Maine Indian Claims Settlement Implementing Act ("the Maine Implementing Act"), consisting of five tribal chiefs and five legislators, as well as representatives of the Governor, the Attorney General, and the Maine Indian Tribal-State Commission as non-voting members. Tribal governments submitted information on the background of the Settlement Acts, and the current issues most in need of resolution in order for the tribes to exercise self-determination. The Task Force agreed to 22 consensus recommendations for changes to the Maine Implementing Act, which were contained in a report to the Legislature issued in January 2020. During the second session (2020) of the 129th Legislature, these recommendations were written into three bills, the primary one being LD 2094. These three bills were voted out of the Judiciary Committee. Action on these bills was halted when the Legislature adjourned early due to the covid-19 pandemic and failed to reconvene in special session.

Q. What did the legislature do in 2021 to enact the Task Force recommendations?

A. In the first session (2021) of the 130th Maine Legislature (2021-2022), the 2019 Task Force consensus recommendations were again incorporated into three bills. Most of the Task Force recommendations were written into LD 1626 An Act Implementing the Recommendations of the Task Force to Change the Maine Indian Claims Settlement Implementing Act. At a public hearing of the Joint Standing Committee on Judiciary on May 4th, there was strong support for LD 1626 expressed by most of those submitting testimony, but also testimony in opposition to the bill from the Governor's Office and a small number of others. LD 1626 was then carried over to the second session of the Legislature (2022). LD

159 An Act to Extend Time Limits for Placing Land in Trust Status under the Maine Indian Claims Settlement Act, was passed and signed by Gov. Mills. LD 554 An Act to Create Gaming Equity and Fairness for Native American Tribes in Maine, allowing the tribes located in Maine to conduct gaming as a business under the federal Indian Gaming Regulatory Act of 1988, was passed by the Legislature but vetoed by Gov. Mills, and the veto was upheld.

Q. What is Governor Mills' position on the Task Force recommendations contained in LD 1626?

A. Governor Mills has expressed "serious concerns" about the "sweeping nature" of the Task Force recommendations. She has expressed some willingness to negotiate on some of the recommendations, while continuing to oppose LD 1626 as a whole. In the past, as Maine Attorney General, she defended the State's existing interpretation of the Settlement Acts. As Governor, she has taken steps to improve relationships with the tribes, by signing legislation banning Indian mascots in schools, changing the name of Columbus Day to Indigenous Peoples Day, extending the coverage of the federal Violence Against Women Act (VAWA) to apply to Indigenous women in Maine, and requiring tribal representatives on certain state boards. She also filled vacant seats on the Maine Indian Tribal-State Commission (MITSC). While some people have suggested that these steps are symbolic, because they don't affect State jurisdiction or change the power dynamics in the relationships between the State and the tribes, others argue that they truly do matter. A lot of the discussions of equity and representation that are helping the sovereignty movement were birthed in the activism work on these issues. It remains to be seen whether she will support more substantial legislative efforts that permit greater tribal self-determination in 2022.

Q. Does LD 1626 authorize tribal gaming?

A. No. As currently written, LD 1626 does not authorize tribal gaming. That Task Force recommendation was separated out into a different bill, LD 554.

Q. What will be the Legislative process and timeline for considering LD 1626 in the second session of the 130th Legislature (2022)?

A. Negotiations over LD 1626 between tribal leaders, the Governor's Office, the Attorney General's Office, and key legislators are expected to proceed through the summer and fall. These negotiations could lead to an amended bill.

The co-chairs of the Judiciary Committee have promised to hold another public hearing on LD 1626 early in the second session of this Legislature, perhaps as early as January, 2022. They plan to report the bill out of committee after that public hearing.

Q. What is the Wabanaki Alliance?

A. The Wabanaki Alliance, a 501c4 organization, is a coalition of all four tribes located in Maine for the purpose of educating the people of Maine about the need for securing sovereignty of the tribes in Maine. Its current highest priority is supporting enactment of the Task Force recommendations through public and

legislative education and advocacy for LD 1626. The Wabanaki Alliance works with a coalition of environmental, civic, religious, and educational organizations to promote LD 1626. For further information, see <https://wabanakialliance.com>

Q. What can I do to support LD 1626?

A. There are several things you can do to support LD 1626:

- You can educate yourself by reading materials, viewing films and websites, and listening to media produced by Wabanaki individuals, organizations, and allies. A list of recommended materials is available by request.

- If you would like to gain a more in-depth understanding of the issues and the proposed legislation, you can read the Report of the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act, available at

<http://legislature.maine.gov/doc/3815> and/or the bill and especially the bill summary at the end of the bill, which is available at

http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1626&PID=1456&sum=130

- You can educate your relatives, friends, and neighbors about this bill.

- You can encourage political, civic, religious, environmental, and community groups to which you belong to hold informational meetings about LD 1626. Guest speakers are available.

- You can write a letter to the editor or an op. ed. to a newspaper to which you subscribe, or a column or letter to the newsletter of an organization to which you belong.

- You can write a letter to your state representative and/or state senator to express your support for LD 1626 and to request their commitment to support this bill when it comes to a vote in the Legislature. All legislators, regardless of their current position (if any) on LD 1626, should be hearing from constituents who support this bill. Individual letters to a legislator in support of a bill can persuade an undecided legislator to support a bill.

- You can meet with your state representative or state senator and ask for their support for LD 1626. Some meetings with legislators have already occurred, and suggestions about arranging such a meeting are available.

- You can participate in, even help organize, events in support of LD 1626, such as on Indigenous People's Day.

- You can testify at the public hearing which the Legislature's Joint Standing Committee on Judiciary will hold in early 2022.

- For further information, and/or to learn more about activities in support of LD 1626, please contact John Maddaus, Chair, Legislative Committee, Committee on Indian Relations, Episcopal Diocese of Maine, at john.maddaus@maine.edu