LD 2007, An Act to Advance Self-determination for Wabanaki Nations
Frequently Asked Questions

Legislators are considering LD 2007, An Act to Advance Self-determination for Wabanaki Nations. What is this bill? Why do tribes in Maine support it? Why should I ask my legislators to pass it? We answer these and other questions in our LD 2007 Frequently Asked Questions (FAQ) below. To view links to source material used in this FAQ, visit our website at www.wabanakialliance.com/ld-2007-faq.

What would LD 2007 do?

The legislation would make substantial changes to the Maine Indian Claims Settlement Implementing Act (also known as the Maine Implementing Act) to address problems with the law that prevent the Wabanaki Nations in Maine from exercising their inherent right to self govern, as all other federally recognized tribes in the United States are able to do under Federal Indian Law. The bill would implement many of the 22 consensus recommendations reached by a bipartisan task force in 2020 tasked to review the law's effectiveness. The recommendations cover tribal court jurisdiction; hunting, fishing and natural resource regulation on tribal land; taxation authority; and trust land acquisition. The changes would bring the rights and authority of all four Wabanaki Nations (Passamaquoddy Tribe, Penobscot Nation, Mi'kmaq Nation, and Houlton Band of Maliseet Indians) in line with the other 570 federally recognized tribes in the United States.

LD 2007 is sponsored by Maine House Speaker Rachel Talbot Ross and co-sponsored by a bipartisan group of more than 100 legislators, including Senate President Troy Jackson and House Minority Leader Billy Bob Faulkingham.

What are the Settlement Acts?

In the 1970s, the Passamaquoddy Tribe successfully sued the United States to establish the tribe as a federally recognized Indian tribe to whom the United States owed a special trust responsibility. Shortly thereafter the Penobscot Nation joined the legal action. In the years that followed, state and federal courts recognized that the tribes in Maine had the same sovereign powers as tribes elsewhere in the country. Around this time, the U.S. government sued the state of Maine on behalf of the Passamaquoddy Tribe and Penobscot Nation over the illegal sale and seizure of tribal lands in violation of the federal Non-Intercourse Act of 1790. After four years of negotiations aimed at resolving the dispute out of court, and with the tribes facing intense public and political pressure to

accept an agreement, the federal Maine Indian Claims Settlement Act (MICSA) and the state Maine Implementing Act (MIA) were ratified in 1980.

Collectively known as the Settlement Acts, MICSA and MIA required the Maliseet, Passamaquoddy, and Penobscot nations to give up claim to their dispossessed lands in exchange for a federally funded pathway to buy back just 2.5% of the 12 million acres unlawfully claimed by Maine. Congress later enacted a separate federal law to address similar claims brought by the Mi'kmaq Nation (Aroostook Band of Micmacs Settlement Act enacted 1991).

The Settlement Acts allow Maine to exert an unusual level of jurisdiction over tribal affairs not found in any other state, and the interpretation of this element of the law has been disputed ever since. For more than 40 years, the state of Maine has used the Settlement Acts to deny Wabanaki Nations' authority to self-govern, a position in direct conflict with the foundations of Federal Indian Law.

What did Wabanaki Nations receive as part of the Maine Indian Claims Settlement Act?

The state of Maine contributed no money to the settlement. The federal government appropriated $81.5 million, to be used for:

- $54.5 million for a Land Acquisition Fund, to be divided evenly between the Penobscot Indian Nation and the Passamaquoddy Tribe. Just under $1 million of those funds were later shifted to a land acquisition fund for the Houlton Band of Maliseet Indians.
- $27 million for a Settlement Fund, to be divided evenly between the Penobscot Nation and the Passamaquoddy Tribe to be held in trust by the U.S. government. Notably, the money is invested by the Secretary of the Interior as agreed to by both tribal governments. Interest from the investments is distributed quarterly to both parties. Additionally, interest from $1 million each is designated to be spent for the benefit of elders over 60 years of age.

The settlement did not give land to the tribes; it simply provided a federally funded mechanism for land restoration. Both the Passamaquoddy Tribe and Penobscot Nation are eligible to purchase up to 150,000 acres — **just 2.5% of the 12 million acres unlawfully claimed by Maine** — from willing landowners. The acreage would be put into a trust held by the U.S. government for the benefit of the tribes. Tribal trust land cannot be sold, condemned, taxed, or subject to state jurisdiction without federal approval.

To this day, neither tribe has been able to purchase the full amount of land provided for in the settlement. The tribes may only access the Land Acquisition Fund when they are able to purchase land and only receive interest from the Settlement Fund.

No minimum land acquisition acreage provision was made for the Houlton Band of Maliseet Indians. Though subjected to provisions constraining their right to self determination, the Mi'kmaq Nation derived no benefits from MICSA.

The Settlement Acts were intended to resolve years-long legal conflicts between the tribes in Maine and the state. Did it work?

No. A fundamental pillar of the Settlement Acts was a pathway for the Passamaquoddy Tribe and Penobscot Nation to each acquire up to 150,000 acres of trust land. That has not happened for either tribe. Additionally, no land base guarantee was made to the Houlton Band of Maliseets or Mi'kmaq Nation. The Settlement Acts have also failed to bring legal certainty to tribal-state relations, as litigation over differing interpretations of the acts began shortly after their enactment and has not abated since. Soon after the legislation was enacted, the state asserted that by signing the Settlement Acts, the tribes had agreed to be treated as municipalities by the state, giving up rights the tribes never knew to be on the table. The state has consistently maintained the tribes are almost entirely subject to state law and cannot benefit from more than 150 laws passed by Congress since 1980 for the general benefit of Indigenous citizens. The tribes have disputed these interpretations and the result has been more than 40 years of continued litigation and strained tribal-state relations..

What is tribal sovereignty?

There are three types of sovereign governments in the United States: the federal government, state governments, and tribal governments. Tribal sovereignty refers to the inherent authority of tribal nations to self-govern, including the authority to establish their own form of government, determine citizenship, preserve cultural identity, provide government services, and make and enforce laws.

There are currently 574 federally recognized tribal nations in the United States, including the four Wabanaki Nations in Maine. Federal recognition means that the US government acknowledges tribes as sovereign governments, as well as its own "trust responsibility" to protect tribal land rights and natural resources, preserve tribal sovereignty and self-governance, and carry out legal mandates of federal Indian law.

Despite the recognition of tribal sovereignty in the Constitution, it wasn't until the 1970s that the federal government began to take steps to support, rather than undermine, tribal self-governance. Ironically, this evolution came at the same time that sovereign authority was being stripped from the Wabanaki Nations through the Settlement Acts. While the restoration of self-governance has proved critically important for tribes throughout Indian Country, the Wabanaki Nations in Maine have been left behind, unable to access the full benefits of their sovereign status. Learn more about tribal sovereignty on our website at www.wabanakialliance.com/sovereignty.

How does the denial of sovereign authority impact the Wabanaki Nations?

Unless Wabanaki Nations are explicitly named in a federal Indian law, those laws are blocked in Maine if they "affect or preempt" Maine law. This language is vague enough to ensure that almost any federal Indian law can be blocked. Since the Settlement Acts passed, only one federal law, the Violence Against Women Act, has been successfully extended to the Wabanaki — a full 17 years after provisions to protect Indigenous women were included.

Since 1980, Congress has enacted more than 150 federal laws for the benefit of tribal nations, and Maine has fought to block access to many of them. Without the access to policies, programs, and funding that build and support self-governance, economic growth in the Wabanaki Nations and their surrounding rural communities is severely stunted. Compared to tribes outside of Maine, all four Wabanaki Nations lag severely in economic development. According to the Harvard Report, between 1989 and 2018, income in Maine grew 25%, while income growth for Wabanaki citizens was just 9%. In 2021, the average income for Mainers was more than twice as high as Wabanaki citizens'. Compared to the rest of Maine, the Wabanaki child poverty rate is almost four times higher. Read the report on our website at www.wabanakialliance.com/harvardreport.

How does the denial of sovereign authority impact the tribes' neighbors?

Researchers estimate that restoring self-governance capabilities for the Wabanaki Nations would result in the direct and indirect addition of more than 2,700 new jobs – 85% of which would be gained by the tribes' neighbors in rural Maine. It would also add an estimated $330 million each year to Maine's gross domestic product, with the benefits of this growth concentrated in rural and economically deprived portions of Aroostook, Penobscot, and Washington counties.

What are some of the rights that other federally recognized tribes have that tribes in Maine don't?

The right to self-govern is a cornerstone of any sovereign nation and is held by all federally recognized tribes. However, the Settlement Acts prevent the tribes in Maine from exercising this right as the vast majority of tribes elsewhere in the United States do. Among the rights denied to the tribes in Maine are:

- The right to exercise criminal jurisdiction over all categories of crimes committed by Native Americans on tribal lands.
- The right to legislate and adjudicate civil regulatory issues arising on tribal lands, such as the right to enact and enforce environmental quality controls or to regulate on-reservation businesses.
- The right to levy and collect taxes.
- The right to conduct gaming in collaboration with state and local governments.
- The right to be immune from lawsuits by private individuals and state governments.
- The right to acquire reservation and trust lands without the consent of local and state governments.

Learn more about the rights of federally recognized tribes from Indian Affairs in the U.S. Department of the Interior.

Who came up with the Settlement Act changes found in LD 2007?

A 2012 letter from the Maine Indian Tribal-State Commission, created by the 1980 Maine Implementing Act to continually review its effectiveness, found that the Settlement Acts "created structural inequities that have resulted in conditions that have risen to the level of human rights violations." In 2019, acknowledgement of these inequities and the determined diplomacy of Wabanaki

tribal governments prompted the Maine Legislature to create the Task Force on Changes to the Maine Indian Claims Settlement Implementing Act. The task force was composed of a bipartisan group of tribal leaders, legislators, and state officials. After six months of hearings, meetings, interviews, and research, the task force issued a report in January 2020 with 22 recommendations to restore tribal self-governance over a range of issues, including the prosecution of crimes on tribal lands; the regulation of fishing, hunting, and other uses of natural resources on tribal lands; gaming; taxation; and land acquisition.

The recommendations formed the basis of state legislation in 2022 and 2023 that received strong bipartisan approval in the legislature, but were ultimately blocked by Governor Mills' opposition. In Congress, legislation sponsored by Rep. Jared Golden that would have extended the benefits of federal Indian laws to the Wabanaki Nations failed to advance in the Senate following opposition from Sen. Angus King.

Will I be able to hunt or fish on land acquired by tribes in Maine if LD 2007 becomes law?

Generally speaking, yes. Tribal lands in Maine are typically open for public access and recreational use unless they have been closed for a specific reason. Hunting and fishing on tribal lands typically requires a permit, as would be the case on state or federal lands. Just as any private landowner in the state, tribes in Maine have the right to post their land. With few exceptions, tribes in Maine do not post their land.

Who supports LD 2007?

More than 100 Republican, Democrat, and Independent state legislators are co-sponsoring House Speaker Rachel Talbot Ross' bill, including Senate President Troy Jackson and House Minority Leader Billy Bob Faulkingham. This follows unprecedented levels of support for a similar bill that passed in 2023 with two-thirds of legislators voting in favor before Governor Mills vetoed it. In addition to legislators, all four Wabanaki Nations support LD 2007, along with hundreds of businesses; organizations advocating for the environment, conservation, and economic and social justice; faith-based and youth groups; unions; professional and philanthropic organizations that make up the Wabanaki Alliance Tribal Coalition, as well as thousands of individuals.

Mainers understand that passing LD 2007 is about fairness and equity. Recognizing the Wabanaki Nations' inherent right to self-govern helps move the Wabanaki Nations and the state of Maine forward together, with improved economic opportunity, careful stewardship of the land, and renewed partnership among neighbors.

What is the Governor's position on LD 2007?

Governor Janet Mills' position on this bill is not yet clear. In the past, as Maine Attorney General, she defended the state's existing interpretation of the Settlement Acts. As governor, she has expressed some willingness to negotiate, but continues to oppose comprehensive efforts to amend the Settlement Acts. Most recently in 2023, she vetoed LD 2004, a bipartisan bill that would have enacted

one of the task force's recommendations by removing the obstacle to Wabanaki Nations being included in beneficial acts applicable to federally recognized tribes. She also opposed the ultimately successful effort to restore Maine's treaty obligations to the state constitution, and opposed US Rep. Jared Golden's federal legislation that would have allowed future federal tribal laws to apply to Wabanaki Nations.

Efforts by tribal leaders, activists, and allies to bring the jurisdictional authority of the Mi'kmaq Nation in line with that of the other Wabanaki Nations in Maine, give tribes exclusive rights to online sports betting, ban Indian mascots in schools, change Columbus Day to Indigenous Peoples' Day, extend the coverage of the federal Violence Against Women Act to apply to Indigenous women in Maine, and require that certain state boards include tribal representatives have met with the governor's support.

What is the status of LD 2007?

The Judiciary Committee will hold a public hearing on LD 2007 at 10 am, Monday, February 26. The Wabanaki Alliance encourages all supporters to submit written testimony in support of LD 2007. Learn more in our testimony guide at www.wabanakialliance.com/ld-2007-testimony.

How can I support LD 2007?

Contact your legislators and urge them to vote YES on LD 2007, write letters to the editor in support of the bill, and talk with friends, family, and neighbors about why this legislation is important for the Wabanaki Nations in Maine and for the entire state. Learn more in our LD 2007 Toolkit at www.wabanakialliance.com/ld-2007-toolkit.