

1999: Year in Review

**A Report to the Governors and Chiefs by
the Maine Indian Tribal-State Commission**

November 23, 1999

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1. Introduction

Purpose and Organization of Report

The purpose of this report is to review the activities, accomplishments, and challenges of the Maine Indian Tribal-State Commission (MITSC) during 1999. Section 1 provides an overview of the people, resources, and activities involved in MITSC's work. Sections 2 through 5 cover the work of MITSC's four substantive committees. Based on the work of the past year, Section 6 reflects on disappointments and successes and suggests areas of focus for the Year 2000.

MITSC Members and Staff

Cushman Anthony has completed 18 months as MITSC's chairperson. William "Eric" Altvater has continued on MITSC as the representative of the Passamaquoddy Tribe at Sipayik (Pleasant Point), while the Passamaquoddy Tribe at Motahkokmikuk (Indian Township) experienced change in its appointee. In September, MITSC welcomed Wayne Newell as the new representative from Motahkokmikuk. Both Penobscot appointees--John Banks and Mark Chavaree--continued their service as MITSC members. All four state appointees--Alan Brigham, Mike Hastings, Fred Hurley, and Evan Richert--continued, as well. In March, Mr. Hastings and Mr. Richert were reappointed to a second three-year term. Diana Scully is completing her 10th year as MITSC's part-time Executive Director.

MITSC Meetings and Committees

During 1999, MITSC has held six regular meetings throughout the State (Augusta, Brewer, Houlton, Orono, and Sipayik), which will culminate on December 3, 1999, with the third annual Assembly of Governors and Chiefs at Indian Island. In addition, MITSC held Wabanaki Day at the Legislature on April 27, 1999, and MITSC's committees have held many work sessions and teleconferences throughout the year.

MITSC is organized into four substantive committees: Economic Basis of Tribal Government, chaired by Alan Brigham; Education and Planning, chaired by Mike Hastings; Human Services and Tribal Courts, chaired by Mark Chavaree; and Natural Resources and Environment, chaired by John Banks. In addition, there is a Finance and Personnel Committee, chaired Cushman Anthony. Interested persons are encouraged to participate on MITSC's Committees, and a number of who are not MITSC members do so.

MITSC Funding

During fiscal year 1999, MITSC received \$22,500 from the State and an equal amount from the Tribes (\$11,250 from the Passamaquoddy Tribe and \$11,250 from the Penobscot Nation). In fiscal year 2000, the State's Part I appropriation to MITSC increased by 3% to \$23,150, which is being matched by a 3% increase from the Tribes (\$11,575 from each). During the First Regular Session of the 119th Legislature, Representative Doug Ahearne sponsored LD 1341 to provide additional funding to MITSC. This legislation passed as a one-time biennial appropriation of \$15,000 a year. During a work session before the Appropriations and Financial Affairs Committee, it was noted that the additional funding would be used to increase the Executive Director's time, add clerical assistance, and involve the Micmacs and Maliseets in MITSC's work.

Involving Micmacs and Maliseets

MITSC's January meeting in Houlton included a session to consider issues of concern to the Aroostook Band of Micmacs and the Houlton Band of Maliseets. MITSC has invited both Bands to participate in its work, and their members have participated in full MITSC meetings, as well as in committee meetings and teleconferences.

During the January meeting, the Houlton Band reviewed draft legislation which would treat their trust lands in the same way with regard to hunting and fishing as Passamaquoddy and Penobscot trust lands and would include them on MITSC. MITSC members noted that a major difference between the proposed legislation and the existing Maine Indian Claims Settlement Implementing Act was that, unlike the Passamaquoddy Tribe and Penobscot Nation, the Houlton Band would not have to get municipal approval for land to be placed in trust.

During the First Regular Session of the 119th Legislature, Representative Roger Sherman sponsored LD 2178, a concept bill to amend the Implementing Act concerning the Houlton Band. The Legislature held over this bill until the Second Regular Session. Though there has not been a formal vote, MITSC members have voiced support for the bill in concept, provided that the Maliseets are treated in the same manner as the Passamaquoddy Tribe and the Penobscot Nation. MITSC understands that a committee comprised of Tribal and State representatives is meeting to review a draft that fleshes out the concept bill, and looks forward to seeing the results of their work.

MITSC has voted in support of the addition of both Maliseet and Micmac representatives to its membership. Under consideration are questions about the total number of representatives, the number of representatives from each government, the balance between state and tribal representatives, and the number of votes needed to carry motions. When they have full voting members, the Bands will be expected to contribute revenues to MITSC. However, until they do they should not be expected to contribute.

Contact with State Government

Governor King invited MITSC's Chairperson to provide a briefing to the *Cabinet* on March 17, 1999. This was helpful in reminding department heads about the need to address tribal concerns, including the implications for their department's work, as well as informing them about MITSC's existence and potential role in assisting with tribal-state relations. One outcome was a follow up session between Commissioner of Labor and MITSC's Executive Director to discuss how the Department of Labor can make its resources available to the Tribes.

As a result of concerns about the unanticipated negative position taken by the *Department of Attorney General* on legislation proposed or supported by MITSC (in particular LD 426, relating to the enforcement of tribal court orders), MITSC's Chairperson met with Attorney General Drew Ketterer over the summer. As a result, the Attorney General has assigned his special assistant Oliver Wesson, III to participate in MITSC meetings. MITSC members have welcomed his participation and hope it leads to a stronger relationship between MITSC and the Department of Attorney General.

MITSC has been involved in many issues and activities at the *119th Legislature*. At the beginning of the First Regular Session, MITSC submitted reports pursuant to three different laws and introduced three pieces of legislation (relating to child welfare, tribal court orders, and land use). MITSC had frequent contact with the Judiciary Committee and also made appearances before the Taxation Committee and the Appropriations and Financial Affairs Committee. A

highlight of 1999 was Wabanaki Day held on April 27 (see Section 3). Finally, a special legislative Committee, conducting a study pursuant to HP 1524 about tribal government representatives in the Maine Legislature, invited MITSC's Chairperson to appear before them in September to share his views about this topic. MITSC is pleased that legislators seem to be more inclined than in the past to ask what MITSC thinks about various tribal-state issues.

Collaboration with Others

Over the past year, MITSC has collaborated extensively with the *Maine Rural Development Council* (MRDC). During its January meeting, MITSC heard a report by MRDC about listening forums held by them in all five Wabanaki communities. In addition, MRDC participated in planning for the MITSC-sponsored Wabanaki Day at the Legislature at the end of April, and one of MRDC's members--the Federal Highway Administration--provided in-kind staff time to help with the preparations. In October, MITSC and MRDC collaborated once again on a well attended Cultural Awareness Conference at Indian Island. MITSC's Chairperson provided summary reflections about panel presentations and MITSC's Executive Director served as conference moderator.

MITSC's Chairperson and Executive Director provided advice to the *Native American Law Association*, a group of students from the University of Maine Law School, in planning and presenting a series of three sessions on the Maine Indian Claims Settlement Act and its legacy. MITSC's Chairperson participated in two of the sessions and MITSC member Mark Chavaree participated in one.

Others participating in and supporting MITSC's work over the past year include the Friends Committee on Maine Public Policy, the Wabanaki Center at the University of Maine, several tribal and state child welfare workers, tribal court representatives, the Penobscot Nation's biologist, and several others.

Who Sets MITSC's Agenda?

Representatives of Albany Township have participated actively in MITSC discussions about land use regulation. During this past year, one of these representatives asked MITSC to address issues of concern to Albany Township. MITSC considered whether and how to deal with issues raised by individuals who are not represented on MITSC, and concluded that issues for MITSC's agenda must be generated by the Tribes, the State, or MITSC's Chairperson. It was further concluded that if a person or group wants something on MITSC's agenda, that person or group must persuade a MITSC member or one of MITSC's Committees to bring the issue forward.

2. Economic Basis of Tribal Government

Homestead Tax Exemption

During the December 1998 Assembly of Governors and Chiefs, MITSC reported that it was discussing the applicability of the homestead tax exemption to the Passamaquoddy Tribe and Penobscot Nation. In the State's view, the homestead tax exemption was part of an array of tax relief, and all taxpayers in Maine received some relief. In the Tribes' view, because tribal members pay sales and income taxes, they contributed to the surplus in state level taxes that

made the homestead tax exemption possible. They also pointed out that the exemption was passed without adequate consultation with or consideration of the Tribes.

In 1999, the Passamaquoddy Tribe introduced LD 1247 to the 119th Legislature. This bill proposed to extend the homestead tax exemption to the Passamaquoddy Tribe and Penobscot Nation. During its March meeting, MITSC voted unanimously to testify in support of the bill before the Taxation Committee. MITSC pointed out that for deeply imbedded cultural reasons, land is held in common by tribal members. They do not pay property taxes and, thus, there are no property taxes to support Tribal Government. MITSC also stated that even though individual tribal members do not own land, Tribal Governments do own land for use by tribal members and they do pay property taxes. For example, the Penobscot Nation pays approximately \$77,000 in property taxes and the Passamaquoddy Tribe pays approximately \$45,000-\$47,000. In contrast, the cost of including the three reservations in the Homestead Tax Exemption program is estimated to a bit more than \$77,000. However, the Legislature did not pass LD 1247.

Sales Tax

Another bill introduced by the Passamaquoddy Tribe was LD 1029, a bill to encourage support of Passamaquoddy Tribal Government through on-reservation business activities. Under the bill, sales tax revenues generated by businesses on the reservations would flow to the Tribe rather than to the State. MITSC took no position on this bill, which passed the Taxation Committee with an amendment to have the State handle the collection of the sales taxes for on-reservation businesses and then give the Tribes a rebate. The bill was enacted and signed into law as Public Law 1999, Chapter 477.

Traditional Crafts

MITSC also supported LD 1384, introduced by the Passamaquoddy Tribe. This bill proposed that sales of traditional crafts products made by members of Passamaquoddy Tribe and materials purchased to create those crafts be exempt from sales and use tax. MITSC sent a letter of support to the Taxation Committee, indicating that they also would favor the inclusion of the Penobscot Nation, Houlton Band of Maliseets, and Aroostook Band of Micmacs if they wanted to be included. The Legislature did not pass LD 1384.

Gaming

MITSC voted unanimously to submit a letter to the Judiciary Committee in opposition to LD 793, a bill sponsored by Senator Peter Mills to limit gaming to the reservations. MITSC pointed out that current Maine law allows the Penobscot Nation and Passamaquoddy Tribe to operate high-stakes beano within Indian Territory. MITSC members felt that a law that is being legally followed by the Tribes should not be changed just because of opposition from a particular area (in this case, Albany Township). MITSC indicated that it supports the right of the Tribes to engage in economic development activities that they believe are necessary to support their Tribal Governments and people, but its vote to oppose LD 793 should be viewed as neutral with respect to the use of gambling as a economic development activity. The Legislature did not pass LD 793.

Fines

A recurring issue before MITSC in recent years has been the flow of fines. In 1999, the issue arose again during discussions about rights of way through Indian Territory (see also Section 5) and in relation to the enforcement fish and wildlife laws. The Director of the Passamaquoddy Warden Service contacted the Commissioner of the Department of Inland Fisheries and Wildlife to express concerns about the flow of fines, and the Commissioner asked MITSC to look into this matter.

Economic Development and Economics of Tribal Government

During 1999, MITSC debated whether it should focus on economic development for individual tribal members and/or on educating policymakers and lawmakers about the economics of Tribal Government. The Executive Director of the Maine Rural Development Council suggested that focusing on economic development would duplicate work already under way between the Tribes and MRDC's member agencies. However, he felt that a conference to educate legislators about the link between sovereignty and the economics of Tribal Government could be a very useful event.

From these discussions, MITSC members learned about a variety of economic development resources available to the Tribes. One MITSC member indicated that the Department of Economic and Community Development was conducting a work force survey, offering funds for marketing, and hiring two new business development specialists placed strategically (Houlton and Calais) to help the Tribes. Another MITSC member mentioned that the Federal Government provides specific incentives for Tribes. He cautioned that many programs hover over the Tribes, hoping to find a good seed to land on. He believes there needs to be more focus so that the good seeds are identified to begin with and can be nourished.

Based on these discussions and other considerations, MITSC decided that any conference should focus on generating income for Tribal Government through revenue sources such as taxes and fines. MITSC has begun to plan a sovereignty workshop for legislators (see Section 3). It also is contemplating having the Executive Director perform research and analysis of taxation, fines, and other funding issues facing Tribal Governments.

3. Education and Culture

Wabanaki Day

A highlight of 1999, was the first-ever Wabanaki Day at the Legislature, held on April 27, 1999, to inform legislators about Wabanaki culture and values. Wabanaki day was supported by a \$4,000 grant from the Department of Economic and Community Development, in-kind staff support by the Federal Highway Administration, and hard work by the Tribal Representatives to the Legislature and MITSC.

The day opened with drumming and singing on the rotunda of the fourth floor as legislators arrived to attend House and Senate sessions. Traditional blessings offered by Passamaquoddy and Penobscot tribal members opened the morning sessions of the House and Senate. Children from the Passamaquoddy, Penobscot, and Maliseet grammar schools served as pages in both chambers. During the sessions, the tribal delegations were recognized and Legislative Sentiments were read and approved in honor of former Tribal Representatives and others.

Drumming, singing, and dancing heralded a formal ceremony in the Hall of Flags held late in the morning. Governor Angus King read a proclamation declaring Wabanaki Day. Tribal Governors and Chiefs and Legislative Leaders made comments. The Passamaquoddy Tribe presented an exquisite, beaded state seal to the State of Maine. The event closed with more singing.

Wabanaki Day also featured a Wabanaki art exhibit in Senate President's Office; an ash-pounding demonstration; Wabanaki videos; more than 15 displays in the Hall of Flags by Maine's four Tribes and associated organizations; a traditional lunch of hulled corn soup, moose meat, and fry bread; and more drumming, singing, and dancing.

MITSC members agree that this large event should happen during the first year of each new Legislature. It has been suggested that MITSC might sponsor a smaller event at the Legislature during the second year of each Legislature.

Offensive Place Names and Mascots

During MITSC's March meeting, the Chairperson reported that the American Indian Movement had raised concerns about the use of word "squaw", hereafter referred to as "sq---". He noted that Governor King had asked MITSC to look into the matter. Passamaquoddy and Penobscot members of MITSC initially confirmed that this term is highly offensive to many tribal members.

Some debate followed about the extent to which "sq---" is offensive. Some contended that the term just means an Indian woman. Many others insisted that the term is highly insulting and derogatory, meaning whore or a woman's private parts. MITSC heard several tribal members state that "sq---" is hurtful and hateful to them, just as the term "nigger" is hurtful and hateful to Black people.

MITSC voted unanimously to draft legislation to eliminate "sq---" from official place names and attempted to have this introduced to the Second Regular Session of the 119th Maine Legislature. Passamaquoddy Tribal Representative Donald Soctomah sponsored a bill, known as LR 3466, to amend 1 MRSA, Chapter 27 by adding "squaw" to the definition of "offensive name" and prohibiting its use to designate "any natural geographic feature or any street, alley, or other road...or any political subdivision of the State." Enacted 22 years ago, this law currently states that "offensive name" means a name...which includes the designation "nigger" as a separate word or as part of a word." Under both the current law and the proposed legislation, there is no legal obligation for a business to change its name.

The Legislative Council initially failed by one vote to accept LR 3466 into the Second Regular Session of the 119th Legislature. On appeal, however, the Council voted 9-0 to allow the bill into the session. There was an outpouring of support for the bill.

MITSC would like to meet with the owner of Sq--- Mountain Resort, to discuss this issue. Since he lives in Florida, it has been difficult to track him down. A recent Bangor Daily News article stated that he wants to create a Native American theme park in the Greenville area. MITSC believes this may be cause for concern and wishes to help the owner make plans that are not culturally offensive to tribal members.

During 1999, MITSC also discussed the use of mascots based on Native Americans. One MITSC member noted that some issues have been dealt quietly and with consciousness-raising and suggested that MITSC reach out to organizations such as the Maine Principals Association and Maine School Management Association about this issue. However, MITSC has decided to focus initially on eliminating "sq---" from official place names.

Sovereignty Workshop

In the fall, MITSC began planning for a workshop on sovereignty for legislators. It has decided to hold this sometime before mid-February 2000 and to focus on tribal views about the legal and cultural aspects of sovereignty. This will be a 90-minute lunchtime session held at or near the State House, with a keynote speaker, respondents, time for questions and answers, and sandwiches. Jill Shibles, a member of the Penobscot Nation and the Tribal Court Judge for the Mashantucket Pequot Tribe in Connecticut, has agreed to be the keynote speaker.

Archives and Website

Last spring, one of MITSC's members offered a proposal to create a Maine Indian Claims Settlement Archives. MITSC would hold title to papers that came to it, set guidelines about such things as maintenance and access, and find an appropriate library. MITSC has approved this proposal.

In October, MITSC considered for the first time whether to develop a MITSC website. It was agreed that the Executive Director will look into this, and the Lt. Governor of the Passamaquoddy Tribe at Sipayik, has offered to help create the site after MITSC finds an appropriate host.

Archaeological Sites

During the First Regular Session of the 119th Legislature, the Passamaquoddy Tribe introduced LD 1028, a bill to fund the monitoring of Indian archaeological sites. MITSC sent a letter of support to the Appropriations and Financial Affairs Committee. The Legislature enacted Resolves 1999, Chapter 23, which requires the Maine Historic Preservation Commission to work with the four Tribes to develop a plan for protecting archaeological sites and report back to next session of the Legislature.

4. Human Services and Tribal Courts

Child Welfare

In 1999, MITSC continued efforts begun in late 1997 to work with the State and the Tribes to develop legislation relating to child welfare. In December 1998, MITSC submitted a report pursuant to Resolves 1997, Chapter 45 to the 119th Legislature, entitled "Impact of Maine Civil Laws on the Wabanaki: 1998", which included proposed child welfare legislation.

Printed up as LD 523, MITSC's bill sought to correct Maine's foster care licensing and funding statutes by recognizing the authority of the Maine Tribes under the federal Indian Child Welfare Act (ICWA). Application of ICWA in Maine was incorporated in the Maine Indian Land Claims Settlement in 1980, but corresponding amendments to state law were not made at that time. Under existing federal and state laws, Maine Tribes may license and approve foster homes for Indian children, and tribal licensing is deemed equivalent to licensing approval by the State. LD 523 states that federal IV-E funds will be available for Indian children. It also recognizes what is implicit in ICWA--that the Tribes may license their own foster homes. The Legislature enacted the bill, which was signed into law as PL 1999, Chapter 392.

During 1999, the Department of Human Services and each Tribe have been negotiating agreements relating to Title IV-E. MITSC hopes this process to go forward directly between the Department and the Tribes and will step in only if help is needed.

Tribal Court Orders

MITSC's civil law review report to the 119th Legislature also included legislation relating to the enforcement of tribal court orders. Printed up as LD 426, MITSC's bill required that Maine institutions should recognize and enforce Tribal Court orders. The Department of Attorney General opposed the bill, arguing that if a legitimate governmental court order is not being executed, the proper procedure for giving full faith and credit to that order would be to ask a State Court to issue an order implement it. LD 426 was designed to be a short circuit of this process, and the Attorney General felt that this was inappropriate. The Legislature did not pass LD 426.

During subsequent discussions about the Legislature's failure to pass LD 426, the representatives of the Penobscot Nation's Tribal Court indicated that the enforcement of Tribal Court orders has not been a problem for them and suggested that this should be matter of relationships with local people. MITSC is exploring their suggestion to bring in a national expert on full faith and credit of tribal court decisions and to hold a workshop on this topic. During these discussions, a representative of the Passamaquoddy Tribe pointed out that state law enforcement personnel frequently go directly to Tribal Police, not to Tribal Court. In the future, the Tribe may choose to require the State to bring actions to Tribal Court, not to Tribal Police.

TANF

At the beginning of 1999, the Passamaquoddy Tribe expressed concern that the State had not included Native American families in planning for the implementation of the Targeted Assistance to Needy Families legislation in Maine. This matter appears to have been resolved.

5. Natural Resources and Environment

Marine Resources

The Passamaquoddy Tribe at Sipayik first brought concerns about marine resources to MITSC in 1984 and has raised the issue many times since then. During the 1990s, MITSC facilitated a meeting between officials of the Tribe and the Department of Marine Resources (under the McKernan Administration), endorsed Passamaquoddy efforts to amend federal legislation, and discussed preparing a policy paper on this topic (which never happened because of a lack of resources). Some argued that MITSC should not be involved in this area, because marine issues are not specifically mentioned in the Settlement Act. Others contended that MITSC should be involved, because this is a key area that affects the economic and legal relationship between the State and the Tribe.

During the 118th Legislature, the Passamaquoddy Tribe submitted LD 2145, "An Act Concerning the Taking of Marine Resources by Members of the Passamaquoddy Tribe". The Tribe did not seek MITSC's involvement in this legislation, which passed and was signed into law as PL 1997, Chapter 708. The law required MITSC to "study any question or issue regarding the taking of marine resources by members of the Passamaquoddy Tribe and Penobscot Nation"

and to report to the 119th Legislature's Joint Standing Committee on Marine Resources. MITSC submitted its report in December 1998, noting that it had written to ask the Tribes to formulate a list of issues and questions.

During 1999, two issues relating to the new law surfaced at MITSC. One was the Penobscot Nation's interest in being included as part of the law. The second was the Passamaquoddy Tribe's concern about the constant challenge involved in reminding legislators that the new law exempts the tribal members from holding certain state licenses and permits. In addition, there was discussion about the relationship between economic development and salt water rights and resources. One MITSC member suggested that that economic development would not be an issue if the Passamaquoddy Tribe fully exercised what it believes to be its salt water fishing rights. He would like the State to take a more proactive approach with regard to these rights. Other MITSC members have pointed out that the State and the Tribe do not agree about these rights.

Land Use

In December 1998, MITSC submitted to the 119th Legislature a report entitled "Impact of Maine Civil Laws on the Wabanaki: 1998", pursuant to Resolves 1997, Chapter 45. One of the proposed pieces of legislation was the tribal land use regulation that had failed to pass by one vote during the Second Regular Session of the 118th Legislature. MITSC recommended that the legislation apply only to the Passamaquoddy Tribe, because the Penobscot Tribal Council had not yet had an opportunity to discuss and decide what route to take with regard to land use regulation.

During its January meeting, MITSC reviewed the two approaches for regulating the use of tribal lands, a cooperative agreement or the revival of legislation from 1998. The Passamaquoddy Tribe continued to favor going the legislative route, while the Penobscot Tribal Council preferred the cooperative agreement approach. MITSC discussed a recent Superior Court decision on Albany Township, which stated in a footnote that the Tribes have jurisdiction over their own lands. That footnote indicates that the Passamaquoddy Tribe is treated like a municipality and does not have to go through the Land Use Regulation Commission (LURC) process.

In March, MITSC voted unanimously to submit a new draft to replace its original proposal. The amendment added Indian Territory to the list of exemptions from LURC jurisdiction, excluded Albany Township from the bill because of pending litigation, and included both the Passamaquoddy Tribe and the Penobscot Nation. The bill was printed up as LD 2030. During work sessions on the bill before the Judiciary Committee, paper companies voiced concerns about the bill's impact on the regulation of impoundments, Albany Township continued to be an issue, and Penobscot concerns also were an issue. The Legislature did not pass LD 2030.

From the State's perspective, it will be difficult to enter into a tribal-state cooperative agreement about land use, because no state agency has authorization to do this. LD 2030 would have provided this authorization to LURC. Both the Penobscot Nation and Passamaquoddy Tribe have said they are moving ahead to take care of their lands in the way they think is right.

Surface Use

In December 1998, MITSC submitted a report about the surface use of tribal inland waters, required by PL 1997, Chapter 739, to the Legislature's Joint Standing Committee on Inland Fisheries and Wildlife. The report indicated that there were three different ideas about how to proceed on regulating the surface use of waters: by amending the Maine Indian Claims

Settlement Act to piggyback onto MITSC's regulatory authority over fishing; by amending the Act to piggyback onto the Tribe's regulatory authority over hunting and trapping; or by cooperative agreement.

In early 1999, MITSC discussions indicated that the State preferred having MITSC regulate surface use or a cooperative agreement, while the Tribes supported regulating surface use themselves. The Passamaquoddy Tribe introduced LD 1255 to have the Tribes regulate the surface use of waters in their Indian Territories. Passamaquoddy and Penobscot MITSC members supported the bill, while State MITSC members opposed it. State MITSC members were not against the idea that Tribes should have more control over surface use, but they opposed the way of doing it in LD 1255. During its March meeting, MITSC voted (six in favor and one abstention) to approve an amendment, contingent on approval by both Tribes, which:

- ⇒ Stated that MITSC has jurisdiction over the regulation of surface water use on great ponds (those of 10 acres or more) within Indian Territory;
- ⇒ Specified that MITSC may delegate this regulatory authority to the Passamaquoddy Tribe for great ponds with 50% or more of shoreline within Passamaquoddy territory and to the Penobscot Nation for great ponds with 50% or more of shoreline within Penobscot territory;
- ⇒ Listed the factors to be considered and the process to be followed in rule-making; and
- ⇒ Required the Commission to submit a report on the effectiveness of this approach and any recommendations, including legislation, to the 121st Legislature by December 15, 2003.

MITSC shared the amendment with the Judiciary Committee, but the Tribes did not approve it. In Committee, the Attorney General, the Natural Resources Council, the paper companies, and the Governor's Office were all against the LD 1255, and the Legislature did not pass it.

Rights of Way

The Passamaquoddy Tribe proposed LD 1914 to the 119th Legislature to provide for concurrent tribal jurisdiction on rights of way and highways passing through reservations and Indian Territory and to provide that fines flow to the Tribes. During its March meeting, it was clear that State and Tribal MITSC members could not reach agreement about most of LD 1914. However, MITSC members did agree that civil penalties and criminal fines imposed for a violation of tribal or state law within Indian territory should be remitted by the court imposing the penalty or fine to the Passamaquoddy Tribe or the Penobscot Nation. During the hearing on LD 1914 before the Judiciary Committee, MITSC testified neither for nor against the bill, though it indicated support for the flow of penalties and fines to the Tribes. The Legislature did not pass LD 1914.

In addition to the flow of fines, MITSC's discussions about rights of way touched on the following points. MITSC will continue working on these:

- ⇒ There are enforcement problems on "no man's land" (strips of land running through Indian territory), because the Tribes do not have jurisdiction over these areas. For example, people can go down a right-of-way to hunt and be outside of tribal ordinances.
- ⇒ It makes sense to allow the enforcement of tribal laws over tribal members on rights of way through Indian territory.
- ⇒ Tribal members are concerned about non-tribal members harming the resources of the Tribes. Non-tribal hunters on rights-of-way are a major part of the problem that led the Passamaquoddy Tribe to submit LD 1914.

⇒ The power of municipalities extends over state roads that pass through a municipality, but the Tribes do not have that same power.

MITSC Fishing Rules

This fall, MITSC has been working closely with the Department of Inland Fisheries and Wildlife (DIFW) to include its fishing rules, adopted in 1998, in DIFW's ice fishing and open waters law books for the upcoming biennium. This collaborative endeavor provides accessible and clear information to anglers fishing on waters in Indian Territory. MITSC also is publishing a pamphlet of its fishing rules.

The Penobscot Nation has announced that it is moving ahead to adopt commercial fishing licensure on waters under its jurisdiction and has asked MITSC to develop new rules to license commercial fishing under its jurisdiction. MITSC has asked the Passamaquoddy Tribe if they would like to be included in this process and is awaiting action by the Joint Tribal Council on this question. Commercial licensing would involve eels, bait dealers, mussels, commercial fishing of alewives, and other activities. There is not complete agreement between the Penobscot Nation and the State about this, and MITSC will work on waters where there is agreement. Licensing would present a new level of operational responsibilities for MITSC. MITSC plans to move ahead on the development and deliberation of this new rule after the New Year.

Salmon

During MITSC's September meeting, it was reported that there were new developments between the Passamaquoddy Tribe and LURC involving the cultivation of blueberries and cranberries, on one hand, and protecting Atlantic salmon, on the other hand. From the Tribe's perspective, they do not want to endanger salmon, but they do want to preserve self-governance over their land. From the State's perspective, the Tribe's lands are subject to the State's environmental laws. The Passamaquoddy Tribe will talk about this situation further and may conclude that there is a role for MITSC to play. During MITSC's discussion of this issue, it was suggested that the Tribe might want to look into a secretarial order by the Department of Interior that relates to impacts of the Endangered Species Act on federally recognized Tribes.

Penobscot Trust Land

During MITSC's October meeting, the Penobscot Nation asked MITSC to support legislation relating to the deadline for acquiring trust land under the Maine Indian Claims Settlement Act. This has been extended at least two times before, and the time is running out again in January 2001. The Penobscot Tribal Council will be asked whether they want to remove the deadline altogether, since the intent of the Settlement Act was for the Tribes to acquire 150,000 acres of trust land each, and whether they mind if the Passamaquoddy Tribe joins in this legislation. MITSC has tabled the request until after the Council meets. It is anticipated that the Penobscots will bring the bill to the Legislature in January 2000.

Moose Hunting

In June, Billy Phillips, Chief of the Aroostook Band of Micmacs, told MITSC that the Micmacs in Maine have no moose hunting rights. He said some day they will want to regulate and hunt on their own lands, like Passamaquoddy and Penobscot tribal members. It was noted that the

Passamaquoddy Tribe put in legislation to give Tribal Members the ability to hunt on lands other than in Indian Territory, but the State argued that the moose population could not support this increased hunting effort. It also was noted that MITSC does not have jurisdiction over hunting in Indian Territory. Thus, the Micmacs were encouraged to talk with the Passamaquoddy Tribe and Penobscot Nation about hunting on their lands.

Reservation Waters

Over the summer, the Passamaquoddy Tribe raised concerns about fishing rules proposed for the reservation waters at Indian Township. DIFW explained that people brought a rule-making petition to them that included the waters at Indian Township, but would affect only non-tribal members. The Passamaquoddy Tribe has an ordinance about entry into tribal waters. DIFW has acknowledged this ordinance and made it known to anglers.

The Penobscot Nation informed MITSC that the U.S. Secretary of Interior has taken a position that the Penobscot reservation includes all islands and the bed of the Penobscot River. The State and the Nation are not in agreement about the extent of the reservation. The State's Attorney General issued an opinion in the past that islands in the East and West Branches of the River are not part of the reservation as defined in the Maine Indian Claims Settlement Act.

Communications about Tribal Ordinances

MITSC recently discussed the fact that DIFW wardens get a lot of questions about hunting and fishing on tribal lands. It was agreed that the Tribes will provide copies of their ordinances with the DIFW's district wardens and regional lieutenants.

Baxter State Park

During their 1998 Assembly, Governors and Chiefs heard concerns that the Baxter State Park Authority was charging fees for the Penobscot Nation to hold their annual Sacred Run to Katahdin over Labor Day weekend. Governor Angus King, Governor Rick Doyle, and MITSC's Chairperson, among others, sent letters to the Authority about this matter. During 1999, MITSC heard that discussions between the Penobscot Nation and the Authority were progressing in a positive manner. MITSC understands that the Authority has set aside a site for exclusive use by the Nation.

6. Reflections and Direction

Some Disappointments

Perhaps the greatest disappointment for several of MITSC's members was the failure of LD 2030, *the land use bill*, to pass the Legislature. MITSC has tried for 12 years to help the State and the Tribes reach understanding and agreement regarding tribal land use regulation. Now MITSC has indefinitely tabled the issue.

Similarly, MITSC has tabled the issue of regulating the surface use of waters. State and tribal positions are set, and MITSC has been unable to help find common ground.

There has been discussion about how difficult it is for MITSC to get a handle on the issue of marine resources and fishing rights. Some MITSC members are frustrated that MITSC has not been more actively involved in this area.

Legislative Successes

At the Legislature, MITSC experienced some successes. Wabanaki Day was the high point. It was a friendly, educational, and enriching event, well covered by the media. Passamaquoddy Tribal Representative Donald Soctomah reported receiving 30 notes from other legislators about how much they enjoyed this event. Another success was the enactment of LD 523, MITSC's child welfare bill. A third success was enactment of LD 1341 with its appropriation of \$15,000 for MITSC for each of the next two years and its implicit promise of further work with the Houlton Band of Maliseet and the Aroostook Band of Micmacs. A fourth success was that LR 3466 (to prohibit the use of "sq--" in official place names) was allowed into the Second Regular Session on appeal by a vote of 9-0. Finally, legislators generally seemed more inclined than in the past want to know about MITSC's perspective on particular tribal-state issues.

Year 2000 Agenda

This review of issues facing MITSC during 1999, suggests that the following issues should be on MITSC's agenda in the Year 2000. MITSC would like to know what the Governors and Chiefs think should be added or deleted from this list and what issues deserve the greatest emphasis.

Economic Basis of Tribal Government

1. Research and analyze the flow of taxes, fines, and funding to and from Tribal Government.
2. Sponsor a workshop to review this research and analysis.

Education and Culture

3. Secure the enactment of LR 3466.
4. Sponsor a sovereignty workshop at the Legislature.
5. Continue work on the Maine Indian Claims Archives.
6. Create a MITSC website.

Human Services and Tribal Courts

7. Host a workshop on full faith and credit relating to tribal court orders.
8. Be available to facilitate child welfare agreements between the State and the Tribes.

Natural Resources and Environment

9. Determine what, if anything, MITSC should address relating to marine resources.
10. Continue work on rights of way issues.
11. Develop and adopt rules to license commercial fishing activities on waters under MITSC's jurisdiction.
12. Stand by to assist in land use discussions relating to Passamaquoddy territory in Washington County.
13. Address the issues of deadlines for acquiring trust lands.