

## **TRIBAL-STATE COLLABORATION – AGENCY GUIDANCE**

**November 29, 2022**

**Overview and Purpose:** The Tribal-State Collaboration Act of 2022 requires certain state agencies to engage in a tribal collaboration process regarding contemplated programs, rules or services that substantially and uniquely affect Maine’s four federally-recognized Indian Tribes or their members. The Act is codified at 5 M.R.S. §§ 11051 *et seq.* Its purpose is to promote respectful dialogue and improve communication between state government and the four Tribes: the Houlton Band of Maliseet Indians, the Mi’kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation. The Act is intended to be implemented within existing resources, and designed not to create a cumbersome new bureaucracy. Instead, it is intended to allow each agency discretion to administer the law in a manner that is efficient and user-friendly, and that accommodates the unique circumstances of the agency’s work. Although there are no penalties for non-compliance with the Act, each agency should strive to ensure that tribal collaboration, when it occurs, is both a meaningful process and one that does not result in unnecessary administrative burdens for tribal or state governments.

**Agencies subject to the collaboration requirement (sub-§§ 11052(1)(A)-(P)):** Only those agencies identified in the Act are subject to its requirements: DACF, DOC, DECD, DOE, DEP, DHHS, DIFW, DOL, DPS, DAFS, DPFR, DDVEM, DMR, DOT, PUC, and the Office of the Public Advocate. Administrative divisions of these agencies are not required to comply with the Act’s requirements separately. So, for example, DPFR need only designate a single tribal liaison for the entire agency, and each professional licensing board within the agency is not required to do so independently. The same is true for filing bi-annual reports – only a single report is required on behalf of the entire agency.

Some agencies will have occasion to engage in tribal collaboration more frequently than others, and some may do so only rarely. The fact that a given agency was included in the Act should not be interpreted to mean that it is expected to engage in tribal collaboration regularly – only that it is possible that it could at some point have occasion to do so. Each agency should thus be vigilant in ensuring that it engages in the collaboration process when appropriate.

**Actions triggering collaboration (sub-§ 11053(D)):** The scope of the Act applies only to “programs, rules and services that substantially and uniquely affect the Indian Tribes or tribal members.” Note that it does not apply to any specific licensing and permitting decisions. Because the statute applies only to agency decision-making that both “substantially and uniquely” affects Tribes or tribal members, it will not cover most programs, rules and services of general applicability. The narrow focus of the Act is to ensure that the time and energy that goes into the collaboration process will be spent on the issues that matter most to tribal communities. Agencies should not be legalistic in assessing which decisions trigger collaboration, and should instead use common sense and good judgment to make that determination consistent with the Act’s purpose of improving tribal-state communication. When in doubt, it may make sense for agencies to have some initial, informal communication with potentially affected Tribes to inform

the determination of whether a contemplated action may substantially and uniquely affect the Tribe or its members.

**Agency obligations:** The Act calls upon agencies to designate a tribal liaison, ensure the liaison and other appropriate staff receive appropriate training, adopt a collaboration policy, and file a report every two years describing its activity under the collaboration law.

**-Designate a tribal liaison (sub-§ 11053(3)).** Agencies must designate a tribal liaison who reports directly to the head of the agency and who is responsible for facilitating effective communication between the agency and the Tribes. The agency's existing legislative liaison would be an appropriate choice for this role. The liaison will serve as the agency's point of contact on tribal issues and oversee implementation of the collaboration Act's requirements within the agency.

**-Adopt a collaboration policy (sub-§ 11053(1)).** The core requirement of the Act is that the agency adopt a policy that sets forth the process it will follow to engage in tribal collaboration. The policy must include provisions which provide for reasonable written notice of the contemplated action, allow the Tribes a reasonable opportunity to comment, require agency consideration of the comments received, and require that the agency make reasonable efforts to complete collaboration before making a final decision. The policy must also ensure agency staff are informed of the requirements of the Act. The agency must seek and consider comments on its draft collaboration policy from the Tribes and the Maine Indian State Tribal Commission.

**-Training (§ 11054):** Tribal liaisons and other agency staff "whose work substantially and uniquely affects Indian tribes or tribal members" must receive training under the Act. The Governor's office will offer training on effective communication and collaboration under the Act, and will request the Tribes to provide training on cultural competency.

**-Filing of reports (sub-§ 11055(2)).** Beginning on January 10, 2023, the law requires agencies to file reports every two years with their legislative committee of jurisdiction and with the Maine Indian Tribal State Commission. The reports must include a copy of the agency's collaboration policy, the name and contact information of the agency's tribal liaison, a description of training received, a description of any actions contemplated during the upcoming biennium – to the extent known – that would trigger collaboration, a summary of any collaboration the agency engaged in during the preceding biennium, and any recommendations for changes to the Act.