

CONSTITUTION OF THE PENOBSCOT NATION

Preamble

We, the members of the Penobscot Nation, create this Constitution in order to: reaffirm our sovereignty as a Nation, authoritatively set forth our method of self-government, clarify areas of tribal law not thus far clearly defined, establish guidelines for the conduct of our governmental affairs, preserve our customs and traditions, foster justice and advance our common welfare. Now, therefore, we acknowledge and adopt this Constitution of the Penobscot Nation as the supreme law by which we will govern ourselves.

Name

Our name shall be the Penobscot Nation; hereinafter called the "Nation."

ARTICLE I. TERRITORY

Penobscot Nation Territory is comprised of all those lands which are commonly known as "reservation" and "trust" lands, including without limitation any and all rights and interests incidental to all such lands. These rights and interests are intended to include without limitation air rights and water rights. Such lands, so defined, are:

"Penobscot Indian Reservation" means the islands in the Penobscot River reserved by and to the Penobscot Nation by treaty with the States of Massachusetts and Maine consisting of Indian Island, also known as Old Town Island, and all islands in said river northward thereof that existed on June 29, 1818, excepting any island transferred to a person or entity other than a member of the Penobscot Nation subsequent to June 29, 1818 and prior to the effective dates of 25 U.S.C. §1721, et seq. and 30 M.R.S.A. §6201, et seq. as amended.

"Penobscot Nation Trust Lands" means those lands acquired pursuant to 30 M.R.S.A. §6205 (2) (B). Such trust lands are lands whose title is held in "trust" by the Secretary of the Interior for the benefit of the Penobscot Nation.

The Nation's lands which are held in "fee simple title" are not considered to be part of the Nation's "Territories."

Any lands acquired after the effective date of this Constitution are to be included in the appropriate category in this Article.

ARTICLE II. JURISDICTION

The authority of the government hereinafter established by this Constitution shall extend over all members of the Penobscot Nation and all persons, subjects, lands and property now or hereafter included within the boundaries of the Nation's territory as defined in Article I.

The Nation's territories are subject to all the tribal laws of the Nation and to only those state laws which have been expressly accepted by the Nation.

Fee land is subject to applicable tribal law as well as the state laws which protect other landowners of the state. The Nation's trust lands are subject to tribal and federal laws. ANY JURISDICTION NOT EXPRESSLY WAIVED BY THE NATION IS HEREBY RETAINED BY THE NATION.

ARTICLE III. MEMBERSHIP

Tribal membership is a right of all persons who meet the qualifications of tribal membership law and subsequent amendments thereto.

ARTICLE IV. DECLARATION OF MEMBERS' CIVIL RIGHTS

The Nation in exercising its powers of self-government shall not:

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself/herself;
- (5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him/her, to have compulsory process for obtaining witnesses in his/her favor, and to have the assistance of counsel for his/her defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of less than one year or a fine of less than \$5,000 or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any law which applies either to named individuals or to easily identifiable members of a group in such a way as to inflict punishment on them without a judicial trial;

(10) pass any law after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed, such as, a law providing for the infliction of punishment upon a person for an act done which, when it was committed, was innocent;

(11) deny to any person accused of an offense punishable by imprisonment the right, upon written request, to a trial by jury of not less than six persons; or

(12) violate the inalienable and indefeasible right of the people to institute, alter, reform or totally change the form of government, when their safety and happiness require it.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section A. Legislative

Part 1. Legislative Authority

The general membership of the Nation shall be the sole legislative body of the Nation empowered to enact or amend tribal laws and ordinances. Any proposed tribal law or ordinance, by whomever drafted, shall be presented to the Governor and Council of the Nation for initial approval at a special meeting called for the purpose. Every law or ordinance presented to the Governor and Council and receiving approval shall

then be submitted to the members of the Nation for their approval at a General Meeting. In the event the Governor and Council do not approve a law or ordinance, such law or ordinance may nevertheless be presented to the general membership for approval at a General Meeting as provided in the tribal petition law (Chapter 1 — Penobscot Tribal Government, Sub-Chapter V — General Petition Standards and Procedures). No law or ordinance shall take effect or be amended until approved by the general membership of the Nation at a General Meeting.

Part 2. General Meeting

The Governor shall call the General Meetings of the Nation; provided, however, in the event the Governor refuses or fails to call a General Meeting, the process for calling a General Meeting shall be as set forth in the tribal petition law referenced above. Any duly enrolled member of the Nation who is at least eighteen years of age shall be eligible to vote on all matters brought before the General Meeting. Voting under this Section shall be conducted by a method agreed to by the members present at the General Meeting. Notice of a General Meeting shall be posted in the entranceway to the Community Building and in at least three (3) other conspicuous locations on the reservation at least seven (7) days prior to such General Meeting and shall be mailed to every off-reservation member of the Nation over eighteen (18) years of age at least seven (7) days prior to such General Meeting. The Governor shall preside over all General Meetings except as otherwise provided in the tribal petition law and except in those instances when a conflict of interest exists between the issue before the voting membership and the office of the Governor. The Lieutenant Governor shall preside over the General Meeting in those instances the Governor is unavailable and in those instances of conflict of interest for the Governor, except as otherwise provided in the tribal petition law. If the Lieutenant Governor is not available, the Governor can designate any member present at the General Meeting to preside over the meeting for the period that the issue creating the conflict is before the membership.

Part 3. State of Maine Legislation

Any proposed tribal legislation intended to be submitted to the Maine Legislature shall first be submitted by the Tribal Representative to the members of the Nation for their prior approval at a General Meeting. The Tribal Representative shall be responsible for the submission of all tribal legislation to the Maine Legislature.

Part 4. Procedure for Amending the Maine Implementing Act

Any proposed amendment of the Maine Implementing Act shall be submitted by the Tribal Representative to the members of the Nation for their approval at a General Meeting. The Tribal Clerk shall certify to the State of Maine the Nation's approval of the proposed amendment, if appropriate. After the amendment is signed by the Governor of the State of Maine, the amending Act must be returned to the Nation to be ratified by its members at a General Meeting. The Act shall not be effective unless, within 60 days of adjournment of the Maine Legislature, the Secretary of State receives written certification by the Governor and Council that the Nation has agreed to the provisions of the Act.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section B. Executive

Section 1. Powers of the Governor and Council

The Governor and Council shall be the executive governing body of the Nation, subject to the limitations expressly imposed by this Constitution. The Governor and Council, acting jointly, shall have and exercise the Nation's sovereign and governmental powers and rights as follows:

- (a) to adopt regulations, bylaws, and rules of procedure to govern the duties, responsibilities, conduct and procedures of the Nation and the Governor and Council;
- (b) to negotiate, make and perform contracts and agreements of any description not inconsistent with law or this Constitution, with any person, association, partnership, corporation, municipality, country or foreign power, local government, county, state, the United States, or other Indian Nation, tribe, or band;
- (c) to seek, make application for and accept grants, aid or donations from any source;
- (d) to manage and appropriate the Nation's funds and to expend such funds in accordance with Article V, Section H of this Constitution;
- (e) to remove or exclude from the jurisdiction of the Nation any non-member of the Nation as such power is provided for in 30 M.R.S.A. 56206;
- (f) to enact regulations governing the activities of voluntary associations operating within lands subject to the jurisdiction of the Nation;
- (g) to appoint subordinate committees, commissions, boards, authorities, advisory or otherwise, officials and employees not otherwise provided for in this Constitution or other applicable tribal law, and to regulate subordinate organizations for economic and other purposes;
- (h) to manage, protect and preserve all lands, minerals, water, wildlife and other natural resources owned or held by the Nation;
- (i) to initiate, regulate and administer land use and/or development on lands owned by or within the jurisdiction of the Nation;
- (j) to make all employment decisions in accordance with the applicable law, policies and procedures of the Nation;
- (k) to collect automobile and snowmobile excise taxes on members and other residents and any other tax which is approved in accordance with tribal law;
- (l) to encumber, mortgage, lease, permit, sell, assign, manage or provide for the management of the lands of the Nation in accordance with the Land and Residency Laws of the Penobscot Nation and other applicable tribal law;
- (m) to encourage and foster arts, crafts, traditions, language and culture of the Nation;
- (n) to advise, consult and negotiate with Federal, State or local governments, and other persons, on all activities which may affect the Nation;
- (o) to advise the Secretary of the Interior and other agencies or representatives of the Federal Government with regard to all appropriation estimates of Federal projects or programs affecting, or for the benefit of Indians, the Nation or its members, prior to the submission of such estimates to the office of Management and Budget and the Congress;
- (p) to employ legal counsel, accountants, and consultants;
- (q) to charter private or public corporations for profit or not for profit, and to enact regulations governing the operation and conduct of such corporations;

- (r) to borrow money and to issue notes and obligations of any kind, and to issue bonds of any kind whatsoever, in accordance with the laws of the Nation or the United States, or in accordance with laws of the State of Maine, in the capacity of a municipality or otherwise;
- (s) to own, manage, provide for the management, purchase, lease, sell, encumber or transfer any kind of property, other than property subject to sub-section (1) of this section, except as otherwise prohibited by law;
- (t) to conduct, within or without the Penobscot Indian Territory, any and all activity or business not otherwise prohibited by law;
- (u) to provide, contract for, regulate or otherwise direct the provision of public and social services of any kind or manner.

Section 2. Composition and Procedures of the Governor and Council

(a) Council

The Council of the Nation shall consist of twelve (12) members. Six (6) Council members shall be elected biennially for terms of four (4) years each in accordance with existing tribal election laws, as such laws may be amended from time to time. Such terms commencing on the first day of the month of October following the biennial tribal election. Every member of the Council shall be a member of the Nation and shall be elected by the qualified voters of the Nation. In any election for purposes of filling vacancies on the Council, the elected candidate shall serve out the term of the vacated Council position for which they are running. The Chairperson of the Council shall be chosen by the Council from among its membership. The Chairperson shall be a member of the Nation by birth. The Chairperson of the Council shall act as Governor whenever the offices of Governor and Lieutenant Governor are vacant at the same time under the same terms and conditions as the Lieutenant Governor. At the time of succession the Chairperson of the Council must meet the same qualification for office as the Governor. The Chairperson shall preside over Council meetings in the absence of the Governor and Lieutenant Governor. All actions of Council shall be binding and adhered to by the tribal government. No individual, elected or otherwise, shall have the power to override or disregard the decisions of the Council. The tribal members' power and right to enact and amend laws through the General Meeting shall be the only means to override a Council action.

(b) Governor and Lieutenant Governor

The Governor shall be elected by the qualified voters of the Nation and shall hold office for two (2) years from the first day of the month of October following the biennial tribal election. The Governor must be a member of the Nation by birth and at the time of induction into office must not hold any office or elected position with the United States, the State of Maine, the Nation or any other tribe or nation. The Governor shall nominate all persons to serve in offices deemed necessary for the proper governing of the Nation with the advice and consent of the Council. The Governor shall take care that the laws and ordinances are faithfully executed in the territory under the Nation's jurisdiction, and shall act with the advice and consent of Council. The Governor shall have the authority to act in all emergencies when the Council cannot readily be convened. The Governor, Lieutenant Governor, Tribal Clerk and Council Chairman shall have signature authority on checks and other similar financial documents of the Nation. The Tribal Council must specifically authorize signature authority on all other documents. The Lieutenant Governor shall be elected by the qualified voters of the Nation and shall hold office for two (2) years from the first day of the month of October following the biennial tribal election, and the Lieutenant Governor shall meet the same qualifications and be subject to the same requirements as the Governor. The Lieutenant Governor shall attend all Council meetings, and shall preside over Council meetings in the absence of the Governor. The Lieutenant Governor's duty shall be to serve in the place of the Governor, if the Governor dies, is removed or recalled from office or otherwise is not able to serve his term of office. Upon any such vacancy in the office of Governor, such office shall be filled in accordance with the applicable tribal election laws, as such laws may be amended from time to time.

(c) Meetings

The Governor shall convene the Council for regular meetings on the first Tuesday of every month and may convene the Council for special meetings as necessary. The Governor shall set the agenda and preside over the Council meetings. The Governor shall have no vote on issues before the Council except in event of a tie. All meetings of the Governor and Council shall be open to all members of the Nation; provided, however, that discussion of confidential matters may be conducted in closed executive session. All minutes, resolutions, recorded votes of the Governor and Council shall be recorded in writing and shall be available to members of the Nation. No Governor, Lieutenant Governor, or member of the Council shall vote on any matter in which he or she or a member of his or her immediate

family has a direct personal interest, including but not limited to employment contracts, project funding, and appointment to offices or committees. The term "immediate family" shall include a person's spouse, siblings, parents and children. Generally seven (7) Council members shall constitute a quorum thereof for purposes of exercising Council powers and responsibilities in accordance with tribal law and custom and for all other Council purposes, notwithstanding any vacancies of Council members; provided, however, an affirmative vote of nine (9) members of the Council is necessary for adoption into Nation membership and for issuance of a residency permit to a non-member. Council members who have three (3) successive unexcused absences from Council meetings, or five(5) unexcused absences during a twelve (12) month period, shall be removed from the Council by the Governor, with the advice and consent of the remaining Council members. Each Council member must be given at least twenty-four (24) hours advance notice of a Council Meeting, nevertheless, attendance by a Council member of any such Council meeting shall be conclusive evidence that they received such notice. The Governor may excuse Council members from attendance at Council meetings in advance of such meetings for health or other personal reasons. No member of the Council shall be liable to answer for anything spoken in debate at any Council Meeting. The Council is subject to Robert's Rules of Order, or such other rules of order as the Council may adopt, and all meetings of the Council shall be conducted in accordance with such rules of order.

Section 3. Chief Executive Officer and Tribal Administrator's Duties and Responsibilities

The Council has delegated certain of its powers and duties to a Chief Executive Officer and Tribal Administrator. The Chief Executive Officer shall be appointed by the Council and shall be accountable and responsible to the Council. The Chief Executive Officer must be a member of the Nation by birth. The Chief Executive Officer shall carry out the following duties:

- (a) direct, control, plan, and coordinate all projects assigned by the Council;
- (b) be responsible for and direct the overall administration of the Nation, including all program departments, administrative units, and tribal enterprises and including responsibility for negotiation of all tribal program contracts;
- (c) direct and control the continuation of current programs and ventures; and also direct and control all new ventures, both in the private and public sectors, as designated by the Council;

- (d) be responsible for the negotiating committee during the annual Bureau of Indian Affairs (BIA) negotiations;
- (e) inform and update the Council by maintaining a centralized information management system for all programs departments, administrative units, and tribal enterprises;
- (f) conduct program department, administrative unit, and tribal enterprise staff meetings;
- (g) all other related duties as assigned by the Council.

The Tribal Administrator shall be a member of the Nation and shall be accountable and responsible to the Chief Executive Officer. The Tribal Administrator shall carry out the following duties:

- (a) coordinate the development and be responsible for monitoring the annual Indirect Cost Budget;
- (b) coordinate the development and be responsible for monitoring the annual General Fund Budget;
- (c) be responsible for the direct supervision of all departmental directors;
- (d) respond to community concern and complaints;
- (e) serve as staff person for Budget Committee;
- (f) be responsible for reviewing annual federal budgets and submitting comments to appropriate agencies;
- (g) represent the Nation at federal, state, and local meetings;
- (h) direct, plan, and coordinate all projects assigned by the Chief Executive Officer;
- (i) enforce all policies and procedures established by the Nation;
- (j) any other related duties as assigned by the Chief Executive Officer.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section C. Penobscot Nation Judicial System

In order to maintain the integrity and fairness of dispute resolutions, the Penobscot Nation Judicial System is established as a separate and distinct branch of the Penobscot Nation Tribal Government. The Penobscot Nation Judicial System shall consist of a

Tribal Court and an Appellate Panel which shall exercise the powers of the judicial branch of the Penobscot Nation. The decisions of the Penobscot Tribal Court and the Penobscot Nation Appellate Panel are not reviewable by any other body of the tribal government.

Part 1. Powers of the Tribal Court.

The Penobscot Tribal Court shall have jurisdiction over all cases and controversies which fall within the jurisdiction of the Nation, including, but not limited to the following:

- (a) exclusive jurisdiction over all civil disputes which pertain to internal tribal matters, including: constitutional review of governmental actions, violation of civil rights, all other disputes affecting property rights, and ownership, descent or possession of land within Penobscot Indian Nation Territory, and which are not reserved to the exclusive jurisdiction of the Tribal Council or to another body of tribal government by the provisions of this Constitution;
- (b) exclusive jurisdiction over violations of the tribal constitution, tribal laws, tribal ordinances, civil, criminal and juvenile offenses committed by tribal members to the extent specified in tribal law, 25 U.S.C. §1721, et seq., 30 M.R.S.A. 56201 et seq., and any amendments thereto;
- (c) Indian child custody proceedings;
- (d) jurisdiction over all other civil matters arising within the Territory of the Tribe Nation and not committed by law to the exclusive jurisdiction of the courts of the United States or the State of Maine.

Part 2. Sovereign Immunity.

The Penobscot Nation Tribal Court shall have no jurisdiction over actions naming the government of the Penobscot Nation as a party unless the Nation specifically consents to be sued in such action, provided, however, that the Penobscot Tribal Court shall have authority to render opinions on the constitutionality of actions of the Nation.

Part 3. Composition of the Tribal Court.

The Penobscot Nation Tribal Court shall consist of a Chief Judge, Associate Judge(s), a Director, Clerk, Tribal Prosecutor, Public Defender and Juvenile Intake/Probation Officer(s), all of which shall be

appointed by the Governor and confirmed by the Council. The Chief Judge and any Associate Judges shall be appointed for terms of five years. The Chief Judge shall nominate any Associate Judges. No person shall be eligible to serve as judge of the Penobscot Judicial System who is not a member in good standing of a bar of the highest court in one of the states of the United States, and no person shall remain a judge of the Penobscot Judicial System who does not become and remain a member in good standing of the bar of the Supreme Judicial Court of the State of Maine within one year after being appointed as judge. The salary or hourly fee paid to any judge of the Penobscot Judicial System may not be reduced during his or her term of office without his/her consent except upon removal.

No Judge shall be removed during the appointed term except upon a finding of just cause by the Governor and Council followed by a public hearing. "Just cause" for removal of a Judge is defined as any of the following: disbarment by any jurisdiction, censure or reprimand by the Maine Board Bar of Overseers or a similar board of any other jurisdiction, active involvement in tribal politics or failure to perform his judicial duties impartially and diligently.

Such public hearing may not take place unless ten day public notice and notice to the Judge whose removal is to be considered is given. The notice must include the specific charges and reasons for removal which are to be considered at the public hearing, the date and time of the hearing. A Judge may be removed for just cause following such public hearing by a unanimous vote of the total elected membership of the Governor and Tribal Council. The decision of the Governor and Tribal Council shall not be subject to judicial review.

Part 4. Political Activities.

No judge of the Penobscot Nation Tribal Court shall hold any elective office of the Nation while serving in a judicial capacity. Active involvement by a judge in tribal politics in any capacity, other than that of judge in a case appropriately brought before the Tribal Court, shall be considered just cause for removal. A judge may engage in activities to improve the law, the legal system, and the administration of justice. A judge should, however, regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.

Part 5. Tribal Court Rules and Procedures.

The Chief Judge of the Penobscot Nation Tribal Court shall adopt Rules and Procedures for the Tribal Court to govern actions before the Court which shall be designed to ensure constitutional, convenient, uncomplicated and prompt resolution of disputes. The Court shall establish its own criteria for operating business. The Chief Judge is the sole regularly designated trial judge and shall supervise all judicial business of the Court including: assignment of cases, appointment of counsel, issuance of administrative orders and supervision of court personnel. In the rare instance, where the Chief Judge is unable to preside over a case due to a conflict of interest or schedule, one of the Appellate Judges may be designated to sit in the Chief Judge's stead.

Part 6. Penobscot Appellate Panel.

The Penobscot Nation Appellate Panel is established to hear appeals from the decisions of the Penobscot Nation Tribal Court. The Rules of Procedure as established by the Tribal Court shall govern the Appellate Panel. The Appellate Panel shall consist of six judges, all of whom shall meet the qualifications for judges appointed pursuant to Section 3 of this Article. Each appeal to the Appellate Panel shall be heard by three randomly selected Appellate Judges who will render a written opinion of their decision. The Governor and Tribal Council shall appoint the Judges of the Appellate Panel for terms of five years and may remove them only through the procedures for removal provided in Section 3 of this Article.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section D. Reserved Powers

All power of the Nation is inherent in its members. This Constitution is the expression of the will of the members of the Nation, and the enumeration of powers herein is not exclusive and shall not be construed to deny or limit other powers retained by its members. All powers not specifically enumerated in this Constitution are reserved to the members of the Nation.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section E. Administrative Bodies & Powers

Departments: The director of each department shall forward progress reports of each program component to the Council on a quarterly basis. The Governor and Council shall meet with the directors on a quarterly basis to review their programs and budgets. The department directors shall meet with the Chief Executive Officer or his/her designee one day each week.

Committees: Committee members are generally nominated by the Governor with the advice and consent of the Council, however, members of the Census, Land, and School Board Committees are elected as provided in the tribal election laws (Chapter I — Penobscot Tribal Government, Sub-chapter VI — Tribal Elections). The Governor and Lieutenant Governor are ex-officio-members of all committees. Committees shall make recommendations to the Governor and Council as appropriate, and the governing body shall not ignore requests to take action. Each committee shall function within the limits of tribal law applicable to it. The Census and School Committees function on an autonomous basis pursuant to applicable tribal law. To the extent that no by-laws or policies and procedures exist, each committee shall establish by-laws and policies and procedures pertaining to its specific committee. With the exception of the Census, Land and School Board Committees, committee by-laws are required to be approved by the Council. The Council shall review committee by-laws on a yearly basis, beginning with the month of January.

The Nation has an established business organization structure. Departments and committees are accountable to the Governor and Council as the Corporate Executive Branch.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section F. Petitions by the People

It is the right of the people at all times to give instructions, address grievances, or propose legislation to the Governor and Council by petition. The petition process shall be ordered through the applicable tribal petition law (Chapter 1, Penobscot Tribal Government Subchapter V — General Petition Standards and Procedures).

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section G. Employment

The Nation has a work force of employees to administer the many programs available and/or to provide the services available to eligible tribal members and/or others. The government of the Nation, in its capacity as employer, shall operate within the confines of the prevailing Personnel Policies & Procedures Manual, Approved as Amended March 5, 1985, to include subsequent revisions by Tribal Council. Amendments to said manual shall be made only by the proper procedure as defined within said manual.

Recommendations of the Personnel Committee shall be submitted to the Council for appropriate action. The Personnel Committee shall consist of five (5) members. The Personnel Committee membership

shall be by nomination of the Governor with the advice and consent of Council. The Personnel Committee shall consist of not more than two (2) duly appointed Council members, two (2) tribal employees, and one community member, one of whom shall be a woman. The quorum of the Personnel Committee shall be any three (3) members present. The Personnel Committee shall perform its duties within the established by-laws of the Committee and shall conduct meetings within an established format. The Personnel Committee must create a written record to be held confidential in cases of appeal. At no time may the Personnel Committee allow any other person to be present at its meetings except those with business before the Committee.

ARTICLE V. ORGANIZATION OF GOVERNMENT

Section H. Financial Accountability

In order to enable the Nation to make financial plans for both current and capital expenditures and to permit tribal members to form intelligent opinions based on sufficient accurate information as to the financial policies and administration of the Nation, the following principles are adopted.

Part I. General Fund Budget.

The Governor, Tribal Council and Budget Committee shall make all appropriations of the General Fund in accordance with an annual budget. The members of the tribe may enact a budget ordinance which will establish standard procedures for: the making and administration of budgets, placement of responsibility for the tasks related to budget preparation and administration, determining the amount of revenues in such manner that budgets may be balanced on the basis of actual revenue and obligations within the budget period and controlling the payment of debt and other expenditures.

Part 2. Financial Accountability Standards.

Tribal members may also enact an ordinance requiring the establishment of a standard procedure by which to insure accountability to all members of the Nation on the status of: the Nation's General Fund Budget, any proposed business enterprises requiring expenditures by the Nation and any funds held in trust for the Nation. The Governor, Lieutenant Governor, Tribal Council, Budget Committee and all Departments shall be required to administer their respective functions in accordance with the principles adopted in the budget and financial accountability ordinances.

Part 3. Annual Audit.

The Governor and Council shall cause an audit of tribal accounts to be conducted annually by a certified public accountant. Quarterly budget status reports shall be prepared internally and an annual financial statement shall be made available to tribal members for their inspection. The annual financial statements shall be audited by a certified public accountant.

Part 4. Conflict of Interest.

Tribal officials are prohibited from participating in financial decisions of the Nation in instances in which the tribal official has a personal financial interest which will be affected by the decision.

ARTICLE VI. ELECTIONS

All elections of the Penobscot Nation shall be conducted in accordance with applicable Tribal election laws, as such laws may be amended from time to time (Chapter 1 — Penobscot Tribal Government, subchapter VI — Tribal Elections).

ARTICLE VII. SAVINGS CLAUSE

All laws, ordinances, resolutions, and policies heretofore enacted by General Meetings of the Nation or by the Governor and Tribal Council shall remain in full force and effect to the extent that they are not inconsistent with this Constitution. Any prior enactments which are inconsistent with this Constitution shall be not deemed invalid unless specifically rescinded or judicially determined to be unconstitutional by a court of competent jurisdiction.

ARTICLE VIII. SEVERABILITY

If in the future, any provision of this Constitution shall be declared invalid by a court of competent jurisdiction, the valid portions shall remain in full force and effect.

ARTICLE IX. ADOPTION OF CONSTITUTION

This Constitution shall become effective when adopted by a simple majority of the voters of the Penobscot Nation who vote in a referendum called for that purpose by the Governor and Council.

In the event the Governor and Council fail to affirmatively act upon a resolution calling for the referendum within fifteen days of the Council meeting at which the resolution is requested, the Tribal Clerk shall call and hold a referendum for the purpose of adopting the Constitution in the manner set forth below.

The Tribal Clerk shall send notices of the referendum to all eligible voters of the Nation at least thirty business days prior to the date of the referendum. Those voters unable to vote in person have the right to request in writing an absentee ballot and a copy of this Constitution. Properly notarized absentee ballots must be received by the date and hour the voting polls close in order to be valid.

Tabulation of the results of the referendum shall be supervised by the Tribal Clerk and Deputy Tribal Clerk(s) of the Nation who shall certify the results within twenty-four hours of the vote.

ARTICLE X. AMENDMENTS TO THE CONSTITUTION

Section A. Procedure for Amendment

A proposed amendment to this Constitution shall be placed upon the ballot at a biennial gubernatorial election upon passage of a resolution by the Tribal Governor and Council or may be voted on by referendum as provided under Article IX. The amendment shall become part of this Constitution upon an affirmative vote in an amount equaling three-quarters (3/4) of those votes cast in the referendum adopting the Constitution.

Section B. Listing of Amendments

The Tribal Clerk shall be responsible for maintaining and updating the list of amendments to the Constitution and all other records with regard to the amendment procedure.