

SEP 15 1980



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1980

Honorable Morris K. Udall
Chairman, Committee on Interior and
Insular Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This supplements our report of August 25, 1980, on H.R. 7919, a bill to settle Indian land claims in the State of Maine. In our earlier report we enclosed a proposed amendment to H.R. 7919 in the nature of a substitute. The proposal was developed in the course of discussions with tribal and State officials in an effort to achieve agreement on substitute language which would clarify governmental responsibilities in implementing the land claims settlement. Our proposed amendment reflected a large measure of agreement, but at the time of its submission discussions had not been concluded with respect to Section 6(b) of the bill. Those discussions have now been concluded and this is to provide you with our recommended language for that provision.

Section 6(b) of H.R. 7919 as introduced provides:

(b) The Passamaquoddy Tribe, the Penobscot Nation, their members, and the land owned by or held for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act. The Maine Implementing Act is hereby approved, ratified and confirmed, and the provisions of the Maine Implementing Act which hereafter become effective including any subsequent amendments pursuant to subsection (d), are incorporated by reference as fully as if set forth herein. The Maine Implementing Act shall not be subject to the provisions of Section 1919 of Title 25 of the United States Code.

As we mentioned in the course of our testimony at the Committee's August 25 hearings on the bill, one of our principal concerns with the settlement proposal is the language of Section 6211(2) and (4) of the Maine Implementing Act which would allow the State to reduce funding to the Passamaquoddy Tribe, the Penobscot Nation, and their members in circumstances where the Tribes or individual members are recipients of Federal funds "within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State" Section 6(b) of H.R. 7919 would approve, ratify, and confirm the provisions of the Maine Implementing Act, including Section 6211.

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U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
OFFICE OF THE CHAIRMAN

Department of the Interior

THE SECRETARY
WASHINGTON, D.C. 20240

EXECUTIVE COMMUNICATION,
PETITION, MEMORIAL AND
~~DEPARTMENTAL~~ REPORT

SEP 10 1980

Supplemental ROUTING SHEET SEP 15 1980

If you recommend this matter be called to the attention of the Chairman, please so indicate by a check mark, and in any event, please initial and date this sheet to record your having seen it.

		Initial	Date	Chairman should see
1	BOYD	SB	9/15	
2	McELVAIN	Jm	9/16	
3	SCOVILLE	CS	9/16	
4	CONKLIN	CR	9/17	
	CHAIRMAN			

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ExecComm No. _____

Petition/Memorial No. _____

Bill No. HR 7919

GPO 68-866-1

individual members are recipients of Federal funds "within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State" Section 6(b) of H.R. 7919 would approve, ratify, and confirm the provisions of the Maine Implementing Act, including Section 6211.

August 25, 1980, on H.R. 7919, a bill to amend the State of Maine. In our earlier report on H.R. 7919 in the nature of a substitute. In the course of discussions with tribal and State representatives agreement on substitute language responsibilities in implementing the land management amendment reflected a large measure of consensus. Submission discussions had not been completed) of the bill. Those discussions have provided you with our recommended language.

attached provides:

the Penobscot Nation, their members, and their members, shall be subject to the State of Maine to the extent and in the manner provided in the Maine Implementing Act. The Maine Implementing Act which hereafter become effective provisions pursuant to subsection (d), are hereby approved, ratified, and confirmed as if set forth herein. The provisions of the United States Code.

My testimony at the Committee's August 25 hearing principal concerns with the settlement provisions 6211(2) and (4) of the Maine Implementing Act which would reduce funding to the Passamaquoddy Tribe, and members in circumstances where the Tribes or

Because we feared that ratification of these provisions in the State Act could result in the abuse of Federal financial assistance by allowing the State to use Federal funds to supplant State funding of programs which benefit its Indian citizens, and would therefore set a potentially dangerous precedent for the use of Federal funds nationwide, we asked State officials to provide a letter clarifying the meaning and intent of Section 6211(2) and (4) of the Maine Implementing Act.

Maine Attorney General Richard S. Cohen had sent to the Senate Select Committee on Indian Affairs a letter dated August 22, 1980, which assists in the interpretation of those provisions of the State law. However, this letter, while helpful, did not completely allay our concern, as expressed at the August 25, 1980 hearings, that Congressional ratification of the Maine Implementing Act pursuant to Section 6(b) of H.R. 7919 may be viewed as sanctioning, even if only in limited circumstances, the practice of supplanting each dollar of State aid to the tribes with a dollar of Federal aid.

After a careful study of the programs which might be affected by this provision in the Maine Implementing Act, we have arrived at the following language as a proposed amendment to Section 6(b):

(b) (1) The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseets, their members, and the land and natural resources owned by or held in trust for the benefit of the Tribe, Nation or Band, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act: Provided, however, that nothing in this section shall be construed as subjecting lands held by the United States in trust to taxation, encumbrance, or alienation. The Maine Implementing Act is hereby approved, ratified and confirmed to the extent that it is not inconsistent with the provisions of this Act. The Maine Implementing Act is not an agreement within the meaning of Section 109 of the Indian Child Welfare Act of 1978.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of any local share required by Maine State law. Federal funds used by the Tribe or Nation as local matching funds shall be considered as local funds for purposes of any maintenance of effort requirements imposed by Federal law or regulation.

(3) Nothing in this Act shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

Paragraph 6(b)(1) of our proposed amendment is substantially similar to the provision in H.R. 7919. The proviso is intended to clarify the understanding of the parties that lands acquired by the United States in trust shall not be subject to taxation and are subject to the restrictions against alienation of section 5(f)(2) of our proposed amendment (section 5(e)(2) of H.R. 7919). To the language ratifying the Maine Implementing Act we have added the phrase, "to the extent that it is not inconsistent with the provisions of this Act". While we have no intention of altering the substance of the jurisdictional agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation, to the extent that anyone in the future perceives a discrepancy between the federal and state legislation we feel it is important to recognize that the federal legislation should control.

Paragraph 6(b)(2) is a reflection of our examination of the interplay of federal and state funding of Indian programs under this new arrangement. Because lands in Passamaquoddy and Penobscot Indian territory will be tax-exempt, those Tribes may wish to rely on federal funds to match state funds available to them as municipalities. As provided in Section 6211(1) of the Maine Implementing Act, "[t]o the extent that any . . . program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through any source of revenue available." (emphasis added). For example, consistent with the Maine Implementing Act and our proposed amendment, funds received by the Tribes under a contract authorized by the Johnson-O'Malley Act (25 U.S.C. Section 452 et seq.) may be used as the local share to match state educational assistance if that use is otherwise consistent with the provisions of the Johnson-O'Malley Act. Thus, regardless of whether or not certain funding sources may be prohibited by federal law or regulation from supplanting state funds under Section 6211(2) or (4) of the Maine Implementing Act, such funds may be used to provide the local share for matching purposes.

Paragraph (3) of our proposed section 6(b) would make it clear that nothing in the Settlement Act, including the ratification of the Maine Implementing Act, should be read to supersede any federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine, unless expressly provided by that Act.

The Maine Attorney General is amending his August 22 letter to provide further explanation of Section 6211 of the Maine Implementing Act. It is our understanding that the State's interpretation is that Section 6211 (2) and (4) will not authorize the supplanting of Federal funds where such supplanting is prohibited by either Federal law or regulation.

It is the Department's intention to structure our funding programs in such a manner that no funds will be supplanted by the operation of Section 6211 of the Maine Implementing Act. This structuring may include the amendment of our regulations to prevent supplanting of funds by states. However, such regulations, if promulgated, will have effect on a national basis and will in no way treat the State of Maine differently from any other state in such funding matters.

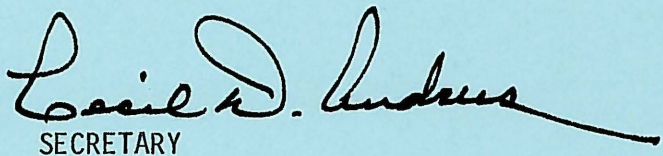
We have also been requested to consider the addition of the word "reasonable" to the language of Section 5(b)(1) of our proposed amendment. That sentence would then read as follows:

Each portion of the Settlement Fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary.

We have no objection to the inclusion of this word so long as the standard of conduct applicable to those charged with investment responsibility is consistent with Section 6 of the Uniform Management of Institutional Funds Act. That Section requires the governing board to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Those charged with investment management of the funds would be obligated to act in the utmost good faith and to exercise ordinary business care and prudence in all matters affecting its administration.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


SECRETARY