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MARKUP SESSION

H.R. 7919, TO PROVIDE FOR THE SETTLEMENT OF LAND CLAIMS OF INDIANS, INDIAN NATIONS AND TRIBES AND BANDS OF INDIANS IN THE STATE OF MAINE, INCLUDING THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, AND THE HOULTON BAND OF MALISEET INDIANS, AND FOR OTHER PURPOSES (MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980.)

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COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

WEDNESDAY, SEPTEMBER 17, 1980

Committee on Interior and Insular Affairs,  
Washington, D. C.

The committee met, pursuant to other business, at 10:07 a.m., in room 1324, Longworth House Office Building, Hon. Morris K. Udall (chairman of the committee) presiding.

The Chairman. The next order of business is H.R. 7919, by Mr. Emery and others, to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and for other purposes (Maine Indian Claims Settlement Act of 1980).

The full committee held a hearing on August 25th. Copies of the bill and accompanying material are before each member.

(H.R. 7919 and related documents follow.)

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1           The Chairman. Let me ask Mr. Ducheneaux, the staff expert,  
2 for a quick summary of the legislation.

3           Mr. Kazen suggests that the folks with the cameras turn  
4 the lights off until such time as the cameras are being used.  
5 As soon as you are finished, cut them off, please.

6           Mr. Ducheneaux?

7           Mr. Ducheneaux. Mr. Chairman, H.R. 7919 provides for a  
8 congressional ratification and implementation of a settlement  
9 agreement reached by the State of Maine and other parties for  
10 the settling of the land claims of the three Indian tribes in  
11 the State of Maine against landowners in that state.

12           The claims arose out of the Nonintercourse Act, which  
13 provides that no transfer of land from an Indian tribe will be  
14 valid unless it is ratified or sanctioned by the United States.

15           In the past, various land transactions among the tribes  
16 and the States of Massachusetts and Maine were in violation of  
17 this Act.

18           The agreement was reached by the State of Maine, the three  
19 tribes involved, and the major landowners. It has the support  
20 of the Administration. It provides, very briefly, that the  
21 tribes will agree to waive all their claims to the land in the  
22 State of Maine in return for a monetary settlement, and it  
23 provides that \$81 million will be appropriated, \$27 million to  
24 be appropriated for a trust fund for the use of the three tribes  
25 and approximately \$54 million to be used for the acquisition



1 of additional land for the tribes, and it also provides that  
2 the United States will extend Federal recognition to the three  
3 tribes, based upon the agreement and upon a state statute en-  
4 acted by the State of Maine, establishing a relationship between  
5 the tribes and the United States.

6 That, very briefly, Mr. Chairman, is the outline of the  
7 bill.

8 Mr. Kazen. Mr. Chairma, what is the responsibility of the  
9 Federal Government in this bill?

10 The Chairman. Mr. Ducheneaux?

11 Mr. Ducheneaux, Mr. Chairman, the Federal Government has  
12 no legal obligation to the potential defendants, the landowners  
13 in the State of Maine. It is possible they have some trust  
14 responsibility to the tribes involved, but they have no legal  
15 responsibility to the landowners themselves.

16 However, the lands were acquired in violation of Federal  
17 law, the United States was aware that the lands were being  
18 acquired, and the landowners are of the opinion that the United  
19 States has some moral obligation to eliminate these claims, and  
20 eliminate the problems with title.

21 Mr. Kazen. Well, is it going to cost the United States  
22 Government any money, and how much?

23 Mr. Ducheneaux. Mr. Chairman, it is going to cost the  
24 Federal Government, if this bill is passed, \$81 million.

25 The Chairman. This bill, and I regret the hasty manner



1 in which it is taken up but, again, we are facing a deadline.  
2 This bill represents a series of one of a half dozen or so  
3 along the Eastern Coast, where the real villain has been the  
4 state or someone else, and not the Federal Government. Unless  
5 we move along with these things, there could be paralysis in  
6 Maine, and we have a situation in Massachusetts that we worked  
7 out some time ago.

8 I favor the legislation, and the White House and the  
9 Administration strongly favor it. The Interior Department has  
10 some amendments, but generally they favor it. I have been  
11 asked by Senator Mitchell of Maine to tell the committee that  
12 he strongly supports it. I hope we can move along with it, and  
13 that the bill will pass.

14 Mr. Marriott. Would the gentleman yield?

15 The Chairman. Yes.

16 Mr. Marriott. I was one who sat in on the hearings and  
17 listened to both sides of the issue, and I can see the concerns  
18 of the gentleman from Texas.

19 If I could give five simple reasons why I think it is a  
20 good bill and why we ought to spend the \$81 million: First of  
21 all, the major parties to the claim have studied it over the  
22 last couple of years, and are all agreed it is a good bill, and  
23 is something that should be done. The Senate passed their bill  
24 yesterday. The tribes, the landowners and the Administration  
25 all agree that it is something that should be done.



1           Second, enactment of the settlement would remove a cloud  
2 from over the title to 12 million acres of land in Maine, and  
3 I think further economic and social disruptions will occur,  
4 and if we do not do it here, we are going to wind up in court,  
5 and I think the \$81 million is a small price to pay when you  
6 look at the alternatives.

7           The \$81.5 million is far less than the cost of litigation.  
8 Some estimate that it would cost somewhere between \$1 billion  
9 and \$2 billion if this thing got out of hand and went to court.  
10 The settlement gives the impoverished tribes a genuine oppor-  
11 tunity to become self-sustaining, self-governing entities, and  
12 funds to develop their potential.

13           What the money does, \$81.5 million, the amount of money  
14 involved, is that it provides \$54.5 million of that to actually  
15 purchase 300,000 acres for the tribes, and \$27 million goes into  
16 a trust fund that the tribes can only use the income or interest  
17 from.

18           Finally, the United States does in fact have at least a  
19 moral obligation to facilitate this and participate in the  
20 negotiated settlement because of their failure to enforce the  
21 Nonintercourse Act.

22           The State of Maine has already expended approximately \$20  
23 million for these Indians in various social programs. So it  
24 seems to me as I look the whole situation over, even though the  
25 \$81 million bothers me to some extent, I think it is a wise and



1 prudent thing for us to put this one out of the way and get it  
2 settled, and I think it will in the long run save everybody,  
3 including the Federal Government, a lot of time and money.

4 I would urge that the committee favorably pass out the  
5 bill.

6 The Chairman. We had a bill earlier in the session in-  
7 volving a similar claim in New York State, and a tenuous agree-  
8 ment has been put together involving Federal lands and state  
9 lands, and a little money. We lost it on the floor under un-  
10 fortunate circumstances. I think we ought to move on this one  
11 and perhaps give us a sensible pattern to apply to some of the  
12 other disputes as they come down the road.

13 Mr. Clausen. Would the gentleman yield?

14 The Chairman. The gentleman from California.

15 Mr. Clausen. I want to ask a question of counsel.

16 You made reference in your comments to the fact that the  
17 Indians had waived any further claims, if this agreement can  
18 be finalized, in effect, through the legislative process. Is  
19 that in writing? Has there been a written statement to that  
20 effect presented to the committee? Do we have that?

21 Mr. Ducheneaux. Mr. Chairman, first of all, the three  
22 tribes are parties to this agreement which would be implemented,  
23 so they are agreeing to the extinguishment of all their claims  
24 against the State of Maine.

25 Mr. Clausen. That is part of the written agreement?



1 Mr. Ducheneaux. It is part of the agreement, and it is  
2 embodied in the bill itself, that before the agreement can be  
3 implemented and ratified, before they get any of the benefits,  
4 they must agree to a written statement extinguishing their  
5 claims.

6 Mr. Marriott. Would the gentleman yield?

7 Mr. Clausen. Yes.

8 Mr. Marriott. I think the point needs to be made that the  
9 Indians' claim represents about two-thirds of the State of  
10 Maine. We are talking about almost the whole state. It seems  
11 like this is a good tradeoff for the State of Maine.

12 The Chairman. We have this paralysis in Martha's Vineyard  
13 where land titles are under a cloud. Everybody is paralyzed.

14 Mr. Clausen. I am inclined to concur with the statements  
15 of the Chair as well as our friend from Utah. It is my under-  
16 standing, also, that the Senate Select Committee -- I under-  
17 stand they have passed a version of the bill, and it might be  
18 in order for us to expedite to give consideration to the  
19 offering of the Senate version as a part of our proceedings  
20 here, if that is in order, Mr. Chairman.

21 The Chairman. Well, I suspect the most expeditious thing  
22 to do would be to pass the amendment Mr. Marriott added, and  
23 then we will have most of the differences gone over.

24 Without objection, the reading of the bill is dispensed  
25 with.



1           The Chair recognizes the gentleman from Utah.

2           Mr. Marriott. Mr. Chairman, I have an amendment which is  
3 in the nature of a substitute. It basically is the very same  
4 bill that the House passed out of our committee -- we have not  
5 passed it yet, but the bill we discussed in committee -- and it  
6 has a few technical amendments. It is now the proposal that  
7 has been agreed to by all parties. I would simply ask, to  
8 summarize, that we incorporate the Senate language.

9           The Chairman. Is this the Senate language?

10          Mr. Marriott, I ask unanimous consent that this bill be  
11 considered as read.

12          The Chairman. Without objection, the amendment in the  
13 nature of a substitute will be considered as read.

14          (Text of the amendment in the nature of a substitute  
15 offered by Mr. Marriot follows.)

16          \*\*\*\*\* Insert. \*\*\*\*\*

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1 The Chairman. Is there further question?

2 Mr. Kazen. Mr. Chairman, I just want to get this straight  
3 now. This substitute is the Senate language?

4 Mr. Marriott. Yes, this is the Senate language.

5 Mr. Kazen. And this is the latest on the agreement?

6 Mr. Marriott. Yes. It is basically the general provis-  
7 ions that we worked on in committee, in the full committee,  
8 plus those where the disputes have now been worked out in the  
9 Senate language, and this now satisfies all parties as far as  
10 we understand.

11 Mr. Kazen. And the explanation that the gentleman gave a  
12 while ago applies to this substitute?

13 Mr. Marriott. It does.

14 Mr. Kazen. Thank you.

15 Mr. Clausen. If the gentleman would yield, it is my under-  
16 standing that both the majority and minority staff have very  
17 carefully evaluated this substitute and find it concurs with  
18 the objectives of the committee as we discussed it.

19 Mr. Marriott. And it is my understanding, Mr. Ducheneaux,  
20 that that is correct.

21 The Chairman. The question occurs on the Marriott sub-  
22 stitute. All in favor say "aye."

23 (Chorus of ayes.)

24 The Chairman. Those opposed say "no."

25 (No response.)



1 The Chairman. The ayes have it. The substitute is agreed  
2 to.

3 The question now is on the bill as amended by the sub-  
4 stitute. Those in favor will say "aye."

5 (Chorus of ayes.)

6 The Chairman. Those opposed, say "no."

7 (No response.)

8 The Chairman. The ayes have it.

9 Mr. Marriott, do you wish to make a motion to report the  
10 bill?

11 Mr. Marriott. Mr. Chairman, I do make a motion.

12 The Chairman. The question is on reporting the bill as  
13 amended.

14 Those in favor say "aye."

15 (Chorus of ayes.)

16 The Chairman. Those opposed say "no."

17 (No response.)

18 The Chairman. The ayes have it. The bill is reported,  
19 and the Chair will prepare the necessary report.

20 (Whereupon, at 10:20 a.m., the committee proceeded to the  
21 consideration of S. 2126.)

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# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

August 25, 1980

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

Dear Mr. Chairman:

This responds to your request for our views on H.R. 7919, a bill "To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes."

We view the settlement of the Indian land claims in the State of Maine as one of the most important issues in Indian affairs facing Congress today. After three and one-half years of effort a legislative settlement proposal is before the Congress, one which is supported by the State, the Tribes, and the major landowners in the State, and which has already received the endorsement of the State Legislature. That proposal is predicated upon the authorization of the appropriation by Congress of \$81.5 million to carry out its provisions.

Because years of continued litigation would have a severe impact on the people of Maine — both Indian and non-Indian — and because the settlement proposal is based on the agreement of all relevant parties and should therefore provide a lasting solution to the problem, we do not object to the Federal contribution contemplated by the bill. However, we have raised a series of questions regarding a number of the provisions of the bill, especially insofar as it provides for the role of the Federal Government as trustee for the Maine Tribes. We have met on several occasions with officials of the State and Tribes, and we fully appreciate the efforts the parties have made to achieve agreement on many of the important provisions of the bill. We have worked with those officials to redraft a number of those provisions and have achieved a large measure of agreement on substitute language to clarify the governmental responsibilities and jurisdictional relationships among the parties. It has not been our intent to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation with respect to their new relationship. We have only sought to assist in making that agreement completely workable.

We have enclosed a proposed amendment to H.R. 7919 in the nature of a substitute, which we believe would clarify the provisions of the bill while adhering closely to the intent and substance of it. We discuss below the more significant changes which our proposal would make in the language of H.R. 7919 as introduced. Discussion among the parties has not yet been concluded with respect to one provision of the bill, Section 6(b). We have therefore noted in the proposed amendment that the language of that section is to be supplied. We anticipate concluding the discussion of that provision shortly and will report to the Committee on proposed language for it as soon as possible.



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We have provided in Section 3(2) of our proposed amendment for a definition of "Indian territory", primarily to aid in a reading of revised Section 5(d) which has been redrafted to clarify how title to lands acquired pursuant to the terms of the Act shall be held. The definition of "Indian territory" tracks the definitions of "Passamaquoddy Indian Territory" and "Penobscot Indian Territory" contained in the Maine Implementing Act, and is not intended to be inconsistent with the use of those terms. It is important to note that the jurisdictional character of the lands described in Section 3(2)(C) will not be altered unless they are actually acquired by the United States in trust for the Passamaquoddy Tribe or the Penobscot Nation pursuant to Section 5(d). We also note that "Indian territory" has been defined in a manner which permits the parties to vary the boundaries of this area later by mutual agreement.

One important concern arises in connection with these definitions. Lands may only be included within Passamaquoddy or Penobscot Indian Territory under Section 6205 of the Maine Implementing Act if they are acquired by the United States on or before January 1, 1983. Designation of lands as Indian territory is critical because only lands so designated will be held in trust by the United States, subject to Federal restrictions against alienation, and within the limited governmental authority of those Tribes. Lands acquired outside Indian territory, which cannot be so held, are much less likely to provide a lasting land base for the Tribes. The date chosen appears to have been based on the assumption that land acquisition would begin early in 1981, thus giving the Secretary and the Tribes nearly two years within which to acquire lands within Indian territory. It now appears that however quickly H.R. 7919 is enacted, it may be difficult to acquire the contemplated acreage within the time limit.

Initially, we recommended to State officials that the Maine Implementing Act be amended to address this concern by providing for a more realistic date for cutting off the creation of Indian territory. They responded that such a concern is premature, and that the Legislature would therefore be unwilling to amend the Act at this time. Nevertheless, we have been assured by State Attorney General Richard S. Cohen that if the appropriation of the necessary sums is delayed so that the contemplated land acquisition could not be effected by January 1, 1983, he would personally be willing to recommend to the State Legislature that the Implementing Act be amended to provide for an adequate extension of time. At any rate, we note that Congress has plenary power to remedy this concern if land acquisition is delayed for reasons beyond the control of the Tribes, and the State Legislature does not provide for an extension of the time limit. The Administration will seek an appropriation of \$81.5 million in fiscal year 1981, upon enactment of an appropriate settlement.



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The most important provision in H.R. 7919 is clearly Section 4, which provides for the final extinguishment of all Indian land claims in the State of Maine. We have revised Section 4(a)(1) of H.R. 7919 only to add a proviso which would make it clear that nothing in the section should be construed to affect an ordinary land title claim of an individual Indian within the State. Without the proviso the section, read literally, would extinguish the title claim of an Indian homeowner in the State whose claim is based on a Federal law generally designed to protect non-Indians as well as Indians, such as laws governing Federal home loans.

The effect of this provision of H.R. 7919 would be that all Indian land claims in Maine arising under Federal law will be extinguished on the date of the enactment of the Act. However, the Tribes have expressed the concern that there is no guarantee that they will receive the consideration authorized in the bill for their agreement to give up their claims. They have therefore advocated that the bill be amended to condition extinguishment of the claims under Section 4 on the appropriation of \$81.5 million by Congress. Another Indian land claim settlement bill in this Congress, H.R. 6631 concerning the Cayuga land claim in New York State, was amended by the Committee to provide for such a conditional amendment. The State of Maine, on the other hand, desires immediate extinguishment of the land claims in order to clear titles in the State as soon as possible. State officials note that the aboriginal title claims of Alaska Natives were extinguished on the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.). We think it is clear that Congress does have plenary power to extinguish claims of aboriginal Indian title. Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955). Nevertheless, we appreciate the Tribes' concern, and we would therefore not be opposed to an amendment which would condition extinguishment on the making of the necessary appropriations. We wish to note, however, that under Public Law 96-217 the statute of limitations at 28 U.S.C. § 2415 is now due to run on December 31, 1982. Thus, a delay in appropriations beyond that date may force the Tribes to file protective lawsuits.

Sections 4(a)(2) and (3) of H.R. 7919 would extinguish claims of Indian title arising under State law. We think this is an inappropriate subject for Federal legislation, and indeed, the identical provisions appear in Section 6213 of the State Implementing Act. Nevertheless, we have agreed to include in our proposed amendment language in lieu of those two paragraphs which would bar the United States from asserting as trustee for the Indians past land claims arising under State law.



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Section 5(a) of H.R. 7919 would establish a \$27 million settlement trust fund for the benefit of the Passamaquoddy Tribe and the Penobscot Nation. We have revised Section 5(b) of H.R. 7919 to clarify the role of the Secretary as the trustee charged with the responsibility of administering this fund. The two Tribes and the Administration agreed in February 1978 that any such trust fund should be administered in accordance with an agreement between the Secretary and each Tribe. The Tribes desire the opportunity for a more liberal investment policy than has historically been authorized for tribal trust funds under the Act of June 24, 1938 (25 U.S.C. § 162a). We respect that desire and are willing to permit future investment of the trust fund to be carried out pursuant to an agreement between the Secretary and each Tribe, but we are concerned that the language of Section 5(b)(1) of H.R. 7919 does not adequately protect the United States from unwarranted liability. The provision contains the requirement that the Secretary must agree to "reasonable terms" for investment within 30 days of submission of proposed terms by the Tribe. We believe that this is a difficult standard and an unworkable procedure. In our proposed amendment, we adopt an approach suggested in the 1977 Final Report of the American Indian Policy Review Commission. Under that approach trust funds could be utilized by the Tribes for potentially more profitable investments, but only after the Tribes specifically release the United States from liability in the event the chosen investment results in a loss.

A proviso in Section 5(b)(3) of H.R. 7919 would require each Tribe to expend annually the income from \$1 million of its portion of the Settlement Fund for the benefit of tribal members over the age of 60. We understand that this was an important factor in discussions of the proposed settlement between the tribal negotiating committees and the memberships of the Tribes, and we applaud their desire to provide special assistance to the Tribes' senior members. However, we questioned whether such a provision should appear in the bill since the Secretary has no responsibility under the bill for any distribution of trust fund income, a point which has been agreed upon among all the parties. Tribal officials have assured us that it is the Tribes alone, not the Secretary, who will be responsible for the expenditure of trust fund income for the benefit of tribal members over 60. In light of that understanding, we do not object to the provision remaining in the bill.

Section 5(c) of H.R. 7919 would establish a \$54.5 million Land Acquisition Fund. The Tribes had insisted upon the acquisition of 300,000 acres of average quality Maine woodland as the integral term of the settlement of their land claims. Our appraisers have determined that \$54.5 million is sufficient to acquire such woodland, but we believe the legislation should not be tied to any given acreage figure, since woodland of varying quality may become available in the marketplace at any given time.



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Our proposed amendment would reword Section 5(d) to clarify that the title to lands acquired in Indian territory shall be held by the United States in trust for the Passamaquoddy Tribe or Penobscot Nation. Lands acquired for the Tribe or Nation outside Indian territory shall be held in fee simple by the respective Tribe or Nation. Our proposed Section 5(d) also contains an authorization for the Secretary to take lands within Indian territory in trust after they have been independently acquired by the Passamaquoddy Tribe or Penobscot Nation. This is necessary because the Tribes contemplate the acquisition of lands outside Indian territory which would later be used for exchange purposes once additional lands within Indian territory go on sale.

The title to lands acquired for the benefit of the Houlton Band of Maliseet Indians is also addressed by this subsection. The Band desires to acquire lands in eastern Aroostook County which would be held in trust for them by the United States. Officials of the State of Maine, however, initially objected to the acquisition of lands in trust status outside the boundaries of Passamaquoddy Indian Territory or Penobscot Indian Territory. We have sought to accommodate both their concerns by redrafting the subsection to authorize the Secretary to acquire lands in trust for the Houlton Band, but only after obtaining the concurrence of authorized State officials to the acquisition. We have provided further that the Houlton Band would be authorized to enter into contracts with appropriate government agencies for the provision of services, similar to those we recommend below with respect to the Passamaquoddy Tribe and the Penobscot Nation. We expect that State and Band officials will work together in good faith to identify suitable lands for the Houlton Band.

The revised subsection also provides that notwithstanding the provisions of the Act of August 1, 1888, and the Act of February 26, 1931 (40 U.S.C. §§ 257, 258a), the Secretary may acquire land under this section only if the Secretary and the owner of the land have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. The cited provisions allow Federal agencies to utilize condemnation procedures and declarations of taking to acquire land for Federal purposes. Our proposed Section 5(d) would not bar the use of such procedures, but would only require the consent of the landowner to the terms of the taking. This limitation was requested by the landowners who intend to sell lands to the Tribes, and we have no objection to it.

Section 5(e) of our proposed amendment is new. We believe that no Federal money should be paid to the Tribes -- either for the trust fund or for land acquisition -- until they each have stipulated to a final dismissal of their claims. This subsection would condition the Secretary's authority to expend the two trust funds for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians on a finding that authorized officials of each of the Tribes have executed documents relinquishing all their claims and have stipulated to a final judicial dismissal of their



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claims. Such relinquishments and dismissals will insure that there can be no future claim against the United States for the extinguishment of the Indian claims effected by this legislative settlement.

Our proposed subsection (f) of Section 5 is a clarification of Section 5(e) of H.R. 7919. Subsection (f) provides that the Indian Nonintercourse Act (25 U.S.C. § 177) shall not be applicable in Maine, but that lands in Indian territory or held in trust for the Houlton Band of Maliseet Indians shall nevertheless be subject to restrictions against alienation. Paragraph (3) provides specific, though limited, authorizations for the alienation of such trust lands. These are consistent with the terms of the proviso to Section 5(e)(2) of H.R. 7919, except that a specific authorization for rights-of-way, with the consent of the affected Tribe, Nation, or Band, has been added to provide for rights-of-way without resort to condemnation. The authorization for exchanges in proposed Section 5(f)(3)(E) has been made more flexible by inserting language taken from Section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. § 1716). Without such flexibility such an exchange authority may prove useless because it is often difficult to find exchange lands of precisely equal value. Finally, the authorization in H.R. 7919 for transfers of land the proceeds of which must be reinvested within two years has been revised in proposed Section 5(f)(3)(F) to reflect the Tribes' intent that sales be authorized only if the Secretary has already made specific arrangements for the acquisition of replacement land.

Section 5(f) of H.R. 7919 would require the Secretary to agree within 30 days to "reasonable terms" for the management and administration of land held in trust for the Passamaquoddy Tribe and Penobscot Nation. We believe the procedures outlined in this subsection are unwieldy but, more importantly, existing Federal laws and regulations provide adequate authority for the Tribes to manage their own trust lands. We have therefore rewritten the provision, which appears as Section 5(g) of our proposed amendment, to restate existing law which would authorize the Secretary to enter into land management agreements with either Tribe in accordance with Section 102 of the Indian Self-Determination Act (25 U.S.C. § 450f). We note that the contract declination procedures of that Act and existing regulations would be applicable to such agreements.

In our proposed amendment we have added a new subsection (h) to provide for condemnation of Passamaquoddy, Penobscot, and Houlton Band lands in accordance with state law relating to such lands. This subsection is necessary because Indian trust or restricted lands may not be condemned under state law without Congressional authorization. Congressional authorizations have generally required that the condemnation be in Federal court and that the United States be a party. We believe it would be unwise to diverge from this practice. Subsection (h) also specifies the disposition of the compensation received.



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The disposition specified differs slightly from Section 5(g) of H.R. 7919 in that it channels proceeds through the Land Acquisition Fund rather than requiring their reinvestment within two years. Since it is the Tribes who initiate land purchases under the scheme of the bill and since sums in the Land Acquisition Fund may only be used for that purpose, the two year requirement is superfluous and confusing. Subsection (i) provides that the proceeds from the condemnation of trust or restricted Indian lands in Maine pursuant to any law of the United States other than this Act shall likewise be reinvested through the Land Acquisition Fund.

Section 6(a) of H.R. 7919, and as revised in our proposed amendment, is intended to effectuate the broad assumption of jurisdiction over Indian lands by the State of Maine. As noted above, we will be reporting to the Committee on Section 6(b) as soon as discussion on it is concluded.

Our proposed amendment contains a new Section 6(c) to make absolutely clear the intention of the parties that the Federal government will not have "Indian country" type law enforcement jurisdiction on Indian lands in the State of Maine. See *State v. Dana*, 404 A.2d 551 (Me. 1979) cert. denied 48 U.S.L.W. 3537 (February 19, 1980). Our proposed Section 6(d) is merely a restatement and clarification of the first sentence and proviso of Section 6(c) of H.R. 7919. No substantive change is intended, except to clarify that the parties have agreed that the jurisdictional provisions of Section 1362 of Title 28, United States Code, shall apply to the three Tribes, notwithstanding the otherwise broad language of the provision.

The second part of Section 6(c) of H.R. 7919 would permit suits against the Secretary by judgment creditors of the Passamaquoddy Tribe and Penobscot Nation to force payment of the judgments out of Settlement Fund income. We believe that such litigation would be burdensome and unnecessary. Our proposed Section 6(d)(2) would provide instead a procedure for administrative attachment of future trust fund income by judgment creditors of the two Tribes. Under that provision the Secretary would be required to honor valid court orders of money judgments against either Tribe from causes of action accruing after the date of the enactment of the bill, by making an assignment to the judgment creditor of the right to receive future income from the Settlement Fund, notwithstanding the provisions of the Anti-Assignment Act (31 U.S.C. § 203).

Under Section 6(d) of H.R. 7919 Congress would consent in advance to any amendment of the Maine Implementing Act as long as the Tribes agreed to any such amendment. The breadth of this "consent" gave us cause for concern. We have therefore included in our proposed Section 6(e)(1), language taken from S. 1181 (96th Cong.) which would authorize future jurisdictional agreements between the State and either the Passamaquoddy Tribe or the Penobscot Nation in the form of amendments to the Implementing Act. State and tribal officials have agreed to this provision. Our proposed Section 6(e)(2) would authorize similar agreements with the Houlton Band of Maliseet Indians.



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Section 6(f) of our proposed amendment is identical to Section 6(e) of H.R. 7919. It authorizes the Passamaquoddy Tribe and Penobscot Nation to exercise jurisdiction, separate and distinct from that of Maine, to the extent authorized by the Maine Implementing Act. That Act in turn leaves the two Tribes with exclusive authority over their own internal tribal affairs, certain misdemeanor jurisdiction over tribal members, small claims jurisdiction, and a significant residuum of regulatory authority over their own lands. The two Tribes will also be treated as municipalities under State law for purposes of jurisdiction over their lands in Indian territory, which means that no other municipality, the main unit of local government in Maine, may exercise any authority over tribal affairs in those areas. Lands and personal property in Indian territory may not be taxed; nor may income from the Settlement Fund. The Tribes and their members shall for the most part be otherwise subject to State taxes.

We note that Section 6208(2) of the Maine Implementing Act would require the Passamaquoddy Tribe and the Penobscot Nation to make payments in lieu of taxes for trust lands within Indian territory. We prefer that, instead of making in-lieu payments, the Tribes merely negotiate contracts with the counties and other districts for the provision of services. Nevertheless, this is a matter for tribal discretion, and Section 6(e) of our proposed amendment would allow for future jurisdictional agreements to accommodate our preference.

We object to the full faith and credit provision of Section 6(f) of H.R. 7919. In lieu of that provision the Tribes and State have offered language which appears in our proposed Section 6(g). It states that the Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other. The parties could agree to this form of comity without the consent of Congress, but we have no objection to its inclusion in the settlement legislation. There is, of course, no reason why the Tribes may not establish similar comity with other jurisdictions.

Section 6(g) of H.R. 7919 provides that Federal laws of general applicability to Indians, Indian tribes, and Indian lands shall not be applicable in Maine, except that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible for all financial benefits for which all other Federally recognized Indian tribes are eligible. We found this provision troublesome and confusing in that Federal financial benefits to Indian tribes would be divorced from general Federal statutes applicable to Indians. This was a subject of some discussion with representatives of the State and Tribes, and agreement was reached on the language of our proposed Section 6(h). In short, this would provide that no Federal law or regulation (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian



reservations, Indian country, Indian territory, or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction or laws of the State of Maine, shall apply within the State. This limitation would include such Federal laws, among others, as the Indian trader statutes (25 U.S.C. §§ 261-264) and the provision of the Clean Air Act Amendments of 1977 which permits Indian tribes to designate air quality standards (42 U.S.C. § 7474).

Section 6(g) of H.R. 7919 also states that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are Federally-recognized Indian tribes and that they shall be eligible for Federal financial programs on the same basis as all other Federally-recognized Tribes. Since the bill contemplates significant acquisition of lands to be held in trust for the Tribes, we read this provision to mean that such trust lands should be treated as Indian reservations for purposes of the provision of Federal Indian services. We do not object to the provision, so interpreted.

We have also included a proviso to this subsection which would limit the membership of the Houlton Band of Maliseet Indians, for purposes of the provision of Federal services or benefits, to persons who are citizens of the United States. This is similar to the limitation in Section 3 of Public Law 95-375 which recognized the Pascua Yaqui Tribe for purposes of the provision of Federal Indian services.

With the agreement of the parties we have included in our proposed amendment a new Section 7, which would clearly permit the Tribes to organize for their common welfare and adopt constitutions or charters. While we have been assured by attorneys for the State of Maine that the Passamaquoddy Tribe and the Penobscot Nation need not adopt charters under State law to avail themselves of the benefits of the status of municipalities of the State, we believe it preferable to make clear that this option continues to exist under Federal law. And, since these Tribes will be administering large land holdings and valuable assets, the adoption of organic governing documents, which would be filed with the Secretary, seems advisable.

Our proposed Section 8(f) would make Section 102 of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912) applicable to the Houlton Band of Maliseet Indians. Officials of the State of Maine consented to this provision and we have no objection to it.

Section 8(b) of H.R. 7919 provides that the eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation pursuant to the Maine Implementing Act shall not be considered by Federal agencies in determining the eligibility of either Tribe for Federal financial aid programs. To clarify this provision, which appears as Section 9(b) of our proposed amendment, we have added a proviso to the effect that Federal agencies shall not be barred by this section from considering the actual financial situation of the Tribe.

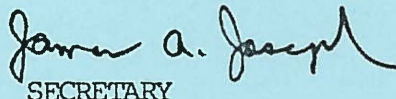


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Section 8(c) of H.R. 7919 would prevent Federal agencies from considering the availability or distribution of funds pursuant to Section 5 of the bill for purposes of denying Federal financial assistance to Indian households or to the Passamaquoddy Tribe or Penobscot Nation. We read this provision to refer only to income from the Settlement Fund to be established pursuant to Section 5(a), and expect that the two Tribes will otherwise be treated as any other tribe insofar as their income from other sources are concerned, including income derived from land or natural resources acquired pursuant to the Act. As read, the provision is unobjectionable. It appears as Section 9(c) of our proposed amendment.

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,



Acting

SECRETARY

Enclosure



Amendment to H.R. 7919 in the

Nature of a Substitute

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.



taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective Tribe, Nation, or Band. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries and status of the land acquired.

(3) The United States shall be a party to any condemnation action under this subsection and exclusive jurisdiction shall be in the United States District Court for the District of Maine: Provided, That nothing in this section shall affect the jurisdiction of the Maine Superior Court provided for in Section 6205(3)(A) of the Maine Implementing Act to review the finding of the Public Utility Commission or a public entity of the State of Maine.

(i) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (h)(2) of this section.

#### APPLICATION OF STATE LAWS

Sec. 6. (a) Except as otherwise provided in subsections (d) and (e) of this section, all Indians, Indian nations, tribes, and bands of Indians in the State of Maine, other than the Passamaquoddy Tribe and the Penobscot Nation and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe, or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws



of the State, and to the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein: Provided, That nothing in this section shall be construed as subjecting land or natural resources held by the United States in trust to taxation, encumbrance, or alienation.

(b) [To be supplied.]

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the Act of June 25, 1948 (62 Stat. 757), as amended, or the Act of July 12, 1960 (74 Stat. 469), as amended.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and Section 1362 of Title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation and their officers and employees shall be immune from suit when the respective Tribe or Nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State of Maine.

(2) Notwithstanding the provisions of Section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the Settlement Fund established pursuant to Section 5(a) of this Act and out of



such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (A) the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation and the State within their respective jurisdictions; (B) allocation or determination of governmental responsibility of the State and the Tribe or Nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe or Nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) The laws and regulations of the United States which are generally applicable to Indians, Indian tribes, and Indian lands shall be applicable to Indians, Indian tribes, and Indian lands in the State of Maine, except that no



law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine, shall apply within the State: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians, and for the purposes of determining eligibility for such financial benefits the respective Tribe, Nation, or Band shall be deemed to be Federally recognized Indian tribes: Provided, further, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be considered Federally recognized tribes for the purposes of Federal taxation and any lands owned by or held in trust for the respective Tribe, Nation, or Band shall be considered Federal Indian reservations for purposes of Federal taxation: Provided, however, That no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseet Indians for purposes of the provision of Federal services or benefits.

#### TRIBAL ORGANIZATION

Sec. 7. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for their common welfare, and adopt an appropriate instrument in writing to govern the affairs of the Tribe,



Nation, or Band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of their organic governing document and any amendments thereto.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

Sec. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective Tribe or Nation may assume such jurisdiction over Indian child custody proceedings, the respective Tribe or Nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by Sections 108(a)-(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with Sections 108(b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation shall be deemed to be "reservations" within Section 4(10) of the Act and the Passamaquoddy Tribe and the Penobscot Nation shall be deemed to be "Indian tribes" within Section 4(8) of the Act.



(e) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over the Indian child custody proceedings of that Tribe or Nation.

(f) Except as may otherwise be subsequently agreed to by the Houlton Band of Maliseet Indians and the State of Maine pursuant to Section 6(e)(2) of this Act, Section 102 of the Indian Child Welfare Act of 1978 shall apply to the Houlton Band of Maliseet Indians to the same extent that that section applies to Indian tribes as defined in Section 4 of the Act.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND  
OF MALISEET INDIANS

Sec. 9.(a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the State of Maine's eligibility for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: Provided, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this section from considering the actual financial situation of the applicant.



SECTION-BY-SECTION ANALYSIS OF H.R. 7919

Section 1

Section 1 entitles the bill as the 'Maine Indian Claims Settlement Act of 1980'.

Section 2

Subsection (a) contains congressional findings and declarations relating to the claims of the Passamaquoddy, Penobscot, and Maliseet Indians for the possession of lands in the State of Maine and damages based upon the alleged illegal transfer of such lands in violation of the Indian Trade and Intercourse Act of 1790. The subsection identifies the current entities representing the historical tribes and declares that it is in the interest of all parties that Congress settle the claim based upon the agreement reached by the tribes and the State of Maine.

Subsection (b) states that the purpose of the legislation is to eliminate the Indian claims to land in the State of Maine and to ratify the State statute defining the relationship between the tribes and the State.

Section 3

Section 3 defines, for the purposes of the legislation, the various terms used in the bill.

Section 4

Subsection (a)(1) provides that all transfers of land anywhere within the United States by the three involved tribes and all transfers of land within the State of Maine by any Indian tribe shall be deemed to be in



accordance with the Constitution and the laws of the United States, including the Indian Trade and Intercourse Act of 1790 and its various later versions, and that Congress ratifies such transfers effective on the date of such transfers.

Subsection (a)(2) provides that any transfer of land within the State of Maine by any Indian tribe shall be deemed to be in accord with the laws of the State and that Congress ratifies such transfers as of the date of transfer.

Subsection (a)(3) provides that any transfer of land made by an individual Indian after December 1, 1873, shall be deemed in accordance with the laws of the State and that Congress ratifies such transfers as of the date of transfer.

Subsection (b) provides that, if any of the three tribes had aboriginal title to any of the lands described in section 4(a), section 4(a) shall be regarded as an extinguishment of such title.

Subsection (c) provides that all claims of the three tribes or any other tribes against the United States, any State or subdivision or any other person, arising out of such land transfers, shall be deemed extinguished as of the date of such transfers.

#### Section 5

Subsection (a) provides that a Maine Indian Claims Settlement Fund will be established in the U.S. Treasury and that \$27,000,000 will be deposited in such fund after an appropriation authorized in section 13.



Subsection (b)(1) provides that the Secretary of the Interior will invest such funds, one-half for the benefit of the Passamaquoddy Tribe and one-half for the benefit of the Penobscot Tribe, under such terms determined by the tribes and agreed to by the Secretary. The Secretary is required to accept reasonable terms for such investment and administration and his decisions are made subject to judicial review in an action brought by the tribes in Federal District Court.

Subsection (b)(2) provides that no part of the principal of such funds shall be distributed to either the tribes or its members.

Subsection (b)(3) provides that the Secretary will pay, on a quarterly basis, the income from such funds to the two tribes without liability to the United States and without regulation by the United States; provided that each tribe shall expend the income from \$1,000,000 of their portion of the fund for old age programs for their members.

Subsection (c) provides that the Secretary will establish a Maine Indian Land Claims Acquisition Fund in the U.S. Treasury and deposit \$54,500,000 therein from funds appropriated pursuant to section 13.

Subsection (d) provides that \$900,000 of such fund will be used to purchase 5,000 acres of land for the Maliseet Indians with one-half of the remaining principal to be held for the benefit of the Passamaquoddy Indians and one-half for the Penobscot Indians. The Secretary is required to expend the principal and any income from such fund for the acquisition of land for the three tribes, upon their request, and for no other purpose. Land acquired for the Maliseet tribe would be equally divided between the other two tribes in the event the Maliseet tribe ceased to exist.



Subsection (e)(1) provides that section 177 of title 25, United States Code, which is essentially the Indian Trade and Intercourse language, shall not apply to any of the Indian tribes in the State of Maine or to any lands owned by such tribes.

Subsection (e)(2) provides that no transfers of land within the Indian territory of the two tribes shall be valid unless made by the tribe with the consent of the Secretary or unless taken for public uses consistent with the State statute or the laws of the United States. The Secretary and the tribes can only approve sales of timber or other natural resources; leases not exceeding 50 years; and lands sales where the proceeds are to be reinvested in lands within two years.

Subsection (f) provides that lands acquired and held in trust for the benefit of the two tribes will be managed and administered according to terms established by the tribes and agreed to by the Secretary. The Secretary must agree to reasonable terms proposed by the tribes and his decision is subject to judicial review in actions by the tribes in Federal District Court.

Subsection (g) provides that, in the event tribal lands are taken for public uses pursuant to State or Federal law, the proceeds shall be reinvested in lands within two years after the taking and such acquired lands would be subject to the terms of the bill and to the Maine Implementing Act.

#### Section 6

Subsection (a) provides that all Indians and Indian tribes in the State of Maine, except the Passamaquoddy and Penobscot, and all lands and resources held in trust by the United States for such tribes or Indians



Subsection (b) provides that the Penobscot and Passamaquoddy tribes and their members and lands shall be subject to the jurisdiction of the State to the extent provided in the Maine Implementing Act. It further provides that the Maine Implementing Act is ratified by the Congress and that its provision, including any subsequent amendments thereto, are incorporated by reference in this legislation. It also provides that the Maine Implementing Act shall not be subject to section 1919 of title 25, United States Code.

Subsection (c) provides that all Indian tribes and Indians in the State of Maine may sue and be sued in the Federal and State courts to the same extent as other citizens, except that the Passamaquoddy and Penobscot tribes shall be immune from suit as provided in the Maine Implementing Act. It provides that any money judgment entered against either tribe, if not paid within 90 days, will be paid by the Secretary out of the Settlement Fund. It further provides that the Secretary may be sued in Federal court for such money judgment.

Subsection (d) provides that the Congress hereby consents to any amendment to the Maine Implementing Act with respect to the two tribes if made with the consent of the tribes.

Subsection (e) authorizes the two tribes to exercise criminal and civil jurisdiction, distinct from the State, to the extent authorized by the Maine Implementing Act.

Subsection (f) provides that the U.S., every State, etc., extend full faith and credit to the judicial proceedings of the two tribes and the tribes extend full faith and credit to the judicial proceedings of the United States, every State, etc.



Subsection (g) provides that none of the special Federal laws relating to Indians will apply to tribes in Maine except that the Passamaquoddy, Penobscot and Maliseet tribes will be eligible for all financial benefits provided by the United States to Indian tribes and that such tribes will be deemed Federally recognized tribes for that purpose. In addition, the three tribes would be considered as Federal tribes for purposes of Federal taxation.

#### Section 7

Subsection (a) provides that the two tribes may assume jurisdiction over child custody proceedings pursuant to the Indian Child Welfare Act pursuant to the procedures established in that Act.

Subsection (b) provides that any petition to so assume jurisdiction shall be considered by the Secretary pursuant to the terms of the Indian Child Welfare Act.

Subsection (c) provides that such assumption of jurisdiction shall not affect proceedings over which a court has already assumed jurisdiction.

Subsection (d) provides that for purposes of this section, the tribes and their reservations will be deemed a "tribe" and "reservation" as provided in the Indian Child Welfare Act.

Subsection (e) provides that the State of Maine will retain jurisdiction over child custody matters until such time as the tribes may assume the jurisdiction.

#### Section 8

Subsection (a) provides that no payment made to the Passamaquoddy, Penobscot, and Maliseet tribes under this legislation shall be considered



Subsection (b) provides that the eligibility of the two tribes for payments from the State of Maine shall not be considered in determining the eligibility of the two tribes for participation in financial aid programs of the United States.

Subsection (c) provides that the availability or distribution of funds under this legislation shall not affect the right of the two tribes or of any Indian to participate in Federal programs.

#### Section 9

Section 9 provides that transfers of land by private owners through purchase by the Secretary pursuant to the bill will be deemed an involuntary conversion for Federal tax purposes.

#### Section 10

Section 10 provides that any funds held by the State of Maine in trust for the two tribes shall be transferred to the Secretary for deposit in the Settlement Fund and that acceptance of such funds will discharge any claims the tribes may have against the State with respect to such funds. It further provides that, upon receipt of the funds, the Secretary shall execute a general release of claims against the State with respect to such funds.

#### Section 11

Section 11 provides that, except as otherwise provided, enactment of this legislation will constitute a general discharge and release of all liability of the State of Maine arising from treaties or agreements to the Indians or the United States, including the action pending in the Federal District Court entitled U.S. v. Maine.



Section 12

Section 12 provides that, except as may otherwise specifically be provided in the bill, nothing in the bill is to authorize any Indian or Indian tribe to sue the United States with respect to claims extinguished.

Section 13

Section 13 authorizes the appropriation of \$81,500,000.

Section 14

Section 14 provides that, if section 4 of the bill is held invalid, the entire Act shall be invalid. If any other provision is held invalid, the remaining provisions will remain in full force and effect.