

State Proposals for Amendments to S. 2829

Status of Maliseet Land

The State does not agree to any changes in S. 2829 with regard to the legal status of land to be acquired by or for the Houlton Band of Maliseet Indians. However, the State would agree to its long-standing offer to add language enabling the State and Maliseets to negotiate with respect to the status of those lands in the future. Specific language is included under the proposed amendments to § 6 of the bill stated below.

Meaning and Scope of § 6211(2) and (4)
of the Implementing Act and Relation-
ship to S. 2829.

The State believes that any necessary clarification of the meaning and scope of the set-off provisions in § 6211(2) and (4) of the Implementing Act is best achieved through a statement in the Committee Report on S. 2829 and accordingly proposes the following language for the report:

"The Committee was advised by the Secretary of his concern that the set-off provisions in § 6211(2) and (4) of the Maine Implementing Act may work to defeat the intent of federal financial assistance to Indian Tribes, since it would appear on its face to permit the State to use federal monies to supplant State monies. However, after further inquiry, the Committee believes the Implementing Act is not inconsistent with this Bill. Specifically, the Committee understands the Maine Implementing Act to work in the following manner.

"To the extent the United States provides funds for a program which would otherwise receive State funds, then the set-off provisions of § 6211(2) and (4) apply. To the extent the United States provides funds for a program which are intended to be supplemental to a State program, then the set-off provisions of 6211(2) and (4) do not apply. The term 'substantially similar purpose' as used in the Implementing Act was not intended to include federal funds intended to enhance, enrich or supplement programs provided for under State law. Thus, for example, where the BIA funds a remedial reading program for the Tribes, such program would not be 'substantially similar' to a basic State educational grant and would not supplant State funding."

Findings - § 2

The State proposes the following changes:

Paragraph (a)(2) should be amended as proposed by the Secretary.

Paragraph (a)(8) should be deleted.

Definitions - § 3

The definitional changes as proposed by the Secretary in subsections are (a), (h) and (k) are acceptable.

The term "lands or other natural resources" in subsection (b) should be amended to "land or natural resources" and the use of this term elsewhere in the Act similarly amended.

Subsection (e) should be amended to read:

"(e) "Maine Implementing Act" means Section 1 of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in Chapter 732 of the Public Laws of 1979."

The other definitional changes proposed by the Secretary are not necessary and such terms are best defined by reference to the Maine Implementing Act.

Extinguishment - § 4

The State proposes that Paragraph 4(a)(2) and (4)(a)(3) be deleted and the following substituted in place thereof:

"(2) The United States is barred from asserting by or on behalf of any Indian, Indian nation or tribe or band of Indians any claim under the laws of the State arising from any transfer prior to the effective date of this Act of land or other natural resources located anywhere within the State of Maine.

The other changes in Section 4 and the new Section X proposed by the Secretary are not acceptable.

Establishment and Operation of
Settlement and Land Acquisition
Funds - § 5.

The State proposes the following changes to the proposals made by the Secretary:

Amend § 5(d) to read:

"(d) The principal of the Land Acquisition Fund shall be apportioned as follows:

- (1) \$900,000 to be held in trust for the Houlton Band of Maliseet Indians;
- (2) \$26,800,000 to be held in trust for the Passamaquoddy Tribe; and
- (3) \$26,800,000 to be held in trust for the Penobscot Nation.

"The Secretary is authorized to expend the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. Land within Indian Territory shall be held in trust by the United States for the benefit of the respective Tribe or Nation. Land outside the boundaries of Indian Territory shall be held in fee simple by the respective Tribe, Nation, or Band, and the United States shall have no further trust responsibility with respect thereto. If the Secretary finds that the Houlton Band of Maliseet Indians shall cease to exist, any land acquired for such Band pursuant to this Act, and held by such Band at the time of the Secretary's finding, shall be divided equally by the Secretary and transferred in fee, one-half to the Passamaquoddy Tribe and one-half to the Penobscot Nation. Except for the provisions of this section, the United States shall have no other authority to acquire lands in trust for the benefit of Indians or Indian tribes in the State of Maine."

Amend § 5(e) to read:

"(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (i) takings for public uses pursuant to the Maine Implementing Act, (ii) takings for public uses pursuant to the laws of the United States, or (iii) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation, to another member of the same Tribe or Nation, shall be void ab initio and without any validity in law or equity.

"(3) Land or natural resources within Passamaquoddy Indian Territory or the Penobscot Indian Territory, may be--

(i) leased in accordance with the Act of August 9, 1955 (69 Stat. 539), as amended,

(ii) leased in accordance with the Act of May 11, 1938 (52 Stat. 347), as amended,

(iii) sold in accordance with section 7 of the Act of June 25, 1910 (36 Stat. 857), as amended,

(iv) subject to rights-of-way in accordance with the Act of February 6, 1948 (62 Stat. 17),

(v) exchanged for other land or natural resources of equal value, and

(vi) sold, only if the proceeds of the sale are deposited in the Land Acquisition Fund established pursuant to subsection (c).

Amend § 5(g) to read:

"(g) When land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory is taken for a public purpose pursuant to the laws of the State of Maine or of the United States, the proceeds paid in compensation for such taking shall be deposited in the Land Acquisition Fund established by subsection (c)."

Tribal Governments - § Y

The State proposes the following in place of that proposed by the Secretary:

"Sec. Y. (a) The Passamaquoddy Tribe and Penobscot Nation shall each organize for their common welfare, and adopt an appropriate instrument in writing to govern the affairs of the Tribe or Nation, 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, and must be approved by the Secretary and by a majority of the adult members of the Tribe or Nation participating in an election conducted by the Secretary.

(b) Any business corporation created by the Passamaquoddy Tribe or Penobscot Nation with the approval of a majority of the adult members of such Tribe or Nation participating in an election conducted by the Secretary shall not constitute for purposes of federal taxation a corporation within the meaning of section 11 of the Internal Revenue Code of 1954, as amended, provided, however, that any business corporation created by the Passamaquoddy Tribe, Penobscot Nation or any member of either Tribe or Nation shall be subject to all the laws of the State of Maine."

Application of State Laws - § 6

The State proposes the following amendments to § 6:

Amend § 6(c) by adding to the end of the first sentence the following clause:

"; and 28 U.S.C. § 1362 shall be applicable to civil actions brought by the Passamaquoddy Tribe and Penobscot Nation."

Amend § 6(c) by adding in the second sentence the word "valid" before "money judgment."

Amend § 6(d) to read:

"(d) 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 Penobscot Nation, provided that such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (1) the enforcement or application of civil, criminal or regulatory laws of each within their respective jurisdiction; (2) 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 (3) the allocation of jurisdiction between tribal courts and State courts."

Amend § 6(f) to read:

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

Amend § 6(g) to read:

"(g) No law or regulation of the United States which (i) accords or relates to a special status or right of or to any Indian, Indian Nation, tribe or band of Indians and (ii) affects the civil, criminal or regulatory jurisdiction of the State of Maine shall apply within the State of Maine, provided, however, that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and State shall be eligible to receive all the financial benefits which the United States provides to Indians, Indian nations and tribes or bands of Indians or States to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians or States and for the purposes of determining eligibility for such financial benefits, the respective Tribe, Nation and Band shall be deemed to be federally recognized Indian tribes; and provided, further, that the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians shall be considered federally recognized Indian 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."

Add a new § 6(h) to read:

"(h) Notwithstanding the provisions of subsection 6(a), 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 the Houlton Band. Unless and until such agreement is made the Houlton Band, its members and any lands owned by the Band or its members shall be subject to the laws of the State of Maine to the extent provided in subsection 6(a)."

The other proposals of the Secretary are unacceptable.

Indian Child Welfare - § 7

The State believes the language in S. 2829 is sufficient and accurate and does not propose any changes.

Tribal Trust Funds - § 10

The State proposes that the phrase "shall constitute" be substituted for "shall be accepted" in the first sentence.

The other proposed changes are not acceptable.

General Discharge - § 11

The State believes the language in S. 2829 is sufficient and accurate and does not propose any changes.

Limitations of Action - § 12

The State believes the language in S. 2829 is sufficient and accurate and does not propose any changes.