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PROPOSED COMMITTEE REPORT LANGUAGE FOR MAINE SETTLEMENT ACT

Section 6211 of the Maine Implementation sets forth provisions for funding of the Passamaquoddy Tribe and Penobscot Nation as municipalities and provides additionally for participation of their members residing within their respective Indian territories in State programs.

This section is broken into four subsections. Subsections one and three provide that the Passamaquoddy Tribe and the Penobscot Nation shall be eligible for participation in State programs which provide financial assistance to State municipalities, including discretionary grants or loans, to the same extent and subject to the same conditions as any other State municipality. To the extent local matching funds are required, the tribes may use funds from any source available, including Federal funds. Subsection four provides further that individuals residing within their Indian territories are eligible for and entitled to receive state grants, loans, or other social service entitlements on the same basis as all other citizens of the State.

Subsections two and four provide limitations on eligibility of the Passamaquoddy Tribe or Penobscot Nation or their members for State funds based on receipt of Federal benefits. Subsection two provides:

> "Any moneys received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding,shall be deducted in computing any payment to be made to the respective tribe or nation by the State."

Subsection four provides:

> "In computing the extent to which any person is entitled to receive any such funds, any moneys received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State."

If these provisions of State law were to be broadly construed, they could have an adverse impact on the ability of the United States to provide assistance to the tribe or their members under programs designed to aid Indian tribes or persons or other general programs designed to aid local governments or individuals regardless of legal status. The supplanting provisions could result in a dollar for dollar reduction of State aid for every dollar of special assistance offered the Indian tribes or members by the United States because of their status as Indians or otherwise provided under more general programs.

In testimony before this on June , 1980, the Secretary of the Interior expressed concern regarding the application of this provision in the Maine Implementation Act and its impact on the ability of the United States to provide services to the Indian tribes and individuals in the State of Maine. He also expressed concern with regard to the precedential aspects of the Maine "supplanting" provision on delivery of services to Indians in other states.

The Maine Implementation Act is a codification of an agreement reached by the Passamaquoddy Tribe and Penobscot Nation with the State of Maine. By letter of August 22, 1980, Attorney General Richard Cohen of the State of Maine explained the intended

reach of Section 6211 of the Maine Act. This letter is printed in full in this Committee report. The following excerpts are relevant to understanding the intent of Section 6211 and the construction to afforded it.

> It was ... understood ... that treating the Tribes as municipalities could place the Tribes in a unique position with respect to their eligibility for Federal funds. As recognized Indian Tribes, the Passamaquoddy Tribe and Penobscot Nation will be eligible for funds and services available only to Indian Tribes (e.g., Johnson-O'Malley Act and Snyder Act funds from the Bureau of Indian Affairs). * * * In addition, since the Maine Tribes would be municipalities under Maine law, it was thought that the Tribes might also be eligible for Federal funds available to municipalities (e.g., Federal municipal revenue sharing). The possible availability of these Federal funds in conjunction with State "municipal" entitlements made it apparent that in some circumstances the Passamaquoddy Tribe or Penobscot Nation would be eligible for multiple funding of Tribal programs from both the State and Federal governments. This multiple State/Federal funding would not be available to other municipalities in Maine nor to the Indian Tribes elsewhere in the United States. Because of this, the State and Tribes agreed that if a basic service was funded by the Federal government, as a result of the Tribes' special status under Federal law, then duplicate funding by the State would be inappropriate. It was with that end in mind that Section 6211 was drafted.
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> [I]t was the understanding of the parties that the set-off provisions in Section 6211(2) and (4) of the Implementing Act were intended only to encompass Federal funds that would be actually received by the Tribes and their members by virtue of their status as recognized Indian Tribes and their status as Indians under Federal Law. Since the State had agreed to treat the Tribes as municipalities for State funding purposes, it was anticipated that any Federal monies received by Tribes as municipalities would not be treated any differently than similar monies received by any other municipality. However, since the Tribes' status as recognized Indian Tribes would in all

probability make them eligible for additional Federal monies unavailable to other citizens and municipalities, such Federal funds received by them as recognized Tribes would be treated differently and would be subject to the set-off provisions.

[I]n drafting Section 6211, it was not the intention of the parties to alter the effect of Federal law. It was understood among all the parties that to the extent the United States provides funds for a program which are required by Federal law to be supplemental to and not to supplant State and local funds, that the set-off provisions in Section 6211(2) and (4) would not apply to such Federal funds. The term "substantially similar purpose" as used in Section 6211 of the Maine Implementing Act was not intended to refer to such Federal funds that enhance, enrich or supplement programs provided for under Maine law. Such Federal funds received by the Tribes would be outside the scope of Section 6211 entirely and would neither be deemed to be eligible to initiate a State match under Section 6211(1) nor would they offset or supplant any State match or State funds under Section 6211(2) and (4). Consistent with the foregoing, the usual State participation in the State/Federal cost sharing of social services such as AFDC, Medicare and Food Stamps would be unaffected by Section 6211(2) or (4).

From this letter, the following salient points emerge:

(1) the supplanting provisions of Section 6211 apply only to Federal funds provided the Tribe or Nation or their members because of their status as Federal recognized Indians. Federal funds provided the tribe or their members which are generally available to other local governments or persons are not subject to the supplanting provisions of Section 6211.

(2) the purpose of Section 6211 is not to establish a basis for withdrawal of State funding from the tribes or their members by virtue of the Federal recognition and their eligibility for Federal Indian services,

but rather it is to avoid duplicate funding by both the State and the Federal government of the same or substantially similar programs.

(3) in the absence of Federal funding in excess of the local share ordinarily required by State law as a condition of State funding, the State contribution to the Tribe or Nation and their members will be equal to that provided other municipal governments and their citizens, and

(4) there will be no withdrawal or diminishment of effort by the State based on Federal funding of programs which enhance or enrich basic programs or which are required by Federal law to be supplemental to and not supplant State and local funds.

The Department of the Interior has expressed concern that the supplanting features of Section 6211 of the Maine Implementing Act may be counter to the policies persued by that Department, and indeed all Federal agencies, over the past 20 years of requiring States to provide services to their Indian citizens on the same basis as they provide services to all other citizens of the State.

The supplanting provisions of Section 6211, however, do not appear to result in any difference in treatment of individual members of the tribes from other citizens of the State or difference in treatment of the tribes from other municipalities for State funding purposes. The supplanting provisions of Section 6211 are triggered only when the Federal funds provided the tribes for the same or substantially similar program exceed the local or

municipal share ordinarily required by State law as a condition of State funding. The objection of Interior that the supplanting provision may deny the tribes or their members equality of treatment with other State municipalities or citizens does not appear well founded. It would appear the real objection to the supplanting provision is that it may lock the tribes and their members into a position of equality with other municipalities in Maine or other State citizens unless the Federal government is willing to totally supplant the State funding. Federal policy to upgrade the conditions of the American Indian through special programs may thus be jeopardized.

The treatment accorded the Passamaquoddy Tribe and the Penobscot Nation as units of State government under the laws of the State of Maine for funding purposes is unique in Federal Indian law. So far as this Committee is aware, no other State accords the Indian tribes within its boundaries this status. Under general Federal law governing Indian affairs, Indian tribes are considered for all purposes domestic dependent sovereigns. Their sovereingty is recognized through Federal treaties and statutes and it pre-dates the U.S. Constitution or the organizational documents of the individual States where they may be located. The Indian tribes are dependent upon the United States for their protection. They do not constitute a unit of local government in the State within which they are located. Cherokee Nation v. Georgia, ___ U.S. ___ (1831); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); McClanahan v. State Tax Commission of Arizona, 411 U.S. 164 (1973); Martinez v. Santa Clara Pueblo, ___ U.S. ___ (1978).

In recent years, there has been a growing tendency in Federal legislation to include the Indian tribes on the same basis as other units of local government for purposes of Federal funding. However, the States do not treat Indian tribes as political subdivisions of the State and to the extent State funds are provided their local governments, Indian tribes do not participate. The provisions of the Maine Implementation Act are unique in this respect. It is very likely that the extent of State participation in the provision of funds to the Indian tribes in that State for governmental operations and the provision of general services will exceed that provided by most states with Federally recognized Indian tribes or populations.

Under the circumstances, the Committee believes the Maine Implementation Act should be ratified without modification. In the event it should be shown that the effort of the State of Maine does not match that provided by other states, the Congress may amend the provisions of this Act to provide equitable funding provisions.