



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

AUG 8 1980

Honorable John Melcher  
Chairman, Select Committee on Indian Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 2829, 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.

At the July 1, 1980 hearing before the Committee on S. 2829, we stated that because years of continued litigation would have a severe impact on the people of Maine — both Indian and non-Indian — we do not object to the Federal contribution contemplated by the bill. However, we also 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. Since then 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 S. 2829. 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 S. 2829 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 S. 2829 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.

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 S. 2829 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.

The most important provision in S. 2829 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 S. 2829 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 S. 2829 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 House Interior and Insular Affairs 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.

*Timing of Extinguishment.*

*Statute of Limitations*

Sections 4(a)(2) and (3) of S. 2829 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. Because of the importance of the language finally extinguishing Indian land claims within the State, and in response to a specific request made at the July 1 hearing, we will be providing the Committee with an opinion of our Solicitor on the effectiveness of the extinguishment language of Section 4 of our proposed amendment.

*Extinguishment letter*

Section 5(a) of S. 2829 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 S. 2829 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 S. 2829 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 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.

*of language on "reasonable" supplied by Tribes*

A proviso in Section 5(b)(3) of S. 2829 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.

*Report language should state this*

Section 5(c) of S. 2829 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.

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. *Land swaps*

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. At the July 1 hearing we expressed the view 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 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 S. 2829. 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 S. 2829, 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 S. 2829 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.

*cf. 5(f)(1)  
to original  
to 829.*  
2

Section 5(f) of S. 2829 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.

The disposition specified differs slightly from Section 5(g) of S. 2829 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.

*Start  
objection*

Section 6(a) of S. 2829, 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 S. 2829. 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.

At the July 1 hearing we had objected to the second part of Section 6(c) of S. 2829, which 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. Our concern was 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 S. 2829 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.

Section 6(f) of our proposed amendment is identical to Section 6(e) of S. 2829. 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. As we pointed out at the July 1 hearing, 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.

At the July 1 hearing we objected to the full faith and credit provision of Section 6(f) of S. 2829. 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 S. 2829 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 S. 2829 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.

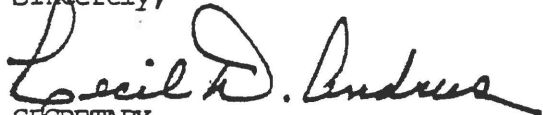
Our proposed Section 8(f) would make Section 102 of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912) applicable to the Houlton Band of Maliseet Indians. Officials of the State of Maine consented to this provision and we have no objection to it.

Section 8(b) of S. 2829 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 Tribes *or their members*.

Section 8(c) of S. 2829 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,

  
SECRETARY

Enclosure

Amendment to S. 2829 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.

(4) The Passamaquoddy Tribe, as represented as of the time of passage of this Act by the Joint Tribal Council of the Passamaquoddy Tribe, is the sole successor in interest to the aboriginal entity generally known as the Passamaquoddy Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(5) The Houlton Band of Maliseet Indians, as represented as of the time of passage of this Act by the Houlton Band Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Maliseet Tribe which years ago claimed aboriginal title to certain lands in the State of Maine.

(6) Substantial economic and social hardship to a large number of landowners, citizens and communities in the State of Maine, and therefore to the economy of the State of Maine as a whole, will result if the aforementioned claims are not resolved promptly.

(7) This Act represents a good faith effort on the part of Congress to provide the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians with a fair and just settlement of their land claims. In the absence of congressional action, these land claims would be pursued through the courts, a process which in all likelihood would consume many years and thereby promote hostility and uncertainty in the State of Maine to the ultimate detriment of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, their members, and all other citizens of the State of Maine.

(8) The State of Maine, with the agreement of the Passamaquoddy Tribe and the Penobscot Nation, has enacted legislation defining the relationship between the Passamaquoddy Tribe, the Penobscot Nation, and their members, and the State of Maine.

(9) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective Tribe, Nation or Band, and repeatedly denied that it had jurisdiction over or responsibility for the said Tribe, Nation, and Band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

(1) to remove the cloud on the titles to land in the State of Maine resulting from Indian claims;

(2) to clarify the status of other land and natural resources in the State of Maine;

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation, except to the extent that it is inconsistent with the provisions of this Act;  
and

(4) to confirm that all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing or recognized in the State of Maine are and shall be subject to all laws of the State of Maine, as provided herein.

DEFINITIONS

Sec. 3. For purposes of this Act, the term—

(1) "Houlton Band of Maliseet Indians" means the sole successor to the Maliseet Tribe of Indians as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Houlton Band of Maliseet Indians is represented, as of the date of the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

(2) "Indian territory" means (A) the Passamaquoddy Indian Reservation; (B) the Penobscot Indian Reservation; (C) until January 1, 1983, the lands in the State of Maine of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder

*repeal to 5(d)*

Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle: Provided, That "Indian territory" within the meaning of this subparagraph may not exceed 300,000 acres of land; and (D) any other lands designated as Passamaquoddy Indian Territory or Penobscot Indian Territory pursuant to the laws of the State;

(3) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights;

(4) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under Section 5(c) of this Act;

(5) "laws of the State" means the Constitution, and all statutes, regulations and common laws of the State of Maine and its political subdivisions, and all subsequent amendments thereto or judicial interpretations thereof;

(6) "Maine Implementing Act" means Section 1 and Section 30 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;

(7) "Passamaquoddy Indian Reservation" means those lands as defined in the Maine Implementing Act;

(8) "Passamaquoddy Indian Territory" means those lands as defined in the Maine Implementing Act;

(9) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted in aboriginal times and all its predecessors and successors in interest. The Passamaquoddy Tribe is represented, as of the date of the enactment of this Act, by the Joint Tribal Council of the Passamaquoddy Tribe, with separate Councils at the Indian Township and Pleasant Point Reservations;

(10) "Penobscot Indian Reservation" means those lands as defined in the Maine Implementing Act;

(11) "Penobscot Indian Territory" means those lands as defined in the Maine Implementing Act;

(12) "Penobscot Nation" means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of the date of the enactment of this Act, by the Penobscot Nation Governor and Council;

(13) "Secretary" means the Secretary of the Interior;

(14) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under Section 5(a) of this Act; and

(15) "transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources.



APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF INDIAN TITLE AND CLAIMS OF THE  
PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, THE HOULTON BAND OF MALISEET INDIANS,  
AND ANY OTHER INDIANS, INDIAN NATION, OR TRIBE OR BAND OF INDIANS  
WITHIN THE STATE OF MAINE

Sec. 4. (a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, § 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: Provided, however, that nothing in this section shall be construed to affect or eliminate the claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law generally designed to protect non-Indians as well as Indians.

(2) The United States is barred from asserting on behalf of any Indian, Indian nation or tribe or band of Indians any claim under the laws of the State arising before the date of this Act and arising from any transfer of land or natural resources located anywhere within the State of Maine, including

Prior to  
1873

cf. 4(a)(2)  
6+(3)d  
S:2829

but without limitation any transfer pursuant to any treaty, compact or statute of any state, on the grounds that such transfer was not made in accordance with the laws of the State.

(b) To the extent that any transfer of land or natural resources described in subsection (a)(1) of this section may involve land or natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, such subsection (a)(1) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of the transfer.

ESTABLISHMENT OF FUNDS

Sec. 5. (a) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which \$27,000,000 shall be deposited following the appropriation of sums authorized by Section 14 of this Act.

(b)(1) One-half of the principal of the Settlement Fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Settlement Fund shall be held in trust for the benefit of the Penobscot Nation. Each portion of the Settlement Fund shall be administered by the Secretary in accordance with terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary: Provided, That the Secretary may not agree to terms which provide for investment of the Settlement Fund in a manner not in accordance with Section 1 of the Act of June 24, 1938 (52 Stat. 1037), unless the respective Tribe or Nation first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment: Provided, further, That until such terms have been agreed upon, the Secretary shall fix the terms for the administration of the portion of the Settlement Fund as to which there is no agreement.

*N.B. change in secy's trust responsible*

(2) Under no circumstances shall any part of the principal of the Settlement Fund be distributed to either the Passamaquoddy Tribe or the Penobscot Nation, or to any member of either Tribe or Nation: Provided, however, That nothing herein shall prevent the Secretary from investing the principal of said Fund in accordance with paragraph (1) of this subsection.

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in Section 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the Settlement Fund allocated to the respective Tribe or Nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from \$1,000,000 of their portion of the

*Report should make liability of the Secy does not apply to disburse any funds to dole by tribe.*

Settlement Fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the Tribe or Nation, the United States shall have no further trust responsibility to the Tribe or Nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which \$54,500,000 shall be deposited following the appropriation of sums authorized by Section 14 of this Act. *Report language should refer to assess. amount by DoI*

(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 and directed to expend, at the request of the affected Tribe, Nation or Band, the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. Land or natural resources acquired within Indian territory for the Passamaquoddy Tribe and the Penobscot Nation shall be held in trust by the United States for the benefit of the respective Tribe or Nation. Land or natural resources acquired outside the boundaries of Indian territory shall be held in fee simple by the respective Tribe or Nation, and the United States shall have no further trust responsibility with respect thereto. The Secretary is also authorized to take

*Clarifies nature of title*

*over*

*insert into new section?*

in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within Indian territory by purchase, gift, or exchange by such Tribe or Nation. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the Band: Provided, That no land or natural resources shall be so acquired without the concurrence of authorized officials of the State of Maine. [The Houlton Band of Maliseet Indians is authorized to enter into contracts for payment for the provision of services from the State, county, or municipality exercising jurisdiction over the lands so acquired, annually not to exceed an amount equal to the real property taxes which would have been levied in the given year against the owner of the land or natural resources, were they not owned by the United States.] Notwithstanding the provisions of Section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and Section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title satisfactory to the Attorney General in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian tribes in the State of Maine.

*Contingent land swaps*

*Maliseet*

*Note State objection*

*The cited Acts contain condemnation procedures*

*They are conditional, however, on the consent of the landowner*

*New* (e) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective Tribe, Nation, or Band have executed appropriate documents relinquishing all

claims to the extent provided by Sections 4, 11, and 12 of this Act and by Section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal of their claims.

(f)(1) The provisions of Section 2116 of the Revised Statutes, shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsection (f)(2), such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

To clarify 5(e)  
of S. 2829  
original.

Note: original eliminate Houlton Band

(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, or transfer of land or natural resources held in trust for the Houlton Band of Maliseet Indians, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe, Penobscot Nation, or Houlton Band of Maliseet Indians to another member of the same Tribe, Nation, or Band, shall be void ab initio and without any validity in law or equity.

Special  
restraint  
alienation

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of

spell out  
provision  
5(e)(2)  
S. 2829

the Houlton Band of Maliseet Indians may, at the request of the respective Tribe, Nation, or Band, be--

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

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

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

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (62 Stat. 17);

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of

money to the grantor or to the Secretary for deposit in the Land Acquisition Fund for the benefit of the affected Tribe, Nation, or Band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the Tribe, Nation, or Band; and

To facilitate exchanges: Taken from Federal Land Policy + Management Act (206 (b) 43 USC 1716

Ch 6205 (A) Me Act

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

allows tribes or individual

(g) Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective Tribe or Nation and agreed to by the Secretary [in accordance with Section 102 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2206)]

Indians would eliminate

*New*

(h)(1) Trust or restricted land or natural resources within the Passamaquoddy or Penobscot Indian Reservations may be condemned for public purposes pursuant to the laws of the State of Maine relating to such lands. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land shall become a part of the reservation in accordance with the laws of the State of Maine and upon notification to the Secretary of the Interior of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

*State would eliminate*

(2) Trust land of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians not within the Passamaquoddy or Penobscot Reservations may be condemned for public purposes pursuant to the laws of the State of Maine relating to the condemnation of such land. The proceeds from any such condemnation shall be deposited in the Land Acquisition Fund established by Section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine or in Indian territory. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective Tribe, Nation or Band shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area

*renders 2 years limit of 5(a) more relevant.*

*cf. 6205 (3)(b) of Me Act*



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.

*feel forum is general feel practice occurring to DoI.*

*State subject to federal from*

(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.

*State would eliminate*

*Land acquisition fund*

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

*Intercon says changes here are to secure federal state jurisdiction*

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. *replaces 6(c) of original bill*

(b) [To be supplied.]

*New: for emphasis* (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. *CF 62061 of MEA*

(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 *Eliminate burden of litigation from 6(c) of original bill*

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

*replaces the section giving Cong. approval in advance (66) d. d. h.*

(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.

*tracts 5118*

(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.

*unchanged from original (e)*

(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

*Ch. 6 (8) d. b. s. 2827.*

*element*

law or regulation of the United States [ (1) which accords or relates to a special status or right <sup>of</sup> 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, *in agreement.* [ 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.

*To receive would element*

*alter*

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.

*Indian Receipts*

*Indian Receipts State funds*

*Intercom has added.*

(c) The availability of funds or distribution of funds pursuant to Section 5 of this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying any Indian household or member thereof participation in any Federally assisted housing program, (2) for denying or reducing the Federal financial assistance or other Federal benefits to which such household or member would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be entitled.

DEFERRAL OF CAPITAL GAINS

Sec. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased by the Secretary with moneys from the Land Acquisition Fund shall be deemed to be an involuntary conversion within the meaning of Section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

Sec. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective Tribe or Nation and shall be added to the principal of the Settlement Fund allocated to that Tribe or Nation. The receipt of said State funds by the

Secretary shall constitute a full discharge of any claim of the respective Tribe or Nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective Tribe and Nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

Sec. 12. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of any Indian nation or tribe or band of Indians or the United States as trustee therefor, including those actions presently pending in the United States District Court for the District of Maine captioned United States of America v. State of Maine (Civil Action Nos. 1966-ND and 1969-ND).

LIMITATION OF ACTIONS

Sec. 13. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.



AUTHORIZATION

Sec. 14. There is hereby authorized to be appropriated \$81,500,000 for transfer to the Funds established by Section 5 of this Act.

INSEPARABILITY

Sec. 15. In the event that any provision of Section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.