

SUMMARY OF MAJOR PROVISIONS

Clean: 9/10/8
Annotated 9/11/8

S. 2829 provides congressional implementation and ratification of the terms of the settlement negotiated among the parties; i.e., the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, the State of Maine, the private owners of large tracts of land, and the United States. Section 4 of the bill provides for the extinguishment of the ^{land} claims of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians in the State of Maine, including damage claims associated with these land claims, upon appropriation of \$81.5 million to implement the provisions of Section ⁵ of this Act.

~~(In return for this waiver of their tribal claims)~~ Section 5 provides that the United States will establish a Maine Indian Claims Settlement Fund, into which will be deposited \$27 million, which the bill authorizes to be appropriated; \$13,500,000 of this fund will be held for the benefit of the Passamaquoddy Tribe, and \$13,500,000 of this fund would be held for the Penobscot Nation. The fund would be administered in accordance with reasonable terms put forth by the respective tribe or nation and agreed to by the Secretary of the Interior.

~~(In return for their waiver)~~ The settlement also provides that the Passamaquoddy Tribe and the Penobscot Nation will retain as reservations those lands and natural resources which were reserved to them in their treaties with Massachusetts and not subsequently transferred by them. The United States also agreed ~~as part of the settlement~~ ^{in its Memorandum of Understanding with the} that these ~~the~~ ^{Passamaquoddy Tribe + Penobscot Nation, dated February 10, 1978,} three tribes shall be eligible to receive all federal Indian services and benefits to the same extent and subject to the same eligibility criteria as other federally recognized tribes. The Tribes' agreement with the State of Maine includes various

~~Tom Hollman concerned that this will be read as consideration. Tom was included it because it was part of the memorandum understood. Refer to 11.01~~
K(6)

other guarantees concerning jurisdictional matters and entitlement to state services.

50000?

In addition, Section 5 provides that the United States will also establish the Maine Indian Lands Acquisition Fund, into which will be ~~deposited~~ ^{credited.} \$54,500,000, which the bill authorizes to be appropriated. It is expected that this amount of money will be sufficient to acquire 150,000 acres of private lands for the Passamaquoddy Tribe, 150,000 acres for the Penobscot Nation, and 5,000 acres for the Houlton Band of Maliseet Indians. These lands will be held by the United States in trust for the three Tribes subject to restraints on alienation except as specified in Section 5. Acquisition of lands for the Houlton Band of Maliseet Indians is deferred pending negotiation with the State on ^{their} ~~the~~ location and other matters of concern to the parties.

Section 6 governs the application of the laws of the State of Maine to persons and property within the Indian Territories. Subsection (c) ^{and ratifies} adopts the Maine Implementing Act and provides that the State may amend the provisions of that Act only with the prior consent of the Passamaquoddy Tribe and Penobscot Nation. The Maine Implementing Act sets forth the terms of agreement between the Tribe and Nation with the State of Maine with respect to the jurisdiction of the Tribe, the Nation, and the State, and the legal status of these Tribes under State law.

Essentially the Maine Implementing Act accords the Passamaquoddy Tribe and Penobscot Nation the status of a municipality under State law; it provides for the application of State law to persons and property within the ^{Penobscot Indian Territory and the Passamaquoddy} ~~Indian Territory~~; it provides

for the Tribes to make payments in lieu of taxes on real and personal property within the Indian territory; it provides that the Tribe and Nation will adopt certain laws of the State as their own but the independent legal status of the Tribes under Federal law is recognized; it establishes the authority of the Tribe and Nation to enact ordinances applicable to all persons within the Indian territory; ^{it} provides that the State shall enforce tribal ordinances as to offenses by non-members or offenses by members committed within ^{either} ~~their respective~~ reservations where the potential penalty exceeds imprisonment for six months or a fine of \$500.00; it reserves to the Tribe or Nation exclusive authority over internal tribal matters, jurisdiction over minor offenses and juvenile offenses committed by members within ^{either} ~~their respective~~ reservations, and reserves to the Tribes ~~and~~

~~under the laws of the United States. Section 5 (b) provides that a method~~
~~of determining the jurisdiction of the State shall be determined by the State~~

the Maine Implementing Act, and be such in force and effect as
courts the same as any other person or entity, provided that prin-
ciples of immunity applicable to municipalities in the State of
Maine are ^{equally} applicable to the Tribe and the Nation when acting in
their governmental capacity. ^{ies} Since the trust and restricted lands
and trust fund of the Tribe, Nation, ~~and Band~~ will be exempt from
levy or attachment or from alienation, provision is made for pay-
ment by the Secretary of income from the Trust Settlement Fund in
satisfaction of valid, final orders of the courts. ~~all taxes the Person~~

→ The trust and restricted lands of the Band
will also, ^{when acquired,} be exempt from levy or attach-
ment or from alienation. section 5(d)(4)
of this Act provides that the State and the
Band ~~(shall negotiate)~~ ^{shall} enter negotiations
following the enactment of this Act to seek
a method by which the Band may satisfy
obligations which it may incur.

Section 6(h) provides that the general laws of the United States which are applicable to Indians because of their status as Indians are applicable to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, except that no such law which affects or preempts the laws of the State of Maine shall be applicable. The Tribe, Nation, and Band are specifically recognized as eligible to receive benefits provided by the United States to Indians because of their status as Indians.

Section 7 authorizes but does not compel the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets to adopt organizational documents and file same with the Secretary. Section 8 provides for the implementation of the Indian Child Welfare Act of 1978 by the Tribes.

Section 9 provides that payments made to the Tribe, Nation, or Band under this Act shall not be considered by Federal agencies in determining or computing the eligibility of the State of Maine for participation in Federal financial aid programs. It further provides that tribal eligibility for receipt of payments from the State of Maine shall not be considered by Federal agencies in determining eligibility of the Tribes or their members to participate in Federal programs except that where eligibility for benefits is dependent upon a showing of need a Federal agency will not be barred from considering the actual financial situation of the applicant. Finally, the availability of funds or distribution of funds from the Settlement Fund established under Section 5 of this Act shall not be considered as income or resources for purposes of denying or reducing Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or

*(provision of the
Maine
Sample
Receipt
Act.)*

Penobscot Nation or their members would otherwise be entitled.

Section 10 provides for a deferral of capital gains for private property owners ~~selling~~ ^{transferring} lands to the United State under this Act by providing that such transfers of land shall be deemed ~~an~~ involuntary conversion, within the meaning of Section 1033 of the Internal Revenue Code of 1954, as amended.

Section 11 provides for the transfer of tribal trust funds from the State of Maine to the Secretary of the Interior. Section 12 provides for the general discharge of the State of Maine from existing or further claims. Section 13 provides that this Act shall not be construed as conferring jurisdiction upon any Indian, Indian tribe or band, ~~to~~ ^{to} sue the United States except as provided in this Act.

~~Section~~ Section 14 authorizes the appropriation of \$81.5 million to implement the provisions of Section 5. Section 15 provides that if the extinguishment provisions of Section 4 are held invalid, then the entire Act shall be ~~invalidated~~ ^{invalidated}.

~~STOP~~
Section 6. Construction section description.

LEGISLATIVE HISTORY

This section will recite the introduction of legislation in the 95th Congress to extinguish these claims and the failure of its passage. It will also identify the various bills which have been introduced in the 96th Congress and the date of the hearings and the current status of the bill on the House side.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

This section simply records the vote of the Committee at mark up.

COMMITTEE AMENDMENTS

The Select Committee on Indian Affairs adopted an amendment in the nature of a substitute as described in the section-by-section analysis that follows:

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

Sec. 1 provides that the Act may be cited as the "Maine Indian Claims Settlement Act of 1980."

Section 2. Congressional Findings and Declaration of Policy.

Sec. 2(a)(1) describes the basis of the claim the ~~Maine~~ ^{Passamaquoddy, Tribe and Penobscot Nation, and the Houlton Band of Maliseet} Indian Tribes have raised against the State of Maine and private landowners owning land in certain areas of the State of Maine. Subsections 2(a)(3) through (6) ^{find} ~~establish~~ that the Houlton Band of Maliseet Indians, ^{second} the Penobscot Nation, and ^{third} the Passamaquoddy Tribe are ^{FIRST} the sole successors of those aboriginal entities ^{that} from

or claimed that once ~~might~~ exercised aboriginal rights of use and occupancy over certain lands located in the State of Maine.

Subsection 5(d)(4) has been agreed to by the Penobscot Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the State of Maine, and the Administration. The Houlton Band remains concerned, ^{however,} about the provisions of Section 5 requiring that it reach agreement with the State securing the performance of obligations, both public and private, that it may incur after the enactment of this Act. The basis for this concern is that since, at present, the Band has no assets other than the lands which will be acquired for it under this Act, it may prove difficult to fully satisfy the State's concern over the satisfaction of future obligations incurred by the Band and the Band's ability to meet payments in lieu of property taxes or other fees imposed under State law. Thus, the Band is concerned that if it and the State fail to resolve these questions, the State may ^{unreasonably} withhold its consent to the acquisition of trust land for the Band. In that event, the Band's claim will have been extinguished without ^{it} having received the compensation contemplated for it by this Act.

It is the purpose of this Act to settle all Indian land claims in Maine fairly. The Houlton Band is impoverished, it is small in numbers, it has no trust ^{fund} to look to, and it is questionable whether the land to be acquired for it will be utilized in an income-producing fashion in the foreseeable future. Immunity from taxation, financial encumbrance or alienation without the consent of the United States is the very essence of the trust character. It is recognized that acquiring land for the Band, in a location satisfactory to both the Band and the State, and not at the same time providing protection against the alienation of that land, would create a substantial risk that the land would fall into private

Insert A

Subsection 4(a)(1) provides Congressional approval and ratification of all prior transfers of land or natural resources located anywhere in the United States by or on behalf of the Passamaquoddy Tribe, Penobscot Nation, or Houlton Band of Maliseet Indians, and of all prior transfers of land or natural resources located in Maine by or on behalf of any other Indian, Indian nation, or tribe or band of Indians, and specifies that all such transfers shall be deemed to have been made in accordance with all laws of the United States, including specifically the Trade and Intercourse Act. Such approval of these prior conveyances will remove the cloud of Indian claims against all present-day landowners in Maine who trace their titles back to the transfers being approved. It is the opinion of the Department of the Interior this language, taken together with the language contained in subsections 4(b) and (c), will effectively and completely extinguish the Maine Indian land claims and all related tribal claims that may have arisen prior to the date of enactment of the legislation. The proviso to subsection 4(a)(1) ensures that the personal claims of individual Indians (other than Federal common law fraud claims) that are based on laws of general applicability that protect non-Indians as well as Indians are not effected by

includes
strangers make
any present
any treaty
compact, or
state, or

the language of subsection 4(a)(1). Thus, any claim by an individual Indian that might be asserted by a non-Indian under generally applicable Federal or state law is not intended to be extinguished and may be brought under the same conditions and limitations as would apply if a non-Indian brought a similar claim.

return to 4(a)(2) previous page

the Interior may acquire 150,000 acres on behalf of the ^{Passamaquoddy} Tribe and the ^{Penobscot} Nation respectively. Upon selection and acquisition, such land, ^{together with the tribes' existing} becomes, ^{in addition to their} "Reservations", ^{will become the} the "Territory" of the ^{respective} Tribe or Nation, ~~respectively~~.

Subsection (14) defines the word "transfer." It is intended to have a comprehensive meaning and to cover all conceivable events and circumstances under which ^{title, possession, dominion, or} control of land, can pass from one person or group of persons, ^{(such as Indian Tribes) OR natural resources} to the control of another person or group of persons.

Section 4. Approval of Prior Transfer and Extinguishment of Indian Title and Claims of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and Any Other Indians, or Tribe or Band of Indians Within the State of Maine.

Section 4 consists of three subsections.

Subject A (over)

~~Subsection 4(a) ~~extinguishes~~ any claim which Penobscot Nation, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, or any other Indian or groups of Indians might raise on the assertion of a violation of the Non-Intercourse Act or other federal law with a limited exception noted here in this subsection. The language is intentionally broad and is designed to extinguish all claims based on land transfers arising before the enactment of this Act. It is the opinion of the Department of the Interior that the language will effectively extinguish the claims.~~

Subsection 4(a)(2) bars the United States from asserting any claims based on the transfer of land or natural resources by treaty, compact, or other device or event which may have occurred in violation of Maine State law.

Insert B

Subsection 4(b) makes clear that the approval of transfers of land or natural resources effected by subsection 4(a)(1) ~~is intended to effect~~ ^San extinguishment of any aboriginal title that may have existed or may have been claimed with respect to such land or natural resources.

Subsection 4(a)(3) bars the United States from asserting any individual claims arising from violation of State law prior to December 1, 1873.

Insert B (cover)

~~Subsection 4(b) states that any claim based on aboriginal title is hereby extinguished.~~

Subsection 4(c) extinguishes all claims for damages by the Maine Tribes or their members arising from the allegedly illegal use and occupancy of the land since the transfer were effected.

*del further
amend re:
effective date
of F.R.
notice.*

Subsection 4(d) provides that the extinguishing and barring provisions shall take effect immediately upon the appropriation of the funds necessary to implement Section 5 of the Act.

It also provides that, once the funds are credited to the Land Acquisition Fund and the Settlement Fund, the Secretary shall publish a notice to that effect in the Federal Register.

Section 5 consists of 10 subsections.

Subsection 5(a) establishes a ~~trust~~ ^{settlement} fund for the benefit

of the Penobscot Nation and Passamaquoddy Tribe in the amount of \$27 million. *#13.5 million to be held in separate accounts for each tribe respectively.*

Subsection 5(b) describes the manner in which the ~~fund~~ ^{settlement fund} shall be allocated and how it shall be managed. The principal of the fund shall in no event be distributed to the Passamaquoddy Tribe or Penobscot Nation or any individual members of those Tribes. The Secretary of the Interior is protected from unwarranted liability in administering the settlement trust fund in subsections 5(b)(1) and (3).

The Settlement Fund will be divided into two equal shares, one to be held in ^{trust} by the Secretary for the benefit of the Passamaquoddy Tribe and the other to be held in trust by the Secretary for the benefit of the Penobscot Nation. The Secretary

will invest and administer each share in accordance with terms applicable to it as established by the Passamaquoddy Tribe or the Penobscot Nation, as the case may be, and agreed to by the Secretary. The Secretary is obligated to agree to any reasonable terms for investment and administration proposed by such Tribe or Nation. Such terms need not be the same for each. The standard of reasonableness as applied to the terms of investment and administration should be determined by reference to standards by which endowment funds are invested and administered in the United States in accordance with standards set forth in the Management of Institutional Funds Act. It is not intended that the Secretary or the Department of the Interior would necessarily make the investment decisions or carry them out. It ^{might} ~~would~~ be reasonable, for example, for the Passamaquoddy Tribe or the Penobscot Nation to establish an investment committee and charge it with responsibility for (A) setting investment policies; (B) selecting one or more professional investment managers to carry out those policies; (C) monitoring both the policies and the managers; and (D) effecting changes in policies and managers from time to time as circumstances and experience may warrant. The committee might include, in addition to tribal members, representatives of the Secretary and persons experienced in the management of endowments, including, in particular, the establishment of policies and the selection of investment managers.

WORK WITH UNITED

Subsection 5(c) establishes a Land Acquisition Fund in the amount of \$54.5 million.

Subsection 5(d) provides that the ~~funds~~ ^{MONIES IN THE LAND Acquisition Funds} shall be used to acquire land or natural resources for the tribes and ~~describes the~~ ^{ONLY provides that} manner in which it shall be apportioned as follows: Passamaquoddy Tribe, \$26.8 million; Penobscot Nation, \$26.8 million; Houlton Band of Maliseet Indians, \$900,000. → see INSERT C. (10/11)

Insert C

No 11

The \$900,000.00 allocated for land acquisition for the Houlton Band of Maliseet Indians is derived from land acquisition funds originally agreed to be provided the Passamaquoddy Tribe and Penobscot Nation. For this reason, the Tribe and Nation are given a one-half undivided reversionary interest in any trust property acquired by the United States on behalf of the Band, now or in future transfer acquisitions, out of these funds. The reversionary interest shall not attach to any one piece of land, but rather follows the trust. In the event the Houlton Band shall terminate its interest in trust property or the trust should ~~cease~~ terminate, then the corpus of the trust will revert to the Passamaquoddy Tribe and the Penobscot Nation.

hands. In extinguishing the claims of the Band and in appropriating the monies for the acquisition of land to compensate the Band for its land claims within the State of Maine, ^{it is the} ~~Congress assumes~~ ^{intent of the Committee} ~~an obligation to ensure~~ that this does not occur. For, should the land which is intended to constitute satisfaction of the Band's legal claims come into the possession of a third party the intent of this Act in this regard will have been defeated. Accordingly, ^{should} ~~under no circumstances will Congress permit~~ the inability of the State and the Houlton Band to reach agreement on these issues ^{to} in any way result in the diminution, diminishment or weakening of those restraints on alienation necessary to ensure that, once the land is acquired, it will remain held for the benefit ^{of} of the Houlton Band. In some respects, of course, this requires the State to agree that lands to be acquired for the Houlton Band will be exempt from some state laws such as those laws providing for levy and sale of lands for non-payment of taxes or satisfaction of judgments. ^{The Committee} ~~Congress~~ also recognizes the legitimate interest of the State in seeking to assure that the obligations of the Band will be met and that fees and in-lieu payments due the State are paid.

Congress has a continuing interest in the progress of the negotiation of the issues which have been described above. ^{The Committee} ~~Congress~~ also expects that both the State and the Band will work ^{and conscientiously} diligently to devise practical arrangements to resolve them. Consequently, this Committee will monitor the negotiations to ensure to its satisfaction that the parties have met these standards.

Subsection 5(e) empowers the Secretary to perfect title to the land acquired through normal condemnation procedures provided

tracks 5(e) identity,

and effect terms of purchase VALUATION

the owner of the land has agreed upon the purchase price, or value
The Secretary is limited in his ability to acquire land or natural resources for any Indians or Indian Tribes in Maine to the authorities provided in this Act.

Subsection 5(f) would prohibit the Secretary from expending any sums for the benefit of the Penobscot Nation, the Houlton Band of Maliseet Indians, or the Passamaquoddy Tribe either ~~under~~ ^{from} the Settlement Fund or the Land Acquisition Fund until he determines that the Tribes have ~~relinquished all claims of the tribes against the State of Maine or individual citizens of the State of Maine, which are extinguished by Sec. 4, H, 172~~ ^{executed appropriate documents relinquishing all claims covered by this Act.}

[Handwritten scribble]

Subsec. 5(g)(1) provides that the Non-Intercourse Act (R.S. 2115, 25 U.S.C. 177) shall not apply to any Indian Indian Nation, tribe, or band of Indians, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, or to any lands held by or in trust for any Indian, or any Indian Nation, tribe or band of Indians.

[Handwritten scribble]

subsec 5(g)(2) provides that all land acquired for the Passamaquoddy Tribe or Penobscot Nation which falls within the bounds of their reservations or is included within ^{the} either Territory of/each tribe shall be subject to a restraint against alienation which is comparable in character to the restraints in R.S. 2115, 25 U.S.C. 177. See discussion under Subsec 6(b)(1).

tracks the language of the

[Handwritten scribble]

(43 U.S.C. § 1716). Subclause (F) of subsection 5(g)(3) requires that the Secretary locate a willing seller of land and effect a contract or option with him before selling any land within Indian Territory.

5 (1) (3)

The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States ~~may~~ ~~initiate~~- is authorized to seek judicial review of all relevant matters in the courts of the United States and shall have an absolute right of removal, *at its discretion,* from any action commenced in the courts of the State.

Subsection 5(h) permits the Secretary and the Penobscot Nation and Passamaquoddy Tribes to set the terms under which the land acquired under this Act shall be administered.

Subsection 5(i)(1) provides that trust land held for the benefit of the Passamaquoddy Tribe and Penobscot Nation may be taken for public uses under State law as provided in the Maine Implementing Act. Section 6205 of the Maine ^{Implementing} Act provides a procedure of acre for acre compensation for taking of reservation land.

Subsection 5(i)(2) provides generally that the State of Maine is able to condemn land held by the tribes in Indian Territory as provided in the Maine Implementing Act.

~~It also provides that~~ monetary compensation for a taking of lands in Indian Territory and ~~provides such funds~~ shall be re-invested ~~in land~~ through the Land Acquisition Fund.

Subsection 5(i)(3) provides that in the event of a taking of trust or restricted lands within the Indian Territory the United States shall be a necessary party to any proceeding. This subsection requires an exhaustion of the administrative process of condemnation as provided by State law. Upon appeal to the courts of the State of Maine, the United States shall have an absolute right of removal at its discretion to the courts of the United States. Gift: see "begin"

Unless specifically
made applicable
within the State
of Maine,

Subsection 10(b)

provides a rule of
construction to govern
interpretation of
Federal statute
enacted after the
date of enactment
of this Act. Provisions
of future Federal
legislation enacted for
the benefit of Indians,
Indian Nations, tribes,
or bands of Indians,
or which relate to
trust lands or
natural resources,
shall not be
applicable within
the State of Maine
if such provisions
would materially
affect or preempt
the application
of Maine State law.
The term "material
affect" shall have
the same meaning

of course Act. Approval
of future Federal
legislation enacted for
the benefit of Meliana,
Meliana, Watson - Triden,
or banks of Meliana,
or which relate to
trust. Such an
material resource,
which may be
aplicable within
the state of Maine
if such provisions
would materially
affect or prevent
the relocation
of Maine State-law.
The term "material
affect" shall have
the same meaning
as is provided
in Section 6(h)
of this Act.

Subsection 6(b)(1) provides that the Passamaquoddy Tribe, the Penobscot Nation, their members and their lands and natural resources which are held ^{by the U.S. in trust for them, or which are held by} them subject to a restriction against alien^{ation} ^{or which are held} or ~~by the United States in trust for or held~~ in fee by the Tribe or Nation or their members shall be subject to the jurisdiction of the State to the extent and in the manner provided in the Maine Implementing Act. The jurisdiction which the State may exercise over the trust lands or natural resources of the Tribe or Nation is limited by Section 5(d)(4) ^{and 5(g)(2)} of this Act. The application of Maine law ~~will~~ ^{can} not jeopardize or impair the clear title

~~of the United States to the trust lands held on behalf of the tribes or~~ ^{obligate the United States to pay taxes or fees except as provided in subsection (d)} ~~jeopardize or~~ ^{can} impair interests of the tribes in their restricted property. Section 6208 of the Maine Implementing Act specifically exempts all real or personal property of the tribes ^{within Indian Territory,} including restricted and trust lands ^{these Maine} of the Tribes, from taxation.

Provision is made for payments by the tribes in lieu of taxes and Section 6(d)(2) of this Act provides a means for payment ^{of such in lieu} from ^{obligation} ~~trust~~ ^{from the Settlement Fund} income in the event of default. Section 5(g)(2) of this Act specifically prohibits alienation of tribal trust or restricted lands except as provided in Section 5(g)(3). This restriction is comparable to 25 U.S.C. § 177 which it replaces. Section 5(g)(2) specifically states that any transfer of lands or natural resources outside the terms of this Act "shall be void ab initio". This effectively exempts these trust or restricted lands from any financial encumbrance which could cloud title and bring about forced sales, or alienation, including, for example, tax or commercial liens or attachments, ~~in a manner or by a means not specifically provided for in this Act.~~ Laws of the State such as

Insert / Pg. 30, after end of 1st partial para.

In addition, to the extent that the State of Maine or a political subdivision or instrumentality of the State which seeks a tax, fee, or payment in lieu of taxes from a tribe, provides services to such tribe which the Federal government would otherwise provide pursuant to Section 6(i), such tribe will be entitled to use Federal funds, consistent with the purpose for which they are appropriated, to pay all or part of any such tax, fee, or payment in lieu of taxes. For example, Federal funds could be used to pay the Maine Forest District tax, pursuant to which the State provides fire protection and fire suppression services for woodlands. To this extent, utilization of Federal funds for payment of such tax or fee should be no different from another tribe ^{the by} ~~which might obtain funding~~ ^{of similar funds} under the Indian Self-Determination and Education Assistance Act (Act of Jan. 4, 1975; 88 Stat. 2203) for purposes of subcontracting such services from a state.

adverse possession or creditors liens are not applicable to these trust or restricted lands or natural resources.

On the other hand, state law, including but not limited to laws regulating land use or management, conservation and environmental protection are fully applicable as provided in this Section and Section 6204 of the Maine Implementing Act. ~~The fact~~ ^T that regulation of land or natural resources may diminish or restrict maximization of income or value is not considered ^{financial} an encumbrance, and is not barred from application under this Act.

Subsection 6(b)(2) provides that funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized by the Passamaquoddy Tribe and the Penobscot Nation to match state funds which laws of the State require to be raised by local or municipal governments as a condition to receiving State financial assistance. Utilization of these funds and restrictions on the amount of the State contribution are governed by Section 6211 of the Maine ¹⁴⁹ ~~Implementation~~ Act. The impact of Section 6211 on provision of Federal funding was the subject of intense scrutiny by this Committee. The exact manner in which this section of the State Act will apply is set forth in this report in the section entitled "Analysis of the Maine Implementing Act". ^{FF} Insofar as general Federal law is concerned, it is the intent of this ^{sub} section of this Act that Federal funds used by the Tribe or Nation as local matching funds shall be considered as local funds for purposes of any maintenance of effort requirements imposed by Federal law or regulation. ^{Insert #1}

Subsection 6(b)(3) is a savings clause to make clear that the provisions of this Act shall not be construed as superseding any Federal statutes or regulations governing the provision or funding of services or benefits to any person or entity in the

AN example of maintenance of effort is Title III of the Indian Reorganization Act, 20 U.S.C. 241.ee (b).

State of Maine except as expressly provided in this Act.

Subsection 6(b)(4) directs the Secretary of the Interior to submit no later than October 30, 1982, to the appropriate committees having jurisdiction over Indian affairs a report on the Federal and State funding provided the Passamaquoddy Tribe and Penobscot Nation. This provision is needed because of the eligibility of the Tribe and Nation to participate as municipalities under the Maine Implementing Act. The relationship ^{created} by this eligibility and the provisions of Section 6211 of the Maine ^{Implementing} Act are unique. The purpose of this subsection is to assure a full review by the appropriate Federal agencies and the Congress of the Federal and State funding efforts in comparison to Federal and State funding efforts in other states.

Subsection 6(c) provides that the federal government is barred from asserting criminal jurisdiction based on federal statutes pertaining to Indian offenses ⁱⁿ the State of Maine. This avoids problems of concurrent State and Federal jurisdiction.

Subsection 6(d)(1) establishes that the Penobscot Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians may sue and be sued in the State of Maine and in the courts of the United States just as any person or entity within the State might sue or be sued, to the extent permitted in the Maine Implementing Act. The Penobscot Nation and Passamaquoddy Tribe are acknowledged to be immune from suit within the State.

Insert.

when they or their officers are acting in their governmental capacity to the same extent that municipalities and their officers are immune from suit.

State of Maine except as expressly provided in this Act.

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Subsection 6(c) provides that the federal government is barred from asserting criminal jurisdiction based on federal statutes pertaining to Indian offenses, in the State of Maine. This avoids problems of concurrent State and Federal jurisdiction.

Subsection 6(d)(1) establishes that the Penobscot Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseet Indians may sue and be sued in the State of Maine and in the courts of the United States just as any person or entity within the State might sue or be sued to the extent permitted in the Maine Implementing Act. The Penobscot Nation and Passamaquoddy Tribe are acknowledged to be immune from suit, within the State of Maine. } line dropped

Subsection 6(d)(2) provides that, notwithstanding any provision of the Anti-Assignment Act, the Secretary of the Interior is empowered to take notice of valid judgments against the Penobscot Nation and Passamaquoddy Tribe and to satisfy the creditors with the income received from the Settlement Fund,

see Draft p. 31

This subsection is similar to the provisions of 5, 1181 introduced in the 90th Cong. 1st Sess. by "authorized" agreement to jurisdictional issues between the State and the tribes.

once such judgements are final and the time for taking on appeal has expired. Explain Anti-Assignment Act (see insert 3)

Subsection 6(e)(1) permits the State of Maine and the Penobscot Nation and the Passamaquoddy Tribe to enter into agreements amending the Maine Implementing Act. A proviso in this subsection limits the subject matter of those agreements to three specific areas.

Subsection 6(e)(2) extends the authority to enter into agreements with the State of Maine to the Houlton Band of Maliseet Indians over jurisdictional issues, including the governmental status of the Band under laws of the State. Until any such an agreement is made with the Houlton Band, it and its members are subject to all the laws of the State of Maine, except those from which they will necessarily be except under Section 5(d)(4).

Subsection 6(f) recognizes the jurisdictional authority of the Penobscot Nation and Passamaquoddy Tribe as ^{limited by} embodied in the Maine Implementing Act.

Subsection 6(g) provides that the courts of the State of Maine and the courts of the Penobscot Nation and Passamaquoddy Tribe shall accord full faith and credit to the judgements of the court's of each other.

STOP

Subsection 6(h) provides that, unless otherwise provided in this Act or the Maine Implementing Act, the general body of federal Indian law applies to the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseets within the State of Maine, except to the extent such law preempts or affects the laws of the State of Maine.

It does not seem to take Congressional "participations" of such future agreements to the State of Maine. Federal law

Insert (3)

The Anti-Assignment
(31 USC 203) generally
precludes Federal officials
from honoring an
assignment of funds
payable by the United
States to an assignee.

Subsection 4(f) recognizes the ~~jurisdictional~~ authority of the Passamaquoddy Tribe and Penobscot Nation to exercise judicial powers as limited by the Maine Supplementing Act.

The treatment of the Passamaquoddy Tribe and Penobscot Nation in the Maine Supplementing Act is original, ~~and innovative~~. It is an innovative blend of customary state law respecting suits of local government coupled with a recognition of the independent ~~well~~ ~~spring~~ source of tribal authority, i.e., the inherent authority of a tribe to be self-governing.

Section 6206 of the Maine Supplementing Act provides that the Passamaquoddy Tribes

Quata Clara Puello v.
Maine, — U.S. — (1978).

and Penobscot Nation shall have all the powers, immunities, and obligations of any municipalities under state law; ~~and~~ it obligates the Tribe and Nation to extend to non-members the ~~same~~ services provided and benefits provided by them as a municipality; and it extends to the Tribe and Nation the same protections and exposure that any municipality or its enjoy with respect to suit in the courts of the State or the United States. ^{Section 6206 of} At the same time, ^{the} Maine Supplementing Act specifically provides that persons who are not members shall not be entitled to vote in Tribal elections; it provides specific immunities from

municipal officials

tribal

4

state regulation of
internal tribal matters;
and Section 6209
~~specifically provides~~
~~in~~ ~~treaty~~ - of the
judicial authority
of the Tribe and
Nation on the
premise that their
courts are ~~the~~
instrumentalities
of the Tribes as
separate sovereigns.

9/ Subsection 6(e). Insert
The Maine Supplementing
Act is carefully structured
to recognize and take
into account the
independent govern-
mental authority of
the Passamaquoddy
Tribe and Penobscot
Nation as Federally
recognized Indian
tribes. See Santa Clara
People v. Martinez,
415 (1975). Under
the Maine Supplementing
Act the Tribe and
Nation agree to adopt
the laws of the State
as their own. Such
adoption does not
violate the principles
of separate sovereignty;
though identical
in form, the laws
are those of the tribes.
Wauneka v. Langsfell, 22 Ariz. At
287, 526 P.2d 1085 (1975).
^{500.6209 of} Under the Maine
Supplementing Act, procedure
in the courts of the
tribes are to be governed

1
6

under Federal law } not State
law. In addition,
principles of double
jeopardy and collateral
estoppel shall not
apply as between the
tribal and State courts.
This is entirely in
keeping with the
principles enunciated
in U.S. v. Wheeler,
435 U.S. 313 (1978)
describing the relation-
ship between tribal
courts and Federal
courts.

It is this separate
and independent
status which this
subsection recog-
nizes.

To be a subsection of 5.1181 introduced in the 90th Congress, 1967. It is "authorized" agreement to the joint jurisdictional issues between the State and the tribes.

once such judgements are final and the time for taking on appeal has expired. **EXPLAIN Anti-Assignment Act**

Subsection 6(e)(1) permits the State of Maine and the Penobscot Nation and the Passamaquoddy Tribe to enter into agreements amending the Maine Implementing Act. A proviso in this subsection limits the subject matter of those agreements to three specific areas. ^{1/} Subsection 6(e)(2) extends the authority to enter into agreements with the State of Maine to the Houlton Band of Maliseet Indians over jurisdictional issues, including the governmental status of the Band under laws of the State. Until any such an agreement is made with the Houlton Band, it and its members are subject to all the laws of the State of Maine, except those from which they will necessarily be except under Section 5(d)(4).

Subsection 6(f) recognizes the jurisdictional authority of the Penobscot Nation and Passamaquoddy Tribe as ^{limited by} ~~embodied in~~ the Maine Implementing Act. See yellow paper.

Subsection 6(g) provides that the courts of the State of Maine and the courts of the Penobscot Nation and Passamaquoddy Tribe shall accord full faith and credit to the judgements of the court's of each other.

Subsection 6(h) provides that, unless otherwise provided in this Act or the Maine Implementing Act, the general body of federal Indian law applies to the Passamaquoddy Tribe, Penobscot Nation and Houlton Band of Maliseets within the State of Maine. The application of such Federal law is limited except to the extent such law preempts or affects the laws of the State of Maine. that Federal law may not materially

applicable to Indians, Indian Nations, Tribes, or bands of Indians, and Indian Bands and natural resources, shall

to assist new concepts for the Congressionally authorized "statutory" of such future agreements to meet elements of such agreements to the status of a Federal law

Tribes, Nations and Bands
are not in their sections
of this Act required to
adopt it or a constitution
each must however
file with the document
secretary a statement
describing its
organizational
structure.

adopt a constitution as
provided in that section.

It does not appear that
any of these tribes have voted
to reject this Act. ~~Consequently~~
They may choose to organize under section 16 of the
I.R.A.

~~of the I.R.A. is available should
the tribes so choose.]~~ However,
adoption of an I.R.A. constitution
is not a prerequisite for
federal recognition of a tribal govern-
ment and the

Insert (4)

It is recognized that some Band members still retain their Canadian citizenship and as "status" Indians would be eligible to receive benefits from ~~the~~ government of Canada or its political subdivisions. It is the intent of the Committee- this section that no Band member who is actually receiving benefits because of his or her status as an Indian from a government in Canada shall be entitled to receive benefits under Federal law which extends benefits to Federally recognized Indians because of their status as Indians.

Section 8. Implementation of the Indian Child Welfare Act.

Subsection 8(a) authorizes the Penobscot Nation and the Passamaquoddy Tribe to assume exclusive jurisdiction over Indian child custody proceedings under the Indian Child Welfare Act of 1978. (~~25 U.S.C. § 1901~~). *(Act of November 8, 1978; 92 Stat. 3069).*

Subsection 8(b) *provides* ~~establishes~~ that the Secretary shall review petitions for the assumption of jurisdiction over Indian child custody proceedings which are made by the Penobscot Nation or the Passamaquoddy Tribe, ~~The Secretary shall consider the petitions~~ as provided in sections 108(b) and (c) of the Indian Child Welfare Act. *over →*

Subsection 8(c) provides that where a court already has jurisdiction *in* ~~an~~ Indian child custody proceeding *involving an Indian child,* ~~it~~ shall not be affected by an assumption of jurisdiction, pursuant to this section, *of such court.* ~~this section~~

Subsection 8(d) ~~of section 8~~ provides that, for purposes of this section, the reservations of the Passamaquoddy Tribe and Penobscot Nation ~~shall be considered~~ *are* reservations under section 4(10) of the Indian Child Welfare Act. *Land within the Penobscot Tribe* ~~Indian territory lying outside~~ *either* ~~the reservation is~~ *are* not considered part of the Tribes' reservations *under*

Subsection 8(e) provides that the Houlton Band of Maliseet Indians

an Indian *Sub Sec 4(8)*
is Tribe within the meaning of the Indian Child Welfare Act.

The proviso makes clear that this subsection does not disturb the jurisdiction of the State of Maine or its courts over child welfare. Consequently, subsections (a), (b), and (d) of Section [0] of the Indian Child Welfare Act are not applicable *to the Houlton Band,* ~~within the State.~~ Subsection 8(e) also refers to subsection 6(e) (2) which authorizes *future* agreements between the State and the Band which may, by their terms, affect the jurisdiction of the State *and the Band.*

*7. It is a petition in near
100% of the ICW 19. It is
order to clarify its jurisdiction.*

Subsection 8(f) provides that, should there be an interim period within which the Passamaquoddy Tribe or the Penobscot Nation has not assumed jurisdiction ^{over} Indian child custody proceedings, jurisdiction will lie with the courts of the State of Maine.

(continued from preceding page)
The Committee notes that the Penobscot Nation currently operates a tribal court, that the Department of the Interior has established a Court of Indian Offenses for the Passamaquoddy Tribe, and that ^{both} such courts are currently exercising jurisdiction over child welfare matters. ^{Sub} It is not intended that Section 8(b)

is not intended to
~~will~~ affect the validity of any ~~such~~ orders which are issued by ~~these~~ ^{of subsection 8(b)} courts prior to the enactment of this bill. Nor ~~is it~~ intended that Section 8(b) be an impediment to the ~~uninterrupted~~ ^{continued jurisdiction over} continuation of the exercise of jurisdiction over child welfare matters ^{which is now exercised} by these courts. Section 8(b) ^{is} was included in anticipation

of the possibility that either the Passamaquoddy Tribe or the Penobscot Nation might choose ~~not to exercise jurisdiction over~~ child welfare matters initially. If ^{either or} both the Tribe and the Nation ^{is} are still exercising jurisdiction over child welfare matters at

the time the settlement becomes effective, the Committee expects the Secretary to provide ^{prompt} the approval ^{of such court system as provided} required by Section 8(b) ^{of the Indian Child Welfare Act of 1978} effective the date that ^{this} the settlement become effective.

Section 9. Effect of Payments to Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians.

Section 9 has three subsections.

Subsection 9(a) provides that the receipt of income by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall not be considered by any agency of the federal government in determining the eligibility of the State of Maine for federal financial assistance.

Subsection 9(b) provides that, the receipt of payments from the State of Maine or the simple eligibility for payments by the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation shall not be computed by the federal government in determining the eligibility of the Penobscot Nation and Passamaquoddy Tribe or any of their members for federal assistance. A proviso to this subsection permits the federal agency to consider the actual need of the applicant if the financial assistance is dependent on a showing of need.

Subsection 9(c) ^{provides that} funds which are forthcoming to the tribes and their members under the terms of this Act are not to be used to deny or reduce benefits to any Indian household or member of that household under any federally assisted housing program.

Funds available to the tribes under this Act are also not to be used to deny or reduce federal assistance or benefits to either

tribe. *The provisions in this subsection are the same as provisions contained in the Act of Oct. 17, 1975 (89 Stat 579) concerning suboriginal legal to Indian tribes.*

Section 10. Deferral of Capital Gains.

Section 10 permits landowners who are selling or acquired their land under this Act to treat the sales as events occurring under Section 1033 of the Internal Revenue Code. This provision of the Code covers involuntary conversions of property.

Section 11. Transfer of Tribal Trust Funds Held By the State of Maine.

Section 11 provides for the transfer of funds currently held in trust for the Penobscot Nation and Passamaquoddy Tribe to the Secretary. The receipt of these funds by the Secretary

have

Section 11 pertains to a ~~State~~ trust fund now operated for the benefit of the Passamaquoddy Tribe and Penobscot Nation by the State of Maine. The monies in this fund are, by the operation of section 11, to be transferred to the Settlement Fund established pursuant to section 5(b) of this Act. The receipt of these funds is intended to effect a general release of claims which might otherwise have been raised against the State of Maine or its officials regarding the administration of the State trust fund. Once the Secretary receives the trust funds from the State, he is authorized and required to execute general releases of the State of Maine and its officials from any claims which either tribe or the United States might ~~have raised~~ ^{otherwise} concerning the administration and management of the trust.

herein

work

Section 13 provides that, except as provided in this Act, nothing in this Act shall be interpreted ~~as~~ either as a jurisdictional act, or to confer jurisdiction to bring suit, or to represent the implicit consent of the United States ^{or its officers} to be sued by any Indian, Indian nation, or tribe or band of Indians if the claims extinguished by this Act are the basis for such suit.

Section 14 authorizes the ^{appropriate} allocation of \$81.5 million to ^{implement the provisions of Sec. 5 of} fulfill the purposes ~~expressed~~ in this Act.

Section 15. Inseparability.

Section 15 provides that if any portion of Section 4, the extinguishment section, is found to be invalid, it is the intent of Congress that the ^{entire} ~~whole~~ Act fail. Should any other portion of the bill be held invalid, however, it is the intent of the Congress that the rest of the Act remain in force.

Section 16. Constuction.

Subsection ¹⁶ (a) simply provides that in the event of any

conflict between the provisions of this Act and the Maine Implementing Act, the provisions of this Act shall govern.

~~Subsection (b) provides that federal acts enacted subsequent to this Act that intend to modify the application of State law under the provisions of this Act or the Maine Implementing Act must contain an express provision making them applicable within the State of Maine or they shall not be applicable. This provision would not require such an express application provision in subsequently enacted statutes which make the Tribes or their members eligible to receive financial benefits or does not affect or preempt the laws of the State. Such provisions would apply under Sec. 5(h) of this Act, even if they were included in a later enacted Act.~~