

SUMMARY OF MAJOR PROVISIONS

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.

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.

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 in its Memorandum of Understanding with the Passamaquoddy Tribe and Penobscot Nation, dated February 10, 1978, that the 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 other guarantees concerning jurisdictional matters and entitlement to state services.

In addition, Section 5 provides that the United States will also establish the Maine Indian Lands Acquisition Fund, into which will be 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 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 (e) adopts and ratifies 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 reservation 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 reservation, and reserves to the Tribes small claims civil jurisdiction and matters of domestic relations including support and child welfare involving their own members.

To facilitate implementation of the Maine Act, Sec. 6(d) provides that the Passamaquoddy Tribe, Penobscot Nation, and the Houlton Band of Maliseet Indians, and their members may, subject to the limitation on internal affairs contained in Sec. 6206(1) of the Maine Implementing Act, sue and be sued in State and Federal courts the same as any other person or entity, provided that principles of immunity applicable to municipalities in the State of Maine are equally applicable to the Tribe and the Nation when acting in their governmental capacities. Since the trust and restricted lands and trust fund of the Tribe and Nation will

be exempt from levy or attachment or from alienation, provision is made for payment by the Secretary of income from the Trust Settlement Fund in satisfaction of valid, final orders of the courts. The trust and restricted lands of the Band will also, when acquired, be exempt from levy or attachment or from alienation. Section 5(d)(4) provides that the State and the Band 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 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 Penobscot Nation or their members would otherwise be entitled.

Section 10 provides for a deferral or capital gains for private property owners transferring lands to the United States under this Act by providing that such transfers of land shall be deemed involuntary conversions 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 sue the United States except as provided in this Act.

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.

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 Passamaquoddy Tribe, Penobscot Nation, and the Houlton Band of Maliseet Indians 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 that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are the sole successors of those aboriginal entities that once exercised or claimed aboriginal rights of use and occupancy over certain lands located in the State of Maine.

Subsection 2(a)(7) finds that other tribes, nations, or bands which may once have held aboriginal title within the State of Maine have long ago abandoned their holdings.

Subsection 2(a)(8) refers to the Maine Implementing Act which was passed by the Maine State Legislature on April 3, 1980, and embodies various jurisdictional agreements between the parties.

Subsection 2(a)(9) makes finding with respect to contributions the State of Maine has made to the welfare of the three Tribes since 1820. According to recent court decisions, Maine was never required to make these contributions and, in light of these decisions, the State of Maine is not being required to make further direct financial contributions to this settlement.

Section 3. Definitions.

Sec. 3 contains definitions of terms used throughout the Claims Settlement Act. Of particular importance, among these definitions are:

Subsections (1), (8), and (11) define the Tribes participating in this settlement. They state that the Tribes are now represented by certain governing bodies and that they are the successors in interest to those aboriginal entities which once exercised or claimed aboriginal rights of use and occupancy over certain areas of the State of Maine.

Subsection (2) defines "land or natural resources." This term is to be interpreted consistent with the term "land and other natural resources" in the Maine Implementing Act.

Subsection (7) and (9) define the terms Penobscot Indian Territory and Passamaquoddy Indian Territory by reference to the definition of these terms contained in the Maine Implementing Act. The Maine Act specifically describes approximately 400,000 acres of land within the State from which the Secretary of the Interior may acquire 150,000 acres on behalf of the Passamaquoddy Tribe and the Penobscot Nation respectively. Upon their selection and acquisition, such land, together with the Tribes' existing reservations, will become the "Territory" of the respective Tribe or Nation.

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 or natural resources can pass from one person or group of person 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.

Subsection 4(a)(1) provides Congressional approval and ratification of all prior transfer 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, including transfers made pursuant to any treaty, compact, or statute of any state 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 transfer 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 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.

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.

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

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

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.

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. Establishment of Funds.

Section 5 consists of 10 subsections.

Subsection 5(a) establishes a 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 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 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.

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

Subsection 5(d) provides that the monies in the Land Acquisition Fund shall only be used to acquire land or natural resources for the tribes and provides that it shall be apportioned as follows: Passamaquoddy Tribe, \$26.8 million; Penobscot Nation, \$26.8 million; Houlton Band of Maliseet Indians, \$900,000. The \$900,000 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 the trust property or the trust should terminate, then the corpus of the trust will revert to the Passamaquoddy Tribe and the Penobscot Nation.

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 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 intent of the Committee 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. Under no circumstances should the inability of the State and the Houlton Band to reach agreement on these issues 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 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 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 expects that both the State and the Band will work diligently and conscientiously 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 the owner of the land has agreed upon the identity, purchase price, and other terms of purchase, or valuation. 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 from the Settlement Fund or the Land Acquisition Fund until he determines that the Tribes have executed appropriate documents relinquishing all claims covered by this Act.

Subsection 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.

Subsection 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 Indian Territory of either 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 Subsection 6(b)(1).

Subsection 5(g)(3) permits the lands and natural resources within the Passamaquoddy and Penobscot Indian Territory and lands held in trust for the Houlton Band of Maliseet Indians to be used in certain ways or conveyed under certain circumstances, pursuant to established federal law governing Indian trust lands. Subclause (E) of that section establishes the right to exchange parcels of land within Indian Territory for land of near equal value. This provision closely tracks the language of the Federal Land Policy and Management Act (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.

Subsection 5(h) permits the Secretary and the Penobscot Nation and Passamaquoddy Tribe 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. Monetary compensation for a taking of lands in Indian Territory shall be

reinvested 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.

Subsection 5(j) provides that, in the event land held for the benefit of any of the three Tribes is condemned under federal law, the compensation received for the land taken shall be reinvested through the Land Acquisition Fund.

Section 6. Application of State Laws.

Section 6 has eight subsections.

Subsection 6(a) provides that except for the Passamaquoddy Tribe, Penobscot Nation, and their members all Indians, Indian Nations, tribes or bands of Indians and their lands or natural resources, shall be subject to the laws of the State of Maine. However, Section 5(d)(4) requires negotiations between the Houlton Band of Maliseet Indians and the State which among other things will result in trust restrictions being placed on land to be acquired for the Band, and this will necessarily entail some exception to the application of the laws of the State. In addition, Section 6(e)(2) authorizes compacts or agreements between the State and the Band which may effect their jurisdictional relationship. Finally, Section 8(e) provides that the provisions of the Indian

Child Welfare Act of 1978 shall be applicable to the Houlton Band and its members, but this shall not oust the State from its underlying jurisdiction over child welfare matters.

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 United States in trust for them, or which are held by them subject to a restriction against alienation, or which are 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 cannot 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 6(d)(2). Nor can it jeopardize or 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 of the three Maine 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 obligations from income from the Settlement Fund 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. Laws of the State such as 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. That regulation of land or natural resources may diminish or restrict maximization of income or value is not considered a financial 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 required 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 Implementing 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".

Insofar as general Federal law is concerned, it is the intent of this subsection 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. An example of such a Federal statute requiring "maintenance of effort" is Title IV of the Indian Education Act, 20 U.S.C. § 241ee(6).

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 the use by another tribe 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.

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

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, once such judgments are final and the time for taking on appeal has expired.

The Anti-Assignment (31 U.S.C. § 203) generally precludes Federal officials from honoring an assignment of funds payable by the United States to an assignor.

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. This subsection is similar to the provisions of S. 1181 introduced in the 96th Congress, 1st Sess.. It "authorizes" agreements on jurisdictional issues between the State and the Tribes. It does not constitute Congressional "ratification" of such future agreements nor does it elevate such agreements to the status of Federal law.

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 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 authority of the Passamaquoddy Tribe and Penobscot Nation to exercise judicial powers as limited by the Maine Implementing Act.

The treatment of the Passamaquoddy Tribe and Penobscot Nation in the Maine Implementing Act is original. It is an innovative blend of customary state law respecting units of local government coupled with a recognition of the independent source of tribal authority, i.e., the inherent authority of a tribe to be self-governing. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

Section 6206 of the Maine Implementing Act provides that the Passamaquoddy Tribe and Penobscot Nation shall have all the powers, immunities, and obligations of any municipality under state law; it obligates the Tribe and Nation to extend to non-members the services and benefits provided by them as municipalities; and it extends to the Tribe and Nation the same protections and exposure that any municipality or municipal officials enjoy with respect to suit in the courts of the State or the United States.

At the same time, Section 6206 of the Maine Implementing Act specifically provides that persons who are not tribal members shall not be entitled to vote in tribal elections; it provides specific immunities from state regulation of internal tribal matters; and Section 6209 treats the judicial authority of the Tribe and Nation on the premise that their courts are instrumentalities of the tribes as separate sovereigns.

Under the Maine Implementing 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. Campbell, 22 Ariz. App. 287, 526 P.2d 1085 (C.A. 1974).

Under Section 6209 of the Maine Implementing Act, procedures in the courts of the tribes are to be governed 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 relationship between tribal courts and Federal courts.

It is this separate and independent status which this subsection recognizes.

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 judgments of the courts of each other.

Subsection 6(h) provides that unless otherwise provided in this Act, the general body of Federal Indian law specially applicable to Indians, Indian Nations, tribes or bands of Indians, and Indian trust lands and natural resources shall be applicable to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, their members and their lands and natural resources, within the State of Maine. However, the application of such Federal law is limited in that to the extent provisions of such Federal law would materially affect the application of the laws of the State of Maine, such provisions of Federal law or laws shall not be applicable.

Section 8 of this Act specifically provides for application of the Indian Child Welfare Act of 1978 and thus will not be affected by this subsection. Nevertheless, for purposes of clarification of this provision, the Indian Child Welfare Act provides an example of provisions in a Federal law which materially affects the application of Maine State law and, but for the specific provisions in Section 8, would not be applicable within the State of Maine. Aside from the jurisdictional provisions of that Act, the Indian Child Welfare Act also imposes stringent evidentiary standards, requires new procedures, and provides substantive rights to litigants which must be followed in proceedings in the courts of the states. Under the provisions of subsection 6(h) of this Act, none of these provisions would be applicable in the State of Maine.

On the other hand, it is not the intent of this section to bar application of Federal laws where the affect on application of State law is peripheral and does not affect a matter in which the State may have a substantial or material interest.

Subsection 6(i) provides that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are federally recognized tribes and that, as such, they are eligible to receive all Federal benefits which the United States provides to other Federally recognized tribes to the same extent and subject to same eligibility criteria as other Federal recognized tribes. Subsection 6(i) provides further that for purposes of federal taxation, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets shall be treated as other federally recognized tribes and that their lands which are held in trust or subject to restrictions against alienation shall be

considered reservation land for federal tax purposes. However, any exemption from federal tax laws does not entitle the Tribes to exemption from payment of State taxes or, in the case of restricted or trust lands, payments in lieu of taxes.

Section 7. Tribal Organization.

Subsection 7(a) empowers, but does not require, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets to adopt an appropriate instrument to govern affairs of the tribe. Section 16 of the Indian Reorganization Act (IRA) (Act of June 18, 1934, 48 Stat. 984), provides that any tribe which has not voted to reject that Act may, if it chooses, organize and 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 IRA. However, adoption of the IRA constitution is not a prerequisite for federal recognition of a tribal government and the Tribe, Nation, and Band are not, in this Section of this Act, required to adopt such a constitution. Each must, however, file with the Secretary a document describing its organizational structure.

Subsection 7(b) limits participation in the Maine Indian Claims Settlement Act by the Houlton Band of Maliseet Indians to those Maliseet Indians who are citizens of the United States or who, as of the date of this Act, are enrolled members of the Band. Membership in the Band shall entitle members to benefits available from the United States by virtue of federal recognition of the Band. 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 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. The Band is empowered to establish further criteria to govern its membership, but this shall be subject to the approval of the Secretary.

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 (Act of November 8, 1978; 92 Stat. 3069).

Subsection 8(b) provides 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 as provided in sections 108(b) and (c) of the Indian Child Welfare Act.

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 courts are currently exercising jurisdiction over child welfare matters. Subsection 8(b) is not intended to affect the validity of any orders which are issued by these courts prior to the enactment of the bill. Nor is subsection 8(b) intended to interrupt the continued jurisdiction over child welfare matters which is now exercised by these courts. Section

8(b) is included in anticipation of the possibility that either the Passamaquoddy Tribe or the Penobscot Nation might choose to file a petition under Section 108 of the Indian Child Welfare Act in order to clarify its jurisdiction.

Subsection 8(c) provides that where a court already has jurisdiction in a proceeding involving an Indian child, this section shall not affect the jurisdiction of such court.

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

Subsection 8(e) provides that the Houlton Band of Maliseet Indians is an Indian Tribe within the meaning of subsection 4(8) 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 101 of the Indian Child Welfare Act are not applicable to the Houlton Band. 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.

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 the provisions contained in the Act of October 17, 1975 (89 Stat. 579) conveying submarginal lands to Indian tribes.

Section 10. Deferral of Capital Gains.

Section 10 provides that landowners who are transferring lands under this Act are authorized to treat those transfers as involuntary conversions under section 1033 of the Internal Revenue Code. Section 1033 permits landowners who have sustained a loss of their property involuntarily to defer the capital gains tax which would otherwise be due on whatever compensation they received

for the property lost for a period of three years. If, during this period, the landowner invest in property which is "similar" to that which he lost, he may apply the basis of the property lost to the newly-acquired property and need not pay the capital gains tax until the newly-acquired property is sold. If, on the other hand, he fails to invest in similar property within the three year period, he must amend the return he filed in the year he claimed the section 1033 treatment and pay the capital gains tax which would have fallen due in that year plus interest.

The provisions of Section 10 of this Act are necessary to achieve a fair settlement of claims. An integral part of this settlement is the participation of those who willingly transfer their land to fulfill its terms. Furthermore, but for the existence of the claims of the Maine Tribes, many of the landowners participating in this settlement would not transfer their land at all. In fact, the present option contracts on the lands which are to be acquired through the Land Acquisition Fund established by Section 5 of this Act are expressly conditioned on the transfer of the land being treated as a Section 1033 event.

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 otherwise raise concerning the administration and management of the trust.

Under the provisions of subsection 5(f), the Secretary is prohibited from expending any monies deposited in the Funds established by Section 5 until the appropriate officials of the three Tribes have executed documents relinquishing all claims to the extent provided in Sections 4, 11, and 12. It is the intent of this section that the Tribes will execute relinquishments of any claims against the United States based on the acceptance of these funds from the State.

Section 12. Other Claims Discharged By This Act.

Section 12 releases the State of Maine from any obligations it may have pursuant to any treaty or agreement with an Indian nation or tribe, or band of Indians. The court cases which the United States has filed on behalf of the Penobscot Nation and Passamaquoddy Tribe against the State of Maine and which are pending in the United States District Court for the District of Maine are specifically included herein.

Section 13 provides that, except as provided in this Act, nothing in this Act shall be interpreted 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 appropriation of \$81.5 million to implement the provision of Section 5 of 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 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. Construction.

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 16(b) provides a rule of construction to govern interpretation of Federal statute enacted after the date of enactment of this Act. Unless specifically made applicable within the State of Maine, provisions of future Federal legislation enacted for the benefit of Indians, Indian Nations, tribes, or bands of Indians, or which relate to trust lands as 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 as is provided in Section 6(h) of this Act.