

Tentative Response of the Passamaquoddy Tribe <sup>and</sup> in the Penobscot Nation to State Proposals for Amendments to S. 2829

The Passamaquoddy Tribe in the Penobscot Nation tentatively proposed the following amendments to the State proposals for amendments to S. 2829:

1. The tribes are generally in agreement with the proposed Committee report language, but would suggest a redraft as follows:

"The Committee was advised by the Secretary of his concern that the set-off provisions in §2211(2) and (4) of the Maine Implementing Act may work to defeat the intent of federal financial assistance to Indian Tribes, since it would appear on its face to permit the State to use federal monies to supplant State monies. However, after further inquiry, the Committee believes the Implementing Act is not inconsistent with existing federal policy. Specifically, the Committee understands that to the extent the United States provides funds to the Maine tribes, Maine Indian Housing Authorities, or local Indian public schools in Maine for programs which are intended to be supplemental to the State program, the set-off provisions of 2211(2) and (4) will not apply. The term "substantially similar purpose" as used in the Implementing Act was not intended to include federal funds intended to enhance, enrich, or supplement programs provided for under State law. Thus, for example, were the BIA funds a remedial reading program for Indians, as in the case of the Johnson-

O'Malley Act programs, such programs would not be "substantially similar" to a basic State educational grant and would not supplant State funding. By the same token, because the set-off provision does not apply to any federal contribution which is not in excess of "any local share ordinarily required by State law as a condition of State funding," the provisions of 6211(2) and (4) will not alter existing federal policies and programs such as Impact Aid or Medicaid.

2. In lieu of the State's proposed changes for §4(a)(2) and (4)(a)(3), the Tribes ~~will~~ tentatively propose the following new §4(2) and (3):

(2) The United States is barred from asserting by or on behalf of any Indian, Indian nation or tribe or band of Indians any claim under the laws of the State arising from any transfer of land or other natural resources located anywhere within the State of Maine, from, by or on behalf of any Indian nation or tribe or band of Indians including but without limitation any transfer pursuant to any treaty, compact or statute of any state on the grounds that such transfer was not made in accordance with the laws of the state.

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State arising from any transfer of land or other natural resources located anywhere within the State of Maine, from, by, or on behalf of any individual Indian, which occurred prior to December 1, 1873, including but without limitation any transfer pursuant to any treaty, compact or statute of any state, on the grounds that any such transfer was not made in accordance with laws of the state.

3. The tribes tentatively propose that the portion of Paragraph 5(d) which appears on page 4 of the State draft be redrafted as follows:

"The secretary is authorized and directed to expend, *with the consent of the affected tribe, nation, or band* the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring at least 147,500 acres of land for the Passamaquoddy Tribe, at least 147,500 acres of land for the Penobscot Nation, and at least 5,000 acres of land for the Houlton Band of Maliseet Indians. Land within Indian territory shall be held in trust by the United States for the benefit of the respective tribe or nation. Land outside the boundaries of Indian territory shall be held in fee simple by the respective tribe, nation or band, and the United States

shall have no further trust responsibility with respect thereto. If the Secretary finds that the Houlton Band of Maliseet Indians shall cease to exist, any land acquired for such band pursuant to this Act, and held by such band at the time of the Secretary's finding, shall be divided equally by the Secretary and transferred in fee, one-half to the Passamaquoddy Tribe and one-half to the Penobscot Nation, provided, however, that if any such land is held in trust by the United States at the time of any such finding by the Secretary, such lands shall be divided equally and held in trust by the United States, one-half for the benefit of the Passamaquoddy Tribe, and one-half for the benefit of the Penobscot Nation. Except for the provisions of this section, or as otherwise provided in the Maine Implementing Act, the United States shall have no other authority to acquire lands in trust for the benefit of Indians or Indian Tribes in the State of Maine.

4. The Tribes would tentatively propose that Section 5(g) on page 5 of the State draft be redrafted to read as follows:

*change.* "(g) <sup>o</sup> If land or natural resources within the Passamaquoddy Indian territory or Penobscot Indian territory is taken for public purposes pursuant to

*new*

the Maine Implementing Act or the laws of the United States, the proceeds paid in compensation for such

taking shall be deposited in the Land Acquisition Fund established by subsection (c). *Reid would add provision prohibiting the condemnation*

*of land held by P+P for Maliseets*

5. The Tribes tentatively propose the following language in lieu of Section Y on page 5 of the State draft:

*Passamaquoddy want constitution + Penobscots don't want one. This section reflects that.*

"Sec. Y. (a) The Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians shall file with the Secretary a copy of their organic governing document and any amendments thereto.

(b) Any business corporation created by the Passamaquoddy Tribe, Penobscot Nation, or the Houlton Band of Maliseet Indians for the purpose of conducting part or all of the proprietary affairs of such tribe, nation, or band shall not constitute a corporation within the meaning of Section 11 of the Internal Revenue Code of 1954, as amended, for purposes of federal taxation, provided, however, that any business corporation created by the Passamaquoddy Tribe, Penobscot Nation or any member either tribe or nation shall be subject to the laws of the State of Maine.

6. The Tribes would tentatively propose that Section 6(f) on page 6 of the State draft be amended to read as follows:

"(f) The Passamaquoddy Tribe, Penobscot Nation and the State of Maine shall give full faith and credit

*Committee report could say that, should Fed's accord H.G.+C. to the Indian Tribes, this provision would not limit the effect.*

Needs  
Redraft →

to the judicial proceedings of each other, ~~and the~~  
~~Courts of the United States and other states and the~~  
~~Passamaquoddy Tribe and the Penobscot Nation shall~~  
~~give full faith and credit to judicial proceedings~~  
~~of each other to the extent such full faith and credit~~  
~~is afforded decisions of Indian Tribal Courts outside~~  
~~the State of Maine and decisions of the courts of the~~  
~~United States and the <sup>states other</sup> State.~~

7. The Tribes tentatively propose that Section 6(g) on page 7 of the State proposal be amended as follows:

"(g) Except as otherwise provided in the Maine Implementing Act, no law or regulation of the United States which (i) accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians and (ii) affects the civil, criminal or regulatory jurisdiction of the State of Maine shall preempt the laws or regulations of the State of Maine,....."