

Intozin (Justice)
Proposed
7/10/80

PROPOSED CHANGES IN S. 2829

Delete paragraphs (8) and (9) of Section 2, and insert in their stead the following new sections:

Sec. X. None of the provisions of this Act shall take effect until the Secretary finds—

(a) that authorized officials of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians have executed appropriate documents relinquishing all claims to the extent provided in section 4 of this Act, including stipulations to the final judicial dismissal of their claims; and

(b) that the State of Maine has enacted legislation essentially identical to the Maine Implementing Act, except that—

- (1) (revisions necessary to make the state law acceptable)
- (2) "
- (3) "
- (4) "

Paragraph (b)(3) of Section 2 should be deleted in light of the above.

Paragraph (b)(4) is inconsistent with paragraph (a)(2) of Section 2. The first paragraph states that Congress finds and declares that "The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe . . . have ceased to exist." But (b)(4) states that "all other Indians, Indian nations and tribes and bands of Indians now or hereafter existing . . . shall be subject to all laws of the State of Maine." Paragraph (a)(2) should be amended to read as follows:

(2) Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

Amend subsections (a), (h), and (k) of section 3 to read:

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

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

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

Regarding other definitions in Section 3:

"Indian Territory", "Passamaquoddy Territory", "Penobscot Territory", "Passamaquoddy Indian Reservation", and "Penobscot Indian Reservation" should be defined in full rather than merely incorporating by reference the definitions in the state law which could be changed in the future.

"Lands or other natural resources" should read "Land^s or natural resources."

Amend Section 4(a) to read:

Sec. 4. (a) Any transfer of land³ or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any treaty or statute of any state, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, Ch. 33, §4, 1 Stat. 138, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve and ratify any such transfer effective as of the date of said transfer; Provided, however, that: Nothing in this section shall be construed to affect or eliminate the claim of any individual Indian which is pursued under any law generally designed to protect non-Indians as well as Indians.

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Amend Section 5(a) to read:

Sec. 5. (a) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Settlement Fund in which \$27,000,000 shall be deposited following the appropriation of sums authorized by section 13 of this Act.

Delete everything in Section 5(b) after the first sentence and insert the following language in its stead:

Each portion of the Settlement Fund shall be administered by the Secretary and invested in accordance with Section 1 of the Act of June 24, 1938 (52 Stat. 1037), or, in accordance with terms agreed upon between the Secretary and the Passamaquoddy Tribe or the Penobscot Nation, respectively, shall be invested by the Secretary in any bonds or obligations in which fiduciary, trust, or public funds under the authority and control of the United States may be invested.

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

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without liability to or on the part of the United States, any income derived from that portion of the Settlement Fund allocated to the respective Tribe or Nation, the use of which shall be free of regulation by the Secretary. Once these payments have been made to the Tribe or Nation, the United States shall have no further trust responsibility to the Tribe or Nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

(4) The Passamaquoddy Tribe and the Penobscot Nation shall each annually expend 7.4 percent of the income paid from their respective portions of the Settlement Fund for the benefit of their members who are over the age of 60

the provisions of this paragraph may be enforced

*Administrative
of funds for land*

Amend Section 5(c) to read:

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which \$54,500,000 shall be deposited following the appropriation of sums authorized by section 13 of this Act.

Amend Section 5(d) to read:

(d) The principal of the Land Acquisition Fund shall be apportioned as follows:

- (1) \$900,000 to be held in trust for the Houlton Band of Maliseet Indians;
- (2) \$26,800,000 to be held in trust for the Passamaquoddy Tribe; and
- (3) \$26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized to expend the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. Land acquired within Indian territory shall be held in trust by the United States for the benefit of the respective Tribe, Nation, or Band. Land acquired 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. The Secretary is also authorized to take in trust for the respective Tribe, Nation, or Band any land acquired within Indian territory by purchase, gift, or exchange by such Tribe, Nation, or Band. If the Secretary finds that the Houlton Band of Maliseet Indians shall cease to exist, any lands acquired for their benefit pursuant to this Act, and still held for their benefit at the time of the Secretary's finding, shall be divided equally by the Secretary and held in trust, 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, 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.

Amend Section 5(e)(2) to read as follows, and add a new paragraph (3);

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources held in trust by the United States for the benefit of the Passamaquoddy Tribe, Penobscot Nation, or the Houlton Band of Maliseet Indians, except (i) takings for public uses consistent with the Maine Implementing Act, as amended in accordance with section X(b) of this Act, (ii) takings for public uses pursuant to the laws of the United States, or (iii) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe, Penobscot Nation, or Houlton Band of Maliseet Indians to another member of the same Tribe, Nation, or Band, shall be void ab initio and without any validity in law or equity.

(3) Land or natural resources held in trust for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may be--

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

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

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

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

(v) exchanged for other land or natural resources of equal value, and

(vi) sold, only if the proceeds of the sale are deposited in the Land Acquisition Fund established pursuant to subsection (c).

Delete Section 5(f) as unnecessary. Regulations at 25 CFR §141.4 already provide for the development of timber management plans, and the BIA just released new manual provisions on forestry management planning on March 17, 1980. With respect to non-timber lands few reservations are subjected to management plans developed by the Secretary, though there is nothing under existing law to prevent the Tribe, or the Secretary in cooperation with the Tribe, to develop such plans. In

- Amend Section 5(g) to read:

(g) When land or natural resources held in trust for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians is taken for a public purpose pursuant to the laws of the State of Maine or of the United States, the proceeds paid in compensation for such taking shall be deposited in the Land Acquisition Fund established by subsection (c).

- Add a new section to read:

Sec. Y. (a) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each organize for their common welfare, and adopt an appropriate constitution to govern the affairs of the Tribe, Nation, or Band when each is acting in its governmental capacity. Such constitution, and any amendments thereto, must be consistent with the terms of this Act and the Maine Implementing Act, as amended in accordance with section X(b) of this Act, and (must be approved by the Secretary) and by a majority of the adult members of the Tribe, Nation, or Band participating in an election conducted by the Secretary. In addition to all powers over their membership and assets ^{which are} vested in the Tribe, Nation, or Band by existing law, the constitution adopted and approved pursuant to this section shall provide the Tribe, Nation, or Band with all the rights, privileges, powers and immunities of a municipality of and subject to the laws of the State of Maine.

(b) The Secretary may not approve a constitution adopted pursuant to subsection (a) unless he also approves a charter of incorporation to govern the proprietary affairs of the Tribe, Nation or Band. Such a charter must be approved by a majority of the adult members of the Tribe, Nation, or Band participating in an election conducted by the Secretary. Any tribal corporation created by such a charter shall be subject to all the laws of the State of Maine, but such a tribal corporation shall not constitute a corporation within the meaning of section 11 of the Internal Revenue Code of 1954, as amended.

Omit S2829 §6(a), 6(b) and insert the following:

- 6(a) The United States shall not have any criminal jurisdiction in the State of Maine under sections 1152, 1153, 1154, 1155, 1156, 1164 and 1165 of Title 18, U.S. Code. (Act of June 25, 1978, C.645, 62 Stat. 757, 758; Act of July 12, 1960, §1 and 2, 74 Stat. 469).
- 6(b)(i) The State of Maine shall have jurisdiction over offenses committed by or against Indians in the State of Maine to the same extent that the State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of the State of Maine shall have the same force and effect on lands owned by Indians or Indian tribes, nations, or bands in Maine, or by the United States in trust for such Indian, Indian tribe, nation or band.
- (ii) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto.
- 6(c)(i) The State of Maine shall have jurisdiction over all civil causes of action between Indians or to which Indians are parties which arise in the State of Maine to the same extent that the State has juris-

civil laws of the State of Maine that are of general application to private persons or private property shall have the same force and effect on lands owned by Indians or Indian tribes, nations, or bands in Maine, or by the United States in trust for such Indian, Indian tribe, nation or band.

- (ii) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto.

6(d) The Maine Implementing Act is not an agreement within the meaning of §109 of the Act of November 8, 1978, 92 Stat. 3074.

6(e) Retain.

A revised S2829 §6(c) and 6(d) follows on page 8:

- Section 6(c) should be amended to read as follows:

(c)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts, except that, (i) the Passamaquoddy Tribe and the Penobscot Nation and their officers and employees shall be immune from suit when the respective Tribe or Nation is acting in its governmental capacity or is acting pursuant to its constitution adopted pursuant to section Y(a) of this Act; and (ii) 28 U.S.C. §1362 shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians.

(2) Notwithstanding the provisions of section 3477 of the Revised Statutes, as amended (31 U.S.C. §203), the Secretary is authorized to recognize valid court orders entering money judgments against either the Passamaquoddy Tribe or the Penobscot Nation by assigning to the judgment creditor the right to receive future income from the Settlement Fund established pursuant to section 5(a) of this Act. The Secretary shall issue regulations necessary to carry out the purposes of this paragraph.

- Amend section 6(d) to read:

(d) The consent of the United States is hereby given to the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation and the same are hereby authorized to enter into compacts and agreements between themselves on matters relating to (1) the enforcement or application of civil, criminal, and regulatory laws of each within their respective jurisdiction, and (2) allocation or determination of governmental responsibility of the State and the Tribe or Nation over specified subject matters or specified geographical areas, or both, including agreements or compacts which provide for concurrent jurisdiction between the State and the Tribe or Nation, and (3) agreements or compacts which provide for transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the State and Tribe or Nation.

X Section 6(f) should be deleted for the reasons stated in the statement of Secretary Andrus to the Senate Select Committee.

Section 6(g) should be revised to read as follows:

(g) The following statutes shall not be applicable to Indian lands or tribes in the State of Maine;

(1) Section 5 of the Act of August 15, 1876 (19 Stat. 200);

(2) Section 1 of the Act of March 3, 1901 (31 Stat. 1066), as amended;

(3) Section 2132 and Section 2133 of the Revised Statutes, as amended;

(4) Sections 405(k) and 710 of the Act of August 3, 1977 (91 Stat. 459, 523);

(5) Section 164(c) and (e) of the Clean Air Act, as amended by section 127(a) of the Act of August 7, 1977 (91 Stat. 735);

(6) Act of October 31, 1979 (93 Stat. 721); *archeological resources protection Act*

(7) Section 3(d) of the Act of November 16, 1977 (91 Stat. 1397); *cooperation agreements*

(8) Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by section 21 of the Act of September 30, 1978 (92 Stat. 834), insofar as this section authorizes the Administrator to enter into cooperative agreements with Indian tribes;

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The verb in the second second sentence of section 7(a) should be changed to say "shall review" rather than "shall approve."

Section 10 should be amended to read:

Sec. 10. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred by the State of Maine to the Secretary to be held in trust for the benefit of the Tribe or Nation as part of the principal of the Settlement Fund allocated to that Tribe or Nation by section 5 of this Act: Provided that, the Secretary shall accept the transfer of those funds only after he has found that authorized officials of the respective Tribe or Nation have executed general releases of the State of Maine and the United States in connection with any claims regarding past administration or management of those funds.

Section 11 should be deleted as unnecessary. To the extent that the State desires a general release or discharge of any obligations it may have toward the Indians or Indian tribes within the State as a result of agreements or treaties entered into with those Indians or Indian tribes, the United States need not be a party to any such release or discharge since any obligation arises under state law and may be addressed adequately by the state legislation.

Section 12 should be amended by making the existing provision subsection (a) and adding a new subsection (b) as follows:

(b) Notwithstanding any other provision of law, any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within one hundred eighty (180) days after the date of the enactment of this Act. Exclusive jurisdiction over such actions is hereby vested in the United States District Court for the District of Maine.