EXHIBIT
A

PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2829

TO PROVIDE FOR THE SETTLEMENT OF THE MAINE INDIAN LAND CLAIMS

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settlement. This proposal contemplated a federal payment of $25,000,000, a State payment of $25,500,000 to be made over 15 years, and 300,000 acres of lands from private parties, for which landowners would be reimbursed $5.00 per acre by the federal government. The total value of this proposal to the Tribes was roughly $90,000,000. Principally because neither the State nor landowners played a role in negotiation of this second proposal, it was rejected by the State and did not become the basis for settlement.

Finally, in October, 1978, the White House announced a third settlement plan through then United States Senator William Hathaway and Presidential Counsel Robert Lipshutz. This settlement consisted of a $27 million permanent trust fund, a $10 million land acquisition fund to buy 100,000 acres of land and $25 million in grants and loans, all to be provided by the federal government. The total value of this proposal was roughly $62 million. No payment from the State was proposed by the White House. This proposal was agreed to by Governor Longley, Attorney General Brennan, Senator Muskie, Senator Hathaway, Representative Cohen and Representative Emery. The Tribes, however, never accepted the plan and ultimately rejected it on the ground that they had been led to believe they were entitled to more land under the terms of the February, 1978 proposal that the Tribes had negotiated with the Administration.

[The remainder of Attorney General Cohen's prepared statement was read into the record and begins on p. 159.]

Senator COHEN. We have several more witnesses that are scheduled to testify this morning. We have this room until 3 o'clock, so why don't we proceed at least until 1 o'clock or 1:30. Then we will take a half-hour break until 2 o'clock and proceed from 2 to 3 o'clock.

Mr. Tureen, why don' you bring your clients forward.

We are going to hear from representatives from the Passamaquoddy and Penobscot negotiating committee. They will be accompanied by Thomas Tureen, their attorney, who is with the Native American Rights Fund.

We welcome you to the hearings and look forward to any remarks you may care to give on behalf of the tribes.

Again, I would ask, if you could, to summarize your testimony. Your full testimony will be included in the record.

Mr. TUREEN. First we will hear from Mr. Andrew Akins.

Senator COHEN. Mr. Akins, please proceed as you wish.

STATEMENT OF ANDREW AKINS, CHAIRMAN, PASSAMAQUODDY-PENOBSCOT NEGOTIATING COMMITTEE, ACCOMPANIED BY THOMAS TUREEN, NATIVE AMERICAN RIGHTS FUND; PRESENTED BY CLEVE DORR, LIEUTENANT GOVERNOR, PASSAMAQUODDY TRIBE

Mr. AKINS. Thank you, Senator Cohen. I would like to introduce Cleve Dorr who will read my prepared statement.

Senator COHEN. Thank you. That will be fine.

Mr. DORR. My name is Cleve Dorr, Senator Cohen. I am Lieutenant Governor of the Passamaquoddy Tribe at Pleasant Point.

Mr. Chairman, this statement is submitted on behalf of the Penobscot Nation and the Passamaquoddy Tribe in support of S. 2829.

This is an historic moment for our tribes, one for which we have waited a very, very long time. When I speak of a long time, I am not talking about the mere 10 or so years that we have been pursuing our land claims and asserting our jurisdictional rights in this most recent round of court cases. I am talking instead about the 200-plus years

that have passed since General George Washington and Col. John Allan, the superintendent of the Federal Government's Eastern Indian Department, sought and received the support of our tribes in the Revolutionary War in return for a promise that the United States would forever protect our lands. I am talking about the 180 years that have passed since this Congress adopted the first Indian Nonintercourse Act which extended that same land protection to all Indian tribes.

We have been waiting all of these years, because until now the Federal Government has failed to carry out the promises made by George Washington and Colonel Allan or to fulfill the mandate of the Nonintercourse Act. In the absence of Federal protection, Massachusetts and Maine have violated the rights of our tribes in numerous ways.

First and foremost, these two States have taken practically all of our lands. Most of these lands were taken in a series of illegal and grossly unfair treaties during the period 1794–1833. The Passamaquoddies received nothing at all for the lands taken in these treaties, the Penobscots almost nothing. Some of our lands have been taken more recently, as in the case of the 999-year leases that the State of Maine granted about 100 years ago on lands within Indian township, and the land which was carved out of the tiny 100-acre Pleasant Point Reservation during the 1950's.

At the same time, the State of Maine has consistently refused to recognize the sovereign rights of our people. Unlike the United States, which regards Indian tribes as possessing all aspects of sovereignty except those which have explicitly been taken from them, the State of Maine has always taken the position that our tribes have no inherent sovereignty and can exercise only those powers of self-government that Maine gives us. Thus, while the State of Maine has been comparatively more enlightened during the last 15 years, and has passed statutes which recognize in our tribes a greater degree of self-government than was previously the case under State law, Maine has stopped far short of recognizing our legitimate right to manage our own internal affairs. Indeed, before the present negotiations, we had absolutely no assurance that the State would not simply wipe away the few comparatively enlightened statutes that it had passed.

In short, the years of failure on the part of the Federal Government to carry out its moral and legal trust responsibilities toward our tribes left us a nearly landless people whose inherent sovereignty was ignored by the only government which paid any attention to us.

But through all of this we have survived. Perhaps we have survived because we live in a part of Maine which is so isolated, stuck off as it is on the side of Canada, and which is a part of the United States only because of our efforts in the Revolutionary War. Perhaps we survived because of our stubbornness and determination. But for whatever reasons, we have clung to the lands which we still possess, and during the past 10 years, have finally succeeded in bringing our grievances successfully to court.

In a series of decisions too long to detail in this short testimony, the courts of both the United States and the State of Maine have consistently recognized our right to protection under the Nonintercourse Act, the trust responsibility of the United States to act on

our behalf, the existence of our inherent tribal sovereignty, and
"Indian country" status of our lands.

It was this string of decisions which ultimately persuaded
executive branch, under both the Ford and Carter administrati
that the Federal Government must take the lead in bringing about
settlement of our land claims. The negotiations which resulted to
years to complete, and have produced the legislation before yo
today.

The settlement provides sufficient funds to purchase 300,000 a
of average quality Maine woodland for our tribes and to establish tw
$13.5 million trust funds. The settlement also deals with a variet
of jurisdictional issues. For example, under the terms of the legislati
the State of Maine relinquishes the power to interfere in our inter
affairs which it formerly claimed, and agrees that the jurisdictiona
terms in the legislation cannot be changed in the future without th
consent of the affected tribe. By the same token, under the terms o
the settlement we are assured that non-Indians will never be able t
assert a constitutional right to a voice in our decisionmaking proc
esses. All of this, of course, is in addition to protections against aliena
tion of our lands, including eminent domain takings, which the settl
ment legislation includes. The security which this compact provide
is of great importance to us.

I would urge your timely attention to this bill. We understand that
it requires some technical refinement. For example, because the funds
for acquisition of the lands and establishment of the trust funds are
not being simultaneously provided, and because the land cannot thus
be instantly acquired, we cannot agree to the extinguishment pro-
vision as it is presently drafted. We are working already with repre-
sentatives of the State, the administration, and this committee on
appropriate new language. We also see that some clarification may
be required to insure that our tribes shall be eligible for the same
services as other federally recognized tribes. While we are prepared
to work on such technical matters, we would only remind you of the
obvious: This bill represents a negotiated settlement of a lawsuit and
cannot be altered without the consent of the parties.

Thank you for your time and consideration.

Senator MITCHELL. Is there anyone else who would like to make
a statement?

STATEMENT OF CARL NICHOLAS, LIEUTENANT GOVERNOR, INDIAN TOWNSHIP, PASSAMAQUODDY RESERVATION

Mr. NICHOLAS. Senator Mitchell, my name is Carl Nicholas. I am
Lieutenant Governor of the Passamaquoddy Tribe of Indian
Township.

Due to the sudden illness of our tribal Governor, Harold Loosey,
who is hospitalized and unable to attend, I am here on behalf of the
Passamaquoddy Tribe of Indian Township.

Senator Mitchell, it is also a pleasure to support today S. 2829, the
Maine Indian Claims Settlement Act of 1980.

After years of negotiation with the State of Maine, the negotiating
committee presented to the tribal members of Indian Township, at
its general meeting held in Indian Township, the final package for a

referendum vote for approval of this package. It was passed by an almost unanimous majority of the members present at the meeting.

Again, the Passamaquoddy Tribe of Indian Township supports the settlement package, and the Passamaquoddy Tribe also supports the Houlton Band of Maliseets. I express this support on behalf of my tribe.

Thank you.

Senator MITCHELL. Thank you, Mr. Nicholas.

Mr. TUREEN. Next we have Mr. Pehrson.

STATEMENT OF WILFRED PEHRSON, GOVERNOR OF THE PENOBSCOT NATION

Mr. PEHRSON. Thank you Senator Cohen and Senator Mitchell.

I am down here today on behalf of the Penobscot Nation in support of S. 2829.

My people authorized the negotiating committee and endorsed the result by reservation-wide vote. I lived with the land claims for a long time. I am pleased that it is nearly over so that we can begin to live as we were intended, with a future as well as a past.

Tomorrow you will hear voices of opposition to S. 2829. I have also been elected to represent those of my people who disagree with the conclusion reached by the majority of the tribes. I support their right to present their views to this committee.

You need to hear their concerns, their mistrust, their rage, and all of the feelings which run deep in us because of the way our people have been kicked around for centuries. Hear them, for they are our people and our relatives. They want to get even and carry this to court, whether or not we ever win, but most of out people feel we have won. That is why I am down here today speaking in behalf of the Penobscot Nation in support of S. 2829.

Thank you.

Senator COHEN. Thank you very much, Mr. Pehrson.

Mr. TUREEN. The next witness is Mr. James Sappier.

Senator COHEN. Mr. Sappier, please proceed as you wish.

STATEMENT OF FRANCIS C. SAPPIER, NEGOTIATING COMMITTEE MEMBER, PENOBSCOT NATION TRIBAL COUNCIL

Mr. SAPPIER. Thank you, Mr. Chairman, and Senator Mitchell.

My name is Francis C. Sappier, Penobscot Nation tribal council member.

I am here to give my support for the Maine Indian Land Claim Act of 1980, S. 2829. The history of this settlement will mean a lot to the Penobscot Nation so that we can preserve our Indian culture with a museum and library, our Indian language and traditional rites, Indian lore, and creation of a full nation government and a constitution.

In closing, I support this settlement, S. 2829. It will bring a just conclusion, for all concerned, to the many injustices of the past.

Thank you.

Senator COHEN. Thank you, Mr. Sappier.

Mr. Akins, are there other witnesses?
Mr. AKINS. Yes. We have Mr. Francis.
Senator COHEN. Mr. Francis, you may proceed as you wish.

STATEMENT OF JOSEPH FRANCIS, MEMBER, PENOBSCOT NATION TRIBAL COUNCIL

Mr. FRANCIS. Thank you, Senator Cohen and Senator Mitchell.
My name is Joseph Francis. I am a member of the Penobscot Nation tribal council. I have been chosen as the tribal council spokesperson today, and I am here to support the Maine Indian Land Claim Settlement Act on behalf of the Penobscot tribal council.
I have found many inequities in the act, and generally speaking it is not so appealing to me or my people. But commonsense outweighs principle, and this act was ratified 2½ to 1 on a referendum ballot while realizing that all parties have exhausted all of their resources in seeking a just and fair settlement. You will hear others oppose this settlement today, but they do not reflect the opinion of the tribal council, the majority of the tribe, or the people of the State of Maine.
Thank you, sir.
Senator COHEN. Thank you, Mr. Francis.
Mr. AKINS. We are finished and will answer any questions you may have.
Senator COHEN. I have a series of questions, and I will direct them either to you, Mr. Akins, or to your attorney, Tom Tureen.
Just for my own purposes, you have indicated we are going to be hearing testimony tomorrow from opponents of this particular settlement from both within the tribe as well as some expression of opposition from nontribal members.
Could you explain your relationship with those Indians who will be testifying in opposition? Are they members of the Penobscot and Passamaquoddy Tribes?
Mr. AKINS. From what I understand, they are all Penobscots, and they are all our members. We do not have problems with them being here. It is a matter of their right.
Senator COHEN. I want to make it clear for the record, there has been some suggestion that this is not going to be a full and open discussion and debate by all parties concerned. We, Senator Mitchell and I, have tried to make it clear for the record that we are allowing as many parties as we can, within the time constraints that we have, to present their testimony, both in favor and in opposition. So, we look forward tomorrow to hearing those tribal members who will express their opposition and the reasons for that expression of opposition as we do for nontribal members who are also opposed to the settlement itself.
Representatives this morning from the State of Maine have indicated their so-called bottom line in terms of what basic principles are involved for a settlement on this issue. One was the question of no State land or State money. The other was no jurisdiction of other nations and the retention by the State of both civil and criminal jurisdiction over the tribes.
What would be the bottom line in terms of the tribes' acceptance of this settlement? What would be indispensible if Congress were to,

in fact, reject some of the provisions? What are those basic elements from which the tribes would not or could not deviate?

Mr. AKINS. Senator, our bottom line is 300,000 acres of land plus a trust fund of $27 million. That is the bottom line.

Senator COHEN. In other words, if the Congress were to lower the amount in the trust fund, it would be rejected by the tribes. Is that correct?

Mr. AKINS. Yes.

Senator COHEN. What would be the effect if Congress were to reduce the amount of land itself, the 300,000 acres? Would you reject it?

Mr. AKINS. We would really have no option but to reject it.

Senator COHEN. What if Congress were to reduce the amount of money to be appropriated for the total settlement package? In other words, if Congress were to reject the $81.5 million, but nonetheless retain the trust fund of $27 million and the 300,000-acre provision, leaving that intact?

Mr. AKINS. No.

Senator COHEN. That does not affect the tribes as far as the tribe is concerned. The landowners might have some objection, however. Is that correct?

Mr. AKINS. Well, we have made an agreement to purchase the land at a certain rate. If you or anyone else can convince the landowners to sell for less, that is fine with us.

Senator COHEN. That would be fine with the tribe, but I assume the landowners or their attorneys, who will be testifying shortly, would say that is not fine with them, and there goes the basis for the settlement.

There was a report on April 27 of this year which described the manner in which the tribes anticipate the use of this land. There was reference to the purchase of two sawmills owned by the Dead River Co. and that the Dead River would be on, let's say, a management contract for 5 or 10 years. Is that correct?

Mr. AKINS. Five years.

Senator COHEN. What is the state of those negotiations right now? Can you tell us what kind of arrangement has been made? For example, would the company get a percentage of the tribes' net profits? What are the financial arrangements between the tribes under the operation of those two sawmills?

Mr. Tureen?

Mr. TUREEN. Senator Cohen, there is a draft of the proposed contract between the two tribes and the Dead River Co. for management. There are two contracts and frankly I—one runs for 5 years and the other runs for 10. I do not remember which is which. I think the proposed land contract is the longer of the two. It is important to note, though, first of all, that these are proposed contracts. Neither has been agreed to. Second, they both contain a provision for termination on 6-month notice so that if the arrangement does not work out, it can be terminated by either party—either side on 6 month's notice.

The proposed contract does provide for Dead River to be paid a percentage of the net profit. As I say, those contracts have not been finalized, and I don't think it serves a lot of purpose to discuss the details of them since they have not been finally negotiated. They would

also relate to the provision in the legislation which provides management of the land in accordance with reasonable terms forth by the tribes.

What we have envisioned in discussing this is that those lands be managed during the early years, in any event, by the Dead R Co. in close consultation with the tribes pursuant to these contr if we are able to reach a satisfactory contract. That would be the in which the property was handled initially. Most of the land, as know, would be coming from the Dead River Co. They curre manage the lands. We know they are pretty good land managers, this would allow for a smooth transition during which time the tri could expand their own staff of land managers.

Senator COHEN. Is it fair to say that this comes at the request of t tribes rather than the insistence by the Dead River Co.? Some opini has been raised in various editorials concerning the unique treatm of the land that will be transferred by the Dead River Co., the imp cation being that they are going to derive a benefit out of the enti transaction. If you couple that suggestion with a management co tract in which there is a percentage of the net profits, you star building up at least the impression that this is benefiting the De River Co. at the expense of the Federal Treasury or perhaps even th State of Maine.

Am I clear from your statement that this management contract, a such, comes at the request of the tribes and not the company?

Mr. TUREEN. I think it is mutual.

Let me say at the outset that people have the habit of seeing the worst and expecting the worst. We fully welcome any scrutiny of any part of this and, as Secretary Andrus testified earlier, their appraisers have justified the prices that have been negotiated for the lands so far.

The Dead River Co. was interested in that management agreement for a very simple reason. They are prepared to sell practically all of their lands. They have a staff in-house, and it was their feeling they did not want to put those people out of work overnight. They told us that they were reluctant to sell all of those lands if it meant overnight putting their staff out of work.

There is a coincidence of interest there because the tribes for their part are going to need assistance in land management during the early years. So the interest of the Dead River Co. in terms of their own employees and the interest of the tribes in needing management coincided. I think it was very much a mutual matter that we have gone as far as we have in terms of discussing that arrangement. No contract, of course, has been signed yet.

Senator COHEN. That is a 6-month notice of termination?

Mr. TUREEN. That is correct.

That is something that does not get talked about very widely, but it is a very important feature of that agreement.

Senator COHEN. In the testimony before the Joint Select Committee on the Maine Indian Settlement in Augusta, James St. Clair, who is the attorney for the State, or at least a consultant for the State, said that he believed the proposed settlement fairly reflects the potentials for winning and for losing that exists between the State and the tribes.

Mr. Tureen, would you agree with that statement?

Mr. TUREEN. We have avoided stating odds on these cases. Andy Akins stated in those same hearings that he believes the odds were 80–20. I think it is a very difficult and dangerous business to get into.

Senator COHEN. Let me explain why I asked you that question.

You have come under some criticism, I assume, as have some of the tribal council members, that you did not negotiate from full strength and that you could have, in fact, gotten a better deal and that you should have held out for more. I assume that will be the testimony tomorrow.

Is it your considered judgment that you negotiated from equal strength, and this does fairly reflect the potentials for winning and losing under the circumstances?

Mr. TUREEN. I think we certainly negotiated from mutual strength. I would agree with what Dick Cohen said earlier—that the negotiations in this case all around were characterized by a mutual respect and were carried on in a commendable atmosphere. It was not always harmonious, but commendable.

The judgments that go into deciding when to pull the string on a settlement are very difficult and are not easily articulated.

You should understand that Indian tribes are inherently conservative. They are very concerned about their futures. They are very concerned about the long view. All I can say is that my clients made a judgment that this settlement at this point in time is appropriate for them to take. This settlement in hand is worth more than the prospect of litigation. We too, my clients and I, think about the social aspect of the disruption that would go along with litigation. Anyone can criticize a negotiated settlement. By definition you can always get more— one could say that you could have gotten more because the settlement is a compromise. We are not entirely happy with it, but that is what we have reached, and that is what a compromise is.

Senator COHEN. In section 5(d)(1), the amount of money appropriated for the purchase of lands for the Maliseets is $900,000 and is tied to a specific amount of land, namely, 5,000 acres. Why is the money appropriated for the acquisition of lands for the Penobscot and Passamaquoddy Tribes not also tied to a specific number of acres?

Mr. TUREEN. There is not any particular reason. The State legislation, as you know, contemplates acquisition of 300,000 acres. It is the first 300,000 acres that is acquired within the designated area that will receive Indian territory treatment. In fact, the amount of money that is being appropriated from our assessment is sufficient to buy 300,000 acres of average quality land.

Senator COHEN. In section 6(g) and in other sections of the proposed Federal act, many of the Federal Indian laws are made inapplicable to the Maine Indian tribes. I would ask you, Mr. Tureen, in the testimony before the Joint Committee of the Maine Legislature, in Augusta, you said that as the negotiations proceeded, the Maine tribes came to see the general body of Federal Indian law as a source of unnecessary Federal interference in the management of tribal property. Is this sentiment the reason behind the exclusion of much of the general Indian law from the settlement bill?

Mr. TUREEN. Again, there is no simple answer. The general body of Federal Indian law is excluded in part because that was the position that the State held to in the negotiations. It was the State's view that

the destiny of the Maine tribes as much as possible in the fut... should be worked out between the State and the tribes.

The tribes were concerned about basic fundamental Federal pr... tections which they had not had before the recent round of court c... So it is also true to say that the tribes are concerned about the pro... lems that existed in the West because of the pervasive interference a... involvement of the Federal Government in the internal tribal matt...

Senator COHEN. The reason I raised the question is because tri... in other parts of the country are going to look to this particular sectio... and raise questions as to why they could not enjoy a similar type o... freedom from Federal intervention in the control of their lives. Th... is a question that other members of this committee are going to wan... to deal with. I am sure it is going to be raised by other Members of th... Senate and perhaps the Congress itself.

If I follow this theme a little bit, in section 5(c) the Federal ac... provides that 25 U.S.C., section 177, the present codification of th... Nonintercourse Act, will not be applicable to the Maine tribes. It i... replaced by a special restraint on alienation which is found in sectio... 5(c)(2).

Why did you feel this new section on alienation was needed?

Mr. TUREEN. Let me preface that by saying that in terms of wh... you were saying a moment ago, if there was only one kind of relation... ship the Indians had to the United States, one might b... more concerned about the precedential nature of this settlement. Th... fact is that there are a myriad of different kinds of relationships tha... Indian tribes have with the United States.

Senator COHEN. I do not think any of them enjoy the status of the... municipality, though.

Mr. TUREEN. They are all different. They range from terminated... tribes to the Alaska Natives to the 280 tribes. There are all kinds of... different relationships—the Narragansett settlement that was passed... in the last Congress.

With all due respect, and I know these questions will be raised, and... I would expect them, I do not see why the addition of one more peculiar... unique relationship between the United States and a tribe, or two, or... three tribes, is going to substantially change the situation that we have... today because it is already the nature of Federal Indian law. It is... already highly idiosyncratic.

I am sorry. Can you repeat your basic question again?

Senator COHEN. I am wondering why you felt that this special... restraint on alienation was needed?

Mr. TUREEN. That was a matter of convenience, and purely that.

Senator COHEN. Does the new section carry with it the whole body... of law that we now have pertaining to the Nonintercourse Act?

Mr. TUREEN. Yes, without any question. The statutes are the same. There are a couple of minor differences.

In our negotiations we provided our own Nonintercourse Act merely as a matter of convenience because it is only going to apply to par... ticular lands in Maine.

Senator COHEN. In section 8(c) of the Federal act, the Federal... Government is prohibited from counting the income realized as a... result of the implementation of section 5 which is the "Establishment...

of Funds" section of this bill in computing any aid to individual or households, members of those households, or the tribes.

How did this provision come to be included?

Mr. TUREEN. Or to the tribes themselves.

Well, this is not novel. We understand this provision has been included in other Indian statutes. I believe that the particular language here was taken from a Navajo-Hopi settlement. It is fairly obvious that that is essential. For example, the settlement provides for a portion of the trust funds to be set aside for older members of the tribes, for income to be paid to them. Absent this kind of protective language, the money paid to them could simply reduce their social security. The tribes, through their settlement, would be subsidizing the social security fund, which I do not think is the intent of the settlement. It is intended to benefit the Indians, not merely to supplant other Federal spending.

Senator COHEN. This committee has received a letter, which I mentioned earlier today, from Robert Coulter of the Indian Law Resource Center, advising that the Penobscot and Passamaquoddy Tribes should be allowed to reassess the settlement package in light of the United States June 10 decision in *Washington* v. *Confederated Tribes of the Coleville Indian Reservation*, and a decision that came down last Friday, *White Mountain Apache Band* v. *Bracker*.

Do you agree with that suggestion made by Mr. Coulter?

Mr. TUREEN. No. I read both of those opinions, but aside from whatever they say, I do not know how one could enter into negotiations with another party who took the position that every time the Supreme Court handed down another case, the matter should be reopened. That is what a negotiation is. At a particular point in time you reach an agreement, and if you are bargaining in good faith, that is what you do.

Senator COHEN. Then if you have reached your settlement with the tribe which you feel is fair and reasonable, and even though other cases might be cascading down that would tend to make your case appear to be stronger, you do not feel it would be responsible or appropriate to reconsider it at this point?

Mr. TUREEN. We have negotiated in good faith. We assume the other side has, and it would preclude that kind of behavior.

Senator COHEN. That is all I have for now.

Senator Mitchell?

Senator MITCHELL. Mr. Tureen, what, in your judgment will happen if this legislation is not enacted?

Mr. TUREEN. We will file our suits. The Federal Government, I assume, will proceed with litigation and the tribes will also proceed with litigation. We have established in several cases that tribes can proceed on their own.

Senator MITCHELL. Based upon your experience in this and other cases, what would litigation involve?

Mr. TUREEN. It would involve—there are a variety of ways in which the suit could be brought. I really cannot get into discussing precisely how we would file the action. That is a decision that I would have to make with my clients and with my colleagues. But it would involve pressing the claim that we have found the tribes to have which the Justice Department has found the tribes to have.

Senator MITCHELL. If the matter were litigated all the way, do y have any way of estimating how long it would take?

Mr. TUREEN. The estimates of 6 to 10 years, I think, are conserv tive. My guess is that it would probably be at least that long, a perhaps twice that long.

Senator MITCHELL. If you get into all-out litigation, would it b your intention to use all legal resources at your command to press t claims in behalf of your clients?

Mr. TUREEN. There is no doubt about that.

Senator MITCHELL. Including those that would have an effect o title to land throughout the affected area?

Mr. TUREEN. The tribes would be seeking full restitution under th law and would be using every legal means available to them to pr their claims forcefully and effectively.

I am ethically bound to do that. The tribes are morally bound t do that.

Senator MITCHELL. What effect, in your judgment, would thi settlement have upon other suits by tribes throughout the Nation?

Mr. TUREEN. I would think that this would only have a dire effect on the Nonintercourse Act claims, and there are only a handfu of them in the East.

I think Secretary Andrus was correct this morning when he said that the most important result of this is to demonstrate that India tribes and State governments and the Federal Government ca negotiate in good faith and can reach an agreement on their differences which is reasonable and appropriate and fair.

I think that that is the most important thing that this settlement stands for. That is, the proposition that disputes between Indian and others should be either resolved through the courts or through an honorable negotiated process.

Senator MITCHELL. You heard my earlier questions regarding alienation of land and how that position does not apply to the lands to be acquired by the Maliseet Band. Do you have any comment on that—that is, on the suggested criticism that this could result in dispersal of Maliseet land as opposed to the Passamaquoddy and Penobscot land?

Mr. TUREEN. My clients support the Maliseet Band—the Houlton Band of Maliseet Indians. They have, throughout this process. They would very much like to see their lands protected.

As you know, it is the Passamaquoddy and Penobscot Tribes which have agreed, out of the funds set aside for them in the settlement, to provide 5,000 acres for that band. We would hope and urge that the Congress would provide, at least minimally, the same kind of protections for the land as it provided for Indian territory lands of the Passamaquoddies and Penobscots. We would hope that the State of Maine would concur in that one provision.

Senator MITCHELL. There exists a State law which has been enacted and legislation which is now proposed in Congress. Is there anything else which any party anticipates receiving which is not contained in these two documents? That is, are there any ancillary agreements, any side agreements, any other provisions that are not included in the State legislation and this proposed Federal legislation?

Mr. TUREEN. There are things which flow from this but no separate agreements. For example, this legislation provides that the Maine

tribes will now, for the first time in history, begin to receive their full share of Federal Indian programs. As you may know, they have been drastically short changed. During the last few years, those were the only years since 1832 when they received any benefits that were especially set aside for Indians at all.

Obviously, and we have discussed this with representatives of the Carter administration, that question of funding must be addressed. The Maine tribes must have an equitable share of money for which this legislation calls. They must have their fair share of capital improvement funds which have not been provided in the past. All of those are matters which we expect to address through the appropriate channels, the appropriations process—discussions with the administration and such.

Senator MITCHELL. As I understand your answer, then, apart from those matters that are specifically identified in the legislation, or which flow naturally from it, there are no separate matters. That is, the people of the State of Maine and the Nation can be assured that the agreements are self-contained and that whatever benefits ought to be received by either side are spelled out in the agreement. Is that a fair statement to make?

Mr. TUREEN. I think that is fair to say, except for things that would logically flow from those two pieces of legislation.

Senator MITCHELL. You heard Secretary Andrus and Attorney General Cohen both testify regarding some areas that they feel require some more work. Indeed, you yourself—not yourself, but Mr. Sappier, I think—identified such areas. I assume that your clients and yourself are prepared to continue working with the Secretary of the Interior and the State of Maine to resolve those areas, hopefully to meet the objections which have been raised by all sides, and to perfect this bill to eliminate in advance any possible opposition to it. Is that right?

Mr. TUREEN. There is no question about it. We are looking forward to doing that within the next couple of weeks. I would concur with Secretary Andrus and with Attorney General Cohen when they said that they feel we can be back by the time of markup with solutions.

Frankly, I would like to say that I have read Secretary Andrus' testimony in its entirety. I think it is remarkable that at this stage we have as few problems as we do. I do not see anything that he is raising that in my estimation is not soluble. Many of the matters that he has raised have already been discussed between members of the negotiating committee and representatives of the Maine attorney general's office and the administration.

I think for the most part we are dealing with technical refinements, matters of clarification, and no substantive changes.

Senator MITCHELL. In the ordinary land transaction, the buyer negotiates with the seller. It is the buyer who is paying the price. One of the comments made about this process which renders this unusual—I know you have heard this comment because it was made to you in a meeting which I attended by someone else—was that here you, representing the parties who will get the land, negotiated with the parties who were selling the land, but the person who is paying the money for the land was not in the room. This, I think you will concede, is an unusual situation.

What assurance will you give this Congress, the people of Maine and the people of the Nation, that even though you were lacking normal incentive that a buyer had, that is, that the money for land or whatever goods or services were being purchased was coming out of the buyer's pocket, that you have negotiated a fair and a reasonable price for the land in question here?

Mr. TUREEN. Well, Senator, that normal incentive might not have been there but another very real one was. That was that we were going to have to face you today, and that you are going to have to face your colleagues in the Senate, and ultimately you are going to have to face the House of Representatives, and the administration is going to have to pass judgment on this.

We knew from the very beginning that unless what was negotiated was reasonable and fair and within normal commercial limits, it was not going to fly. That is why we—none of us is expert in these matters—hired the most competent consultant that we could find. He will testify tomorrow at the committee's request.

We fully expected from the beginning that all of this would be subject to scrutiny. I am pleased, but not surprised, that the Department of the Interior would send a team of appraisers up to Maine. They have come back and said that that which was done was appropriate and within normal commercial limits.

It is not that difficult, really, to price out Maine woodland. It is not as ethereal as is much real estate appraisal. Basically what you do is count the trees. You count the species. You multiply the number of trees by whatever the price is. You add in something for residual and the quality of the land, and you discount. It is fairly mathematical. I think what Interior found was that we did not deviate from that normal approach.

Senator MITCHELL. So I understand you conclusion to be that you and your clients are satified that the amount being paid for this land is a fair and reasonable one. If you had the money and were paying your own money, this would be a reasonable price from you standpoint.

Mr. TUREEN. I think that is the position of the negotiating committee at this point, and that will be the recommendation to the tribes, yes.

Senator MITCHELL. I have one final question.

You have heard me refer previously to questions raised in two documents which I put in the record, and I know you have seen these before. They may have slipped your mind in the intervening months, but since one of them seems to be directed at you, I wonder if I could ask that question and ask you to comment on it?

Mr. TUREEN. I try my best to forget about documents like that.

Senator MITCHELL. This is a question that appeared in the Bangor Daily News editorial of March 28, 1980. It was among a series of questions, and it says:

> If the Indians get their land and money in Maine, will the Native American Rights Fund and the other foundations that have bankrolled the Indians in their legal quest dispatch an army of well-financed lawyers to Maine, to chase down other historic injustices heaped upon the Native Americans by our forefathers?

Do you have any comment on that question?

Mr. TUREEN. We try to be effective advocates for our clients, and I hope that the Native American Rights Fund will continue to do that.

It should be apparent to the Bangor Daily News and to this committee that the Native American Rights Funds—that neither the Native American Rights Funds nor I, nor Archibald Cox, who is my cocounsel, nor the firm of Hogan and Hartz here in Washington, which has assisted us over the years—none of us has a contingent fee interest in this case or any contractual. The tribe has no contractual obligation to pay any of us anything.

The Bangor Daily News seems to be misinformed on that point. It seems to believe that 10 percent of this, or something, is going to go to the Native American Rights Fund, which is not true. But we try to be responsible advocates, and we try to effectively represent our clients. I hope that we will do that in the future.

Senator MITCHELL. Before you acquire specific parcels of land, I assume it will be your intention to conduct an appropriate search of the title of that land and make certain that the title will be a valid one that you will be receiving?

Mr. TUREEN. Under the scheme laid out, the land will be acquired by the United States. The United States has its own provisions for acquiring land, as I understand it. Generally speaking, it requires a consensual condemnation action, I believe. I am no expert on the Justice Department's procedures here, but it is my understanding that not only do they search the title but they cure any defect that may be there in any event.

Senator MITCHELL. Thank you very much, Mr. Tureen, and all of you gentlemen.

Senator COHEN. There is no financial arrangement between you and the clients you represent?

Mr. TUREEN. None.

Senator COHEN. Thank you, Mr. Tureen, and all of the other gentleman.

We have one final witness this morning. He is counsel for the landowners, Donald Perkins. He is with the law firm of Pierce, Atwood, Scribner, Allen, Smith, and Lancaster of Portland, Maine. He is legal counsel to several of the large landowners of Maine who have agreed to participate in the land transfers that are contemplated in this proposed legislation.

Mr. Perkins, we look forward to hearing your remarks.

If you could summarize your statement, it would be very helpful at this point in time. Your full statement will become a part of the record.

Please proceed, Mr. Perkins.

STATEMENT OF DONALD W. PERKINS, COUNSEL FOR LANDOWNERS IN MAINE, FROM PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH, AND LANCASTER, PORTLAND, MAINE

Mr. PERKINS. Thank you, Senator Cohen and Senator Mitchell.

My name is Donald W. Perkins. I am counsel for Maine landowners who have indicated willingness to provide options for the sale of forest land at fair market value to facilitate the settlement of the Maine Indian claims.

I understand that the Governor, the Maine attorney general, members of the Maine congressional delegation, and other public represen-

EXHIBIT
Docket B

Public Hearing
10:00 A.M.
Augusta, Maine

SENATOR COLLINS: This hearing will come to order. This is a public hearing of the Joint Select Committee of the Maine Legislature on Indian Land Claims. We are here today to hear a bill that has been presented to the Legislature on behalf of the State by the Senator from Cumberland, Senator Conley and myself so that we may hear the entire story of the role of the State of Maine that is proposed to us from all of the interested parties.

Our procedure during the day will be that we will first hear a presentation from the State of Maine, from the representatives of the Indian Tribes and from representatives of affected landowners. During this period of presentation, there will be no questioning permitted but when all of these presentations are before us there will then be questions from the Committee. We hope to be able to break for lunch at 12:30 for a half hour only and to resume promptly at 1:00. After lunch we will be hearing from the opponents to this measure, from those that wish to qualify themselves as neutrals and then from other proponents. There will be questions as time permits from the Committee to the various witnesses that come before us. If members of the general public have questions which are not answered, you are most welcome to write those questions on a sheet of paper and hand it to our Committee Staff, who are seated over here to my left, and those questions will be handed to the Committee and we will try to organize them so that all questions can be presented before the day is over. I would point out to you that the rules of this building do not permit smoking during our proceedings. There are concession stands out in the wings of the building, so there

It treats fairly both sides and is a fair appraisal of the rights of both parties in my judgment. Thank you very much.

SENATOR COLLINS: Thank you very much, Mr. St. Clair. Mr. Cohen, does this conclude the State's presentation? (Mr. Cohen indicates affirmatively) We are now ready to hear from representatives of the Indian Tribes. The Committee will recognize Mr. Thomas Tureen.

MR. TUREEN: Senator Collins, Representative Post, Members of the Joint Select Committee. My name is Thomas Tureen and I appear on behalf of the Penobscot Nation and Passamaquoddy Tribe in support of the proposed Settlement to the Maine Indian Land Claims. The Legislation before you deals only with the jurisdictional issues in the land case. These are issues which have already been tested in Court and on which the Maine Tribes have been uniformly successful. The most important of these cases was State vs. Dana Soccabasin in which the Maine Supreme Court unanimously ruled last July that the lands of the Maine Indian Tribes constitute Indian Country as that term is used in Federal Law. As such, Indians residing on Tribal Land in Maine are not subject to the civil or criminal jurisdiction of the Courts of Maine. Indian businesses on Indian Lands are not obliged to pay State Sales Taxes. Indians who reside and earn their income on Indian Lands are not obliged to pay State Income Taxes. State Environmental Laws, Business Regulations, and other Governmental Controls do not apply on Tribal Lands and the Tribes have an unfetered right to regulate hunting and fishing. In light of all this, one might ask why the Indians were willing to even discuss the question of jurisdiction with the State but simply the answer is that they were obliged to do so if they wanted to effectuate the Settlement of the

monetary and land aspects of the claim which they had already worked out with the Carter Administration.

Last summer, as you may recall, the Tribes and the Administration presented the Maine Congressional Delegation with a plan for settling the claim which called for a 27 million dollar trust fund and 300,000 acres of land. These lands were to be purchased in part with Federal Agency Funds and in part with funds appropriated by Congress. The Congressional Delegation responded, however, that it could not move forward with Legislation to effectuate the proposed Settlement until a jurisdictional arrangement had been agreed to by State Officials. Thus, the Tribes opened negotiations with the State concerning the question of jurisdiction not because they wanted to do so but because they were obliged to do so to obtain a Settlement that they had already negotiated with the Federal Government. I was not at all certain how these negotiations would develop. Deep feelings of suspicion and mistrust had devloped, not only during the course of the litigation but also during 150 years of not always honorable State wardship. I would remind you that the Maine Indians were the last Indians in the United States to become fully unfranchised. It was 1967 before they received their right to vote in all elections that affected their lives. I would remind you that it was as recent as the mid 1950's that the State of Maine built a highway through the tiny Pleasant Point Passamaquoddy Reservation without the slightest suggestion of due process and with absolutely no compensation and I would remind you that it was only 100 years ago that the State of Maine leased nearly 5,000 acres within the Indian Township Passamaquoddy Reservation for 999 years to provide funds for building a highway through that Reservation which the

Indians neither wanted nor needed. But as the negotiations progressed, these feelings of mistrust began to break down and a spirit of reconciliation made itself felt in those negotiations. Both sides began to attempt to understand and to the greatest extent possible, accommodate the needs of the other. For the State this meant, among other things, understanding the Tribes' legitimate interest in managing their internal affairs, in exercising tribal powers in certain areas of particular cultural importance such as hunting and fishing, and securing basic Federal protection against future alienation for the lands to be returned in the Settlement. For the Indians it meant, among other things, understanding the legitimate interests of the State in having basic laws such as those dealing with the environment apply uniformly thoughout Maine. Increasingly, both sides found areas of mutual interest as, for example, in the case of the General Body of Federal Indian Regulatory Law which the Tribes came to see as a source of unnecessary Federal interferance in the management of Tribal property and the State came to see as a source of uncertainty in future Tribal-State relations. In the end what we wound up with was a blueprint for a governmental relationship between Indians and non-Indians alike--between Indians and non-Indians unlike that which exists anywhere else in the United States. The Plan is very much a compromise but both sides see it as a framework within which the spirit of cooperation and mutual understanding which developed during the negotiations can continue in the future. With this Plan, it is my clients' belief that we in Maine will be able to avoid the bitterness and rancor which has all too often characterized Indian-non-Indian relations in other parts of the Country. Before closing, I feel that I should say a few

words about the land aspect of the proposed Settlement. As you know, the proposal calls for sufficient funds to purchase 300,000 acres for the Tribes. This acreage figure was not picked arbitrarily but rather was the product of extensive and detailed negotiations with the White House. In the Fall of 1978 when the President announced that he would support a totally Federally funded solution of the Maine Claims, the large landholders agreed to attempt to locate 200,000 acres which could be purchased in connection with the Settlement. My Clients, believing that they could locate an additional 100,000 acres on the open market began evaluating the lands that these large landholders offered. The Tribal Negotiating Committee was assisted in this effort by the Sewall Company which it hired as a consultant. Much of the land which was initially offered was widely scattered or involved common and undivided ownership interests. As the process continued, the Committee sought to find lands that were well located and which could be easily managed in the future. Substantial progress has been made in this process and I have given the Committee Chairman this morning a list of lands which the Negotiating Committee has placed under option. In addition to the lands on this list, the Negotiating Committee has arranged for options for the purchase of two saw mills owned by the Dead River Company. One of these mills is in Princton, the other in Stillwater. The list which I have provided also includes one small blueberry farm which the Tribes would plan to operate. These going businesses should give the Tribes a healthy start in their long-range goal of economic self sufficiency and should have a positive impact in terms of jobs not only for Indians but non-Indians as well.

In closing, I would summarize my remarks by saying that I am pleased that the Tribes were able to negotiate a proposed Settlement of these claims. The prospect of full-scale litigation with its attendant economic disruption is something that the Tribes have always said they wanted to avoid. At the same time, I must be candid with you and say that in my opinion we would win that lawsuit if a Court test came to pass. The long string of decisions in these cases in our favor provides strong support for that view but hopefully with the proposal before you, all of that can be avoided. I thank you very much for you consideration. I would like to introduce Andrew Aikens, who is Chairman of the Passamaquoddy-Penobscot Negotiating Committee, who will speak next and following him, Terry Polchies, who will speak on behalf of the Houlton Band of Maliseet Indians. Thank you very much.

SENATOR COLLINS: Thank you, Mr. Tureen. Mr. Aikens.

MR. AIKENS: Okay. Mr. Chairman--

SENATOR COLLINS: Would you lift the microphone upward just a little--that's it. Thank you.

MR. AIKENS: Mr. Chairman and Members of the Committee, my name is Andrew Aikens and I am the Chairman of the Tribe's Land Claims Committee. The Settlement Agreement is the product of many years of work between the State and Indian Leaders. The general members of the two Tribes have in good faith passed and approved the agreements and we will, I might add, uphold our parts of it. As you know, the Bill presented here has the support of the leaders in Maine. In our meetings with Attorney General, Richard Cohen, it was agreed that neither side would make any changes or amendment in the package. We have not and we expect

the same in return from the Maine Senate or House.

Briefly, our claim is the strongest and most halable by any Indian Tribe in this Country. Unlike the estimates of Mr. Cohen and Mr. St. Clair, we believe our chances of winning are perhaps 80-20; however, we would prefer not to draw out the matter in Court and we ask that you will recommend to the full Maine Senate and House the approval of LD 2037. I might add, we are interested in building a new relationship with Maine, one of mutual trust and respect and, finally, anyone who is interested in learning how we feel about people who will reside on the lands we will purchase, we do not intend to displace anyone. Thank you very much.

SENATOR COLLINS: Thank you very much, Mr. Aikens. Now, Mr. Polchies.

MR. POLCHIES: My name is Terry Polchies. I'm Chairman of the Houlton Band of Maliseet's Negotiating Committee. Madam Chairperson, Mr. Chairman, Members of the Committee, I'm pleased to appear before you today on behalf of the Houlton Band of Maliseet Indians and to stand here together with our other Maine Tribal Leaders.

The Maliseet Tribe has always used and occupied the lands in the St. John Watershed. About a hundred years ago, the Houlton Band of Maliseet Indians settled in and around Houlton. As the old Indian hunting economy in Aroostook County changed, our members today are the descendants of the aboriginal family groups. Most of our members are full blood and half blood Indians.

Other Maliseet family hunting groups settled to the North in Quebec and to the East in New Brunswick. Unlike the Canadian-side bands and our close relatives to the South, the Passamaquoddy Tribe and the Penobscot

Nation, the Houlton Band of Maliseets has never had a recognized land base and we have generally been exluded from Indian Social Service Programs. As a result, we have the lowest income and most disturbing social and economic statistics of any Indian Tribe in the Northeast.

The Houlton Band of Maliseet Indians supports our brother Tribes. We have labored long and hard in negotiations with State Leaders to produce the Legislation you are now considering. Any Legislation before you such as this must, of course, be the product of compromise. The Legislation before you is a necessary first step in the process of settling the Maine Indian Land Claims. It remains for Congress to take the next step.

The Houlton Band of Maliseet Indians has agreed that the overall Legislative Settlement Package must (1) provide recognition of the status of the Band as an Indian Tribe so that deeply needed Federal Indian Services will be provided to our people, and (2) provide a secure and permanent land base that will continue to be owned by the Band and for the use and for the benefit of our members, our children and their children, forever. We pledge to continue to work with State Officials and the Passamaquoddy Tribe and Penobscot Nation and believe that these objectives can be achieved. Only if these goals are reached can there be a just and fair settlement for the Houlton Band of Maliseet Indians.

We look forward to a new and productive relationship with Maine and all our neighbors. Thank you for this opportunity to appear before you today. Thank you.

SENATOR COLLINS: Thank you, Mr. Polchies. Mr. Tureen, does that conclude the presentation?

EXHIBIT
tabbies
C

PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2829

TO PROVIDE FOR THE SETTLEMENT OF THE MAINE INDIAN LAND CLAIMS

JULY 1 AND 2, 1980
WASHINGTON, D.C.

Volume 1

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 8 1980

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

Dear Mr. Chairman:

This responds to your request for our views on S. 2829, a bill "To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes."

We view the settlement of the Indian land claims in the State of Maine as one of the most important issues in Indian affairs facing Congress today. After three and one-half years of effort a legislative settlement proposal is before the Congress, one which is supported by the State, the Tribes, and the major landowners in the State, and which has already received the endorsement of the State Legislature. That proposal is predicated upon the authorization of the appropriation by Congress of $81.5 million to carry out its provisions.

At the July 1, 1980 hearing before the Committee on S. 2829, we stated that because years of continued litigation would have a severe impact on the people of Maine — both Indian and non-Indian — we do not object to the Federal contribution contemplated by the bill. However, we also raised a series of questions regarding a number of the provisions of the bill, especially insofar as it provides for the role of the Federal Government as trustee for the Maine Tribes. Since then we have met on several occasions with officials of the State and Tribes, and we fully appreciate the efforts the parties have made to achieve agreement on many of the important provisions of S. 2829. We have worked with those officials to redraft a number of those provisions and have achieved a large measure of agreement on substitute language to clarify the governmental responsibilities and jurisdictional relationships among the parties. It has not been our intent to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation with respect to their new relationship. We have only sought to assist in making that agreement completely workable.

We have enclosed a proposed amendment to S. 2829 in the nature of a substitute, which we believe would clarify the provisions of the bill while adhering closely to the intent and substance of it. We discuss below the more significant changes which our proposal would make in the language of S. 2829 as introduced. Discussion among the parties has not yet been concluded with respect to one provision of the bill, Section 6(b). We have therefore noted in the proposed amendment that the language of that section is to be supplied. We anticipate concluding the discussion of that provision shortly and will report to the Committee on proposed language for it as soon as possible.

We have provided in Section 3(2) of our proposed amendment for a definition of "Indian territory", primarily to aid in a reading of revised Section 5(d) which has been redrafted to clarify how title to lands acquired pursuant to the terms of the Act shall be held. The definition of "Indian territory" tracks the definitions of "Passamaquoddy Indian Territory" and "Penobscot Indian Territory" contained in the Maine Implementing Act, and is not intended to be inconsistent with the use of those terms. It is important to note that the jurisdictional character of the lands described in Section 3(2)(C) will not be altered unless they are actually acquired by the United States in trust for the Passamaquoddy Tribe or the Penobscot Nation pursuant to Section 5(d). We also note that "Indian territory" has been defined in a manner which permits the parties to vary the boundaries of this area later by mutual agreement.

One important concern arises in connection with these definitions. Lands may only be included within Passamaquoddy or Penobscot Indian Territory under Section 6205 of the Maine Implementing Act if they are acquired by the United States on or before January 1, 1983. Designation of lands as Indian territory is critical because only lands so designated will be held in trust by the United States, subject to Federal restrictions against alienation, and within the limited governmental authority of those Tribes. Lands acquired outside Indian territory, which cannot be so held, are much less likely to provide a lasting land base for the Tribes. The date chosen appears to have been based on the assumption that land acquisition would begin early in 1981, thus giving the Secretary and the Tribes nearly two years within which to acquire lands within Indian territory. It now appears that however quickly S. 2829 is enacted, it may be difficult to acquire the contemplated acreage within the time limit.

Initially, we recommended to State officials that the Maine Implementing Act be amended to address this concern by providing for a more realistic date for cutting off the creation of Indian territory. They responded that such a concern is premature, and that the Legislature would therefore be unwilling to amend the Act at this time. Nevertheless, we have been assured by State Attorney General Richard S. Cohen that if the appropriation of the necessary sums is delayed so that the contemplated land acquisition could not be effected by January 1, 1983, he would personally be willing to recommend to the State Legislature that the Implementing Act be amended to provide for an adequate extension of time. At any rate, we note that Congress has plenary power to remedy this concern if land acquisition is delayed for reasons beyond the control of the Tribes, and the State Legislature does not provide for an extension of the time limit. The Administration will seek an appropriation of $81.5 million in fiscal year 1981, upon enactment of an appropriate settlement.

The most important provision in S. 2829 is clearly Section 4, which provides for the final extinguishment of all Indian land claims in the State of Maine. We have revised Section 4(a)(1) of S. 2829 only to add a proviso which would make it clear that nothing in the section should be construed to affect an ordinary land title claim of an individual Indian within the State. Without the proviso the section, read literally, would extinguish the title claim of an Indian homeowner in the State whose claim is based on a Federal law generally designed to protect non-Indians as well as Indians, such as laws governing Federal home loans.

The effect of this provision of S. 2829 would be that all Indian land claims in Maine arising under Federal law will be extinguished on the date of the enactment of the Act. However, the Tribes have expressed the concern that there is no guarantee that they will receive the consideration authorized in the bill for their agreement to give up their claims. They have therefore advocated that the bill be amended to condition extinguishment of the claims under Section 4 on the appropriation of $81.5 million by Congress. Another Indian land claim settlement bill in this Congress, H.R. 6631 concerning the Cayuga land claim in New York State, was amended by the House Interior and Insular Affairs Committee to provide for such a conditional amendment. The State of Maine, on the other hand, desires immediate extinguishment of the land claims in order to clear titles in the State as soon as possible. State officials note that the aboriginal title claims of Alaska Natives were extinguished on the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.). We think it is clear that Congress does have plenary power to extinguish claims of aboriginal Indian title. Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955). Nevertheless, we appreciate the Tribes' concern, and we would therefore not be opposed to an amendment which would condition extinguishment on the making of the necessary appropriations. We wish to note, however, that under Public Law 96-217 the statute of limitations at 28 U.S.C. § 2415 is now due to run on December 31, 1982. Thus, a delay in appropriations beyond that date may force the Tribes to file protective lawsuits.

Sections 4(a)(2) and (3) of S. 2829 would extinguish claims of Indian title arising under State law. We think this is an inappropriate subject for Federal legislation, and indeed, the identical provisions appear in Section 6213 of the State Implementing Act. Nevertheless, we have agreed to include in our proposed amendment language in lieu of those two paragraphs which would bar the United States from asserting as trustee for the Indians past land claims arising under State law. Because of the importance of the language finally extinguishing Indian land claims within the State, and in response to a specific request made at the July 1 hearing, we will be providing the Committee with an opinion of our Solicitor on the effectiveness of the extinguishment language of Section 4 of our proposed amendment.

Section 5(a) of S. 2829 would establish a $27 million settlement trust fund for the benefit of the Passamaquoddy Tribe and the Penobscot Nation. We have revised Section 5(b) of S. 2829 to clarify the role of the Secretary as the trustee charged with the responsibility of administering this fund. The two Tribes and the Administration agreed in February 1978 that any such trust fund should be administered in accordance with an agreement between the Secretary and each Tribe. The Tribes desire the opportunity for a more liberal investment policy than has historically been authorized for tribal trust funds under the Act of June 24, 1938 (25 U.S.C. § 162a). We respect that desire and are willing to permit future investment of the trust fund to be carried out pursuant to an agreement between the Secretary and each Tribe, but we are concerned that the language of Section 5(b)(1) of S. 2829 does not adequately protect the United States from unwarranted liability. The provision contains the requirement that the Secretary must agree to "reasonable terms" for investment within 30 days of submission of proposed terms by the Tribe. We believe that this is a difficult standard and an unworkable procedure. In our proposed amendment, we adopt an approach suggested in the 1977 Final Report of the American Indian Policy Review Commission. Under that approach trust funds could be utilized by Tribes for potentially more profitable investments, but only after the Tribes specifically release the United States from liability in the event the chosen investment results in a loss.

A proviso in Section 5(b)(3) of S. 2829 would require each Tribe to expend annually the income from $1 million of its portion of the Settlement Fund for the benefit of tribal members over the age of 60. We understand that this was an important factor in discussions of the proposed settlement between the tribal negotiating committees and the memberships of the Tribes, and we applaud their desire to provide special assistance to the Tribes' senior members. However, we questioned whether such a provision should appear in the bill since the Secretary has no responsibility under the bill for any distribution of trust fund income, a point which has been agreed upon among all the parties. Tribal officials have assured us that it is the Tribes alone, not the Secretary, who will be responsible for the expenditure of trust fund income for the benefit of tribal members over 60. In light of that understanding, we do not object to the provision remaining in the bill.

Section 5(c) of S. 2829 would establish a $54.5 million Land Acquisition Fund. The Tribes had insisted upon the acquisition of 300,000 acres of average quality Maine woodland as the integral term of the settlement of their land claims. Our appraisers have determined that $54.5 million is sufficient to acquire such woodland, but we believe the legislation should not be tied to any given acreage figure, since woodland of varying quality may become available in the marketplace at any given time.

Our proposed amendment would reword Section 5(d) to clarify that the title to lands acquired in Indian territory shall be held by the United States in trust for the Passamaquoddy Tribe or Penobscot Nation. Lands acquired for the Tribe or Nation outside Indian territory shall be held in fee simple by the respective Tribe or Nation. Our proposed Section 5(d) also contains an authorization for the Secretary to take lands within Indian territory in trust after they have been independently acquired by the Passamaquoddy Tribe or Penobscot Nation. This is necessary because the Tribes contemplate the acquisition of lands outside Indian territory which would later be used for exchange purposes once additional lands within Indian territory go on sale.

The title to lands acquired for the benefit of the Houlton Band of Maliseet Indians is also addressed by this subsection. The Band desires to acquire lands in eastern Aroostook County which would be held in trust for them by the United States. Officials of the State of Maine, however, initially objected to the acquisition of lands in trust status outside the boundaries of Passamaquoddy Indian Territory or Penobscot Indian Territory. We have sought to accommodate both their concerns by redrafting the subsection to authorize the Secretary to acquire lands in trust for the Houlton Band, but only after obtaining the concurrence of authorized State officials to the acquisition. We have provided further that the Houlton Band would be authorized to enter into contracts with appropriate government agencies for the provision of services, similar to those we recommend below with respect to the Passamaquoddy Tribe and the Penobscot Nation. We expect that State and Band officials will work together in good faith to identify suitable lands for the Houlton Band.

The revised subsection also provides that notwithstanding the provisions of the Act of August 1, 1888, and the Act of February 26, 1931 (40 U.S.C. §§ 257, 258a), the Secretary may acquire land under this section only if the Secretary and the owner of the land have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. The cited provisions allow Federal agencies to utilize condemnation procedures and declarations of taking to acquire land for Federal purposes. Our proposed Section 5(d) would not bar the use of such procedures, but would only require the consent of the landowner to the terms of the taking. This limitation was requested by the landowners who intend to sell lands to the Tribes, and we have no objection to it.

Section 5(e) of our proposed amendment is new. At the July 1 hearing we expressed the view that no Federal money should be paid to the Tribes — either for the trust fund or for land acquisition — until they each have stipulated to a final dismissal of their claims. This subsection would condition the Secretary's authority to expend the two trust funds for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians on a finding that authorized officials of each of the Tribes have executed documents relinquishing all their claims and have stipulated to

a final judicial dismissal of their claims. Such relinquishments and dismissals will insure that there can be no future claim against the United States for the extinguishment of the Indian claims effected by this legislative settlement.

Our proposed subsection (f) of Section 5 is a clarification of Section 5(e) of S. 2829. Subsection (f) provides that the Indian Nonintercourse Act (25 U.S.C. § 177) shall not be applicable in Maine, but that lands in Indian territory or held in trust for the Houlton Band of Maliseet Indians shall nevertheless be subject to restrictions against alienation. Paragraph (3) provides specific, though limited, authorizations for the alienation of such trust lands. These are consistent with the terms of the proviso to Section 5(e)(2) of S. 2829, except that a specific authorization for rights-of-way, with the consent of the affected Tribe, Nation, or Band, has been added to provide for rights-of-way without resort to condemnation. The authorization for exchanges in proposed Section 5(f)(3)(E) has been made more flexible by inserting language taken from Section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. § 1716). Without such flexibility such an exchange authority may prove useless because it is often difficult to find exchange lands of precisely equal value. Finally, the authorization in S. 2829 for transfers of land the proceeds of which must be reinvested within two years has been revised in proposed Section 5(f)(3)(F) to reflect the Tribes' intent that sales be authorized only if the Secretary has already made specific arrangements for the acquisition of replacement land.

Section 5(f) of S. 2829 would require the Secretary to agree within 30 days to "reasonable terms" for the management and administration of land held in trust for the Passamaquoddy Tribe and Penobscot Nation. We believe the procedures outlined in this subsection are unwieldy but, more importantly, existing Federal laws and regulations provide adequate authority for the Tribes to manage their own trust lands. We have therefore rewritten the provision, which appears as Section 5(g) of our proposed amendment, to restate existing law which would authorize the Secretary to enter into land management agreements with either Tribe in accordance with Section 102 of the Indian Self-Determination Act (25 U.S.C. § 450f). We note that the contract declination procedures of that Act and existing regulations would be applicable to such agreements.

In our proposed amendment we have added a new subsection (h) to provide for condemnation of Passamaquoddy, Penobscot, and Houlton Band lands in accordance with state law relating to such lands. This subsection is necessary because Indian trust or restricted lands may not be condemned under state law without Congressional authorization. Congressional authorizations have generally required that the condemnation be in Federal court and that the United States be a party. We believe it would be unwise to diverge from this practice. Subsection (h) also specifies the disposition of the compensation received.

The disposition specified differs slightly from Section 5(g) of S. 2829 in that it channels proceeds through the Land Acquisition Fund rather than requiring their reinvestment within two years. Since it is the Tribes who initiate land purchases under the scheme of the bill and since sums in the Land Acquisition Fund may only be used for that purpose, the two year requirement is superfluous and confusing. Subsection (i) provides that the proceeds from the condemnation of trust or restricted Indian lands in Maine pursuant to any law of the United States other than this Act shall likewise be reinvested through the Land Acquisition Fund.

Section 6(a) of S. 2829, and as revised in our proposed amendment, is intended to effectuate the broad assumption of jurisdiction over Indian lands by the State of Maine. As noted above, we will be reporting to the Committee on Section 6(b) as soon as discussion on it is concluded.

Our proposed amendment contains a new Section 6(c) to make absolutely clear the intention of the parties that the Federal government will not have "Indian country" type law enforcement jurisdiction on Indian lands in the State of Maine. See State v. Dana, 404 A.2d 551 (Me. 1979) cert. denied 48 U.S.L.W. 3537 (February 19, 1980). Our proposed Section 6(d) is merely a restatement and clarification of the first sentence and proviso of Section 6(c) of S. 2829. No substantive change is intended, except to clarify that the parties have agreed that the jurisdictional provisions of Section 1362 of Title 28, United States Code, shall apply to the three Tribes, notwithstanding the otherwise broad language of the provision.

At the July 1 hearing we had objected to the second part of Section 6(c) of S. 2829, which would permit suits against the Secretary by judgment creditors of the Passamaquoddy Tribe and Penobscot Nation to force payment of the judgments out of Settlement Fund income. Our concern was that such litigation would be burdensome and unnecessary. Our proposed Section 6(d)(2) would provide instead a procedure for administrative attachment of future trust fund income by judgment creditors of the two Tribes. Under that provision the Secretary would be required to honor valid court orders of money judgments against either Tribe from causes of action accruing after the date of the enactment of the bill, by making an assignment to the judgment creditor of the right to receive future income from the Settlement Fund, notwithstanding the provisions of the Anti-Assignment Act (31 U.S.C. § 203).

Under Section 6(d) of S. 2829 Congress would consent in advance to any amendment of the Maine Implementing Act as long as the Tribes agreed to any such amendment. The breadth of this "consent" gave us cause for concern. We have

therefore included in our proposed Section 6(e)(1), language taken from S. 1181 (96th Cong.) which would authorize future jurisdictional agreements between the State and either the Passamaquoddy Tribe or the Penobscot Nation in the form of amendments to the Implementing Act. State and tribal officials have agreed to this provision. Our proposed Section 6(e)(2) would authorize similar agreements with the Houlton Band of Maliseet Indians.

Section 6(f) of our proposed amendment is identical to Section 6(e) of S. 2829. It authorizes the Passamaquoddy Tribe and Penobscot Nation to exercise jurisdiction, separate and distinct from that of Maine, to the extent authorized by the Maine Implementing Act. That Act in turn leaves the two Tribes with exclusive authority over their own internal tribal affairs, certain misdemeanor jurisdiction over tribal members, small claims jurisdiction, and a significant residuum of regulatory authority over their own lands. The two Tribes will also be treated as municipalities under State law for purposes of jurisdiction over their lands in Indian territory, which means that no other municipality, the main unit of local government in Maine, may exercise any authority over tribal affairs in those areas. Lands and personal property in Indian territory may not be taxed; nor may income from the Settlement Fund. The Tribes and their members shall for the most part be otherwise subject to State taxes.

We note that Section 6208(2) of the Maine Implementing Act would require the Passamaquoddy Tribe and the Penobscot Nation to make payments in lieu of taxes for trust lands within Indian territory. As we pointed out at the July 1 hearing, we prefer that, instead of making in-lieu payments, the Tribes merely negotiate contracts with the counties and other districts for the provision of services. Nevertheless, this is a matter for tribal discretion, and Section 6(e) of our proposed amendment would allow for future jurisdictional agreements to accommodate our preference.

At the July 1 hearing we objected to the full faith and credit provision of Section 6(f) of S. 2829. In lieu of that provision the Tribes and State have offered language which appears in our proposed Section 6(g). It states that the Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other. The parties could agree to this form of comity without the consent of Congress, but we have no objection to its inclusion in the settlement legislation. There is, of course, no reason why the Tribes may not establish similar comity with other jurisdictions.

Section 6(g) of S. 2829 provides that Federal laws of general applicability to Indians, Indian tribes, and Indian lands shall not be applicable in Maine,

except that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible for all financial benefits for which all other Federally recognized Indian tribes are eligible. We found this provision troublesome and confusing in that Federal financial benefits to Indian tribes would be divorced from general Federal statutes applicable to Indians. This was a subject of some discussion with representatives of the State and Tribes, and agreement was reached on the language of our proposed Section 6(h). In short, this would provide that no Federal law or regulation (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction or laws of the State of Maine, shall apply within the State. This limitation would include such Federal laws, among others, as the Indian trader statutes (25 U.S.C. §§ 261-264) and the provision of the Clean Air Act Amendments of 1977 which permits Indian tribes to designate air quality standards (42 U.S.C. § 7474).

Section 6(g) of S. 2829 also states that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are Federally-recognized Indian tribes and that they shall be eligible for Federal financial programs on the same basis as all other Federally-recognized Tribes. Since the bill contemplates significant acquisition of lands to be held in trust for the Tribes, we read this provision to mean that such trust lands should be treated as Indian reservations for purposes of the provision of Federal Indian services. We do not object to the provision, so interpreted.

We have also included a proviso to this subsection which would limit the membership of the Houlton Band of Maliseet Indians, for purposes of the provision of Federal services or benefits, to persons who are citizens of the United States. This is similar to the limitation in Section 3 of Public Law 95-375 which recognized the Pascua Yaqui Tribe for purposes of the provision of Federal Indian services.

With the agreement of the parties we have included in our proposed amendment a new Section 7, which would clearly permit the Tribes to organize for their common welfare and adopt constitutions or charters. While we have been assured by attorneys for the State of Maine that the Passamaquoddy Tribe and the Penobscot Nation need not adopt charters under State law to avail themselves of the benefits of the status of municipalities of the State, we believe it preferable to make clear that this option continues to exist under Federal law. And, since these Tribes will be administering large land holdings and valuable assets, the adoption of organic governing documents, which would be filed with the Secretary, seems advisable.

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

Section 8(b) of S. 2829 provides that the eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation pursuant to the Maine Implementing Act shall not be considered by Federal agencies in determining the eligibility of either Tribe for Federal financial aid programs. To clarify this provision, which appears as Section 9(b) of our proposed amendment, we have added a proviso to the effect that Federal agencies shall not be barred by this section from considering the actual financial situation of the Tribe.

Section 8(c) of S. 2829 would prevent Federal agencies from considering the availability or distribution of funds pursuant to Section 5 of the bill for purposes of denying Federal financial assistance to Indian households or to the Passamaquoddy Tribe or Penobscot Nation. We read this provision to refer only to income from the Settlement Fund to be established pursuant to Section 5(a), and expect that the two Tribes will otherwise be treated as any other tribe insofar as their income from other sources are concerned, including income derived from land or natural resources acquired pursuant to the Act. As read, the provision is unobjectionable. It appears as Section 9(c) of our proposed amendment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Cecil D. Andrus

SECRETARY

Enclosure

Amendment to S. 2829 in the —
Nature of a Substitute

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

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

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

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

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

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

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

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

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

(b) It is the purpose of this Act—

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

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

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

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

DEFINITIONS

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

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

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

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

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

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

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

(6) "Maine Implementing Act" means Section 1 and Section 30 of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in Chapter 732 of the Public Laws of 1979;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ESTABLISHMENT OF FUNDS

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

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

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

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

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

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

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

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and

(3) $26,800,000 to be held in trust for the Penobscot Nation.

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

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

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

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

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

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

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

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

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

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

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

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

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the Land Acquisition Fund for the benefit of the affected Tribe, Nation, or Band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the Tribe, Nation, or Band; and

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

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

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

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

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taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective Tribe, Nation, or Band. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries and status of the land acquired.

(3) The United States shall be a party to any condemnation action under this subsection and exclusive jurisdiction shall be in the United States District Court for the District of Maine: Provided, That nothing in this section shall affect the jurisdiction of the Maine Superior Court provided for in Section 6205(3)(A) of the Maine Implementing Act to review the finding of the Public Utility Commission or a public entity of the State of Maine.

(i) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (h)(2) of this section.

APPLICATION OF STATE LAWS

Sec. 6. (a) Except as otherwise provided in subsections (d) and (e) of this section, all Indians, Indian nations, tribes, and bands of Indians in the State of Maine, other than the Passamaquoddy Tribe and the Penobscot Nation and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe, or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws

of the State, and to the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein: Provided, That nothing in this section shall be construed as subjecting land or natural resources held by the United States in trust to taxation, encumbrance, or alienation.

(b) [To be supplied.]

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the Act of June 25, 1948 (62 Stat. 757), as amended, or the Act of July 12, 1960 (74 Stat. 469), as amended.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and Section 1362 of Title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation and their officers and employees shall be immune from suit when the respective Tribe or Nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State of Maine.

(2) Notwithstanding the provisions of Section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the Settlement Fund established pursuant to Section 5(a) of this Act and out of

such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (A) the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation and the State within their respective jurisdictions; (B) allocation or determination of governmental responsibility of the State and the Tribe or Nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe or Nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) The laws and regulations of the United States which are generally applicable to Indians, Indian tribes, and Indian lands shall be applicable to Indians, Indian tribes, and Indian lands in the State of Maine, except that no

law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine, shall apply within the State: Provided, however, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians, and for the purposes of determining eligibility for such financial benefits the respective Tribe, Nation, or Band shall be deemed to be Federally recognized Indian tribes: Provided, further, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be considered Federally recognized tribes for the purposes of Federal taxation and any lands owned by or held in trust for the respective Tribe, Nation, or Band shall be considered Federal Indian reservations for purposes of Federal taxation: Provided, however, That no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseet Indians for purposes of the provision of Federal services or benefits.

TRIBAL ORGANIZATION

Sec. 7. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for their common welfare, and adopt an appropriate instrument in writing to govern the affairs of the Tribe,

Nation, or Band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of their organic governing document and any amendments thereto.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

Sec. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective Tribe or Nation may assume such jurisdiction over Indian child custody proceedings, the respective Tribe or Nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by Sections 108(a)-(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with Sections 108(b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation shall be deemed to be "reservations" within Section 4(10) of the Act and the Passamaquoddy Tribe and the Penobscot Nation shall be deemed to be "Indian tribes" within Section 4(8) of the Act.

(e) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over the Indian child custody proceedings of that Tribe or Nation.

(f) Except as may otherwise be subsequently agreed to by the Houlton Band of Maliseet Indians and the State of Maine pursuant to Section 6(e)(2) of this Act, Section 102 of the Indian Child Welfare Act of 1978 shall apply to the Houlton Band of Maliseet Indians to the same extent that that section applies to Indian tribes as defined in Section 4 of the Act.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

Sec. 9.(a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the State of Maine's eligibility for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: Provided, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this section from considering the actual financial situation of the applicant.

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

DEFERRAL OF CAPITAL GAINS

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

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

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

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

OTHER CLAIMS DISCHARGED BY THIS ACT

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

LIMITATION OF ACTIONS

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

AUTHORIZATION

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

INSEPARABILITY

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

General Categories of Large Land Owners In Maine 2019

EXHIBIT
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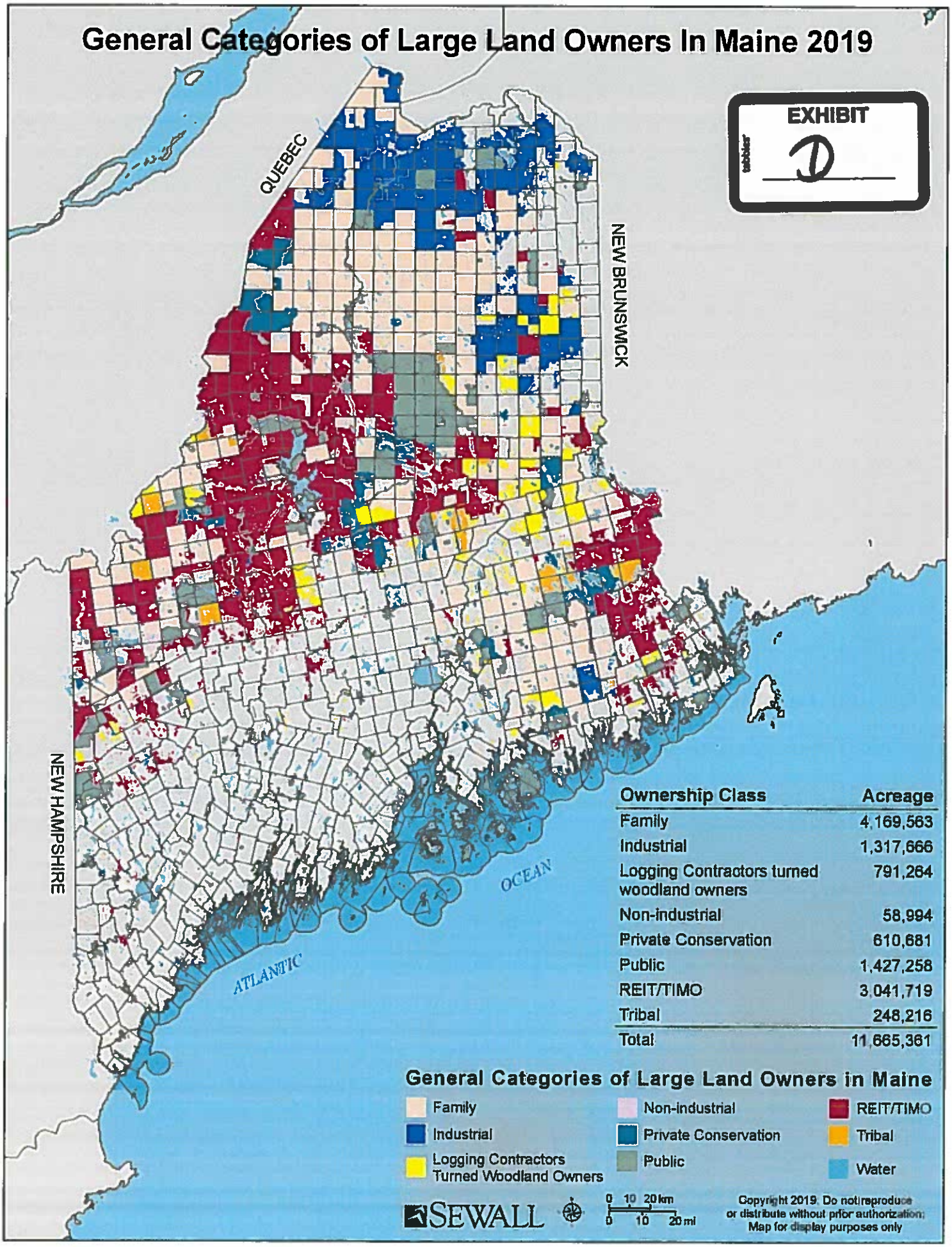

Ownership Class	Acreage
Family	4,169,563
Industrial	1,317,666
Logging Contractors turned woodland owners	791,264
Non-industrial	58,994
Private Conservation	610,681
Public	1,427,258
REIT/TIMO	3,041,719
Tribal	248,216
Total	11,665,361

General Categories of Large Land Owners in Maine

- Family
- Industrial
- Logging Contractors Turned Woodland Owners
- Non-industrial
- Private Conservation
- Public
- REIT/TIMO
- Tribal
- Water

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96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 96-1353

PROVIDING FOR THE SETTLEMENT OF LAND CLAIMS OF INDIANS, INDIAN NATIONS AND TRIBES AND BANDS OF INDIANS IN THE STATE OF MAINE, INCLUDING THE PASSAMAQUODDY TRIBE, THE PENOBSCOT NATION, AND THE HOULTON BAND OF MALISEET INDIANS, AND FOR OTHER PURPOSES

SEPTEMBER 19, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 7919]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 7919) to provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1970 (1 Stat. 137), or subsequent reenactments or versions thereof.

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

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(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

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

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

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

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

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

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

(b) It is the purpose of this Act—

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

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

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation, and

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

DEFINITIONS

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

(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 the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

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

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

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

(e) "Maine Implementing Act" means Section 1, Section 30, and Section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in Chapter 732 of the Public Laws of 1979;

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

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

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

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

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

(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;

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

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

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

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

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

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

or band of Indians, located anywhere within the State of Maine, 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 of Maine.

(8) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or 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.

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

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

(d) The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of Sec. 5 of this Act. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

ESTABLISHMENT OF FUNDS

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

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

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

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

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

(c) There is hereby established in the United States Treasury a fund to be known as the Maine Indian Claims Land Acquisition Fund in which $54,500,000 shall be desposited following the appropriation of sums authorized by Section 14 of this Act.

(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 Secetary is authorized and directed to expend, at the request of the affected Tribe, Nation or Band, the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective Tribe or Nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area of purchase, gift, or exchange by such Tribe or Nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective Tribe or Nation, and the United States shall have no further trust responsibility with respect thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the Band, *provided*, that no land or natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseets Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition, *provided, further*, that the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

(4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by section 5(d)(3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this Act and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation:

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this Act and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the Band, except that the Band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act.

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the Band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the Band.

(D) provisions on the location of these lands. Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application of the laws of the State of Maine. Within one year of the date of enactment of this Act, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian Affairs a report on the status of these negotiations.

(e) Notwithstanding the provisions of Section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and Section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

(f) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the Funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective Tribe, Nation, or Band have executed appropriate documents relinquishing all claims to the extent provided by Sections 4, 11, and 12 of this Act and by Section 6213 of the Main Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g)(1) The provisions of Section 2116 of the Revised Statutes shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any land or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2), such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Maine Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same Tribe or Nation, shall be void *ab initio* and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective Tribe, Nation, or Band, be—

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

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

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

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

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

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

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

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

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

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the Land Acquisition Fund established by Section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective Tribe or Nation shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective Tribe or Nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

(3) The 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 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, over any action commenced in the courts of the State.

(j) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i)(2) of this section.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as provided in section 8(e) and Sec. 5(d)(4) all Indians, Indian nations, or tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band or Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b)(1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the Tribe, Nation, or their members, shall be subject to the jurisdiction of the

State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and state funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and state funding in other states.

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of Sections 1152, 1153, 1154, 1155, 1156, 1160, 1161, and 1165 of Title 18 of the United States Code. This provision shall not be effective until 60 days after the publication of notice in the Federal Register as required by subsection 4(d) of this Act.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and Section 1362 of Title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians; *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of Section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the Settlement Fund established pursuant to Section 5(a) of this Act and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: *Provided*, That such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (A) the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or Nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe or Nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or prempts the civil,

criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or eviromental matters, shall apply within the State.

(i) As Federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other Federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective Tribe, Nation, or Band subject to a restriction against alienation or which are held in trust for the benefit of the respective Tribe, Nation, or Band shall be considered Federal Indian reservations for purposes of Federal taxation.

TRIBAL ORGANIZATION

SEC. 7. (a)The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the Tribe, Nation, or Band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) For purposes of benefits under this Act and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of the date of this Act, are enrolled members on the Band's existing membership roll, and direct lineal descendants of such members. Membership in the Band shall be subject to such further qualifications as may be provided by the Band in its organic governing document or amendments thereto subject to the approval of the Secretary.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective Tribe or Nation may assume such jurisdiction over Indian child custody proceedings, the respective Tribe or Nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by Sections 108(a)-(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with Sections 108 (b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are "reservations" within Section 4(10) of the Act.

(e) For the purposes of this section, the Houlton Band of Maliseet Indians is an "Indian tribe" within Section 4(8) of the Act, provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in subsection 6(e)(2) of this Act.

(f) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that Tribe or Nation.

EFFECT OF PAYMENT TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 9.(a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians pursuant

to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) The eligibility for a receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

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

DEFERRAL OF CAPITAL GAINS

SEC. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the Land Acquisition Fund whether in the name of thte United States or of the respective Tribe, Nation or Band shall be deemed to be an involuntary conversion within the meaning of Section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by theh State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective Tribe or Nation and shall be added to the principal of the Settlement Fund allocated to that Tribe or Nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective Tribe or Nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective Tribe and Nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

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

LIMITATION OF ACTIONS

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

AUTHORIZATION

SEC. 14. There is hereby authorized to be appropriated $81,500,000 for the fiscal year beginning October 1, 1980 for transfer to the Funds established by Section 5 of this Act.

INSEPARABILITY

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

CONSTRUCTION

SEC. 16.(a) In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this Act should emerge, the provisions of this Act shall govern.

(b) The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian Nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicaable within the State of Maine.

PURPOSE

The purpose of H.R. 7919 [1] is to provide Congressional ratification and implementation of a ettlement of land claims which have been raised by three Maine Indian Tribes, the Passamaquoddy Tride, the Penobscot Nation, and the Houlton Band of Maliseet Indians to as much as two-thirds of the lands comprising the State of Maine and on which more than 350,000 private citizens now reside. The settlement embodied in this Act was negotiated by the three Maine Tribes, the State of Maine, and those private landowners who are willing to transfer portions of their holdings to fulfill its purposes.

HISTORICAL BACKGROUND

The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians were first contacted in the area which is the State of Maine and the Province of New Brunswick by the earliest explorers of the North American continent.

All three tribes are riverine in their land-ownership orientation. The aboriginal territory of the Penobscot Nation is centered on the Penobscot River. The aboriginal territory of the Passamaquoddy Tribe is centered on the Saint Croix River and the smaller river systems to the west. The aboriginal territory of the Houlton Band of Maliseet Indians is centered on the Saint John River.

When the Revolutionary War broke out, General George Washington requested the assistance of these tribes and, on June 23, 1777, Colonel John Allan, of the Massachusetts militia who was the director of the Federal Government's Eastern Indian Department, negotiated a treaty with these Indians, pursuant to which the Indians were to assist in the Revolutionary War in return for protection of their lands

[1] H.R. 7919 was co-sponsored by Representatives Emery and Snowe.

by the United States and provision of supplies in times of need. This treaty was never ratified by the United States, although Allan's journals indicate that the Indians played a crucial role in the Revolutionary War.

Despite requests from the Maine Indians, the Federal Government did not protect the tribes following the Revolutionary War. In 1794, the Passamaquoddy Tribe entered into an agreement with the Commonwealth of Massachusetts (which then had jurisdiction over all of what is now Maine), in which the tribe relinquished all but 23,000 acres of its aboriginal territory. Subsequent sales and leases by the State of Maine further reduced this territory to approximately 17,000 acres. The Penobscot Nation lost the bulk of its aboriginal territory in treaties consummated in 1796 and 1818. A sale to the State of Maine in 1833 resulted in the loss of four townships by the Penobscot Nation.

History of Litigation

The validity of these agreements with the Tribes was not seriously questioned until, in 1972, when the Governors of the Passamaquoddy Tribe asked the United States to bring suit on behalf of their Tribe on the ground that its agreement with Massachusetts was invalid because it had never been approved by the Federal Government as required by the Nonintercourse Act.

The Nonintercourse Act—which is also known as the Trade and Intercourse Act—was first enacted by the newly-formed Congress of the United States in 1790 and was subsequently re-enacted five times. It consisted of many provisions regulating a wide spectrum of activities between American Indians and Indian Tribes and the non-Indian citizens of the United States. Salient among these provisions was a section which prohibited the transfer of any lands from Indians or Indian tribes without the approval of the United States. As re-enacted in 1793, this section read, in pertinent part:

> . . . no purchase or grant of lands, or any title or claim thereto, from any Indians or nation or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by a treaty or convention entered into pursuant to the constitution . . .

A fine of up to one thousand dollars and imprisonment of up to one year were provided for a violation of this section. All the subsequent re-enactments of the Nonintercourse Act included this section in one form or another. In 1834, it was enacted in its present form and is currently codified at Title 25, section 177 of the United States Code. The importance of this provision to Federal Indian policy is critical and it has been described as "the linchpin of Federal Indian law."

The tribe's request was denied by the United States on grounds that the Nonintercourse Act does not apply to nonrecognized tribes and on the grounds that there was, thus, no trust relationship between the United States and the Maine Tribes. The Passamaquoddy Tribe then brought a declaratory judgment action against the Secretary of the Interior and the United States Attorney General. In 1972, the tribe won an order forcing the United States to file a protective action on

its behalf. In 1975, the United States District Court for the District of Maine held that the Indian Nonintercourse Act applies to all tribes, including those which are not federally-recognized, and that the Act creates a trust relationship between the United States and all such tribes. Later that year, the United States Court of Appeals for the First Circuit unanimously reaffirmed the *Passamaquoddy* decision, holding that the trust relationship created by the Act includes, at minimum, an obligation to investigate and take such action as may be warranted under the circumstances when an alleged violation of the Nonintercourse Act is brought to the government's attention.

The issues raised in the *Passamaquoddy* case were reaffirmed in two subsequent decisions involving Maine Indians: *Bottomly* v. *Passamaquoddy Tribe*, 599 F. 2d 1061 (1st Cir. 1979) (holding that Maine Tribes are entitled to protection under the federal Indian common law doctrines) and *State of Maine* v. *Dana*, 404 A. 2d 551 (Me. 1979), *cert.* denied 100 F. Ct. 1064 (Feb. 1980) (holding that reservation land of dependent Maine Indian Tribes constitutes Indian country as that term is used in Federal law).

History of Settlement Discussions

The settlement process began in March of 1977 when President Carter appointed retired Georgia Supreme Court Justice William Gunter to study the case. After substantial study of the merits of the claims and the defenses to them, Justice Gunter recommended that the case be settled. The White House acted on this suggestion by appointing a three-person work group to develop a settlement plan which consisted of Eliot Cutler, Associate Director of the Office of Management and Budget for Energy, Natural Resources and Science; Leo Krulitz, Solicitor of the Department of the Interior; and A. Stephens Clay, Judge Gunter's law partner. Negotiations between this work group and the tribes produced an agreement between the tribes and the administration, which was announced in February, 1978. An agreement between the administration and officials of the State of Maine was announced in November, 1978. But it was not until March, 1980, that an agreement supported by all parties was announced.

Following its March announcement, the current agreement was approved by the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. The agreement was then adopted by the Maine legislature and signed into law by the Maine Governor Joseph Brennan, on April 2, 1980. The proposal was introduced in the Senate on June 13, 1980, by Senator William Cohen and Senator George Mitchell of Maine and in the House of Representatives, on August 1, 1980, by Congressman Emery and Congresswoman Snowe.

Need

After the Court of Appeals affirmed the District Court decision, the Justice Department undertook an analysis of the Tribes' claim. In a memorandum written in 1977, the Department described the case as "potentially the most complex litigation ever brought in the Federal courts with social costs and economic impacts without precedent and

incredible litigation costs to all parties." This conclusion was based on the size of claim, the number of persons living within the disputed area, and the nature of the legal issues involved, since the Tribes claim covers up to 12.5 million acres of land (60 percent of the State of Maine) and nearly two hundred years had intervened between the time the first agreement was reached and the present day. More than 350,000 people live on the now disputed land.

If the case were to be litigated, it would involve a host of novel issues and, given the magnitude of the claim each side would be certain to appeal each ruling of the court. Moreover, the court would be required to decide questions of fact concerning events which began before this country was founded. Estimates of the time it would take to litigate such a case range from five to more than fifteen years. In the meantime, according to testimony offered to this Committee, titles to land in the entire claim area would be clouded, the sale of municipal bonds would become difficult if not impossible, and property would be difficult to alienate. Although the State of Maine estimates its chances of succeeding, if the case were to be litigated, at 60 per cent, all the parties agree that such a victory would be pyrrhic. In August of this year, the Under Secretary of the Interior in testimony before the Committee on Interior and Insular Affairs described this legislation as "critical" and urged its passage.

Special Issues

Testimony before the Committee and written materials submitted for the record reveal the following concerns about the settlement embodied in H.R. 7919 and the Maine Implementing Act, all of which the Committee believes to be unfounded:

1. *That the settlement will terminate the three Maine Tribes.*—The settlement does not terminate the three Tribes in Maine. Numerous provisions of H.R. 7919 and the Maine Implementing Act make reference to the Maine Tribes as tribes, and Sec. 6(i) specifically provides that "As Federally recognized Indian tribes the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians, to same extent and subject to the same eligibility criteria as are generally applicable to other Indians, Indian nations or tribes or bands of Indians."

2. *That the settlement amounts to a "destruction" of the sovereign rights and jurisdiction of the Passamaquoddy Tribe and the Penobscot Nation.*—Until recently, the Maine Tribes were considered by the State of Maine, the United States, and by the Maine courts, to have no inherent sovereignty. Prior to the settlement, the State passed laws governing the internal affairs of the Passamaquoddy Tribe and the Penobscot Nation, and claimed the power to change these laws or even terminate these tribes. In 1979, however, it was held in *Bottomly* v. *Passamaquoddy Tribe*, 559 F. 2d 1061 (1st Cir. 1979), that the Maine Tribes still possess inherent sovereignty to the same extent as other tribes in the United States. The Maine Supreme Judicial Court reversed its earlier decisions and adopted the same view in *State* v. *Dana*, 404 A. 2d 551 (Me. 1979), *cert, denied*, 100 S.Ct. 1064 (Feb. 19, 1980).

While the settlement represents a compromise in which state authority is extended over Indian territory to the extent provided in the Maine Implementing Act, in keeping with these decisions the settlement provides that henceforth the tribes will be free from state interference in the exercise of their internal affairs. Thus, rather than destroying the sovereignty of the tribes, by recognizing their power to control their internal affairs and by withdrawing the power which Maine previously claimed to interfere in such matters, the settlement strengthens the sovereignty of the Maine Tribes.

The settlement also protects the sovereignty of the Passamaquoddy Tribe and the Penobscot Nation in other ways. For example, Secs. 6206(1) and 6214, and 4733 of the Maine Implementing Act provide that these Tribes, as Indian tribes under the United States Constitution, may exclude non-Indians from tribal decisionmaking processes, even though non-Indians live within the jurisdiction of the tribes. Other examples of expressly retained sovereign activities include the hunting and fishing provisions discussed in paragraph 7 below, and the provisions contained in Title 30, Sec. 6209 as established by the Maine Implementing Act and Sec. 6 in H.R. 7919 which provide for the continuation and/or establishment of tribal courts by the Passamaquoddy Tribe and the Penobscot Nation with powers similar to those exercised by Indian courts in other parts of the country. Finally, Sec. 7(a) of H.R. 7919 provides that all three Tribes may organize for their common welfare and adopt an appropriate instrument to govern its affairs when acting in a governmental capacity. In addition, the Maine Implementing Act grants to the Passamaquoddy Tribe and Penobscot Nation the state constitutional status of municipalities under Maine law. In view of the "homerule" powers of municipalities in Maine, this also constitutes a significant grant of power to the Tribes.

3. *The settlement provides none of the protections that is afforded other tribes.*—One of the most important federal protections is the restriction against alienation of Indian lands without federal consent. Sections 5(d)(4) and 5(g)(2) and (3) of H.R. 7919 specifically provides for such a restriction and, as was made clear during the hearings, this provision is comparable to the Indian Non-Intercourse Act, 25 U.S.C. Section 177. Sections 6 and 8 of H.R. 7919 also specifically continue the applicability of the Indian Bill of Rights of the 1968 Civil Rights Act, the Indian Child Welfare Act, and all other federal Indian statutes to the extent they do not affect or preempt authority granted to the State of Maine under the terms of the settlement.

4. *Individual Indian property and claims by Indians who hold individual use assignments will be taken in the settlement.*—The settlement envisions four categories of Indian land in Maine: individually-assigned existing reservation land, existing reservation land held in common, newly-acquired tribal land within "Indian territory," and newly-acquired tribal land outside "Indian territory." Only newly-acquired land within Indian territory and newly-acquired tribal land to be held in trust for the Houlton Band of Maliseet Indians will be taken in trust by the United States. Existing land within the reservations, whether held by individuals pursuant to a use assignment or in common by the Tribe as a whole, will not be taken by the United States in trust. These lands will simply be subject to a federal restric-

tion against alienation which will prevent their loss or transfer to a non-tribal member. Sec. 5(g)(2)(C) of H.R. 7919 provides that the Department of the Interior will have no role in transfers of individual tribal property from one tribal member to another, and Sec. 18 of the Maine Implementing Act, ends the power of the Maine Commissioner of Indian Affairs to interfere with such internal transfers.

The settlement will also have no effect on claims by individual Indian land owners or individual Indian assignment owners. Section 4 of H.R. 7919 and Title 30, Sec. 6213 as established by the Maine Implementing Act specifically protect claims which individual Indians have for causes of action arising after December 1, 1873. For these reasons, trespass actions brought by individual Indians will not be affected.

5. *The settlement will subject tribal lands to property taxation.*—Sec. 6208 of the Maine Implementing Act specifically prohibits the imposition of such a tax. The confusion over this issue apparently comes from two provisions of the settlement: Title 30, Sec. 6208(2) as established by the Maine Implementing Act, which provides for payments in lieu of taxes on lands within Indian Territory, and Sec. 6(i) of H.R. 7919 which provides that lands held in trust for the Passamaquoddy Tribe or the Penobscot Nation or subject to a restriction against alienation, shall be considered "Federal Indian reservations for purposes of federal taxation."

Title 30, Sec. 6208 as established by the Maine Implementing Act does not impose any taxes on any land within Indian territory. A tax is a charge against property which can result in a taking of that property for non-payment of the tax. Section 6208 does not provide for such a tax, and H.R. 7919 forbids such a tax. The actual workings of this provision are explained in detail in the Committee section-by-section analysis of the Maine Implementing Act which appears in this report. That analysis explains, among other things, that these payments in lieu of taxes will most likely be paid with funds provided to the tribes by the federal government.

Sec. 6(i) of H.R. 7919, which treats the Passamaquoddy and Penobscot Indian Territories as federal reservations for purposes of federal taxes is designed to insure that activities within these Territories are entitled to the same Federal tax exemptions which apply on reservations of other Federally-recognized tribes. The provision is intended only to benefit the Tribes.

6. *That the provision for eminent domain takings will lead to a rapid loss of Indian land.*—While Sec. 6205(3), (4), and (5) of the Maine Implementing Act and Sec. 5(i) and (j) of H.R. 7919 provide a mechanism for takings for public uses, these provisions impose preconditions on such takings which are more stringent than any other known to the Committee. Before a taking could ever be effectuated within the reservations, an entity proposing such a taking must demonstrate that there is no reasonably feasible alternative to the taking. No taking, whether within or without the reservation, can lead to a diminution of Indian lands, and any taken land must be replaced. The settlement provides machinery for adding such substitute lands to the reservation or Indian territory from which they are taken.

7. *Subsistence hunting and fishing rights will be lost since they will be controlled by the State of Maine under the Settlement.*—Prior to

the settlement, Maine law recognized the Passamaquoddy Tribe's and the Penobscot Nation's right to control Indian subsistence hunting and fishing within their reservations, but the State of Maine claimed the right to alter or terminate these rights at any time. Under Title 30, Sec. 6207 as established by the Maine Implementing Act, the Passamaquoddy Tribe and the Penobscot Nation have the permanent right to control hunting and fishing not only within their reservations, but insofar as hunting and fishing in certain ponds is concerned, in the newly-acquired Indian territory as well. The power of the State of Maine to alter such rights without the consent of the affected tribe or nation is ended by Sec. 6(e)(1) of H.R. 7919. The State has only a residual right to prevent the two tribes from exercising their hunting and fishing rights in a manner which has a substantially adverse affect on stocks in or on adjacent lands or waters. This residual power is not unlike that which other states have been found to have in connection with federal Indian treaty hunting and fishing rights. The Committee notes that because of the burden of proof and evidence requirements in Title 30, Sec. 6207(6) as established by the Maine Implementing Act, the State will only be able to make use of this residual power where it can be demonstrated by substantial that the tribal hunting and fishing practices will or are likely to adversely affect wildlife stock outside tribal land.

8. *The lands and trust funds provided in the settlement will not benefit the Indians because of the lack of adequate controls.*—In testimony before the Committee, one of the Indian opponents to the bill stated his belief that the Indians would receive no benefits from the trust fund established under the settlement, and that all income would be used by the Secretary of the Interior. This fear in unfounded. Section 5(b) of H.R. 7919 requires the Secretary to make all trust fund income available to the respective Tribe and Nation quarterly, and provides that he may make no deduction for the United States' expense in the administration of the fund.

Fears that the Tribes will not have adequate control over the management of the trust funds are equally unfounded. The legislation specifically provides that the funds shall be managed in accordance with terms put forth by the Tribes. As is explained elsewhere in this report, the Secretary must agree to reasonable terms put forth by the tribes, and through the Administrative Procedure Act, the Tribes may obtain judicial review of any refusal by the Secretary to agree to reasonable terms. While the United States will not be liable for losses which result from investments that the Tribes request which are outside the scope of the Department of the Interior's existing authority, such investments cannot be made except at the request of the Tribe or Nation which seeks such an investment.

9. *The settlement will lead to acculturation of the Maine Indians.*—Nothing in the settlement provides for acculturation, nor is it the intent of Congress to disturb the cultural integrity of the Indian people of Maine. To the contrary, the Settlement offers protections against this result being imposed by outside entities by providing for tribal governments which are separate and apart from the towns and cities of the State of Maine and which control all such internal matters. The Settlement also clearly establishes that the Tribes in Maine will continue to be eligible for all federal Indian cultural programs.

Committee Amendment and Summary of Major Provisions

The Committee adopted an amendment in the nature of a substitute to H.R. 7919. The Administration had serious objections to some of the provisions of the legislation as introduced in the Senate (S. 2829). H.R. 7919, though introduced much later than the Senate bill, is identical to S. 2829. Over a period of three months, officials of the Administration met and negotiated with representatives of the State and of the three tribes. Senate and House Committee staff attended and participated in many of these meetings. The amendment in the nature of a substitute is the result of these negotiations and resolves all of the problems in the original legislation.

As amended, H.R. 7919 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 will 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 land for the Passamaquoddy Tribe, 150,000 acres of land for the Penobscot Nation, and 5,000 acres of land for the Houlton Band of Maliseet Indians all of which is now privately held. 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 all Indians, Indian nations, or tribes or bands of Indians, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and any lands held by them or for their benefit. Subsection 6(b) adopts and ratifies the Maine Implementing Act and subsection 6(e) 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 municipalities 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 nonmembers 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, subsection 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 to the same extent 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 and their offices 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. Subsection 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.

Subsection 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 civil, criminal, or regulatory jurisdiction of the State of Maine shall be application within the State. 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 the Federal agency receiving the application 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 of 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 nation, or tribe or band of Indians, 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 16 provides that in the event of a conflict between this Act and the Maine Implementing Act, this Act shall govern. It also provides that federal statutes enacted subsequent to this Act which are designed for the benefit of Indians or Indian tribes and which materially affect or preempt the laws of the State of Maine, including the Maine Implementing Act, shall not apply within the State unless they are specifically made applicable to the State.

A complete section-by-section analysis of this bill and the Maine State Implementing Act are contained in Senate Report 96–957 which the Committee accepts as its own.

Cost and Budget Act Compliance

The bill authorizes the appropriation of $81,500,000. Inasmuch as this bill ratifies and implements a negotiated settlement of a land claim of these Indian tribes as a preferred alternative to extensive, divisive litigation, it is expected that appropriation of these funds would be a prerequisite to the agreement by the tribe to the extinguishment of all of their claims. As a consequence, it is expected that the entire amount would be appropriated for fiscal year 1981. The Committee is advised that the Administration strongly supports inclusion of this amount in the FY 1981 appropriations. The cost analysis prepared by the Congressional Budget Office, which the Committee accepts as its own, follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 18, 1980.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7919 as amended, the Maine Indian Claims Settlement Act of 1980, as ordered reported by the House Committee on Interior and Insular Affairs, September 17, 1980. The bill authorizes the appropriation of $81.5 million to provide for the settlement of land claims of Indians, Indian nations and bands of Indians in the State of Maine. Upon appropriation of the authorized amount, $27 million would be transferred to a new Maine Indian Claims Settlement Fund, with investment income (but not the principal) to be regularly distributed to the Passamaquoddy Tribe and the Penobscot Nation. The remaining $54.5 million would be transferred to a new Maine Indian Claims Land Acquisition Fund, with both principal and income to be spent to acquire lands for specified Indian groups.

Because of the trust responsibility placed on the Secretary of the Interior by the bill, the outlays resulting from the bill would differ from the appropriation. Monies held in trust by the federal government result in net outlays to the federal budget only when principal is disbursed. Since Section 5(b)(2) prohibits any distribution of principal held in the Settlement Fund, the only net outlays to the federal budget would occur when principal of the Land Acquisition Fund is used to acquire land pursuant to the Act. Assuming that the monies authorized are appropriated by the 96th Congress, it is expected that all $54.5 million will be outlayed in fiscal year 1981 to purchase approximately 300,000 acres of land on which interested parties already hold purchase options.

In addition, this bill would make designated Maine Indians eligible for benefits available through a number of discretionary federal programs. Thus, while no additional expenditures are mandated by this section of the bill, relevant federal agencies would be required to include these groups among those eligible for benefits and may seek additional funds in order to provide such benefits.

Sincerely,

Alice M. Rivlin, *Director.*

Inflation Impact Statement

As noted above, the bill authorizes the appropriation of $81,500,000. However, $27,000,000 of this amount will be permanently invested in a trust fund with only the interest to be paid to the tribal beneficiaries each year. As a consequence, inflationary pressure from this amount would be negligible. The remainder is to be invested in a trust fund, with the principal and interest to be available for the acquisition of land for the tribal beneficiaries. This might tend to have some minor, temporary inflationary impact on local land values, but the Committee estimates that it would have no significant lasting inflationary impact.

Oversight Statement

Other than normal oversight responsibilities exercised in connection with hearings on these legislative proposals, no specific oversight activities were undertaken by the committee and no recommendations were submitted to the committee pursuant to rule X, clause 2(b)2.

Committee Recommendation

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill, as amended.

Department Report

The favorable report of the Department of the Interior, dated August 25, 1980, and a supplemental communication from the Department, dated September 10, 1980, follow:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., August 25, 1980.

Hon. Morris K. Udall,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on H.R. 7019, a bill "To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes."

We view the settlement of the Indian land claims in the State of Maine as one of the most important issues in Indian affairs facing Congress today. After three and one-half years of effort a legislative settlement proposal is before the Congress, one which is supported by the State, the Tribes, and the major landowners in the State, and which has already received the endorsement of the State Legislature. That proposal is predicated upon the authorization of the appropriation by Congress of $81.5 million to carry out its provisions.

Because years of continued litigation would have a severe impact on the people of Maine—both Indian and non-Indian—and because the settlement proposal is based on the agreement of all relevant

parties and should therefore provide a lasting solution to the problem, we do not object to the Federal contribution contemplated by the bill. However, we have raised a series of questions regarding a number of the provisions of the bill, especially insofar as it provides for the role of the Federal Government as trustee for the Maine Tribes. We have met on several occasions with officials of the State and Tribes, and we fully appreciate the efforts the parties have made to achieve agreement on many of the important provisions of the bill. We have worked with those officials to redraft a number of those provisions and have achieved a large measure of agreement on substitute language to clarify the governmental responsibilities and jurisdictional relationships among the parties. It has not been our intent to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation with respect to their new relationship. We have only sought to assist in making that agreement completely workable.

We have enclosed a proposed amendment to H.R. 7919 in the nature of a substitute, which we believe would clarify the provisions of the bill while adhering closely to the intent and substance of it. We discuss below the more significant changes which our proposal would make in the language of H.R. 7919 as introduced. Discussion among the parties has not yet been concluded with respect to one provision of the bill, Section 6(b). We have therefore noted in the proposed amendment that the language of that section is to be supplied. We anticipate concluding the discussion of that provision shortly and will report to the Committee on proposed language for it as soon as possible.

We have provided in Section 3(2) of our proposed amendment for a definition of "Indian territory", primarily to aid in a reading of revised Section 5(d) which has been redrafted to clarify how title to lands acquired pursuant to the terms of the Act shall be held. The definition of "Indian territory" tracks the definitions of "Passamaquoddy Indian Territory" and "Penobscot Indian Territory" contained in the Maine Implementing Act, and is not intended to be inconsistent with the use of those terms. It is important to note that the jurisdictional character of the lands described in Section 3(2)(C) will not be altered unless they are actually acquired by the United States in trust for the Passamaquoddy Tribe or the Penobscot Nation pursuant to Section 5(d). We also note that "Indian territory" has been defined in a manner which permits the parties to vary the boundaries of this area later by mutual agreement.

One important concern arises in connection with these definitions. Lands may only be included within Passamaquoddy or Penobscot Indian Territory under Section 6205 of the Maine Implementing Act if they are acquired by the United States on or before January 1, 1983. Designation of lands as Indian territory is critical because only lands so designated will be held in trust by the United States, subject to Federal restrictions against alienation, and within the limited governmental authority of those Tribes. Lands acquired outside Indian territory, which cannot be so held, are much less likely to provide a lasting land base for the Tribes. The date chosen appears to have been based on the assumption that land acquisition would begin early in 1981, thus giving the Secretary and the Tribes nearly two years within

which to acquire lands within Indian territory. It now appears that however quickly H.R. 7919 is enacted, it may be difficult to acquire the contemplated acreage within the time limit.

Initially, we recommended to State officials that the Maine Implementing Act be amended to address this concern by providing for a more realistic date for cutting off the creation of Indian territory. They responded that such a concern is premature, and that the Legislature would therefore be unwilling to amend the Act at this time. Nevertheless, we have been assured by State Attorney General Richard S. Cohen that if the appropriation of the necessary sums is delayed so that the contemplated land acquisition could not be effected by January 1, 1983, he would personally be willing to recommend to the State Legislature that the Implementing Act be amended to provide for an adequate extension of time. At any rate, we note that Congress has plenary power to remedy this concern if land acquisition is delayed for reasons beyond the control of the Tribes, and the State Legislature does not provide for an extension of the time limit. The Administration will seek an appropriation of $81.5 million in fiscal year 1981, upon enactment of an appropriate settlement.

The most important provision in H.R. 7919 is clearly Section 4, which provides for the final extinguishment of all Indian land claims in the State of Maine. We have revised Section 4(a)(1) of H.R. 7919 only to add a proviso which would make it clear that nothing in the section should be construed to affect an ordinary land title claim to an individual Indian within the State. Without the proviso the section, read literally, would extinguish the title claim of an Indian homeowner in the State whose claim is based on a Federal law generally designed to protect non-Indians as well as Indians, such as laws governing Federal home loans.

The effect of this provision of H.R. 7919 would be that all Indian land claims in Maine arising under Federal law will be extinguished on the date of the enactment of the Act. However, the Tribes have expressed the concern that there is no guarantee that they will receive the consideration authorized in the bill for their agreement to give up their claims. They have therefore advocated that the bill be amended to condition extinguishment of the claims under Section 4 on the appropriation of $81.5 million by Congress. Another Indian land claim settlement bill in this Congress, H.R. 6631 concerning the Cayuga land claim in New York State, was amended by the Committee to provide for such a conditional amendment. The State of Maine, on the other hand, desires immediate extinguishment of the land claims in order to clear titles in the State as soon as possible. State officials note that the aboriginal title claims of Alaska Natives were extinguished on the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.). We think it is clear that Congress does have plenary power to extinguish claims of aboriginal Indian title. *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272 (1955). Nevertheless, we appreciate the Tribes' concern, and we would therefore not be opposed to an amendment which would condition extinguishment on the making of the necessary appropriations. We wish to note, however, that under Public Law 96-217 the statute of limitations at 28 U.S.C. § 2415 is now due to run on December 31, 1982.

Thus, a delay in appropriations beyond that date may force the Tribes to file protective lawsuits.

Sections 4(a)(2) and (3) of H.R. 7919 would extinguish claims of Indian title arising under State law. We think this is an inappropriate subject for Federal legislation, and indeed, the identical provisions appear in Section 6213 of the State Implementing Act. Nevertheless, we have agreed to include in our proposed amendment language in lieu of those two paragraphs which would bar the United States from asserting as trustee for the Indians past land claims arising under State law.

Section 5(a) of H.R. 7919 would establish a $27 million settlement trust fund for the benefit of the Passamaquoddy Tribe and the Penobscot Nation. We have revised Section 5(b) of H.R. 7919 to clarify the role of the Secretary as the trustee charged with the responsibility of administering this fund. The two Tribes and the Administration agreed in February 1978 that any such trust fund should be administered in accordance with an agreement between the Secretary and each Tribe. The Tribes desire the opportunity for a more liberal investment policy than has historically been authorized for tribal trust funds under the Act of June 24, 1938 (25 U.S.C. § 162a). We respect that desire and are willing to permit future investment of the trust fund to be carried out pursuant to an agreement between the Secretary and each Tribe, but we are concerned that the language of Section 5(b)(1) of H.R. 7919 does not adequately protect the United States from unwarranted liability. The provision contains the requirement that the Secretary must agree to "reasonable terms" for investment within 30 days of submission of proposed terms by the Tribe. We believe that this is a difficult standard and an unworkable procedure. In our proposed amendment, we adopt an approach suggested in the 1977 Final Report of the American Indian Policy Review Commission. Under that approach trust funds could be utilized by the Tribes for potentially more profitable investments, but only after the Tribes specifically release the United States from liability in the event the chosen investment results in a loss.

A proviso in Section 5(b)(3) of H.R. 7919 would require each Tribe to expend annually the income from $1 million of its portion of the Settlement Fund for the benefit of tribal members over the age of 60. We understand that this was an important factor in discussions of the proposed settlement between the tribal negotiating committees and the memberships of the Tribes, and we applaud their desire to provide special assistance to the Tribes' senior members. However, we questioned whether such a provision should appear in the bill since the Secretary has no responsibility under the bill for any distribution of trust fund income, a point which has been agreed upon among all the parties. Tribal officials have assured us that it is the Tribes alone, not the Secretary, who will be responsible for the expenditure of trust fund income for the benefit of tribal members over 60. In light of that understanding, we do not object to the provision remaining in the bill.

Section 5(c) of H.R. 7919 would establish a $54.5 million Land Acquisition Fund. The Tribes had insisted upon the acquisition of 300,000 acres of average quality Maine woodland as the integral term

of the settlement of their land claims. Our appraisers have determined that $54.5 million is sufficient to acquire such woodland, but we believe the legislation should not be tied to any given acreage figure, since woodland of varying quality may become available in the marketplace at any given time.

Our proposed amendment would reword Section 5(d) to clarify that the title to lands acquired in Indian territory shall be held by the United States in trust for the Passamaquoddy Tribe of Penobscot Nation. Lands acquired for the Tribe or Nation outside Indian territory shall be held in fee simple by the respective Tribe or Nation. Our proposed Section 5(d) also contains an authorization for the Secretary to take lands within Indian territory in trust after they have been independently acquired by the Passamaquoddy Tribe or Penobscot Nation. This is necessary because the Tribes contemplate the acquisition of lands outside Indian territory which would later be used for exchange purposes once additional lands within Indian territory go on sale.

The title to lands acquired for the benefit of the Houlton Band of Maliseet Indians is also addressed by this subsection. The Band desires to acquire lands in eastern Aroostook County which would be held in trust for them by the United States. Officials of the State of Maine, however, initially objected to the acquisition of lands in trust status outside the boundaries of Passamaquoddy Indian Territory or Penobscot Indian Territory. We have sought to accommodate both their concerns by redrafting the subsection to authorize the Secretary to acquire lands in trust for the Houlton Band, but only after obtaining the concurrence of authorized State officials to the acquisition. We have provided further that the Houlton Band would be authorized to enter into contracts with appropriate government agencies for the provision of services, similar to those we recommend below with respect to the Passamaquoddy Tribe and the Penobscot Nation. We expect that State and Band officials will work together in good faith to identify suitable lands for the Houlton Band.

The revised subsection also provides that notwithstanding the provisions of the Act of August 1, 1888, and the Act of February 26, 1931 (40 U.S.C. §§ 257, 258a), the Secretary may acquire land under this section only if the Secretary and the owner of the land have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. The cited provisions allow Federal agencies to utilize condemnation procedures and declarations of taking to acquire land for Federal purposes. Our proposed Section 5(d) would not bar the use of such procedures, but would only require the consent of the landowner to the terms of the taking. This limitation was requested by the landowners who intend to sell lands to the Tribes, and we have no objection to it.

Section 5(e) of our proposed amendment is new. We believe that no Federal money should be paid to the Tribes—either for the trust fund or for land acquisition—until they each have stipulated to a final dismissal of their claims. This subsection would condition the Secretary's authority to expend the two trust funds for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians on a finding that authorized officials of each of the

Tribes have executed documents relinquishing all their claims and have stipulated to a final judicial dismissal of their claims. Such relinquishments and dismissals will insure that there can be no future claim against the United States for the extinguishment of the Indian claims effected by this legislative settlement.

Our proposed subsection (f) of Section 5 is a clarification of Section 5(e) of H.R. 7919. Subsection (f) provides that the Indian Nonintercourse Act (25 U.S.C. § 177) shall not be applicable in Maine, but that lands in Indian territory or held in trust for the Houlton Band of Maliseet Indians shall nevertheless be subject to restrictions against alienation. Paragraph (3) provides specific, though limited, authorizations for the alienation of such trust lands. These are consistent with the terms of the proviso to Section 5(e)(2) of H.R. 7919, except that a specific authorization for rights-of-way, with the consent of the affected Tribe, Nation, or Band, has been added to provide for rights-of-way without resort to condemnation. The authorization for exchanges in proposed Section 5(f)(3)(E) has been made more flexible by inserting language taken from Section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. § 1716). Without such flexibility such an exchange authority may prove useless because it is often difficult to find exchange lands of precisely equal value. Finally, the authorization in H.R. 7919 for transfers of land the proceeds of which must be reinvested within two years has been revised in proposed Section 5(f)(3)(F) to reflect the Tribes' intent that sales be authorized only if the Secretary has already made specific arrangements for the acquisition of replacement land.

Section 5(f) of H.R. 7919 would require the Secretary to agree within 30 days to "reasonable terms" for the management and administration of land held in trust for the Passamaquoddy Tribe and Penobscot Nation. We believe the procedures outlined in this subsection are unwieldy but, more importantly, existing Federal laws and regulations provide adequate authority for the Tribes to manage their own trust lands. We have therefore rewritten the provision, which appears as Section 5(g) of our proposed amendment, to restate existing law which would authorize the Secretary to enter into land management agreements with either Tribe in accordance with Section 102 of the Indian Self-Determination Act (25 U.S.C. § 450f). We note that the contract declination procedures of that Act and existing regulations would be applicable to such agreements.

In our proposed amendment we have added a new subsection (h) to provide for condemnation of Passamaquoddy, Penobscot, and Houlton Band lands in accordance with state law relating to such lands. This subsection is necessary because Indian trust or restricted lands may not be condemned under state law without Congressional authorization. Congressional authorizations have generally required that the condemnation be in Federal court and that the United States be a party. We believe it would be unwise to diverge from this practice. Subsection (h) also specifies the disposition of the compensation received.

The disposition specified differs slightly from Section 5(g) of H.R. 7919 in that it channels proceeds through the Land Acquisition Fund rather than requiring their reinvestment within two years. Since it is

the Tribes who initiate land purchases under the scheme of the bill and since sums in the Land Acquisition Fund may only be used for that purpose, the two year requirement is superfluous and confusing. Subsection (i) provides that the proceeds from the condemnation of trust or restricted Indian lands in Maine pursuant to any law of the United States other than this Act shall likewise be reinvested through the Land Acquisition Fund.

Section 6(a) of H.R. 7919, and as revised in our proposed amendment, is intended to effectuate the broad assumption of jurisdiction over Indian lands by the State of Maine. As noted above, we will be reporting to the Committee on Section 6(b) as soon as discussion on it is concluded.

Our proposed amendment contains a new Section 6(c) to make absolutely clear the intention of the parties that the Federal government will not have "Indian country" type law enforcement jurisdiction on Indian lands in the State of Maine. See *State* v. *Dana*, 404 A.2d 551 (Me. 1979) *cert. denied* 48 U.S.L.W. 3537 (February 19, 1980). Our proposed Section 6(d) is merely a restatement and clarification of the first sentence and proviso of Section 6(c) of H.R. 7919. No substantive change is intended, except to clarify that the parties have agreed that the jurisdictional provisions of Section 1362 of Title 28, United States Code, shall apply to the three Tribes, notwithstanding the otherwise broad language of the provision.

The second part of Section 6(c) of H.R. 7919 would permit suits against the Secretary by judgment creditors of the Passamaquoddy Tribe and Penobscot Nation to force payment of the judgments out of Settlement Fund income. We believe that such litigation would be burdensome and unnecessary. Our proposed Section 6(d)(2) would provide instead a procedure for administrative attachment of future trust fund income by judgment creditors of the two Tribes. Under that provision the Secretary would be required to honor valid court orders of money judgments against either Tribe from causes of action accruing after the date of the enactment of the bill, by making an assignment to the judgment creditor of the right to receive future income from the Settlement Fund, notwithstanding the provisions of the Anti-Assignment Act (31 U.S.C. § 203).

Under Section 6(d) of H.R. 7919 Congress would consent in advance to any amendment of the Maine Implementing Act as long as the Tribes agreed to any such amendment. The breadth of this "consent" gave us cause for concern. We have therefore included in our proposed Section 6(e)(1), language taken from S. 1181 (96th Cong.) which would authorize future jurisdictional agreements between the State and either the Passamaquoddy Tribe or the Penobscot Nation in the form of amendments to the Implementing Act. State and tribal officials have agreed to this provision. Our proposed Section 6(e)(2) would authorize similar agreements with the Houlton Band of Maliseet Indians.

Section 6(f) of our proposed amendment is identical to Section 6(e) of H.R. 7919. It authorizes the Passamaquoddy Tribe and Penobscot Nation to exercise jurisdiction, separate and distinct from that of Maine, to the extent authorized by the Maine Implementing Act. That Act in turn leaves the two Tribes with exclusive authority over their own internal tribal affairs, certain misdemeanor jurisdiction over

tribal members, small claims jurisdiction, and a significant residium of regulatory authority over their own lands. The two Tribes will also be treated as municipalities under State law for purposes of jurisdiction over their lands in Indian territory, which means that no other municipality, the main unit of local government in Maine, may exercise any authority over tribal affairs in those areas. Lands and personal property in Indian territory may not be taxed; nor may income from the Settlement Fund. The Tribes and their members shall for the most part be otherwise subject to State taxes.

We note that Section 6208(2) of the Maine Implementing Act would require the Passamaquoddy Tribe and the Penobscot Nation to make payments in lieu of taxes for trust lands within Indian territory. We prefer that, instead of making in-lieu payments, the Tribes merely negotiate contracts with the counties and other districts for the provision of services. Nevertheless, this is a matter for tribal discretion, and Section 6(e) of our proposed amendment would allow for future jurisdictional agreements to accommodate our preference.

We object to the full faith and credit provision of Section 6(f) of H.R. 7919. In lieu of that provision the Tribes and State have offered language which appears in our proposed Section 6(g). It states that the Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other. The parties could agree to this form of comity without the consent of Congress, but we have no objection to its inclusion in the settlement legislation. There is, of course, no reason why the Tribes may not establish similar comity with other jurisdictions.

Section 6(g) of H.R. 7919 provides that Federal laws of general applicability to Indians, Indian tribes, and Indian lands shall not be applicable in Maine, except that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible for all financial benefits for which all other Federally recognized Indian tribes are eligible. We found this provision troublesome and confusing in that Federal financial benefits to Indian tribes would be divorced from general Federal statutes applicable to Indians. This was a subject of some discussion with representatives of the State and Tribes, and agreement was reached on the language of our proposed Section 6(h). In short, this would provide that no Federal law or regulation (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction or laws of the State of Maine, shall apply within the State. This limitation would include such Federal laws, among others, as the Indian trader statutes (25 U.S.C. §§ 261–264) and the provision of the Clean Air Act Amendments of 1977 which permits Indian tribes to designate air quality standards (42 U.S.C. § 7474).

Section 6(g) of H.R. 7919 also states that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are Federally-recognized Indian tribes and that they shall be eligible for Federal financial programs on the same basis as all other Federally-recognized Tribes. Since the bill contemplates significant acquisition of lands to be held in trust for the Tribes, we read this provision to

mean that such trust lands should be treated as Indian reservations for purposes of the provision of Federal Indian services. We do not object to the provision, so interpreted.

We have also included a proviso to this subsection which would limit the membership of the Houlton Band of Maliseet Indians, for purposes of the provision of Federal services or benefits, to persons who are citizens of the United States. This is similar to the limitation in Section 3 of Public Law 95–375 which recognized the Pascua Yaqui Tribe for purposes of the provision of Federal Indian services.

With the agreement of the parties we have included in our proposed amendment a new Section 7, which would clearly permit the Tribes to organize for their common welfare and adopt constitutions or charters. While we have been assured by attorneys for the State of Maine that the Passamaquoddy Tribe and the Penobscot Nation need not adopt charters under State law to avail themselves of the benefits of the status of municipalities of the State, we believe it preferable to make clear that this option continues to exist under Federal law. And, since these Tribes will be administering large land holdings and valuable assets, the adoption of organic governing documents, which would be filed with the Secretary, seems advisable.

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

Section 8(b) of H.R. 7919 provides that the eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation pursuant to the Maine Implementing Act shall not be considered by Federal agencies in determining the eligibility of either Tribe for Federal financial aid programs. To clarify this provision, which appears as Section 9(b) of our proposed amendment, we have added a proviso to the effect that Federal agencies shall not be barred by this section from considering the actual financial situation of the Tribe.

Section 8(c) of H.R. 7919 would prevent Federal agencies from considering the availability or distribution of funds pursuant to Section 5 of the bill for purposes of denying Federal financial assistance to Indian households or to the Passamaquoddy Tribe or Penobscot Nation. We read this provision to refer only to income from the Settlement Fund to be established pursuant to Section 5(a), and expect that the two Tribes will otherwise be treated as any other tribe insofar as their income from other sources are concerned, including income derived from land or natural resources acquired pursuant to the Act. As read, the provision is unobjectionable. It appears as Section 9(c) of our proposed amendment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JAMES A. JOSEPH,
Acting Secretary.

Enclosure.

AMENDMENT TO H.R. 7919 IN THE NATURE OF A SUBSTITUTE

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

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

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

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

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

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

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

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

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

(b) It is the purpose of this Act—

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

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

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

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

DEFINITIONS

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

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

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

or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; and portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; and portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle: *Provided*, That "Indian territory" within the meaning of this subparagraph may not exceed 300,000 acres of land; and (D) any other lands designated as Passamaquoddy Indian Territory or Penobscot Indian Territory pursuant to the laws of the State;

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

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

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

(6) "Maine Implementing Act" means Section 1 and Section 30 of the "Act to Implement the Maine Indian Settlement" enacted by the State of Maine in Chapter 732 of the Public Laws of 1979;

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

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

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

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

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

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

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

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

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

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

SEC. 4. (a)(1) Any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, and any transfer of land or natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1979 (ch. 33, § 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer: *Provided, however*, That nothing in this section shall be construed to affect or eliminate the claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law generally designed to protect non-Indians as well as Indians.

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

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

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians or any of their members or by any other Indian, Indian nation, tribe or band of Indians, or any predecessors or successors in interest thereof, arising at the time of or subsequent to the

transfer and based on any interest in or right involving such land or natural resources, including but without limitation claims for trespass damages or claims for use and occupancy, shall be deemed extinguished as of the date of transfer.

ESTABLISHMENT OF FUNDS

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

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

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

(3) The Secretary shall make available to the Passamaquoddy Tribe and the Penobscot Nation in quarterly payments, without any deductions except as expressly provided in Section 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the Settlement Fund allocated to the respective Tribe or Nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the Settlement Fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the Tribe or Nation, the United States shall have no further trust responsibility to the Tribe or Nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

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

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

(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;

(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and

(3) $26,800,000 to be held in trust for the Penobscot Nation. The Secretary is authorized and directed to expend, at the request of the affected Tribe, Nation or Band, the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purpose. Land or natural resources acquired within Indian territory for the Passamaquoddy Tribe and the Penobscot Nation shall be held in trust by the United States for the benefit of the respective Tribe or Nation. Land or natural resources acquired outside the boundaries of Indian territory shall be held in fee simple by the respective Tribe or Nation, and the United States shall have no further trust responsibility with respect thereto. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within Indian territory by purchase, gift, or exchange by such Tribe or Nation. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the Band: *Provided*, That no land or natural resources shall be so acquired without the concurrence of authorized officials of the State of Maine. The Houlton Band of Maliseet Indians is authorized to enter into contracts for payment for the provision of services from the State, county, or municipality exercising jurisdiction over the lands so acquired, annually not to exceed an amount equal to the real property taxes which would have been levied in the given year against the owner of the land or natural resources, were they not owned by the United States. Notwithstanding the provisions of Section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and Section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title satisfactory to the Attorney General in the United States and condemn interests adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian tribes in the State of Maine.

(e) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the funds established pursuant to subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective Tribe, Nation, or Band have executed appropriate documents relinquishing all claims to the extent provided by Sections 4, 11, and 12 of this Act and by Section 6213 of the Maine Implementing Act, including stipulations to the final judicial dismissal of their claims.

(f) (1) The provisions of Section 2116 of the Revised Statutes, shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot

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

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

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective Tribe, Nation, or Band, be—

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

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

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

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

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the Land Acquisition Fund for the benefit of the affected Tribe, Nation, or Band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the Tribe, Nation, or Band; and

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

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

(h) (1) Trust or restricted land or natural resources within the Passamaquoddy or Penobscot Indian Reservations may be condemned for public purposes pursuant to the laws of the State of Maine relating to such lands. In the event that the compensation for the taking is in the form of substitute land to be added to the reservation, such land

shall become a part of the reservation in accordance with the laws of the State of Maine and upon notification to the Secretary of the Interior of the location and boundaries of the substitute land. Such substitute land shall have the same trust or restricted status as the land taken. To the extent that the compensation is in the form of monetary proceeds, it shall be deposited and reinvested as provided in paragraph (2) of this subsection.

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

(3) The United States shall be a party to any condemnation action under this subsection and exclusive jurisdiction shall be in the United States District Court for the District of Maine: *Provided*, That nothing in this section shall affect the jurisdiction of the Maine Superior Court provided for in Section 6205(3)(A) of the Maine Implementing Act to review the finding of the Public Utility Commission or a public entity of the State of Maine.

(i) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (h)(2) of this section.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as otherwise provided in subsections (d) and (e) of this section, all Indians, Indian nations, tribes, and bands of Indians in the State of Maine, other than the Passamaquoddy Tribe and the Penobscot Nation and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe, or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Indian, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and to the civil and criminal jurisdiction of the courts of the State, to the same extent as

any other person or land therein: *Provided*, That nothing in this section shall be construed as subjecting land or natural resources held by the United States in trust to taxation, encumbrance, or alienation.

(b) [To be supplied.]

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the Act of June 25, 1948 (62 Stat. 757), as amended, or the Act of July 12, 1960 (74 Stat. 469), as amended.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and Section 1362 of Title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation and their officers and employees shall be immune from suit when the respective Tribe or Nation is acting in its governmental capacity to the same extent as any municipality or like officers or employees thereof within the State of Maine.

(2) Notwithstand the provisions of Section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the Settlement Fund established pursuant to Section 5(a) of this Act and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: *Provided*, That such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (A) the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation and the State within their respective jurisdictions; (B) allocation or determination of governmental responsibility of the State and the Tribe or Nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe or Nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent author-

ized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) The laws and regulations of the United States which are generally applicable to Indians, Indian tribes, and Indian lands shall be applicable to Indians, Indian tribes, and Indian lands in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal or regulatory jurisdiction of the State of Maine, shall apply within the State: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians, and for the purposes of determining eligibility for such financial benefits the respective Tribe, Nation, or Band shall be deemed to be Federally recognized Indian tribes: *Provided, further*, That the Passamaquoddy Tribe, the Penobscot Nation, and the HoultonBand of Maliseet Indians shall be considered Federally recognized tribes for the purposes of Federal taxation and any lands owned by or held in trust for the respective Tribe, Nation, or Band shall be considered Federal Indian reservations for purposes of Federal taxation: *Provided, however*, That no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseet Indians for purposes of the provision of Federal services or benefits.

TRIBAL ORGANIZATION

SEC. 7. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for their common welfare, and adopt an appropriate instrument in writing to govern the affairs of the Tribe, Nation, or Band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of their organic governing document and any amendments thereto.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective Tribe or Nation may assume such jurisdiction over Indian child custody proceedings, the respective Tribe or Nation shall present to the Secretary for approval a petition to assume such

jurisdiction and the Secretary shall approve that petition in the manner prescribed by Sections 108(a)–(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with Sections 108 (b) and (c) of the Act.

(c) Assumption of jurisiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation shall be deemed to be "reservations" within Section 4(10) of the Act and the Passamaquoddy Tribe and the Penobscot Nation shall be deemed to be "Indian tribes" within Section 4(8) of the Act.

(e) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over the Indian child custody proceedings of that Tribe or Nation.

(f) Except as may otherwise be subsequently agreed to by the Houlton Band of Maliseet Indians and the State of Maine pursuant to Section 6(e)(2) of this Act, Section 102 of the Indian Child Welfare Act of 1978 shall apply to the Houlton Band of Maliseet Indians to the same extent that that section applies to Indian tribes as defined in Section 4 of the Act.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 9.(a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the State of Maine's eligibility for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this section from considering the actual financial situation of the applicant.

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

would otherwise be entitled, or (3) for denying or reducing the Federal financial assistance or other Federal benefits to which the Passamaquoddy Tribe or Penobscot Nation would otherwise be entitled.

DEFERRAL OF CAPITAL GAINS

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

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effiective date of this Act shall be transferred to the Secretary to be held in trust for the respective Tribe or Nation and shall be added to the principal of the Settlement Fund allocated to that Tribe or Nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective Tribe or Nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective Tribe and Nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

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

LIMITATION OF ACTIONS

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

AUTHORIZATION

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

INSEPARABILITY

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

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 10, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This supplements our report of August 25, 1980, on H.R. 7919, a bill to settle Indian land claims in the State of Maine. In our earlier report we enclosed a proposed amendment to H.R. 7919 in the nature of a substitute. The proposal was developed in the course of discussions with tribal and State officials in an effort to achieve agreement on substitute language which would clarify governmental responsibilities in implementing the land claims settlement. Our proposed amendment reflected a large measure of agreement, but at the time of its submission discussions had not been concluded with respect to Section 6(b) of the bill. Those discussions have now been concluded and this is to provide you with our recommended language for that provision.

Section 6(b) of H.R. 7919 as introduced provides:

> (b) The Passamaquoddy Tribe, the Penobscot Nation, their members, and the land owned by or held for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act. The Maine Implementing Act is hereby approved, ratified and confirmed, and the provisions of the Maine Implementing Act which hereafter become effective including any subsequent amendments pursuant to subsection (d), are incorporated by reference as fully as if set forth herein. The Maine Implementing Act shall not be subject to the provisions of Section 1919 of Title 25 of the United States Code.

As we mentioned in the course of our testimony at the Committee's August 25 hearings on the bill, one of our principal concerns with the settlement proposal is the language of Section 6211 (2) and (4) of the Maine Implementing Act which would allow the State to reduce funding to the Passamaquoddy Tribe, the Penobscot Nation, and their members in circumstances where the Tribes or individual members are recipients of Federal funds "within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State. . . ." Section 6(b) of

H.R. 7919 would approve, ratify, and confirm the provisions of the Maine Implementing Act, including Section 6211.

Because we fear that ratification of these provisions in the State Act could result in the abuse of Federal financial assistance by allowing the State to use Federal funds to supplant State funding of programs which benefit its Indian citizens, and would therefore set a potentially dangerous precedent for the use of Federal funds nationwide, we asked State officials to provide a letter clarifying the meaning and intent of Section 6211 (2) and (4) of the Maine Implementing Act.

Maine Attorney General Richard S. Cohen had sent to the Senate Select Committee on Indian Affairs a letter dated August 22, 1980, which assists in the interpretation of those provisions of the State law. However, this letter, while helpful, did not completely allay our concern, as expressed at the August 25, 1980 hearings, that Congressional ratification of the Maine Implementing Act pursuant to Section 6(b) of H.R. 7919 may be viewed as sanctioning, even if only in limited circumstances, the practice of supplanting each dollar of State aid to the tribes with a dollar of Federal aid.

After a careful study of the programs which might be affected by this provision in the Maine Implementing Act, we have arrived at the following language as a proposed amendment to Section 6(b):

> (b)(1) The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseets, their members, and the land and natural resources owned by or held in trust for the benefit of the Tribe, Nation or Band, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act: *Provided, however*, That nothing in this section shall be construed as subjecting lands held by the United States in trust to taxation, encumbrance, or alienation. The Maine Implementing Act is hereby approved, ratified and confirmed to the extent that it is not inconsistent with the provisions of this Act. The Maine Implementing Act is not an agreement within the meaning of Section 109 of the Indian Child Welfare Act of 1978.
>
> (2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of any local share required by Maine State law. 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.
>
> (3) Nothing in this Act shall be construed to supersede any Federal laws or regulations governing the provision or funding or services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

Paragraph 6(b)(1) of our proposed amendment is substantially similar to the provision in H.R. 7919. The proviso is intended to clar-

ify the understanding of the parties that lands acquired by the United States in trust shall not be subject to taxation and are subject to the restrictions against alienation of section 5(f)(2) of our proposed amendment (section 5(e)(2) of H.R. 7919). To the language ratifying the Maine Implementing Act we have added the phrase, "to the extent that it is not inconsistent with the provisions of this Act". While we have no intention of altering the substance of the jurisdictional agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation, to the extent that anyone in the future perceives a discrepancy between the federal and state legislation we feel it is important to recognize that the federal legislation should control.

Paragraph 6(b)(2) is a reflection of our examination of the interplay of federal and state funding of Indian programs under this new arrangement. Because lands in Passamaquoddy and Penobscot Indian territory will be tax-exempt, those Tribes may wish to rely on federal funds to match state funds available to them as municipalities. As provided in Section 6211(1) of the Maine Implementing Act, "[t]o the extent that any . . . program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through *any source of revenue available.*" (Italic added.) For example, consistent with the Maine Implementing Act and our proposed amendment, funds received by the Tribes under a contract authorized by the Johnson-O'Malley Act (25 U.S.C. Section 452 *et seq.*) may be used as the local share to match state educational assistance if that use is otherwise consistent with the provisions of the Johnson-O'Malley Act. Thus, regardless of whether or not certain funding sources may be prohibited by federal law or regulation from supplanting state funds under Section 6211(2) or (4) of the Maine Implementing Act, such funds my be used to provide the local share for matching purposes.

Paragrah (3) of our proposed section 6(b) would make it clear that nothing in the Settlement Act, including the ratification of the Maine Implementing Act, should be read to supersede any federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine, unless expressely provided by that Act.

The Maine Attorney General is amending his August 22 letter to provide further explanation of Section 6211 of the Maine Implementing Act. It is our understanding that the State's interpretation is that Section 6211 (2) and (4) will not authorize the supplanting of federal funds where such supplanting is prohibited by either Federal law or regulation.

It is the Department's intention to structure our funding programs in such a manner that no funds will be supplanted by the operation of Section 6211 of the Maine Implementing Act. This structuring may include the amendment of our regulations to prevent supplanting of funds by states. However, such regulations, if promulgated, will have effect on a national basis and will in no way treat the State of Maine differently from any other state in such funding matters.

We have also been requested to consider the addition of the word "reasonable" to the language of Section 5(b)(1) of our proposed amendment. That sentence would then read as follows:

> Each portion of the Settlement Fund shall be administered by the Secretary in accordance with reasonable terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to be the Secretary.

We have no objection to the inclusion of this word so long as the standard of conduct applicable to those charged with investment responsibility is consistent with Section 6 of the Uniform Management of Institutional Funds Act. That section requires the governing board to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Those charged with investment management of the funds would be obligated to act in the utmost good faith and to exercise ordinary business care and prudence in all matters affecting its administration.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS, *Secretary.*

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EXHIBIT
F

PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2829

TO PROVIDE FOR THE SETTLEMENT OF THE MAINE INDIAN LAND CLAIMS

JULY 1 AND 2, 1980
WASHINGTON, D.C.

Volume 2
Appendix

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from them something which they considered to be theirs of right. We respectfully request this Committee to make a careful analysis of the law enforcement responsibilities and the possible problems which could arise as the matter is covered in the Settlement Act. Note particularly that under Section 6206 of Section 1 General Powers, the Passamaquoddy Tribe and the Penobscot Nation shall designate such officers and officials as are necessary to implement and administer those laws of the State of Maine that are applicable to the Indian territories. And note, also, under Section 6207 that by Subsection 1(a) the Passamaquoddy Tribe and the Penobscot Nation shall have exclusive authority within their respective Indian territories to promulgate and enact ordinances regulating hunting, trapping, and other taking of wild life. Yet, note by Subsection 6 of the same section in the Act, the Commissioner's powers of supervision may well be in conflict with the tribes' choice of ordinances for hunting, fishing and trapping. This area alone could easily become a nightmare and lead to considerable administrative difficulty and, perhaps, dangerous problems for law enforcement.

The undersigned feel that calling attention to a few points as above will indicate to this Committee that there are some very serious problems with respect to tribal and state relationships which have been unrealistically and perhaps ineffectively dealt with by the Settlement Act. Law enforcement is not an exercise which occurs in a vacuum. It is often and perhaps almost always fraught with emotion and some danger for the law enforcement officers themselves. In Maine, at least, the rights to hunt and fish and trap are widely considered to be inalienable rights by a large proportion of Maine citizens. Clearly, if Maine's Indians are given special, exclusive rights to hunt without limitation for sustenance purposes and non-Indians may not have the same rights, conflicts will begin to crop up. We respectfully request this Committee to make its own in-depth evaluation of the Settlement Act of the Maine Legislature. We think it raises more questions than it answers.

The undersigned—both of whom are active practitioners of law in the State of Maine of many years' standing, are avid hunters and fishermen and, for what it is worth, former members of the Maine State Legislature—believe that even though the so-called settlement was negotiated for many years, the Legislature was given little or no opportunity for in-depth study or review of the negotiations and their decisions and the reasons for them. We believe that most of the legislators voted on the basis of statements made to them as to the chaotic problems that would arise with respect to land titles, future mortgage commitments by banks, and the near impossibility of selling future municipal bonds. We believe that such tactics while presented perhaps by spokesmen who believe they were implicit in continued negotiations or the advent of active lawsuit, the statements themselves foreclosed the individual legislators from asking for the necessary time to think about the proposition and to review it at leisure.

Finally, we do not believe the scare stories because we believe as lawyers that there are court procedures to prevent such untoward freezing of land titles. As we stated above, the simplest way in which the matter could be handled to the satisfaction of nearly everyone except those members of the tribes who literally believe that they may have returned to them one half of the land in the State of Maine, is for Congress forthwith to extinguish all claims to land of all Indians in the State of Maine and to authorize suits to be brought in the United States courts of proper jurisdiction for the proof of and the award of money damages, if any be deemed appropriate by the courts, which said damages would be paid by the United States of America.

We earnestly submit these thoughts to your consideration, and we are grateful for the opportunity to be heard. We most earnestly request that you will read the documents listed above, and we feel very sure that if you do, you will become convinced as we are that history and the law will make it impossible for the Maine Indians to sustain these claims in any courts of this land.

PREPARED SATEMENT OF TERRY POLCHIES, AUTHORIZED REPRESENTATIVE, HOULTON BAND OF MALISEET INDIANS

Mr. Chairman and members of the Committee, I am Terry Polchies, authorized representative for the Houlton Band of Maliseet Indians. I appreciate the opportunity to submit this statement on S. 2329, a bill of overriding significance to the Houlton Band.

The Houlton Band supports the intent of S. 2829—to provide a just settlement of the Indian aboriginal land claims in Maine. The Houlton Band has agreed to extinguishment of its aboriginal land claim in Maine on two conditions: (1) that the Houlton Band be legislatively recognized as an Indian tribe by Congress and treated as eligible for all federal services and programs that benefit Indians: and (2) that a secure and permanent land base be held in trust for the Band by the United States. In its current form, S. 2829 fulfills only the first objective, but not the second—obtaining a secure and permanent tribal land base. The Band's support for S. 2829 is therefore conditioned upon the bill providing that the $900,000 be held in trust for the Band to purchase land that will be held in trust and restricted against alienation and will not be subject to State property taxes. The Band is agreeable to making payments in lieu of State taxes out of timber income it receives from the lands. But the lands should be exempted from levy and sale for failure to pay taxes. These minimal protections—already afforded the Passamaquoddy and Penobscot "Indian territory" lands under S. 2829—are needed to insure that the lands to be purchased for the Houlton Band by the United States will be more than a fleeting possession, will provide a permanent land base of enduring value for the Band.

History teaches that Indian tribes retain their lands only where those lands are exempt from levy for failure to pay property taxes and generally restricted against alienation (as by mortgage liens, judgment liens and the like). This is essentially what is meant by holding Indian lands "in trust". Without these protections, Indian lands become equivalent to fee lands. The difference is practical, not technical, for unrestricted fee lands rarely remain in Indian ownership for more than short periods of time. For example, the Puyallup Tribe in the State of Washington owned an 18,000 acre reservation in the late nineteenth century. When restrictions against alienation were removed by Congress and local property taxes authorized to be imposed, the lands quickly passed into non-Indian ownership. By the 1960's, the Indians owned only 22 acres. See generally *Puyallup Tribe* v. *Department of Game*, 433 U.S. 165 (1977). This example is illustrative of the experience of numerous western tribes.

Restrictions against alienation of Indian lands have been imposed by Congress since 1790. Without such restrictions, the expenditure of $900,000.00 of federal funds for lands for the Houlton Band will undoubtedly prove to be a waster gesture, as the lands will soon go out of tribal ownership and the benefit sought by the Band and the United States—a tribal land base—will be irrevocably lost. Specific language on how to provide the protections against alienation of land sought by the Band in S. 2829 is provided in Appendix A.

We understand that the Secretary of the Interior will submit a report embracing the essence of these changes, but providing that lands to be taken into trust for the Band must be consented to by appropriate State officials. Unlike the Passamaquoddy Tribe and Penobscot Nation, we have not identified existing lands in the area where we live that can be acquired. We have been assured by responsible leaders of the State that they will work with us to identify lands in the vicinity of our homes that are appropriate to be taken into trust status. We expect to be able to locate lands for acquisition based on the reasonable and good faith commitments of these officials, and can accept this change as a compromise modification to the bill. Since—unlike the Passamaquoddy Tribe and Penobscot Nation—the Band has no State reservation, it has greater need for lands near where its members live.

THE HOULTON BAND'S CLAIM

The land claim of the Houlton Band is set forth in some detail in a report prepared by our attorneys, Sonosky, Chambers & Sachse, 2030 M Street, Washington, D.C. 20036, entitled "Analysis of the Aboriginal Indian title of the Houlton Band of Maliseets" (November 9, 1979). A copy of that report is being submitted as Appendix B to this statement for inclusion in the Committee's hearing record on S. 2829. A summary of the claim follows:

It is well-documented that since at least the early seventeenth century, Maliseet Indians exclusively used and occupied the lands of the St. John River watershed which encompasses large areas in what is now Maine, Quebec and New Brunswick. Historical records left by early explorers and missionaries including Samuel de Champlain (1603), Pierre Bairde (1611) and Cadillac (1693) as well as numerous accounts from the eighteenth and nineteenth centuries identify Maliseet Indians throughout the watershed. Most ethnohistorians and anthropologists agree that Maliseet aboriginal territory included the entire St. John watershed. A map show-

ing this widely held consensus view of the Maliseet aboriginal homeland is found in the Smithsonian's Handbook of North American Indians, Vol. 15, p. 123 (a copy of which is attached as Appendix C to this statement). One study, by enthnologist Frank Speck, gives a more restrictive view—that only a portion of the watershed was included. But even Speck makes it clear that substantial portions of Aroostook County in northern Maine—over one million acres—were Maliseet aboriginal territory. Thus *all* scholars agree that the Maliseets held aboriginal title to vast areas in what is now Maine.

The Maliseets used these lands for hunting caribou and other animals, fishing, use of timber, gathering roots and raising maize and other crops. During the summer months they gathered in fortified communities. Throughout the rest of the year the Maliseets dispersed in small family bands to hunt. Each family band occupied a defined territory for hunting within the larger Maliseet territory.

This traditional pattern of Maliseet life continued in the St. John valley well into the nineteenth century. Aroostook County in northern Maine remained a sparsely settled frontier area until after the Civil War. Early in the nineteenth century Aroostook County attracted only a small number of settlers primarily for lumbering. But beginning in about 1870, with the advent of the potato-starch making industry, and the opening of railroad lines to major commercial centers, Aroostook County's settler population boomed as the area became sedentary and agrarian with vast acreages of potato farm. The County's non-Indian population grew from about 9,000 in 1840 to over 60,000 in 1900. The State encouraged this transformation of Aroostook County from a backwoods inhabited primarily by Maliseet Indians and a small number of loggers, to the more densely settled non-Indian potato farm country, by offering fertile land to settlers at bargain prices. Sizeable non-Indian communities arose in this period as the non-Indian farm population expanded.

These changes in Aroostook County had a severe impact on the Maliseet family hunting bands which had traditionally used land within Maine. As non-Indian settlement increased, game became increasingly scarce, with caribou becoming extinct in the area late in the century. Reliance on the traditional hunting and fishing subsistence economy became impossible. The Maliseet family hunting bands were forced into a more sedentary existence, farming and working for the settlers who had destroyed the Maliseet way of life. Many settled near Houlton, a traditional camping area and a central nexus in the rivers for the Maliseet canoeists.

The Houlton Band today is comprised of lineal descendants of the Maliseet family hunting bands which traditionally hunted in Maine. It is the only Band of Maliseets in the United States. The Houlton Band had always retained its Indian identity. Its members today have large degrees of Indian blood and speak Indian language. The Band's organization remains as it was in aboriginal times—along kinship lines. The Band is the successor land-owning entity to the Maliseets family hunting bands which used aboriginal lands in Maine.

The aboriginal claim of the Maliseets to the lands its members exclusively used and occupied in Maine has never been lost. Congress has never extinguished Maliseet title. Nor were there any treaties with the State which could even purport to remove the Maliseet's aboriginal lands in Maine. Furthermore, the Maliseets never voluntarily left their lands. Instead, the Maliseets were involuntarily forced to change their way of life as non-Indian settlers—without federal authorization—increasingly destroyed the Maliseets' subsistence economy. Since the forcible exclusion of Indians from aboriginal lands even by federal officers cannot extinguish Indian title, it follows *a fortiori* that non-Indian settlers encroaching on Indian lands and excluding the Indians cannot extinguish aboriginal title.

Since the Maliseets' aboriginal title in northern Maine has never been abandoned or extinguished, it remains valid today. The Houlton Band, as the land-owning entity, believes that settlement of its land claim through legislation would best serve the interests of the Band and its members, as well as the non-Indian people of Maine and the Nation. But such a settlement must provide more than temporary benefits to be acceptable to the Houlton Band.

S. 2829. The Houlton Band now has 350 members. The Band's members are for the most part at the poorest end of the economic spectrum, living in substandard housing and without adequate health care. (Article from "Indian Truth" attached as Appendix D to this statement.) Even by Indian standards, living conditions among the Houlton Band are generally appalling. For example, in 1971, the per capita income of Indians in Aroostook County was about $600.00 and only about 9% of the Indian families in Aroostook County have an income

above the poverty level. State Indian services to Houlton Band members have been minimal and federal services nonexistent. The Band looks to S. 2829 as a ray of hope for improving the economic plight of its members and, just as important, to establish a lasting land base to perpetuate its people and culture.

The Band agrees with Secretary Andrus that certain other provisions in the bill require additional clarification. Some of the needed changes are technical only, and we have appreciated the opportunity to meet in the past weeks with the staff of this Committee, the other tribes, representatives of Secretary Andrus and the State to produce clarifying language agreeable to all interested parties. The Houlton Band remains particularly concerned with the applicability of the Indian Child Welfare Act to its members and protecting the Band's authority over its internal tribal affairs. The severity of the Indian child welfare problem among the Houlton Band was documented by the Final Report of the Indian Policy Review Commission, Task Force Four: Federal, State and Tribal Jurisdiction, p. 205, which stated that "[i]n Aroostook County in 1972 Indian children were placed in foster homes at a rate of 62.4 times (6,240 percent) greater than the State-wide rate for non-Indians." Most child placements of Houlton Band members are in non-Indian homes. This intolerable situation was brought to the attention of this committee during consideration of the Indian Child Welfare Act. Hearings before the Senate Select Committee on Indian Affairs 95th Cong., 1st Sess. on S. 1214, the Indian Child Welfare Act of 1977, pp. 343–349. The Houlton Band, perhaps more than any other Indian tribe in the country, needs to have the protection of the Act to ensure that state institutions do not continue this pattern of placing a disproportionate number of the Band's children in non-Indian homes. This first objective is easily secured by the following addition to Section 7:

In Section 7, add "and/or Houlton Band of Maliseet Indians" after "Penobscot Nation" whenever those words appear in the section; and add "or Band" after "or Nation" in subsection 7(a).

In addition, we strongly support addition of a new section to the bill recognizing the authority of the Houlton Band to organize its government and adopt a constitution and business charter. We believe that the Indian Reorganization Act of 1934 (25 U.S.C. 461 *et seq.*) applies to the Band and to other tribes in Maine. This should be confirmed in the legislation.

Finally, we are informed by the Interior Department that their report will propose an amendment to the bill that members of the Band who are not American citizens would not be eligible for federal services or benefits as members of the Band. We understand the Department's concern is that large numbers of Canadian Maliseets might seek membership in the Band, and we are sympathetic to this issue. However, Interior's concern can be met by providing that persons not on the current Band membership roll must be American citizens to be eligible for federal services or benefit as Band members. We are attaching the Band's membership roll as Appendix E. A small minority of our present members are not American citizens. Although they have lived in the United States for years, usually decades, these members have not become citizens. Rather, they have lived in Houlton in exercise of their rights under the Jay Treaty, which provides that Indians on either side of the United States-Canadian border shall have the right to free access to both sides of the border, without regard to their citizenship. They should not be penalized for exercising their Jay Treaty rights by being stricken from the Band's roll.

Thank you for the opportunity to present this testimony.

Calendar No. 1050

96TH CONGRESS, 2d Session } SENATE { REPORT No. 96-957

AUTHORIZING FUNDS FOR THE SETTLEMENT OF INDIAN CLAIMS IN THE STATE OF MAINE

SEPTEMBER 17 (legislative day, JUNE 12), 1980.—Ordered to be printed

Mr. MELCHER, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2829]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2829) to authorize funds for the settlement of Indian claims in the State of Maine, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

AMENDMENT TO S. 2829 IN THE NATURE OF A SUBSTITUTE

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980"

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the ground that the lands in question were originally transferred in violation of law, including, but without limitation, the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

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

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

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

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

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

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

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

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

(b) It is the purpose of this Act—

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

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

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation, and

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

DEFINITIONS

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

(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 the enactment of this Act, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians;

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

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

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

(e) "Maine Implementing Act" means Section 1, Section 30, and Section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in Chapter 732 of the Public Laws of 1979;

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

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

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

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

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

(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;

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

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

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

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

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

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

(3) The United States is barred from asserting by or on behalf of any individual Indian any claim under the laws of the State of Maine arising from any transfer of land or natural resources located anywhere within the State of Maine from, by, or on behalf of any individual Indian, which occurred prior to De-

cember 1, 1873, including but without limitation any transfer pursuant to any treaty, compact, or statute of any state.

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

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

(d) The provisions of this section shall take effect immediately upon appropriation of the funds authorized to be appropriated to implement the provisions of Sec. 5 of this Act. The Secretary shall publish notice of such appropriation in the Federal Register when such funds are appropriated.

ESTABLISHMENT OF FUNDS

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

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

(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 Penosbscot Nation in quarterly payments, without any deductions except as expressly provided in subsection 6(d)(2) and without liability to or on the part of the United States, any income received from the investment of that portion of the Settlement Fund allocated to the respective Tribe or Nation, the use of which shall be free of regulation by the Secretary. The Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the Settlement Fund for the benefit of their respective members who are over the age of sixty. Once payments under this paragraph have been made to the Tribe or Nation, the United States shall have no further trust responsibility to the Tribe or Nation or their members with respect to the sums paid, any subsequent distribution of these sums, or any property or services purchased therewith.

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

(d) The principal of the Land Acquisition Fund shall be apportioned as follows:
(1) $900,000 to be held in trust for the Houlton Band of Maliseet Indians;
(2) $26,800,000 to be held in trust for the Passamaquoddy Tribe; and
(3) $26,800,000 to be held in trust for the Penobscot Nation.

The Secretary is authorized and directed to expend, at the request of the affected Tribe, Nation or Band, the principal and any income accruing to the respective portions of the Land Acquisition Fund for the purpose of acquiring land or natural resources for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians and for no other purposes. The first 150,000 acres of land or natural resources acquired for the Passamaquoddy Tribe and the first 150,000 acres acquired for the Penobscot Nation within the area described in the Maine Implementing Act as eligible to be included within the Passamaquoddy Indian Territory and the Penobscot Indian Territory shall be held in trust by the United States for the benefit of the respective Tribe or Nation. The Secretary is also authorized to take in trust for the Passamaquoddy Tribe or the Penobscot Nation any land or natural resources acquired within the aforesaid area by purchase, gift, or exchange by such Tribe or Nation. Land or natural resources acquired outside the boundaries of the aforesaid areas shall be held in fee by the respective Tribe or Nation, and the United States shall have no further trust responsibility with respect thereto. Land or natural resources acquired within the State of Maine for the Houlton Band of Maliseet Indians shall be held in trust by the United States for the benefit of the Band, *provided*, that no land or natural resources shall be so acquired for or on behalf of the Houlton Band of Maliseet Indians without the prior enactment of appropriate legislation by the State of Maine approving such acquisition, *provided further*, that the Passamaquoddy Tribe and the Penobscot Nation shall each have a one-half undivided interest in the corpus of the trust, which shall consist of any such property or subsequently acquired exchange property, in the event the Houlton Band of Maliseet Indians should terminate its interest in the trust.

(4) The Secretary is authorized to, and at the request of either party shall, participate in negotiations between the State of Maine and the Houlton Band of Maliseet Indians for the purpose of assisting in securing agreement as to the land or natural resources to be acquired by the United States to be held in trust for the benefit of the Houlton Band. Such agreement shall be embodied in the legislation enacted by the State of Maine approving the acquisition of such lands as required by section 5(d)(3). The agreement and the legislation shall be limited to:

(A) provisions providing restrictions against alienation or taxation of land or natural resources held in trust for the Houlton Band no less restrictive than those provided by this Act and the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation;

(B) provisions limiting the power of the State of Maine to condemn such lands that are no less restrictive than the provisions of this Act and the Maine Implementing Act that apply to the Passamaquoddy Indian Territory and the Penobscot Indian Territory but not within either the Passamaquoddy Indian Reservation or the Penobscot Indian Reservation;

(C) consistent with the trust and restricted character of the lands, provisions satisfactory to the State and the Houlton Band concerning:

(i) payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the Band, except that the Band shall not be deemed to own or use any property for governmental purposes under the Maine Implementing Act.

(ii) payments of other fees and taxes to the extent imposed on the Passamaquoddy Tribe and the Penobscot Nation under the Maine Implementing Act, except that the Band shall not be deemed to be a governmental entity under the Maine Implementing Act or to have the powers of a municipality under the Maine Implementing Act;

(iii) securing performance of obligations of the Houlton Band arising after the effective date of agreement between the State and the Band.

(D) provisions on the location of these lands. Except as set forth in this subsection, such agreement shall not include any other provisions regarding the enforcement or application of the laws of the State of

Maine. Within one year of the date of enactment of this Act, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian Affairs a report on the status of these negotiations.

(e) Notwithstanding the provisions of Section 1 of the Act of August 1, 1888 (25 Stat. 357), as amended, and Section 1 of the Act of February 26, 1931 (46 Stat. 1421), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title satisfactory to the Attorney General of the United States and condemn interest adverse to the ostensible owner. Except for the provisions of this Act, the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine.

(f) The Secretary may not expend on behalf of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians any sums deposited in the Funds established pursuant to the subsections (a) and (c) of this section unless and until he finds that authorized officials of the respective Tribe, Nation, or Band have executed appropriate documents relinquishing all claims to the extent provided by Sections 4, 11, and 12 of this Act and by Section 613 of the Maine Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g)(1) The provisions of Section 2116 of the Revised Statutes shall not be applicable to (A) the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation, or tribe or band of Indians in the State of Maine, or (B) any or natural resources owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians or any other Indian, Indian nation or tribe or band of Indians in the State of Maine. Except as provided in subsections (d)(4) and (g)(2), such land or natural resources shall not otherwise be subject to any restraint on alienation by virtue of being held in trust by the United States or the Secretary.

(2) Except as provided in paragraph (3) of this subsection, any transfer of land or natural resources within Passamaquoddy Indian Territory or Penobscot Indian Territory, except (A) takings for public uses consistent with the Main Implementing Act, (B) takings for public uses pursuant to the laws of the United States, or (C) transfers of individual Indian use assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same Tribe or Nation, shall be void *ab initio* and without any validity in law or equity.

(3) Land or natural resources within the Passamaquoddy Indian Territory or the Penobscot Indian Territory or held in trust for the benefit of the Houlton Band of Maliseet Indians may, at the request of the respective Tribe, Nation, or Band, be—

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

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

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

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

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the Land Acquisition Fund for the benefit of the affected Tribe, Nation, or Band, as the circumstances require, so long as payment does not exceed 25 per centum of the total value of the interests in land to be transferred by the Tribe, Nation, or Band; and

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

(h) Land or natural resources acquired by the Secretary in trust for the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in

accordance with terms established by the respective Tribe or Nation and agreed to by the Secretary in accordance with Section 102 of the Indian Self-Determination and Education Assistance Act (88 Stat. 2206), or other existing law.

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

(2) Trust land of the Passamaquoddy Tribe or the Penobscot Nation not within the Passamaquoddy Reservation or Penobscot Reservation may be condemned for public purposes pursuant to the Maine Implementing Act. The proceeds from any such condemnation shall be deposited in the Land Acquisition Fund established by Section 5(c) and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the respective Tribe or Nation shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land not acquired in trust shall be held in fee by the respective Tribe or Nation. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired.

(3) The 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 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, over any action commenced in the courts of the State.

(j) When trust or restricted land or natural resources of the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited and reinvested in accordance with subsection (i) (2) of this section.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as provided in section 8, subsection (e), all Indians, Indian nations, tribes or bands of Indians in the State of Maine, other than the Passamaquoddy Tribe, the Penobscot Nation, and their members, and any lands or natural resources owned by any such Indian, Indian nation, tribe or band of Indians and any lands or natural resources held in trust by the United States, or by any other person or entity, for any such Inidan, Indian nation, tribe, or band of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b) (1) The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the Tribe, Nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.

(2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of the local share as provided by the Maine Implementing Act.

(3) Nothing in this section shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

(4) Not later than October 30, 1982, the Secretary is directed to submit to the appropriate committees of the House of Representatives and the Senate having jurisdiction over Indian affairs a report on the Federal and state funding provided the Passamaquoddy Tribe and Penobscot Nation compared with the respective Federal and state funding in other states.

(c) The United States shall not have any criminal jurisdiction in the State of Maine under the provisions of Sections 1152, 1153, 1154, 1155, 1156, 1160, 1161, 1162, 1163, and 1165 of Title 18 of the United States Code. This provision shall not be effective until 60 days after the publication of notice in the Federal Register as required by subsection 4(d) of this Act.

(d)(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and all members thereof, and all other Indians, Indian nations, or tribes or bands of Indians in the State of Maine may sue and be sued in the courts of the State of Maine and the United States to the same extent as any other entity or person residing in the State of Maine may sue and be sued in those courts; and Section 1362 of Title 28, United States Code, shall be applicable to civil actions brought by the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians; *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Implementing Act.

(2) Notwithstanding the provisions of Section 3477 of the Revised Statutes, as amended, the Secretary shall honor valid final orders of a Federal, State, or territorial court which enters money judgments for causes of action which arise after the date of the enactment of this Act against either the Passamaquoddy Tribe or the Penobscot Nation by making an assignment to the judgment creditor of the right to receive income out of the next quarterly payment from the Settlement Fund established pursuant to Section 5(a) of this Act and out of such future quarterly payments as may be necessary until the judgment is satisfied.

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penabscot Nation: *Provided*, That such amendment is made with the agreement of the affected Tribe or Nation, and that such amendment relates to (A) the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe or Nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe or Nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

(2) Notwithstanding the provisions of subsection (a) of this section, the State of Maine and the Houlton Band of Maliseet Indians are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by or held in trust for the benefit of the Band or its members.

(f) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(g) The Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other.

(h) Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory or land held in trust for Indians, and also (2) which affects or preempts the civil, crimial, or regulatory jurisdiction of the State of Maine, shall apply within the State.

(i) As Federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation,

and the Houlton Band of Maliseet Indians shall be treated in the same manner as other Federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective Tribe, Nation, or Band subject to a restriction against alienation or which are held in trust for the benefit of the respective Tribe, Nation, or Band shall be considered Federal Indian reservations for purposes of Federal taxation.

TRIBAL ORGANIZATION

SEC. 7. (a) The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians may each organize for their common welfare and adopt an appropriate instrument in writing to govern the affairs of the Tribe, Nation, or Band when each is acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act and the Maine Implementing Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall each file with the Secretary a copy of its organic governing document and any amendment thereto.

(b) For purposes of benefits under this Act and the recognition extended the Houlton Band of Maliseet Indians, no person who is not a citizen of the United States may be considered a member of the Houlton Band of Maliseets, except persons who, as of the date of this Act, are enrolled members on the Band's existing membership roll, and direct lineal descendants of such members. Membership in the Band shall be subject to such further qualifications as may be provided by the Band in its organic governing document or amendments thereto subject to the approval of the Secretary.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to the Indian Child Welfare Act of 1978 (92 Stat. 3069). Before the respective Tribe or Nation may assume such jurisdiction over Indian child custody proceedings, the respective Tribe or Nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by Sections 108(a)–(c) of said Act.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with Sections 109(b) and (c) of the Act.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation are "reservations" within Section 4(10) of the Act.

(e) For the purposes of this section, the Houlton Band of Maliseet Indians is an "Indian tribe" within Section 4(8) of the Act, provided, that nothing in this subsection shall alter or effect the jurisdiction of the State of Maine over child welfare matters as provided in subsection 6(e)(2) of this Act.

(f) Until the Passamaquoddy Tribe or the Penobscot National has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over Indian child custody proceedings of that Tribe or Nation.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 9. (a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot Nation or any of their

members under any financial aid program of the United States: *Provided*, That to the extent that eligibility for the benefits of such a financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

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

DEFERRAL OF CAPITAL GAINS

SEC. 10. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the Land Acquisition Fund whether in the name of the United States or of the respective Tribe, Nation or Band shall be deemed to be an involuntary conversion within the meaning of Section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 11. All funds of either the Passamaquoddy Tribe or the Penobscot Nation held in trust by the State of Maine as of the effective date of this Act shall be transferred to the Secretary to be held in trust for the respective Tribe or Nation and shall be added to the principal of the Settlement Fund allocated to that Tribe or Nation. The receipt of said State funds by the Secretary shall constitute a full discharge of any claim of the respective Tribe or Nation, its predecessors and successors in interest, and its members, may have against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective Tribe and Nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

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

LIMITATION OF ACTIONS

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

AUTHORIZATION

SEC. 14. There is hereby authorized to be appropriated $81,500,000 for the fiscal year beginning October 1, 1980 for transfer to the Funds established by Section 5 of this Act.

INSEPARABILITY

SEC. 15. In the event that any provision of Section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the

event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

CONSTRUCTION

SEC. 16. (a) In the event a conflict of interpretation between the provisions of the Maine Implementing Act and this Act should emerge, the provisions of this Act shall govern.

(b) The provisions of any Federal law enacted after the date of enactment of this Act for the benefit of Indians, Indian nations, or tribes or bands of Indians, which would materially affect or preempt the application of the laws of the State of Maine, including application of the laws of the State to lands owned by or held in trust for Indians, or Indian Nations, tribes, or bands of Indians, as provided in this Act and the Maine Implementing Act, shall not apply within the State of Maine, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State of Maine.

PURPOSE

The purpose of S. 2829 is to provide Congressional ratification and implementation of a settlement of land claim which have been raised by three Maine Indian Tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians to as much as two-thirds of the lands comprising the State of Maine and on which more than 250,000 private citizens now reside. The settlement embodied in this Act was negotiated by the three Main Tribes, the State of Maine, and those private landowners who are willing to transfer portions of their holdings to fulfill its purposes.

HISTORICAL BACKGROUND

The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians were first contacted in the area which is the State of Maine and the Province of New Brunswick by the earliest explorers of the North American continent.

All three tribes are riverine in their land-ownership orientation. The aboriginal territory of the Penobscot Nation is centered on the Penobscot River. The aboriginal territory of the Passamaquoddy Tribe is centered on the Saint Croix River and the smaller river systems to the west. The aboriginal territory of the Houlton Band of Maliseet Indians is centered on the Saint John River.

When the Revolutionary War broke out, General George Washington requested the assistance of these tribes and, on June 23, 1777, Colonel John Allan, of the Massachusetts militia who was the director of the federal government's Eastern Indian Department, negotiated a treaty with these Indians, pursuant to which the Indians were to assist in the Revolutionary War in return for protection of their lands by the United States and provision of supplies in times of need. This treaty was never ratified by the United States, although Allan's journals indicate that the Indians played a crucial role in the Revolutionary War.

Despite requests from the Maine Indians, the federal government did not protect the tribes following the Revolutionary War. In 1794, the Passamaquoddy Tribe entered into an agreement with the Commonwealth of Massachusetts (which then had jurisdiction over all of what is now Maine), in which the tribe relinquished all but 23,000

acres of its aboriginal territory. Subsequent sales and leases by the State of Maine further reduced this territory to approximately 17,000 acres. The Penobscot Nation lost the bulk of its aboriginal territory in treaties consummated in 1796 and 1818. A sale to the State of Maine in 1833 resulted in the loss of four townships by the Penobscot Nation.

History of Litigation

The validity of these agreements with the Tribes was not seriously questioned until, in 1972, the Governors of the Passamaquoddy Tribe asked the United States to bring suit on behalf of their Tribe on the ground that its agreement with Massachusetts was invalid because it had never been approved by the federal government as required by the Nonintercourse Act.

The Nonintercourse Act—which is also known as the Trade and Intercourse Act—was first enacted by the newly-formed Congress of the United States in 1790 and was subsequently re-enacted five times. It consisted of many provisions regulating a wide spectrum of activities between American Indians and Indian Tribes and the non-Indian citizens of the United States. Salient among those provisions was a section which prohibited the transfer of any lands from Indians or Indian tribes without the approval of the United States. As reenacted in 1793, this section read, in pertinent part:

> * * * no purchase or grant of lands, or any title or claim thereto, from any Indians or nation or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by a treaty or convention entered into pursuant to the constitution * * *.

A fine of up to one thousand dollars and imprisonment for up to one year were provided for violation of this section. All the subsequent reenactments of the Nonintercourse Act included this section in one form or another. In 1834, it was enacted in its present form and is currently codified at Title 25, section 177 of the United States Code. The importance of this provision to federal Indian policy is critical and it has been described as "the linchpin of federal Indian law."

The tribe's request was denied by the United States on grounds that the Nonintercourse Act does not apply to nonrecognized tribes and on the grounds that there was, thus, no trust relationship between the United States and the Maine Tribes. The Passamaquoddy Tribe then brought a declaratory judgment action against the Secretary of the Interior and the United States Attorney General. In 1972, the tribes won an order forcing the United States to file a protective action on its behalf. In 1975, the United States District Court for the District of Maine held that the Indian Nonintercourse Act applies to all tribes, including those which are not federally-recognized, and that the Act creates a trust relationship between the United States and all such tribes. Later that year, the United States Court of Appeals for the First Circuit unanimously reaffirmed the *Passamaquoddy* decision, holding that the trust relationship created by the Act includes, at minimum, an obligation to investigate and take such action as may be warranted under the circumstances when an alleged violation of the Nonintercourse Act is brought to the government's attention.

The issues raised in the *Passamaquoddy* case were reaffirmed in two subsequent decisions involving Maine Indians: *Bottomly* v. *Passamaquoddy Tribe*, 599 F. 2d 1061 (1st Cir. 1979) (holding that Maine Tribes are entitled to protection under the federal Indian common law doctrines) and *State of Maine* v. *Dana*, 404 A. 2d 551 (Me. 1979), cert. denied 100 F. Ct. 1064 (Feb. 1980) (holding that reservation land of dependent Maine Indian Tribes constitutes Indian country as that term is used in federal law).

History of Settlement Discussions

The settlement process began in March of 1977 when President Carter appointed retired Georgia Supreme Court Justice William Gunter to study the case. After substantial study of the merits of the claims and the defenses to them, Justice Gunter recommended that the case be settled. The White House acted on this suggestion by appointing a three-person work group to develop a settlement plan which consisted of Eliot Cutler, Associate Director of the Office of Management and Budget for Energy, Natural Resources and Science; Leo Krulitz, Solicitor of the Department of the Interior; and A. Stephens Clay, Judge Gunter's law partner. Negotiations between this work group and the tribes produced an agreement between the tribes and the administration, which was announced in February, 1978. An agreement between the administration and officials of the State of Maine was announced in November, 1978. But it was not until March, 1980, that an agreement supported by all parties was announced.

Following its March announcement, the current agreement was approved by the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians. The agreement was then adopted by the Maine legislature and signed into law by the Maine Governor Joseph Brennan, on April 2, 1980. The proposal was introduced in Congress on June 13, 1980, by Senator William Cohen and Senator George Mitchell of Maine.

Need

After the Court of Appeals affirmed the District Court decision the Justice Department undertook an analysis of the Tribes' claim. In a memorandum written in 1977, the Department described the case as "potentially the most complex litigation ever brought in the Federal courts with social costs and economic impacts without precedent and incredible litigation costs to all parties." This conclusion was based on the size of claim, the number of persons living within the disputed area, and the native of the legal issues involved. For, the Tribes claim up to 12.5 million acres, or 60 percent of the State of Maine and, in the nearly two hundred years that had intervened between the time the first agreement was reached and the present day, more than 350,000 people had moved onto the now disputed land.

If the case were to be litigated, it would involve a host of novel issues and, given the magnitude of the claim each side would be certain to appeal each ruling of the court. Moreover, the court would be required to decide questions of fact concerning events which began before this country was founded. Estimates of the time it would take to litigate such a case range from five to more than fifteen years. In the meantime, according to testimony offered to this Committee, titles to

land in the entire claim area would be clouded, the sale of municipal bonds would become difficult if not impossible, and property would be difficult to alienate. Although the State of Maine estimates its chances of succeeding, if the case were to be litigated, at 60 per cent, all the parties agree that such a victory would be pyrrhic. In July of this year, Secretary of the Interior Cecil Andrus, in testimony before this Committee, described this legislation as "critical" and urged its passage.

Special Issues

Testimony before the Committee and written materials submitted for the record reveal the following concerns about the settlement embodied in S. 2829 and the Maine Implementing Act, all of which the Committee believes to be unfounded:

1. *That the settlement will terminate the three Maine Tribes.*—In July 1, 1980, testimony, Interior Secretary Cecil Andrus stated that the setlement does not terminate the three Tribes in Maine. The Committee agrees with the Secretary. Numerous provisions of S. 2829 and the Maine Implementing Act make reference to the Maine Tribe as tribes, and Sec. 6(h) specifically provides

> That as Federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians, to same extent and subject to the same eligibility criteria as are generally applicable to other Indians, Indian nations or tribes or bands of Indians.

2. *That the settlement amounts to a "destruction" of the sovereign rights and jurisdiction of the Passamaquoddy Tribe and the Penobscot Nation.*—Until recently, the Maine Tribes were considered by the State of Maine, the United States, and by the Maine courts, to have no inherent sovereignty. Prior to the settlement, the State passed laws governing the internal affairs of the Passamaquoddy Tribe and the Penobscot Nation, and claimed the power to change these laws or even terminate these tribes. In 1979, however, it was held in *Bottomly* v. *Passamaquoddy Tribe*, 599 F.2d 1061 (1st Cir. 1979), that the Maine Tribes still possess inherent sovereignty to the same extent as other tribes in the United States. The Maine Supreme Judicial Court reversed its earlier decisions and adopted the same view in *State* v. *Dana*, 404 A.2d 551 (Me. 1979), *cert. denied*, 100 S.Ct. 1064 (Feb. 19, 1980). While the settlement represents a compromise in which state authority is extended over Indian territory to the extent provided in the Maine Implementing Act, in keeping with these decisions the settlement provides that henceforth the tribes will be free from state interference in the exercise of their internal affairs. Thus, rather than destroying the sovereignty of the tribes, by recognizing their power to control their internal affairs and by withdrawing the power which Maine previously claimed to interfere in such matters, the settlement strengthens the sovereignty of the Maine Tribes.

The settlement also protects the sovereignty of the Passamaquoddy Tribe and the Penobscot Nation in other ways. For example, Secs.

6206(1) and 6214, and 4733 of the Maine Implementing Act provide that these Tribes, as Indian tribes under the United States Constitution, may exclude non-Indians from tribal decision-making processes, even though non-Indians live within the jurisdiction of the tribes. Other examples of expressly retained sovereign activities include the hunting and fishing provisions discussed in paragraph 7 below, and the provisions contained in Title 30, Sec. 6209 as established by the Maine Implementing Act and Sec. 6 in S. 2829 which provide for the continuation and/or establishment of tribal courts by the the Passamaquoddy Tribe and the Penobscot Nation with powers similar to those exercised by Indian courts in other parts of the country. Finally, Sec. 7(a) of S. 2829 provides that all three Tribes may organize for their common welfare and adopt an appropriate instrument to govern its affairs when acting in a governmental capacity. In addition, the Maine Implementing Act grants to the Passamaquoddy Tribe and Penobscot Nation the state constitutional status of municipalities under Maine law. In view of the "homerule" powers of municipalities in Maine, this also constitutes a significant grant of power to the Tribes.

3. *The settlement provides none of the protections that is afforded other tribes.*—One of the most important federal protections is the restriction against alienation of Indian lands without federal consent. Sections 5(d)(4) and 5(g)(2) and (3) of S. 2829 specifically provides for such a restriction and, as was made clear during the hearings, this provision is comparable to the Indian Non-Intercourse Act, 25 U.S.C. § 177. Sections 6 and 8 of S. 2829 also specifically continue the applicability of the Indian Bill of Rights of the 1968 Civil Rights Act, the Indian Child Welfare Act, and all other federal Indian statutes to the extent they do not affect or preempt authority granted to the State of Maine under the terms of the settlement.

4. *Individual Indian property and claims by Indians who hold individual use assignments will be taken in the settlement.*—The settlement envisions four categories of Indian land in Maine: individually-assigned existing reservation land, existing reservation land held in common, newly-acquired tribal land within "Indian territory," and newly-acquired tribal land outside "Indian territory." Only newly-acquired land within Indian territory and newly-acquired tribal land to be held in trust for the Houlton Band of Maliseet Indians will be taken in trust by the United States. Existing land within the reservations, whether held by individuals pursuant to a use assignment or in comomn bv the Tribe as a whole, will not be taken by the United States in trust. These lands will simply be subject to a federal restriction against alienation which will prevent their loss or transfer to a non-tribal member. Sec. 5(f)(2)(C) of S. 2829 provides that the Department of the Interior will have no role in transfers of individual tribal property from one tribal member to another, and Sec. 18 of the Maine Implementing Act, ends the power of the Maine Commissioner of Indian Affairs to interfere with such internal transfers.

The settlement will also have no effect on claims by inividual Indian land owners or individual Indian assignment owners. Section 4 of S. 2829 and Title 30. Sec. 6213 as established by the Maine Implementing Act specifically protect claims which individual Indians

have for causes of action arising after December 1, 1873. For these reasons, trespass actions brought by individual Indians will not be affected.

5. *The Settlement will subject tribal lands to property taxation.*—Sec. 6208 of the Maine Implementing Act specifically prohibits the imposition of such a tax. The confusion over this issue apparently comes from two provisions of the settlement: Title 30, Sec. 6208(2) as established by the Maine Implementing Act, which provides for payments in lieu of taxes on lands within Indian Territory, and Sec. 6(h) of S. 2829 which provides that lands held in trust for the Passamaquoddy Tribe or the Penobscot Nation or subject to a restriction against alienation, shall be considered "Federal Indian reservations for purposes of federal taxation."

Title 30, Sec. 6208 as established by the Maine Implementing Act does not impose any taxes on any land within Indian territory. A tax is a charge against property which can result in a taking of that property for non-payment of the tax. Section 6208 does not provide for such a tax, and S. 2829 forbids such a tax. The actual workings of this provision are explained in detail in the Committee section-by-section analysis of the Maine Implementing Act which appears in this report. That analysis explains, among other things, that these payments in lieu of taxes will most likely be paid with funds provided to the tribes by the federal government.

Sec. 6(h) of S. 2829, which treats the Passamaquoddy and Penobscot Indian Territories as federal reservations for purposes of federal taxes is designed to insure that activities within these Territories are entitled to the same Federal tax exemptions which apply on reservations of other Federally recognized tribes. The provision is intended only to benefit the Tribes.

6. *That the provision for eminent domain takings will lead to a rapid loss of Indian land.*—While Sec. 6205(3), (4), and (5) of the Maine Implementing Act and Sec. 5 (h) and (i) of S. 2829 provide a mechanism for takings for public uses, these provisions impose preconditions on such takings which are more stringent than any other known to the Committee. Before a taking could ever be effectuated within the reservations, an entity proposing such a taking must demonstrate that there is no reasonably feasible alternative to the taking. No taking, whether within or without the reservation, can lead to a diminution of Indian lands, and any taken land must be replaced. The settlement provides machinery for adding such substitute lands to the reservation or Indian territory from which they are taken.

7. *Subsistence hunting and fishing rights will be lost since they will be controlled by the State of Maine under the Settlement.*—Prior to the settlement, Maine law recognized the Passamaquoddy Tribe's and the Penobscot Nation's right to control Indian subsistence hunting and fishing within their reservations, but the State of Maine claimed the right to alter or terminate these rights at any time. Under Title 30, Sec. 6207 as established by the Maine Implementing Act, the Passamaquoddy Tribe and the Penobscot Nation have the permanent right to control hunting and fishing not only within their reservations, but insofar as hunting and fishing in certain ponds is concerned, in the

newly-acquired Indian territory as well. The power of the State of Maine to alter such rights without the consent of the affected tribe or nation is ended by Sec. 6(e)(1) of S. 2829. The State has only a residual right to prevent the two tribes from exercising their hunting and fishing rights in a manner which has a substantially adverse effect on stocks in or on adjacent lands or waters. This residual power is not unlike that which other states have been found to have in connection with federal Indian treaty hunting and fishing rights. The Committee notes that because of the burden of proof and evidence requirements in Title 30, Sec. 6207(6) as established by the Maine Implementing Act, the State will only be able to make use of this residual power where it can be demonstrated by substantial that the tribal hunting and fishing practices will or are likely to adversely affect wildlife stock outside tribal land.

8. *The lands and trust funds provided in the Settlement will not benefit the Indians because of the lack of adequate controls.*—In testimony before the Committee, one of the Indian opponents to the bill stated his belief that the Indians would receive no benefits from the trust fund established under the settlement, and that all income would be used by the Secretary of the Interior. This fear is unfounded. Section 6(b) of S. 2829 requires the Secretary to make all trust fund income available to the respective Tribe and Nation quarterly, and provides that he may make no deduction for the United States' expense in the administration of the fund.

Fears that the Tribes will not have adequate control over the management of the trust funds are equally unfounded. The legislation specifically provides that the funds shall be managed in accordance with terms put forth by the Tribes. As is explained elsewhere in this report, the Secretary must agree to reasonable terms put forth by the tribes, and through the Administrative Procedure Act, the Tribes may obtain judicial review of any refusal by the Secretary to agree to reasonable terms. While the United States will not be liable for losses which result from investments that the Tribes request which are outside the scope of the Department of the Interior's existing authority, such investments cannot be made except at the request of the Tribe or Nation which seeks such an investment.

9. *The Settlement will lead to acculturation of the Maine Indians.*—Nothing in the settlement provides for acculturation, nor is it the intent of Congress to disturb the cultural integrity of the Indian people of Maine. To the contrary, the Settlement offers protections against this result being imposed by outside entities by providing for tribal governments which are separate and apart from the towns and cities of the State of Maine and which control all such internal matters. The Settlement also clearly establishes that the Tribes in Maine will continue to be eligible for all federal Indian cultural programs.

Summary of Major Provisions

S. 2829 provides congressional implementation and ratification of the terms of the settlement negotiated among the parties; that is, 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 land for the Passamaquoddy Tribe, 150,000 acres of land for the Penobscot Nation, and 5,000 acres of land for the Houlton Band of Maliseet Indians all of which is now privately held. 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 all Indians, Indian nations, or tribes or bands of Indians, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and any lands held by them or for their benefit. Subsection 6(b) adopts and ratifies the Maine Implementing Act and subsection 6(e) 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 municipalities 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, subsection 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 to the same extent 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 and their offices 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. Subsection 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.

Subsection 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 civil, criminal, or regulatory jurisdiction of the State of Maine shall be application within the State. 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 parlticipation 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 the Federal agency receiving the application 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 Passamquoddy Tribe or Penobscot Nation or their members would otherwise be entitled.

Section 10 provides for a deferral of 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 nation, or tribe or band of Indians, 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 16 provides that in the event of a conflict between this Act and the Maine Implementing Act, this Act shall govern. It also provides that federal statutes enacted subsequent to this Act which are designed for the benefit of Indians or Indian tribes and which materially affect or preempt the laws of the State of Maine, including the Maine Implementing Act, shall not apply within the State unless they are specifically made applicable to the State.

Legislative History

S. 2829 was introduced on June 13, 1980 by Senators Cohen and Mitchell and was referred to the Select Committee on Indian Affairs. The Committee held hearings on July 1 and 2 at which the Department of the Interior, the affected tribes and other interested parties testified. A companion bill, H.R. 7919 was introduced in the House and the House Interior and Insular Affairs Committee held hearings on August 25, 1980.

Committee Recommendations and Tabulations of Votes

The Select Committee on Indian Affairs, in open business session on September 16, 1980, with a quorum present, recommends by unanimous vote that the Senate pass S. 2829, as amended.

Committee Amendments

The Committee recommends an amendment in the nature of a substitute.

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 findings 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

Section 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.

Subsections (7) and (9) define the terms Penobscot Indian Territory and Passamaquoddy Indian Territory by reference to the definitions 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 persons to another person or group of persons.

Section 4. Approval of Prior Transfers and Extinguishment of Indian Title and Claims of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and any other Indians, or Tribe or Band of Indians within the State of Maine

Section 4 consists of four subsections.

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, 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 affected 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 in any other manner which may have occurred in violation of laws of the State of Maine.

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 transfers 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 Uniform 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.

The term "income" as used in Section 5 means the return in money or property derived from the use of the assets in the Settlement Fund, including net appreciation, both realized and unrealized.

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 Passama-

quoddy Tribe and Penobscot Nation. For this reason, the Tribe and Nation are each 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, and the State of Maine. 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 nonpayment 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. This Act, through its ratification of the Maine Implementing Act, authorizes the Secretary to take in trust only those lands which are authorized pursuant to Section 6205 of the Maine Implementing Act to become Passamaquoddy Indian Territory or Penobscot Indian Territory, and lands to be acquired with the consent of the State of Maine for the Houlton Band of Maliseet Indians. These lands include the first 150,000 acres to be acquired prior to January 1, 1983 for the Passamaquoddy Tribe within the area designated as eligible to become Passamaquoddy Indian Territory, the first 150,000 acres to be acquired prior to January 1, 1983 acquired for the Penobscot Nation within the area designated as eligible to become Ponobscot Indian Territory, lands acquired with the funds authorized in subsection 5(d) to be appropriated for the benefit of the Houlton Band of Maliseet Indians, and any other lands authorized for inclusion within Passamaquoddy Indian Territory or Penobscot Indian Territory pursuant to Section 6205(5) of the Maine Implementing Act.

The term "ostensible owner" is intended to include a party who is in possession or who, purporting to be the owner, has granted possession to a lessee or other party, or who otherwise appears to be the owner, as distinguished from the holder of an interest under an alleged title defect.

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. 2116, 25 U.S.C. § 177) shall not apply to any Indian, Indian nation, or tribe or band of Indians in the State of Maine, 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 in the State of Maine.

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 equal or nearly 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 and restricted land held for the benefit of the Passamaquoddy Tribe and Penobscot Nation and located under the Passamaquoddy Reservation or the Penobscot Reservation 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 for acre-for-acre compensation for the taking of reservation land.

Subsection 5(i)(2) provides generally that the State of Maine may 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, or tribes or bands of Indians and their lands or natural resources, shall be subject to the laws of the State of Maine. However, subsection 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, subsection 6(e)(2) authorizes compacts or agreements between the State and the Band which may effect their jurisdictional relationship. Finally, subsection 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 or restricted lands or natural resources of the Tribe or Nation is limited by Subsections 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 by the State.

Provision is made for payments by the two tribes in lieu of taxes and subsection 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. Subsection 5(g)(2) of this Act specifically prohibits alienation of tribal trust or restricted lands except as provided in subsection 5(g)(3). This restriction is comparable to 25 U.S.C. § 177 which it replaces. Subsection 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 the 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 where laws of the State require funds 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 subsection 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 is unique. The purpose of this subsection is to assure a full review by the appropriate Federal agencies and the Congress of the Federal and States 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 in the State of Maine which is based on federal statutes pertaining to certain Indian offenses contained in the Major Crimes Act. This avoids problems of concurrent State and Federal criminal 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 capacities 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 an appeal has expired.

The Anti-Assignment Act (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 exempt under subsection 5(d)(4).

Subsection 6(f) recognizes the authority of the Passamaquoddy Tribe and Penobscot Nation to exercise judicial powers as provided 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, that is, 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 residing within the Passamaquoddy Indian Territory or the Penobscot Indian Territory 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 official 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 and subject to redefinition by the State of its laws, 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, or 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, and to any other Indians, Indian nations, or tribes or bands of Indians 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 affect or preempt the application of the civil, criminal, or regulatory jurisdiction of the State of Maine, such provisions of Federal law or laws shall not be applicable.

On the other hand. it is not the intent of this subsection to invalidate other provisions of this Act regarding the application of federal laws in Maine. For example, Section 8 of this Act specifically provides for application of the Indian Child Welfare Act of 1978 and 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. But for Section 8, however, subsection 6(h) would prohibit the application of the Indian Child Welfare Act in Maine since it would affect the civil jurisdiction of the State over child custody proceedings.

The phrase "civil, criminal, or regulatory jurisdiction" as used in this section is intended to be broadly construed to encompass the statutes and regulations of the State of Maine as well of the jurisdiction of the courts of the State. The word "jurisdiction" is not be be narrowly interpreted as it has in cases construing the breadth of Public Law 83-280 such as *Bryan* v. *Itasca County*, 426 U.S. 373

(1976). As a practical matter, the phrase "civil, criminal or regulatory jurisdiction" is to be given the same meaning as the phrase "laws of the State" as defined at subsection 3(d) of this Act. The phrase "laws of the State" was not used in this subsection because it was believed to be susceptible to an interpretation which would have rendered inapplicable federal laws according the Tribes special rights with respect to the government of the United States. An example of such a law is that which empowers the United States Attorney to represent Indian Tribes in suits at law and in equity (25 U.S.C. § 175). It is also the intent of this subsection, however, to provide that federal laws according special status or rights to Indian or Indian Tribes would not apply within Maine if they conflict with the general civil, criminal, or regulatory laws or regulations of the State. Thus, for example, although the federal Clean Air Act, 42 U.S.C. § 7474, accords special rights to Indian tribes and Indian lands, such rights will not apply in Maine because otherwise they would interfere with State air quality laws which will be applicable to the lands held by or for the benefit of the Maine Tribes. This would also be true of police power laws on such matters as safety, public health, environmental regulations or land use.

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 federally recognized tribes. Subsection 6(i) provides that for purposes of federal taxation, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians 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 Maliseet Indians, respectively, to adopt an appropriate instrument to govern affairs of each 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 that 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 will retain their Canadian citizenship and that as "status" Indians under Canadian law will continue to be eligible to receive benefits from the government of Canada or its political subdivisions. It is the intent of 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 these 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. It is expected that the Secretary will approve, effective as of the date of enactment of this bill, any petition which is submitted pursuant to this subsection by a tribe which, as of the date of enactment, is exercising jurisdiction over child welfare matters.

Subsection 8(c) provides that where a state or tribal court already has jurisdiction in a pending proceeding involving an Indian child, this section shall not affect the procedure in or 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 reviewing the application 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 a landowner who has sustained a loss of his property involuntarily to defer the capital gains tax which would otherwise be due on whatever compensation he received for the property lost for a period of three years. If, during this period, the landowner invests 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. *Transfer of Tribal Trust Funds Held By the State of Maine*

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 subsection 5(b) of this Act. The receipt of these funds is intended to effect a general release of claims which might otherwise be 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 expanding 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 of this Act. It is the intent of this section that the Tribes will execute relinquishments of any claims against the United States based on its 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 any Indian, 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. *Limitation of Actions*

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. *Authorization*

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 statutes 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, or tribes or bands of Indians, or which relates 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.

Section-by-Section Analysis of the Maine State Implementing Act

All sections in this analysis refer to Section 1 of the Maine Implementing Act that enacts Title 30, Part, of the Maine Revised Statutes, unless otherwise indicated.

Section 6201. Short Title

The Act may be cited as "An Act To Implement the Maine Claims Settlement."

Section 6202. Legislative Findings and Declaration of Policy

This section simply notes that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are asserting claims to lands in the State of Maine, the prosecution of which will cause economic hardship in the State. The findings state that the Indian claimants and the State have reached an agreement the terms of which are embodied in the Implementing Act. This statement is slightly inaccurate inasmuch as the Maliseets did not reach full agreement with the State. However, authorized representatives of the Houlton Band appeared before the Maine Legislature in public hearings and testified in favor of the Maine Implementing Act. The Findings section states that the Passamaquoddy Tribe and the Penobscot Nation "have agreed to adopt the laws of the State as their own to the extent provided in this Act."

It is stated "The Houlton Band of Maliseet Indians and its lands will be wholly subject to the laws of the State." As a "Finding" or statement of "Policy", this statement does not constitute a substantive assertion of jurisdiction over the Maliseets. It differs with S. 2829 in that the Federal legislation will extend Federal recognition to the Maliseets. In addition, S. 2829 will provide that Maliseet land must also be taken in trust once acquired with the consent of the Maine legislature, which will entail exemptions from some state laws.

Section 6203. Definitions

This section provides definitions for thirteen different terms used in the Act. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are defined. The Houlton Band of Maliseets is defined as including the entire Maliseet Tribe as constituted on March 4, 1789, which are now represented "as to lands within the United States" by the Houlton Band of Maliseet Indians.

A unique feature of this Act is the distinction between "Indian Territory" and "Indian Reservation". The Maine Act recognizes and defines the existing Passamaquoddy and Penobscot "Reservations".

It further provides that new lands to be acquired in a designated area shall be Passamaquoddy and Penobscot "Territory". These distinctions are relevant to the application of certain state land laws and to jurisdiction of the tribes.

Section 6204. Laws of State to Apply to Indian Lands

This section provides that, except as otherwise provided in the Act, all Indians and lands or other natural resources owned by them or held by the United States for them are subject to the civil and criminal jurisdiction of the State. Although the State of Maine contends that it now has complete civil and criminal jurisdiction over the Reservations, the exact status of the reservations has not been finally determined. This section resolves those questions and extends, to the extent specified in the Maine Implementing Act, State authority over Indian persons and property. There are specific protections for property and limitations of jurisdictional authority which make this an acceptable tradeoff.

Section 6205. Indian Territory

Subsections 1 and 2 provide specific territorial descriptions comprising about 400,000 acres from which the Passamaquoddy and Penobscot tribal trust land base may be established as "Indian territory." Each tribe may select 150,000 acres within the designated area. The existing reservations, plus the first 150,000 acres acquired for each tribe by the Secretary of the Interior shall be the tribal "territory", provided that such land must be acquired prior to January 1, 1983.

There is a serious problem with respect to the date of acquisition. The Attorney General has committed himself to seeking an extension of this date to accommodate the need for orderly land acquisition if through no fault of the tribes the land acquisition process is unduly delayed.

Subsection 3(A) provides that, to effectuate a taking of lands by condemnation within either the Passamaquoddy or Penobscot Reservations, the entity taking such property must (1) demonstrate that there is no reasonably feasible alternative to the proposed taking, (2) conduct a hearing, and (3) acquire, by purchase or otherwise, comparably valued property contiguous to the reservation which shall automatically become a part of the reservation. This provision applies to allotted as well as tribally owned property.

Subsection 3(B) provides that whenever lands within the Indian territory, but outside the reservation, is taken for public purposes, the proceeds shall be invested in other lands of equal acreage "within an unorganized or unincorporated area of the state" and such lands shall be included within the respective Indian territory without further approval of the State.

Subsection 4 provides that in the event of a taking by the United States of lands within the Indian territory, land acquired with the proceeds of such taking shall be governed under subsection 3(b).

Subsection 5 provides that, except as provided in the above four subsections, lands acquired in trust for the Passamaquoddy and Penobscot Tribes outside the designated "Indian territory" area shall not be made a part of the Indian territory except with the consent of the state legislature and any affected city, town, village or plantation.

Section 6206. Jurisdiction of Tribes Within Indian Territory

Subsection (1) provides that the Passamaquoddy Tribe and the Penobscot Nation, within their respective territories, shall have all of the powers, immunities, and obligations of any municipality under state law, including the power to enact ordinances and collect taxes, provided that (1) persons who are not members of the Tribe or Nations may not participate in internal tribal matters nor are such matters subject to State regulation, (2) that non-members shall be entitled to receive municipal benefits but not be entitled to vote, (3) that persons who are not members of either Tribe and who are not Indians shall not be entitled to receive benefits accorded under Federal law to Indians because of their status as Indians.

Subsection (2) provides that the Passamaquoddy Tribe and the Penobscot Nation and their members may, subject to the limitation on internal affairs contained in subsection (1), sue and be sued in state courts, to the same extent as any other entity or person, provided, however, that tribal officials and the Tribes enjoy the immunity of governmental officials and political subdivisions of the state when acting in their governmental capacities.

Subsection (3) provides that the Passamaquoddy Tribe and the Penobscot Nation each has the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or Section 6207 providing for regulation of fish and wildlife resources. In the event either Tribe chooses not to exercise its exclusive jurisdiction over tribal members, the State retains exclusive jurisdiction to enforce the tribal ordinances against non-members of the Tribe.

Section 6207. Regulation of Fish and Wildlife Resources

This section is broken down into eight subsections. The Passamaquoddy Tribe and Penobscot Nation shall have exclusive authority to regulate hunting, trapping or other taking of wildlife within their respective territory and exclusive authority to regulate sustenance fishing within their respective reservations and any fishing in any pond less than ten (10) acres in surface area where the pond lies entirely within the boundaries of the Indian territory of either Tribe. The tribal regulations must not be discriminatory except they may provide special provisions for sustenance hunting and fishing rights of tribal members.

The Tribes shall maintain registration stations to keep track of the wildlife taken in order to coordinate with state authorities. A specially created Tribal-State Commisison is authorized to promulgate regulations for fishing on rivers and streams passing through or bordering on the Indian territories and on "great ponds", i.e. ponds which are of 10 or more surface acres in size. The State Commissioner of Inland Fisheries and Wildlife is vested with authority to conduct fish and wildlife surveys within the Indian territories and where game management practices are found to have or are likely to have an adverse effect which would "significantly deplete" the fish and game outside the Indian territory he may, after a public hearing, order the enforcement of generally applicable State fish and game laws within the Indian territory.

Any such decision by the Commissioner is reviewable, and in any such challenge the burden of proof is on the Commissioner as to all issues, and the Commissioner must prove his case by substantial evidence.

Section 6208. Taxation

This section is broken into three subsections and relates only to taxation authority of the State. Funds or income derived from the Federal "Settlement Fund" which is distributed to the Passamaquoddy Tribe or Penobscot Nation or their members is exempt from state taxation. The Tribes are to make "payments in lieu of taxes" on all real and personal property within their respective Indian territories except that property used or held predominantly for governmental purposes enjoys the same immunity from taxation as any municipality. Since the Tribes are vested with municipal authority, the taxing authorities to which their property might be subject will be a county, a district, or the State. And, since nearly all Maine property tax is collected by municipalities, it is anticipated that the in-lieu tax on the trust property will be de minimis. Sections 5 and 6 of S. 2829 exempt trust property from encumbrances or alienation by operation of any State tax. The only recourse in the event of a failure by a tribe to make its in-lieu payments is to the income derived from the settlement trust fund.

For all other purposes, the Passamaquoddy Tribe, Penobscot Nation and their members, and all other Indians or Indian tribes within the State are subject to payment of the same taxes as all other citizens or residents of the State including, for example, sales, excise, and income taxes. Either Tribe or Nation "when acting in its business capacity as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such."

That the Tribe, Nation or Band may be exempt from federal taxation will not exempt the Tribe, Nation or Band from taxation under Maine law. Thus, for example, while Indian tribes are, under Revenue Rulings of the Internal Revenue Service, not considered to be taxable entities, such Ruling would not exempt any tribe from Maine income taxes imposed under the laws of the State of Maine.

Finally, although the fee in tribal trust land will be in the United States, the Tribe and Nation will be liable to make payments or pay fees is lieu of property taxes or other taxes, including, for example, excise taxes, which payments, fees or taxes may be assessed as an incident of ownership of land or natural resources.

Section 6209. Jurisdiction over Criminal Offenses, Juvenile Crimes, Civil Disputes and Domestic Relations

This section is divided into five subsections. The Passamaquoddy Tribe and Penobscot Nation are recognized to have exclusive jurisdiction over criminal offenses committed by members of either Tribe against another member of either Tribe within the boundaries of their respective reservations (as distinct from their territories) in which the maximum potential term of imprisonment does not exceed six months and the maximum potential fine does not exceed $500.00. Each Tribe also has exclusive jurisdiction over juvenile offenses of members of either Tribe committed within their respective reservations including certain juvenile offenses defined by State law.

The Tribes also have exclusive jurisdiction over small claims civil actions arising on the reservations between members of either Tribe who reside on the reservation; Indian child custody proceedings to the extent authorized by Federal law; and domestic relations matters, including marriage, divorce and support between members of either Tribe or Nation both of whom reside on the Indian reservation of the respective Tribe.

Crimes and punishments are defined by State law, but the Tribes are deemed to be enforcing tribal law when acting under this section. In other words, the Tribes have adopted State law as their own. Procedures are governed by Title 25, sections 1301–03, United States Code (Indian Civil Rights Act of 1968) and any other applicable federal law. As to cases over which the State has jurisdiction (those with punishments greater than six months in jail or a fine in excess of $500.00), the State also has jurisdiction over lesser included offenses which would otherwise be subject to exclusive tribal jurisdiction. Principles of double jeopardy and collateral estoppel are not applicable as between the State and Tribal courts.

With the exception of those crimes over which the Tribes are given exclusive jurisdiction, the laws of the State relating to criminal offenses and juvenile crimes apply and the State is given exclusive jurisdiction over other offenses notwithstanding the Major Crimes Act (18 U.S.C. 1153).

Subsection 5 of this section provides for the establishment of "extended reservations" within the Indian territory. Any 25 or more adult members of either the Passamaquoddy Tribe or the Penobscot Nation may petition the Tribal-State Commission for the establishment of such extended reservation and upon approval of the Commission and the State legislature such extended reservation shall be created.

Section 6210. Law Enforcement on Indian Reservations and Within Indian Territory

This section is broken into four subsections. Passamaquoddy and Penobscot police officers are vested within exclusive authority within their respective territories to enforce ordinances adopted by the Tribes under their authority pursuant to Sec. 6206 and hunting and fishing regulations adopted pursuant to Sec. 6207(1); and to enforce the criminal, juvenile, civil and domestic relations laws over which the Tribes have exclusive jurisdiction in Sec. 6209(1).

Both Tribal and State law enforcement officers are vested with authority to enforce regulations of the Tribal-State Commission respecting hunting and fishing adopted pursuant to Sec. 6207(3) and all laws of the State other than those over which the Tribes have exclusive jurisdiction under Sec. 6209.

Ordinances enacted by the Passamaquoddy Tribe and the Penobscot Nation under Sec. 6206 and 6207(1) apply to non-members of the Tribes as well as to members. Sec. 6206(3) provides that the State retains exclusive jurisdiction to enforce Tribal ordinances against non-members. Tribal police officers under this section are thus vested with authority to arrest non-members but judicial proceedings must be through the State courts which are empowered to enforce Tribal ordinances against non-members under Sec. 6206(3).

Law enforcement officers appointed by the Tribes shall possess the same powers and shall be subject to the same duties, limitations, and training requirements as municipal police officers under the laws of the State. Provision is made for Tribal-State agreements for cooperation and mutual aid between police forces.

Section 6211. Eligibility of Indian Tribes for State Funding

Section 6211 of the Maine Implementing Act sets forth provisions for funding the Passamaquoddy Tribe and Penobscot Nation as municipalities and provides additionally for participation of residents of the Indian territory of the respective Tribe or Nation in State programs.

This section is broken into four subsections. Subsections one and three provide that the Passamaquoddy Tribe and the Penobscot Nation shall be eligible for participation in State programs which provide financial assistance to State municipalities, including discretionary grants or loans, to the same extent and subject to the same conditions as any other State municipality. To the extent local matching funds are required, the Tribes may use funds from any source available, including Federal funds. Subsection four provides further that individuals residing within their Indian territories are eligible for and entitled to receive State grants, loans, or other social service entitlements on the same basis as all other citizens of the State.

Subsections two and four provide limitations on eligibility of the Passamaquoddy Tribe or Penobscot Nation or their members for State funds based on receipt of Federal benefits. Subsection two provides:

> Any moneys received by the respective tribe or nation from the United States within substantially the same period for which state funds are provided, for a program or purpose substantially similar to that funded by the State, and in excess of any local share ordinarily required by state law as a condition of state funding, shall be deducted in computing any payment to be made to the respective tribe or nation by the State.

Subsection four provides:

> In computing the extent to which any person is entitled to receive any such funds, any moneys received by such person from the United States within substantially the same period of time for which state funds are provided and for a program or purpose substantially similar to that funded by the State, shall be deducted in computing any payment to be made by the State.

If these provisions of State law were to be broadly construed, they could have an adverse impact on the cost to the United States in providing assistance to the Tribes or their members under programs designed to aid Indian tribes or persons or under other general programs designed to aid local governments or individuals regardless of legal status. The supplanting provisions could result in a dollar for dollar reduction of State aid for every dollar of special assistance, over and above any local share under a State-local cost sharing formula, offered the Indian Tribes or their members by the United States

because of their status as Indians or as otherwise provided under more general programs.

In testimony before this Committee on July 1, 1980, the Secretary of the Interior expressed concern regarding the application of this provision in the Maine Implementing Act and its impact on the cost to the United States in providing services to the Indian tribes and individuals in the State of Maine. He also expressed concern with regard to the precedential aspects of the Maine "supplanting" provision on delivery of services to Indians in other states.

The Maine Implementing Act is a codification of an agreement reached by the Passamaquoddy Tribe and Penobscot Nation with the State of Maine. By letter of August 22, 1980, Attorney General Richard Cohen of the State of Maine explained the intended reach of Section 6211 of the Maine Act. This letter is printed in full elsewhere in this Committee report. The following excerpts are relevant to understanding the intent of Section 6211 and the construction to be afforded it.

> It was * * * understood * * * that treating the Tribes as municipalities could place the Tribes in a unique position with respect to their eligibility for Federal funds. As recognized Indian Tribes, the Passamaquoddy Tribe and Penobscot Nation will be eligible for funds and services available to Indian Tribes (*e.g.*, Johnson-O'Malley Act and Snyder Act funds from the Bureau of Indian Affairs). * * * In addition, since the Maine Tribes would be municipalities under Maine law, it was thought that the Tribes might also be eligible for Federal funds available to municipalities (e.g., Federal municipal revenue sharing). The possible availability of these Federal funds in conjunction with State "municipal" entitlements made it apparent that in some circumstances the Passamaquoddy Tribe or Penobscot Nation would be eligible for multiple funding of Tribal programs from both the State and Federal governments. This multiple State/Federal funding would not be available to other municipalities in Maine nor to the Indian Tribes elsewhere in the United States. Because of this, the State and Tribes agreed that if a basic service was funded by the Federal government, as a result of the Tribes' special status under Federal law, then duplicate funding by the State would be inappropriate. It was with that end in mind that Section 6211 was drafted.
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> * * * * * * *
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> (I)t was the understanding of the parties that the set-off provisions in Section 6211(2) and (4) of the Implementing Act were intended only to encompass Federal funds that would be actually received by the Tribes and their members by virtue of their status as recognized Indian Tribes and their status as Indians under Federal law. Since the State had agreed to treat the Tribes as municipalities for State funding purposes, it was anticipated that any moneys received by Tribes as municipalities would not be treated any

differently than similar moneys received by any other municipality. However, since the Tribes' status as recognized Indian Tribes would in all probability make them eligible for additional Federal moneys unavailable to other citizens and municipalities, such Federal funds received by them as recognized Tribes would be treated differently and would be subject to the set-off provisions.

(I)n drafting Section 6211, it was not the intention of the parties to alter the effect of Federal law. It was understood among all the parties that to the extent the United States provides funds for a program which are required by Federal law to be supplemental to and not to supplant State and local funds, that the set-off provisions in Section 6211(2) and (4) would not apply to such Federal funds. The term "substantially similar purpose" as used in Section 6211 of the Maine Implementing Act was not intended to refer to such Federal funds that enhance, enrich or supplement programs provided for under Maine law. Such Federal funds received by the Tribes would be outside the scope of Section 6211 entirely and would neither be deemed to be eligible to initiate a State match under Section 6211 (1) not would they offset or supplant any State match or State funds under Section 6211(2) and (4). Consistent with the foregoing, the usual State participation in the State/Federal cost sharing of social services such as AFDC, Medicare and Food Stamps would be unaffected by Section 6211(2) or (4).

From this letter, the following salient points emerge:

(1) the supplanting provisions of Section 6211 apply only to Federal funds provides the Tribe or Nation or their members because of their status as Federally recognized Indians. Federal funds provided either Tribe or its members which are generally available to other local governments or persons are not subject to the supplanting provisions of Section 6211.

(2) the purpose of Section 6211 is not to establish a basis for withdrawal of State funding from the Tribes or their members by virtue of the Federal recognition and their eligibility for Federal Indian services, but rather it is to avoid duplicate funding by both the State and the Federal government of the same or substantially similar programs.

(3) in the absence of Federal funding in excess of the local share ordinarily required by State law as a condition of State funding, the State contribution to the Tribe or Nation and their members will be equal to that provided other municipal governments and their citizens, and

(4) there will be no withdrawal or diminishment of effort by the State based on Federal funding of programs which enhance or enrich basic programs and which are required by Federal law or regulation to be supplemental to and not supplant State and local funds.

The Department of the Interior has expressed concern that the supplanting features of Section 6211 of the Maine Implementing Act may be counter to the policies pursued by the Department, and

indeed all Federal agencies, over the past 20 years which require states to provide services to their Indian citizens on the same basis as they provide services to all other citizens of the states.

The supplanting provisions of Section 6211, however, do not appear to result in any difference in treatment of individual members of the tribes from other citizens of the State or difference in treatment of the tribes from other municipalities for State funding purposes. The supplanting provisions of Section 6211 are triggered only when the Federal funds provided the tribes for the same or substantially similar program exceed the local or municipal share ordinarily required by State law as a condition of State funding. The objection of Interior that the supplanting provision may deny the tribes or their members equality of treatment with other State municipalities or citizens does not appear well founded. It would appear the real objection to the supplanting provision is that it may make it impossible for the United States to fulfill its commitment to the Passamaquoddy Tribe and Penobscot Nation to provide funding or services to the Tribe or Nation on a level commensurate with that provided other Federally recognized tribes without supplanting State funding.

The treatment accorded the Passamaquoddy Tribe and the Penobscot Nation as units of State government under the laws of the State of Maine for funding purposes is unique in Federal Indian law. So far as this Committee is aware, no other State accords the Indian tribes within its boundaries this status. Under general Federal law governing Indian affairs, Indian tribes are considered for all purposes domestic dependent sovereigns. Their sovereignty is recognized through Federal treaties and statutes and it pre-dates the U.S. Constitution or the organizational documents of the individual states where they may be located. The Indian tribes are dependent upon the United States for their protection. They do not constitute a unit of local government of the state in which they are located. *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832); *McClanahan* v. *State Tax Commission of Arizona*, 411 U.S. 164 (1973); *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978).

In recent years, there has been a growing tendency in Federal legislation to include the Indian tribes on the same basis as other units of local governments for purposes of Federal funding. However, the States do not treat Indian tribes as political subdivisions of the State and to the extent State funds are provided their local governments, Indian tribes do not participate. The provisions of the Maine Implementing Act are unique in this respect. The Committee does not believe the contribution of the State of Maine toward its Indian citizens should be any less than that of other states with a Federally recognized Indian population. On the other hand, it is very possible that the extent of State participants in the provisions of funds to the Indian tribes in that State for governmental operations and the provision of general services will exceed that provided by other states with Federally recognized Indian tribes or populations.

It is noted that many of the programs specifically provided for Indians or Indian tribes specifically provide against diminishment of State funding. Examples of this are found in Title II of the Indian

Child Welfare Act of 1978 (92 Stat. 3076, 42 U.S.C. §§ 620, 1337) and the Indian Elementary and Secondary School Assistance Act (20 U.S.C. Subchapter III, 241 aa et seq.). In addition, program agencies have promulgated regulations to provide similar restrictions on use of Federal funds to diminish state effort. See, for example, 25 C.F.R. 273.34(a) restricting use of Indian education monies under the Johnson-O/Malley Act (48 Stat. 596, 25 U.S.C. §§ 452–454). Other regulations provide for extension of services only when alternative sources are not available. See, 42 C.F.R. Chapter 1, Subpart C restricting delivery of contract health care by the Indian Health Service and 25 C.F.R. Chapter 1, Subpart A, Sec. 20.3 establishing the policy of the Bureau of Indian Affairs in delivery of general assistance. To the extent Federal program monies are intended to be supplemental to State program monies, it would appear the various Federal agencies have adequate authority to promulgate regulations which would specify such limitations on use and would be uniformly applicable throughout the United States.

Under the circumstances, the Committee believes the Maine Implementing Act should be ratified without modification. In the event it should be shown that the effort of the State of Maine does not match that provided by other states, or that delivery of Federal programs to the tribes and their members is impeded or restricted and cannot be effectively addressed through regulation, the Congress retains the authority to amend the provisions of this Act to provide equitable funding provisions.

Section 6212. Maine Indian Tribal-State Commission

This section provides that any transfer of land or natural resources by any Indian tribe, nation or band of Indians prior to the date of the State Act shall be deemed to have been made in accordance with the laws of the State. With respect to individuals, any transfer made prior to December 1, 1873, is deemed to have been made in accordance with State law. The purpose of this section is to extinguish Indian claims arising under State law as opposed to Federal law.

HOUSEKEEPING PROVISIONS

The remaining provisions of the Maine State Implementing Act are housekeeping in nature. Provision is made for the continuation of Tribal school committees, Tribal housing authorities, and provision for Indian housing mortgage insurance. It is also provided that violation of Tribal fish and wildlife ordinances shall constitute a violation of State law and be enforceable in State courts.

Section 30 of the housekeeping provisions states that in the event section 6204 extending the laws of the State to the Tribes' Indian territories is held invalid, then the entire Act is invalidated; that in the event section 6209, subsections 3 or 4 providing for State jurisdiction over lesser included offenses and non-application of principles of double jeopardy and collateral estoppel are held invalid, then all of section 6209 shall be deemed invalid; and providing further that, except for these limitations, if any other section of the Act is held invalid it shall have no effect on the remaining provisions of the Act.

Finally, this Committee takes note of the hearings before, and report of, the Maine Joint Select Committee on Land Claims and acknowledges the report and hearing record as forming part of the understanding of the Tribe and State regarding the meaning of the Maine Implementing Act.

Cost and Budgetary Considerations

The Congressional Budget Office submitted the following cost estimate on S. 2829, as amended:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 17, 1980.

Hon. John Melcher,
Chairman, Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

Dear Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2829, the Maine Indian Claims Settlement Act of 1980, as amended and ordered reported by the Senate Select Committee on Indian Affairs, September 16, 1980. The bill authorizes the appropriation of $81.5 million to provide for the settlement of land claims of Indians, Indian nations and bands of Indians in the State of Maine. Upon appropriation of the authorized amount, $27 million would be transferred to a new Maine Indian Claims Settlement Fund, with investment income (but not the principal) to be regularly distributed to the Passamaquoddy Tribe and the Penobscot Nation. The remaining $54.5 million would be transferred to a new Maine Indian Claims Land Acquisition Fund, with both principal and income to be spent to acquire lands for specified Indian groups.

Because of the trust responsibility placed on the Secretary of the Interior by the bill, the outlays resulting from the bill would differ from the appropriation. Monies held in trust by the federal government result in net outlays to the federal budget only when principal is disbursed. Since Section 5(b)(2) prohibits any distribution of principal held in the Settlement Fund, the only net outlays to the federal budget would occur when principal of the Land Acquisition Fund is used to acquire land pursuant to the Act. Assuming that the monies authorized are appropriated by the 96th Congress, it is expected that all $54.5 million will be outlayed in fiscal year 1981 to purchase approximately 300,000 acres of land on which interested parties already hold purchase options.

In addition, this bill would make designated Maine Indians eligible for benefits available through a number of discretionary federal programs. Thus, while no additional expenditures are mandated by this section of the bill, relevant federal agencies would be required to include these groups among those eligible for benefits and may seek additional funds in order to provide such benefits.

Sincerely,

Robert D. Reischauer,
(For Alice M. Rivlin, Director).

Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2126 will have no regulatory impact and only minimal paperwork impact.

Executive Communications

The pertinent communications received by the committee from the Department of the Interior and others setting forth recommendations relating to S. 2126 follow:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., September 10, 1980.

Hon. John Melcher,
Chairman, Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: This supplements our report of August 8, 1980, on S. 2829, a bill to settle Indian land claims in the State of Maine. In our earlier report we enclosed a proposed amendment to S. 2829 in the nature of a substitute. The proposal was developed in the course of discussions with tribal and State officials in an effort to achieve agreement on substitute language which would clarify governmental responsibilities in implementing the land claims settlement. Our proposed amendment reflected a large measure of agreement, but at the time of its submission discussions had not been concluded with respect to Section 6(b) of the bill. Those discussions have now been concluded and this is to provide you with our recommended language for that provision.

Section 6(b) of S. 2829 as introduced provides:

> (b) The Passamaquoddy Tribe, the Penobscot Nation, their members, and the land owned by or held for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act. The Maine Implementing Act is hereby approved, ratified and confirmed, and the provisions of the Maine Implementing Act which hereafter become effective including any subsequent amendments pursuant to subsection (d), are incorporated by reference as fully as if set forth herein. The Maine Implementing Act shall not be subject to the provisions of Section 1919 of Title 25 of the United States Code.

As we mentioned in the course of our testimony at the Committee's July 1 hearings on the bill, one of our principal concerns with the settlement proposal is the language of Section 6211(2) and (4) of the Maine Implementing Act which would allow the State to reduce funding to the Passamaquoddy Tribe, the Penobscot Nation, and their members in circumstances where the Tribes or individual members are recipients of Federal funds "within substantially the same period for

which state funds are provided, for a program or purpose substantially similar to that funded by the State. . . ." Section 6(b) of S. 2829 would approve, ratify, and confirm the provisions of the Maine Implementing Act, including Section 6211.

Because we feared that ratification of these provisions in the State Act could result in the abuse of Federal financial assistance by allowing the State to use Federal funds to supplant State funding of programs which benefit its Indian citizens, and would therefore set a potentially dangerous precedent for the use of Federal funds nationwide, we asked State officials to provide the Committee with a letter clarifying the meaning and intent of Section 6211(2) and (4) of the Maine Implementing Act.

Maine Attorney General Richard S. Cohen sent the Committee a letter dated August 22, 1980, which assists in the interpretation of those provisions of the State law. However, this letter, while helpful, did not completely allay our concern, as expressed at the July 1, 1980 hearings, that Congressional ratification of the Maine Implementing Act pursuant to Section 6(b) of S. 2829 may be viewed as sanctioning, even if only in limited circumstances, the practice of supplanting each dollar of State aid to the tribes with a dollar of Federal aid.

After a careful study of the programs which might be affected by this provision in the Maine Implementing Act, we have arrived at the following language as a proposed amendment to Section 6(b):

> (b)(1) The Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseets, their members, and the land and natural resources owned by or held in trust for the benefit of the Tribe, Nation or Band, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act: *Provided, however*, that nothing in this section shall be construed as subjecting lands held by the United States in trust to taxation, encumbrance, or alienation. The Maine Implementing Act is hereby approved, ratified and confirmed to the extent that it is not inconsistent with the provisions of this Act. The Maine Implementing Act is not an agreement within the meaning of Section 109 of the Indian Child Welfare Act of 1978.
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> (2) Funds appropriated for the benefit of Indian people or for the administration of Indian affairs may be utilized, consistent with the purposes for which they are appropriated, by the Passamaquoddy Tribe and the Penobscot Nation to provide part or all of any local share required by Maine State law. 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.
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> (3) Nothing in this Act shall be construed to supersede any Federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine unless expressly provided by this Act.

Paragraph 6(b)(1) of our proposed amendment is substantially similar to the provision in S. 2829. The proviso is intended to clarify the understanding of the parties that lands acquired by the United States in trust shall not be subject to taxation and are subject to the

restrictions against alienation of section 5(f)(2) of our proposed amendment (section 5(e)(2) of S. 2829). To the language ratifying the Maine Implementing Act we have added the phrase, "to the extent that it is not inconsistent with the provisions of this Act". While we have no intention of altering the substance of the jurisdictional agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation, to the extent that anyone in the future perceives a discrepancy between the federal and state legislation we feel it is important to recognize that the federal legislation should control.

Paragraph 6(b)(2) is a reflection of our examination of the interplay of federal and state funding of Indian programs under this new arrangement. Because lands in Passamaquoddy and Penobscot Indian territory will be tax-exempt, those Tribes may wish to rely on federal funds to match state funds available to them as municipalities. As provided in Section 6211(1) of the Maine Implementing Act, "[t]o the extent that any . . . program requires municipal financial participation as a condition of state funding, the share for either the Passamaquoddy Tribe or the Penobscot Nation may be raised through *any source of revenue available.*" (emphasis added). For example, consistent with the Maine Implementing Act and our proposed amendment, funds received by the Tribes under a contract authorized by the Johnson-O'Malley Act (25 U.S.C. Section 452 *et seq.*) may be used as the local share to match state educational assistance if that use is otherwise consistent with the provisions of the Johnson-O'Malley Act. Thus, regardless of whether or not certain funding sources may be prohibited by federal law or regulation from supplanting state funds under Section 6211(2) or (4) of the Maine Implementing Act, such funds may be used to provide the local share for matching purposes.

Paragraph (3) of our proposed section 6(b) would make it clear that nothing in the Settlement Act, including the ratification of the Maine Implementing Act, should be read to supersede any federal laws or regulations governing the provision or funding of services or benefits to any person or entity in the State of Maine, unless expressly provided by that Act.

The Maine Attorney General is amending his August 22 letter to provide further explanation of Section 6211 of the Maine Implementing Act. It is our understanding that the State's interpretation is that Section 6211 (2) and (4) will not authorize the supplanting of Federal funds where such supplanting is prohibited by either Federal law or regulation.

It is the Department's intention to structure our funding programs in such a manner that no funds will be supplanted by the operation of Section 6211 of the Maine Implementing Act. This structuring may include the amendment of our regulations to prevent supplanting of funds by states. However, such regulations, if promulgated, will have effect on a national basis and will in no way treat the State of Maine differently from any other state in such funding matters.

We have also been requested to consider the addition of the word "reasonable" to the language of Section 5(b)(1) of our proposed amendment. That sentence would then read as follows:

> Each portion of the Settlement Fund shall be administered by the Secretary in accordance with reasonable terms established by

the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary.

We have no objection to the inclusion of this word so long as the standard of conduct applicable to those charged with investment responsibility is consistent with Section 6 of the Uniform Management of Institutional Funds Act. That Section requires the governing board to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Those charged with investment management of the funds would be obligated to act in the utmost good faith and to exercise ordinary business care and prudence in all matters affecting its administration.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

CECIL D. ANDRUS,
Secretary.

STATE OF MAINE,
DEPARTMENT OF THE ATTORNEY GENERAL,
Augusta, Maine, August 22, 1980.

Re S. 2829 "The Maine Indian Claims Settlement Act."

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MELCHER: At the request of Secretary Andrus, we are writing to explain in detail the understanding of State officials as to the meaning and intent of § 6211 of the Maine Implementing Act, Chapter 732 of the Public Laws of Maine, 1979. That section sets forth the mechanism under which the Passamaquoddy Tribe and Penobscot Nation, as municipalities, will receive monies under State programs. The statement below represents my view as Attorney for the State and reflects my understandings of the intent and representations of the parties during the extended negotiations. I understand that this letter will be included in the Committee's records. Since I believe it helps in understanding the interrelationship of this bill and the Maine Implementing Act, I believe it would be useful to also include this letter in the Congressional history of the bill.

In drafting and negotiating the Maine Implementing Act, the Tribes and State agreed that the powers, duties and rights of the Tribes in Maine would be defined by reference to the powers, duties and rights of municipalities in Maine. (See Section 6206(1) of the Maine Implementing Act). Because municipalities are an important and essential unit of government in Maine and, under the principles of "home rule" in the Maine Constitution, are accorded significant power of self-government, this approach was believed to be an important element of the Implementing Act. At the same time, it was understood that this provision would make the Tribes eligible for funds from the State in basically the same manner as cities and towns in Maine. This availability of State funds to the Tribes, as municipalities, was viewed by the State as a unique and substantial provision of the settlement

with long-range cost implications to the State. It was included because it was consistent with one of the fundamental premises of the Implementing Act; i.e., that the Maine Tribes were to be subject to general State law as other citizens with certain limited exceptions in recognition of their unique cultural or historic interest. So far as we know, no other State in the Nation treats Indian Tribes in a like fashion for funding purposes.

It was also understood, however, that treating the Tribes as municipalities could place the Tribes in a unique position with respect to their eligibility for Federal funds. As recognized Indian Tribes, the Passamaquoddy Tribe and Penobscot Nation will be eligible for funds and services availably only to Indian Tribes (e.g., Johnson-O'Malley Act and Snyder Act funds from the Bureau of Indian Affairs). Although at the time that the Implementing Act was negotiated the exact extent of this funding was unknown, it was understood that it would be significant and that it would be provided to the same extent and on the same terms that Federal funds were provided to Indian Tribes elsewhere in the United States. In addition, since the Maine Tribes would be municipalities under Maine law, it was thought that the Tribes might also be eligible for Federal funds available to municipalities (e.g., Federal municipal revenue sharing). The possible availability of these Federal funds in conjunction with State "municipal" entitlements made it apparent that in some circumstances the Passamaquoddy Tribe or Penobscot Nation would be eligible for multiple funding of Tribal programs from both the State and Federal governments. This multiple State/Federal funding would not be available to other municipalities in Maine nor to the Indian Tribes elsewhere in the United States. Because of this, the State and Tribes agreed that if a basic service was funded by the Federal government, as a result of the Tribes' special status under Federal law, then duplicate funding by the State would be inappropriate. It was with that end in mind that § 6211 was drafted.

Having thus summarized the basic thinking behind § 6211, several additional points should be made. First, § 6211 was intentionally drafted using broad language of general applicability rather than specifically cross-referencing particular Federal or State laws. Since the parties were conscious of the fact that existing State or Federal funding laws could be changed in the future and new programs created, and on the expectation that future amendment of the Maine Implementing Act might not be easily achieved to conform it to future changes in other laws, it was believed that use of general language was a preferable drafting approach instead of discussing the operation of each specific source of funding.

Second, it was the understanding of the parties that the determination of the amount of State monies to which the Tribes or its members would be eligible would be determined in the first instance, using the provisions of State law ordinarily applicable to other municipalities or citizens. In other words, statutory formulas in Maine law would serve as the initial starting point in determining Tribal entitlements from the State. In some respects those existing statutory formulas already contain provisions for the treatment of Federal funds, which provisions would be equally applicable to the Maine Tribes.

Third, it was the understanding of the parties that the set-off provisions in § 6211(2) and (4) of the Implementing Act were intended only to encompass Federal funds that would be actually received by the Tribes and their members by virtue of their status as recognized Indian Tribes and their status as Indians under Federal law. Since the State had agreed to treat the Tribes as municipalities for State funding purposes, it was anticipated that any Federal monies received by the Tribes as municipalities would not be treated any differently than similar monies received by any other municipality. However, since the Tribes' status as recognized Indian Tribes would in all probability make them eligible for additional Federal monies unavailable to other citizens and municipalities, such Federal funds received by them as recognized Tribes would be treated differently and would be subject to the set-off provisions.

Fourth, in drafting § 6211 it was not the intention of the parties to alter the effect of Federal law. It was understood among all the parties that to the extent the United States provides funds for a program which are required by Federal statutes or regulations to be supplemental to and not to supplant State and local funds, then the set-off provisions in § 6211(2) and (4) would not apply to such Federal funds. The term "substantially similar purpose" as used in § 6211 of the Maine Implementing Act was not intended to refer to such Federal funds that enhance, enrich or supplement programs provided for under Maine law. Such federal funds received by the Tribes would be outside the scope of § 6211 entirely and would neither be deemed to be eligible to initiate a State match under § 6211(1) nor would they offset or supplant any State match or State funds under § 6211(2) or (4). Consistent with the foregoing, the usual State participation in the State/Federal cost sharing of social services such as AFDC, Medicare and Food Stamps would be unaffected by § 6211(2) or (4).

Fifth, since many programs in Maine are shared State-municipal responsibilities, it was understood that the Tribes, as municipalities, would have to raise their local share which would be computed in the manner provided by Maine law generally. Insofar as State valuation was a factor in determining the Tribal share, the land in Indian Territory would be valued in the same manner in which privately owned land was valued in any other municipality. Since it was understood that the Passamaquoddy Tribe and Penobscot Nation could, but probably would not, choose to have a local tax, it was agreed that Federal funds could first be credited to the Tribe's share of any shared State-local programs with the balance credited to the State. Thus, the offset provisions of § 6211(2) would apply if and only if Federal funds in a particular program exceeded any local share necessary to trigger a State match under State law.

It is important to understand that § 6211 was negotiated with and agreed to by the Tribes. Insofar as it reduces the total amount of State funds to which the Tribes might be eligible, that consequence was understood at time of agreement. In addition, nothing in § 6211 increases the obligation of Federal agencies to fund Tribal programs in Maine. Those decisions will be made using the normally applicable criteria in Federal law and regulations. However, in determining eligibility for

Federal funds, it was also understood that the Maine Tribes would be treated no differently than other Tribes elsewhere in the United States, and would not be penalized nor receive less Federal funds by virtue of their eligibility for State funds under the Maine Implementing Act.

This latter point regarding future Federal funding for Tribal programs in Maine is one about which I wish to express my serious concern. It has been the States and Tribal expectation that, to the extent the United States funds a program for Indians elsewhere in the country, so also would it fund it in Maine. However, during the course of our negotiations with the Tribes and in all our dealings with the Department of Interior we have had serious difficulty in determining exactly what programs will be provided to the Maine Tribes and in what amounts. Expected levels of funding once estimated by B.I.A. have to date not been forthcoming. For example, estimates of Federal funding prepared in 1979 by the Eastern Regional Office of B.I.A. indicated that nearly $1.3 million would be provided in FY 1981 for education alone, even if no State funds were provided. This report was in fact provided to the Maine Legislature. We relied on such B.I.A. estimates in negotiating § 6211 of the Maine Implementing Act. We have only recently learned, however, that the actual figure for FY 1981 may be far less than B.I.A.'s earlier estimate. In addition, we are unable to obtain any confirmation of what B.I.A. or Indian Health Services funding levels may be or how they might be computed in subsequent fiscal years. This now raises serious concern that the Maine Tribes may not be appropriately funded in the future by the Federal government. Just as the Federal government is concerned that State funds not be unfairly reduced to these Tribes, so also we are gravely concerned that Federal funding not be reduced to these Tribes by virtue of their eligibility for State programs. In agreeing to treat the Tribes as municipalities, the State of Maine and the Passamaquoddy Tribe and Penobscot Nation have achieved an unusual relationship and one about which we are very optimistic. It would be extremely unfair to the Tribes and the State and inconsistent with our reliance on earlier B.I.A. reports if, as a result of this creative effort, the Federal government were to provide programs and funds to the Tribes on any different terms or amounts than it did to Indian Tribes elsewhere in the United States.

Very truly yours,

RICHARD S. COHEN,
Attorney General.

NATIVE AMERICAN RIGHTS FUND,
Portland, Maine, September 6, 1980.

Hon. JOHN MELCHER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MELCHER: Secretary Andrus has asked me to write to you to explain the Passamaquoddy Tribe's and the Penobscot Nation's understanding of Sec. 6(g) of S. 2829 and Sec. 6211 of the Maine Implementing Act. Section 6211 deals with the eligibility of the Maine Tribes for State funding. Sec. 6(g) provides in relevant part that the

Maine Tribes "shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians." My clients' understanding of these provisions is best explained by outlining the manner in which they developed.

Negotiations concerning settlement of the Maine Indian land claims began in the spring of 1977 when President Carter appointed Justice William B. Gunter to evaluate the claims and recommend a course of action for the Administration. Justice Gunter studied the legal aspects of the case and discussed with the parties their views concerning settlement. The Tribes raised federal Indian services as an issue of major importance to them. The State of Maine was expected to discontinue the services which it was providing to the Tribes, and the United States had never provided the Maine tribes the level of services which it provides other Indian tribes. The Tribes were determined to make certain that any settlement contain a provision ensuring that full federal Indian services be provided to them and that they not have to use income obtained from settlement funds and property to pay for services which the Federal Government provides other tribes. At one point during these discussions the Department of the Interior suggested to Justice Gunter that the services issue be dealt with by providing the Maine Tribes with a lump sum payment in lieu of such services, but this suggestion was rejected. Justice Gunter's July 7, 1977 recommendation, a copy of which is enclosed, met the Tribe's objectives in this regard. The Justice recommended creation of a trust fund for the Tribes, acquisition of trust lands for the Tribes, and the provision of federal Indian services. Paragraph C(3) of the recommendation says that the United States should "[a]ssure the two tribes that that normal Bureau of Indian Affairs benefits will be accorded to them by the United States in the future."

Justice Gunter's recommendation led to detailed negotiations with a White House Work Group composed of Eliot R. Cutler, Associate Director of the Office of Management and Budget, Leo M. Krulitz, Solicitor of the Department of the Interior, and A. Stephens Clay, Justice Gunter's law partner. The Tribes took the same position in these negotiations concerning the services issue as they did in their discussions with Justice Gunter. These negotiations produced an agreement between the Tribes and the President on February 10, 1978. That agreement, which was embodied in a document titled Joint Memorandum of Understanding, a copy of which is enclosed, approached federal Indian services in a manner similar to that recommended by Justice Gunter. In Section 7(c) the federal government pledges:

> that the tribes will be considered fully federally recognized tribes and will receive all federal services, benefits and entitlements on the same basis as other federally recognized tribes.

The agreement between the Tribes and the White House led to still further negotiations in which the Tribes were asked by the Maine Congressional Delegation to reach an agreement with the State of Maine concerning jurisdictional matters. An agreement with the State was ultimately reached which provided that in addition to their status

as federally-recognized tribes, the Passamaquoddy Tribe and the Penobscot Nation would also have municipal status for various purposes under Maine law. As part of this agreement, and in return for concessions made by the Tribes, the State committed itself to fully include the Tribes in its municipal funding system. Under the terms of the agreement the Tribes are permitted to use federal funds to supply any local share which is required for funding by the State.

At the time the Tribes were negotiating with the Federal Government there was no discussion concerning services to be provided by the State of Maine. It was assumed by those participating in the negotiations that Maine would discontinue the Maine Department of Indian Affairs and cease its prior funding of the Tribes through that agency. It was also assumed that Maine would provide services to Maine Indians as citizens of the State. There was no discussion, however, as to how this was to be done, even though the funding of members of federally-recognized tribes by states was then a matter of dispute between the Federal Government and various states. As a result, the agreement to guarantee full Federal Indian funding was not conditioned on provision of a particular level of funding by the State.

My clients are pleased that the agreement which they negotiated with the State of Maine may reduce to some exent the cost to the Federal Government of providing full services to them. They understand Sec. 6211 of the Maine Implementing Act to prohibit duplicate funding by the State and the Federal Government. They also understand that the supplanting provision of Sec. 6211 does not apply to federal programs which by statute or regulation are deemed supplemental. They understand Sec. 6(g) of S. 2829 to be a guarantee, consistent with that bargained for in the Joint Memorandum of Understanding, that the Federal Government will provide them with full federal funding regardless of the level of funding provided by the State of Maine. They also understand that the Administration has a desire to obtain maximum participation by the State of Maine in meeting the Federal Government's obligation to the Maine Tribes, and fears that Sec. 6211 might hinder this goal. Specifically, they understand that the Administration is concerned that because the Federal Government funds various programs for Indians at levels higher than those provided by most states, that in order to meet its obligation to fund Maine tribes at the same level as other tribes it might be obliged under Sec. 6211 to supplant Maine's contribution to particular programs. After studying various Maine programs, however, it appears that the Federal Government will be able to meet its obligation of providing full federal funding to the Maine Tribes without supplanting Maine funds. This will require careful attention to existing federal statutes and regulations, and may require adoption of new regulations. The Tribes are prepared to cooperate with the appropriate officials on these issues, and will assist in the preparation of remedial legislation if it develops that the Federal Government is bearing a disproportionate share of the cost of providing full federal Indian services to them.

Many thanks for your assistance in this matter.

Sincerely,

THOMAS N. TUREEN.

Enclosures.

KILPATRICK, CODY, ROGERS, MCCLATCHEY, & REGENSTEIN,
Atlanta, Ga., July 15, 1977.

Recommendation to: President Carter.
From: William B. Gunter.
Re: Passamaquoddy and Penobscot tribal claims—Maine.

A. MY ASSIGNMENT

My assignment was to examine the problem created by these claims for approximately ninety days and then make a recommendation to you as to what action, if any, you should take in an attempt to bring about a resolution of the problem.

I have not acted as a mediator in this matter; my role has been more that of a judge; I have read the law and examined the facts; I have met and conferred with affected parties and their representatives; I have attempted to be objective, realizing that no one person can ever attain total objectivity; I have tried to come forth with a recommendation that, in my own mind, is just and practical; and I now proceed with a brief statement of the problem and my recommendation.

B. THE PROBLEM

The pending court actions based on these tribal claims have the unfortunate effect of causing economic stagnation within the claims area. They create a cloud on the validity of real property titles; and the result is a slow-down or cessation of economic activity because property cannot be sold, mortgages cannot be acquired, title insurance becomes unavailable, and bond issues are placed in jeopardy.

Were it not for this adverse economic result, these cases could take their normal course through the courts, and there would be no reason or necessity for you to take any action with regard to this matter. However, I have concluded that this problem cannot await judicial determination, and it is proper and necessary for you to recommend some action to the Congress that will eliminate the adverse economic consequences that have developed to date and that will increase with intensity in the near future.

I have concluded that the Federal Government is primarily responsible for the creation of this problem. Prior to 1975 the Federal Government did not acknowledge any responsibility for these two tribes. Interior and Justice took the position that these two tribes were not entitled to federal recognition but were "State Indians". In 1975 two federal court decisions, one at the trial level and another at the appellate level, declared that the Constitution adopted in 1789 and a Congressional enactment of 1790 created a trust relationship between the Federal Government and these two tribes. In short, the Federal Government is the guardian, and the two tribes are its wards. After the appellate decision, Interior and Justice concluded that the tribal claims would be prosecuted against private property owners owning property within the claims area and against the State of Maine for the properties owned by it within the claims area. Therefore, we have the unusual situation of the Federal Government being, in my mind, primarily responsible for the creation of the problem, and it is now placed in a position by court decisions of having to compound the

problem by court actions that seek to divest private property owners and Maine of title to land that has heretofore been considered valid title. The prosecution of these cases by the Federal Government brings about the adverse economic consequences already mentioned.

I have concluded that the states of Maine and Massachusetts, out of which Maine was created in 1820, bear some responsibility for the creation of this problem. The states procured the land in the claims area, whether legally or illegally I do not now decide, and sold much of it. The State of Maine now owns, I am informed, somewhere between 400,000 and 500,000 acres of land in the claims area.

I have concluded that the two tribes do not bear any responsibility for the creation of the problem, and I have concluded that private property owners owning property within the claims area do not bear any responsibility for the creation of the problem.

The problem is complex and does not lend itself to a simple solution because it is old and large. The factual situation giving birth to the problem goes back to colonial times and the early years of our life as a nation under the Constitution. Adding to the complexity is the fact that the problem is social, economic, political, and legal.

Enough about the problem—I move on to my recommended solution.

C. THE SOLUTION

I have given consideration to the legal merits and demerits of these pending claims. However, my recommendation is not based entirely on my personal assessment in that area. History, economics, social science, justness, and practicality are additional elements that have had some weight in the formulation of my recommendation.

My recommendation to you is that you recommend to the Congress that it resolve this problem as follows:

(1) Appropriate 25 million dollars for the use and benefit of the two tribes, this appropriated amount to be administered by Interior. One half of this amount shall be appropriated in each of the next two fiscal years.

(2) Require the State of Maine to put together and convey to the United States, as trustee for the two tribes, a tract of land consisting of 100,000 acres within the claims area. As stated before, the State reportedly has in its public ownership in the claims area in excess of 400,000 acres.

(3) Assure the two tribes that normal Bureau of Indian Affairs benefits will be accorded to them by the United States in the future.

(4) Request the State of Maine to continue to appropriate in the future on an annual basis state benefits for the tribes at the equivalent level of the average annual appropriation over the current and preceding four years.

(5) Require the Secretary of Interior to use his best efforts to acquire long-term options on an additional 400,000 acres of land in the claims area. These options would be exercised at the election of the tribes, the option-price paid would be fair market value per acre, and tribal funds would be paid for the exercise of each option.

(6) Upon receiving the consent of the State of Maine that it will accomplish what is set forth in numbered paragraphs (2) and (4) above, the Congress should then, upon obtaining tribal consent to

accept the benefits herein prescribed, by statutory enactment extinguish all aboriginal title, if any, to all lands in Maine and also extinguish all other claims that these two tribes may now have against any party arising out of an alleged violation of the Indian Nonintercourse Act of 1790 as amended.

(7) If tribal consent cannot be obtained to what is herein proposed, then the Congress should immediately extinguish all aboriginal title, if any, to all lands within the claims area except that held in the public ownership by the State of Maine. The tribes' cases could then proceed through the courts to a conclusion against the state-owned land. If the tribes win their cases, they recover the state-owned land; but if they lose their cases, they recover nothing. However, in the meantime, the adverse economic consequences will have been eliminated and Interior and Justice will have been relieved from pursuing causes of action against private property owners to divest them of title to land that has heretofore been considered valid title.

(8) If the consent of the State of Maine cannot be obtained for what is herein proposed, then the Congress should appropriate 25 million dollars for the use and benefit of the tribes (see paragraph numbered (1)), should then immediately extinguish all aboriginal title, if any, and all claims arising under an alleged violation of the 1790 Act as amended, to all lands within the claims area except those lands within the public ownership of the State. The tribes' cases could then proceed through the courts against the state-owned land. If the tribes win their cases they recover the land; but if they lose their cases they recover nothing against the state of Maine. However, in the meantime, they will have received 25 million dollars from the United States for their consent to eliminate economic stagnation in the claims area, and their consent to relieve Interior and Justice from pursuing causes of action against private property owners to divest them of land titles that have heretofore been considered valid.

It is my hope that the Congress can resolve this problem through the implementation of numbered paragraphs (1) through (6) above. Paragraphs (7) and (8) are mere alternatives to be utilized in the event consensual agreement cannot be obtained.

Respectfully submitted,

WILLIAM B. GUNTER.

[Press release from the Office of the White House Press Secretary, February 10, 1978]

THE WHITE HOUSE

JOINT MEMORANDUM OF UNDERSTANDING

For several months, representatives of the Passamaquoddy and Penobscot Tribes and a White House Work Group comprised of Eliot R. Cutler, Associate Director, Office of Management and Budget; Leo M. Krulitz, Interior Department Solicitor; and A. Stephens Clay, Washington attorney, have been meeting to discuss the tribes' land and damage claims in Maine and the federal services to be extended to the tribes in the future. These discussions have produced agreement with respect to both a partial settlement of the claims and future

federal services. The parties hope that the terms and conditions described here also will serve as a vehicle for settlement of all the tribes' claims.

A. The Basic Agreement: A Partial Settlement

The Administration, through the White House Work Group, agrees to submit to the Congress and to seek passage of legislation which would provide the two tribes with the sum of $25 million in exchange for (1) the extinguishment of the tribes' claims to 50,000 acres per titleholder of such land within the 5 million-acre revised claims area (Area I)[1] to which title is held as of this date by any private individual(s), corporation(s), business(es), or other entity(ies), or by any country or municipality;[2] and (2) for the extinguishment of all their claims in the 7.5 million additional acres (Area II) in the claims area as originally defined (Areas I and II). Thus, *every* landholder within Area I would have his title cleared of all Passamaquoddy and Penobscot land and damage claims up to 50,000 acres,[3] and *all* titles in Area II would be totally cleared of such claims.

The tribes will execute a valid release and will dismiss all their claims with respect to Area II and with respect to landholders with 50,000 acres or less in Area I. The legislation will not clear title with respect to any of the holdings of any private individual, corporation, business, or other entity which are in excess of 50,000 acres in Area I, nor to any lands in Area I held by the State of Maine.

By preliminary estimate, the $25 million to be paid by the federal government would clear title to approximately 9.2 million acres within the original 12.5 million-acre claims area. All claims against householders, small businesses, counties and municipalities would be cleared. Approximately 3.3 million acres in Area I out of the original 12.5 million-acre claim would remain in dispute. About 350,000 acres of the disputed land is held by the state; the remaining 3.0 million acres is held by approximately 14 large landholders.

B. Proposed Settlement of the Tribes' Remaining Claims Against the State of Maine and Certain Large Landholders

The tribes and the White House Work Group recognize the desirability of settling the tribes' entire claim, if possible. However, direct discussions between the tribes and the State of Maine or between the tribes and the large landholders either have not occurred or have not been successful.

In an effort to promote an overall settlement, the White House Work Group has obtained from the tribes the terms and conditions on which the tribes would be willing to re-

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[1] This acreage description of the revised claims area is based on information taken from maps and not from surveys. The final revised claims area, to be determined by the Department of Justice based on information furnished by the Department of the Interior, may vary from this description by ±5%.

[2] For purposes of such extinguishment, titleholding, whether direct or indirect, partial or complete, is deemed to include control, or ability to control, through subsidiaries, partnerships, trusts, or other entities.

[3] For any landholder with holdings in excess of 50,000 acres, the 50,000-acre exemption would apply to lands which are representative of the overall holdings of such landholder.

solve their claims against the State of Maine and against the large landholders whose titles would not fully be cleared by the Basic Agreement. The tribes have authorized the Work Group to communicate these terms and conditions to the appropriate representatives of the State and the affected landholders. In this context, the Work Group serves primarily as an intermediary with limited authority to settle the remaining claims on the terms set forth by the tribes.

1. *Claims Against the State of Maine.*—The tribes have claims against the State of Maine for approximately 350,000 acres of State-held lands in Area I and for trespass damages. Rulings on several of the defenses originally available to Maine already have been made by the courts in the tribes' favor.

The State of Maine currently appropriates approximately $1.7 million annually for services for the Penobscot and Passamaquoddy Tribes. The tribes are willing to dismiss and release all their claims for land and damages against Maine in exchange for an assurance that Maine will continue these appropriations at the current level of $1.7 million annually for the next 15 years. The appropriations would be otherwise unconditional and would be paid to the United States Department of the Interior as trustee for the tribes. Should the State agree to give this assurance, the legislation to be submitted to the Congress by the Administration would provide for the extinguishment of all tribal claims to the affected State-held lands and all trespass damage claims when the last payment is made.

2. *Claims Against Large Private Landholders.*—In exchange for the dismissal, release and extinguishment of their claims to approximately 3.0 million acres within Area I held by the large landholders as described in the Basic Agreement, and in exchange for a dismissal and release of all trespass claims against said individuals or businesses, the tribes ask that 300,000 acres of average quality (approximately $112.50 per acre) timber land be conveyed to the Department of the Interior as trustee for the tribes, and that they be granted long-term options to purchase an additional 200,000 acres of land at the fair market value prevailing whenever the options are exercised. The tribes also ask for an additional $3.5 million to help finance their exercise of these options.

In recognition of the desirability of achieving an overall settlement, the Administration will recommend to the Congress the payment by the federal government of an additional $3.5 million for the tribes, if the affected private landholders will contribute the 300,000 acres and the options on 200,000 acres as set forth in the tribes' settlement conditions. Additionally, the Administration will recommend the payment of $1.5 million directly to the landholders contributing acreage and options to the settlement package. The $1.5 million would be divided proportionately according to the contribution made by the respective landholders.

If a settlement of the tribes' claims against the large landholders can be accomplished on the terms specified above, the

Work Group has agreed to use its best efforts to acquire easements permitting members of the tribe to hunt, fish, trap and gather for noncommercial purposes and to obtain brown and yellow ash on all property from the large landholders within Area I. The tribes will be subject to applicable laws and regulations in the exercise of easement rights. Additionally, it is agreed that the exercise of easement rights shall in no way interfere with the landholder's use of his property, either now or in the future. If the Work Group's efforts to acquire these easements are unsuccessful, the tribes have reserved the right to reject a settlement with the large landholders.

C. Other Terms and Conditions

(1) Nothing in this agreement is intended by the parties to be an admission with respect to the value of these claims. If settlement can be accomplished, it will reflect a compromise from every perspective. The tribes regard their claims as worth many times more than any consideration to be received under this agreement. The State of Maine, on the other hand, has taken the position that the tribes' claims are without merit.

The Administration has chosen to evaluate the claims not merely on the basis of their merit and their dollar value, but also in light of the facts that the claims are complex; they will require many, many years to resolve; and the litigation will be extremely expensive and burdensome to everyone and could, by its mere pendency, have a substantial adverse effect on the economy of the State of Maine and on the marketability of property titles in the State.

With these considerations in mind, any settlement will reflect a shared understanding of the reality created by the litigation, rather than one party's view of the equity of the claims. The claims are unique, and resolution of them on any basis other than litigation similarly must be unique.

(2) If a settlement can be reached with the State of Maine, with the large landholders, or with both on the terms described above, the White House Work Group has the option of implementing a settlement on those terms, rather than on the terms of the Basic Agreement specified in Section A. The Work Group has agreed to consult with the tribes before choosing any of the alternatives provided by this agreement.

(3) The tribes recognize that in no event shall the federal government's cash contribution to any settlement exceed $30 million; the federal government will pay $25 million to achieve the Basic Agreement, and an additional $5 million to facilitate a settlement of all claims against private landholders.

(4) The location of the 300,000 acres must be satisfactory to the tribes. However, it is agreed that the 300,000 acres may be in several tracts, so long as the timber land is of average quality. It is also agreed that land will be selected in such a manner as to not unreasonably interfere with the large landholders' existing operations.

(5) The cash funds to be obtained in the settlement shall be paid in trust for the benefit of the tribes on terms agreeable to them and the federal government. No part of the capital will be distributed on a per capita basis. The terms of the trust shall not preclude reasonable investment of the principal, nor shall they affect in any way the right of the tribes to dispose of income. The right to dispose of income shall be wholly a matter for tribal discretion.

(6) All property and cash obtained pursuant to this settlement shall be divided equally between the two tribes.

(7) The federal government pledges that the tribes will be considered fully federally recognized tribes and will receive all federal services, benefits and entitlements on the same basis as other federally recognized tribes.

(8) All lands acquired by the tribes and land currently held by the tribes shall be treated for governmental purposes as other federally recognized tribal lands are treated. The consent of the United States will be given to the exercise of criminal and civil jurisdiction by the State of Maine pursuant to 25 USC 1321, 1322, provided that the United States shall effect a retrocession within four years upon request of the tribes.

(9) If a settlement can be reached with the State of Maine, the White House Work Group will use its best efforts to obtain for the tribes assured access under mutually agreeable regulations to a designated place in Baxter State Park for religious ceremonial purposes. If the Work Group's efforts to obtain such assured access are unsuccessful, the tribes have reserved the right to reject a settlement with the State of Maine.

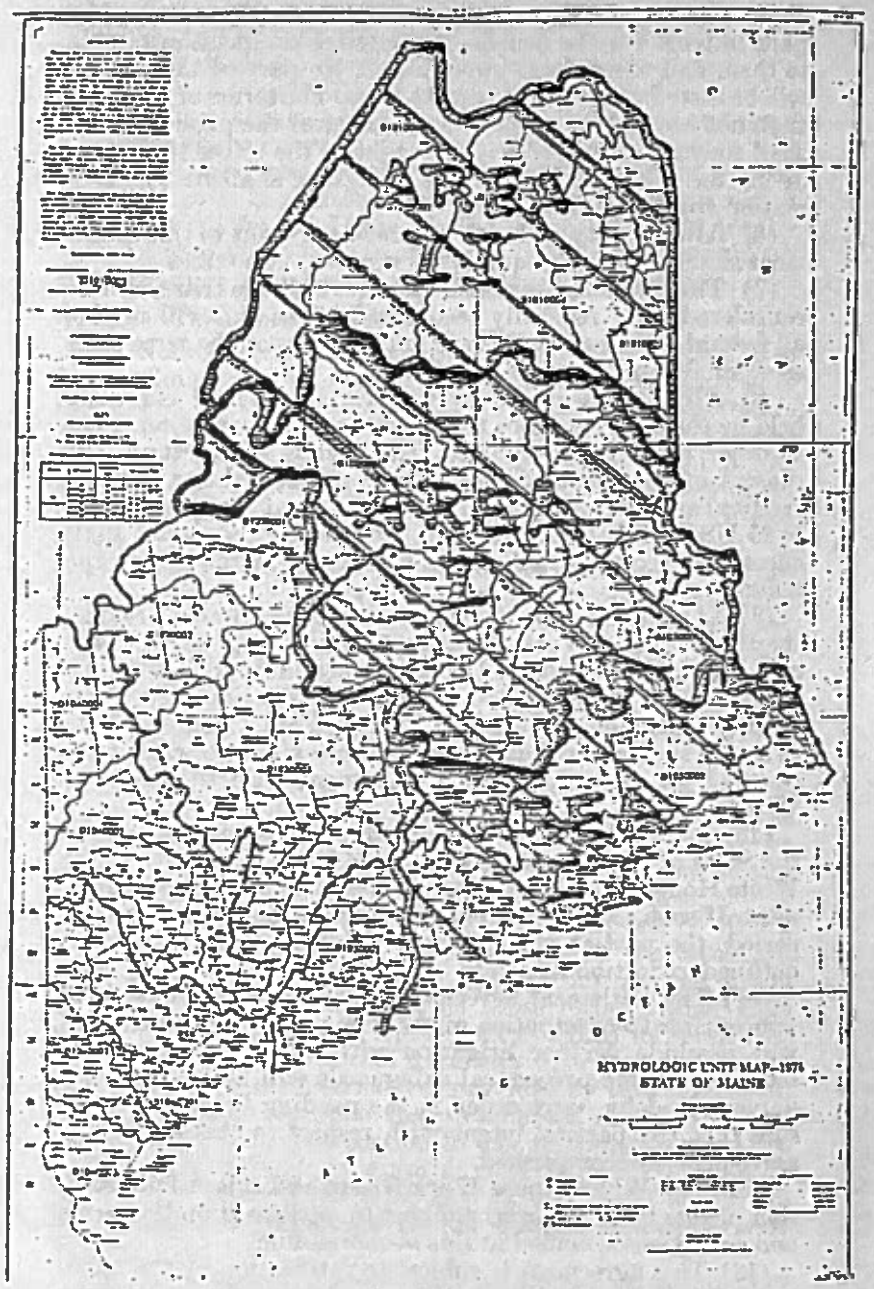
(10) With respect to settlement of the tribes' claims against the State of Maine and large landholders within Area I, the White House Work Group has 60 days to accomplish an agreement. If such a settlement cannot be accomplished within that period, the parties will proceed with the Basic Agreement outlined in Section A, above.

(11) The settlement agreement will be executed in a form appropriate to effectuation of the terms of the agreement and will preclude further litigation with respect to all claims settled. Suitable procedural safeguards will be adopted and implemented by court order in the pending litigation to assure that the parties' intent with respect to this settlement agreement is accomplished.

(12) The White House Work Group and this Administration pledge their vigorous support to settlement on the terms and conditions specified in this memorandum.

(13) This agreement is subject to ratification by the tribes on or by February Ninth, Nineteen Hundred and Seventy Eight.

For the administration:	For the Tribes:
ELIOT R. CUTLER.	———— ————.
LEO M. KRULITZ.	———— ————.
A. STEVENS CLAY.	———— ————.



Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by S. 2829 as amended.

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96TH CONGRESS
2D SESSION

S. 2829

To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 13 (legislative day, JUNE 12), 1980

Mr. COHEN (for himself and Mr. MITCHELL) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

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

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the successor in interest to the aboriginal entity generally known as the Penobscot Nation, which years ago claimed aboriginal title to certain lands in the State of Maine.

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

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

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

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

(8) The parties to these claims, acting through their duly authorized representatives, whose authority is hereby recognized and acknowledged, have executed a Settlement Agreement dated , 1980, which requires implementing legislation by Congress.

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

(10) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians. During this same period, the United States provided few special services to the respective tribe, nation, or band, and repeatedly denied that it had jurisdiction over or responsibility for the said tribe, nation, and band. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of

Maine not be required further to contribute directly to this claims settlement.

(b) It is the purpose of this Act—

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

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

(3) to ratify the Maine Implementing Act, which defines the relationship between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation; and

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

DEFINITIONS

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

(a) "Houlton Band of Maliseet Indians" means the Maliseet Tribe of Indians as constituted on March 4, 1789, and all its predecessors and successors in interest, which, as of the date of passage of this Act, are represented, as to lands within the United States, by the Houlton Band Council of the Houlton Band of Maliseet Indians.

(b) "Land or other natural resources" means any real property or other natural resources, or any interest in or right involving any real property or other natural resources, including but without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(c) "Land Acquisition Fund" means the Maine Indian Claims Land Acquisition Fund established under section 5(c) of this Act.

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

(e) "Maine Implementing Act" means the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter of the Private and Special Laws of 1979.

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

(g) "Passamaquoddy Territory" means those lands as defined in the Maine Implementing Act.

(h) "Passamaquoddy Tribe" means the Passamaquoddy Indian Tribe, as constituted on March 4, 1789, and all its predecessors and successors in interest,

which as of the date of passage of this Act, are represented by the Joint Tribal Council of the Passamaquoddy Tribe, with separate Councils at the Indian Township and Pleasant Point Reservations.

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

(j) "Penobscot Indian Territory" means those lands defined in the Maine Implementing Act.

(k) "Penobscot Nation" means the Penobscot Indian Nation as constituted on March 4, 1789, and all its predecessors and successors in interest, which as of the date of passage of this Act are represented by the Penobscot Nation Governor and Council.

(l) "Secretary" means the Secretary of the Interior.

(m) "Settlement Fund" means the Maine Indian Claims Settlement Fund established under section 5(a) of this Act.

(n) "Transfer" includes but is not limited to any voluntary or involuntary sale, grant, lease, allotment, partition, or other conveyance; any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance; and any act, event, or circumstance that resulted in a change in title to, pos-

session of, dominion over, or control of land or other natural resources.

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

SEC. 4. (a)(1) Any transfer of land or other 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 other natural resources located anywhere within the State of Maine, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians, including but without limitation any transfer pursuant to any treaty, compact, or statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including but without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

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(2) 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, shall be deemed to have been made in accordance with the laws of the State, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(3) 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, shall be deemed to have been made in accordance with the laws of the State, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(b) To the extent that any transfer of land or other natural resources described in section 4(a) may involve land or other natural resources to which the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, or any of their members, or any other Indian, Indian nation, or tribe or band of Indians had aboriginal title, subsection 4(a) shall be regarded as an extinguishment of said aboriginal title as of the date of such transfer.

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

ESTABLISHMENT OF FUNDS

SEC. 5. (a) The Secretary of the Treasury shall establish an account in the Treasury of the United States to be known as the Maine Indian Claims Settlement Fund and shall transfer $27,000,000 from the general funds of the Treasury into such account following the appropriation authorized by section 13 of this Act.

(b)(1) One-half of the principal of the Settlement Fund shall be held in trust by the Secretary for the benefit of the Passamaquoddy Tribe, and the other half of the Settlement Fund shall be held in trust for the benefit of the Penobscot

Nation. Each portion of the Settlement Fund shall be invested and administered by the Secretary in accordance with terms established by the Passamaquoddy Tribe or the Penobscot Nation, respectively, and agreed to by the Secretary. The Secretary shall accept reasonable terms for investment and administration proposed by the Passamaquoddy Tribe or the Penobscot Nation within thirty days of the date on which he receives the proposed terms, and, until such terms have been agreed upon, shall fix the terms for the administration of the Settlement Fund. The Passamaquoddy Tribe or the Penobscot Nation may obtain judicial review in the United States District Court for the District of Maine of any refusal by the Secretary to accept reasonable terms put forth by the respective tribe or nation, or of any failure of the Secretary to administer such funds in accordance with such terms.

(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 reasonable investment of the principal of said Fund by the Secretary.

(3) The Secretary, on a quarterly basis, shall make available to the Passamaquoddy Tribe and the Penobscot Nation, without liability to or on the part of the United States, and without any deductions, any income derived from

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that portion of the Settlement Fund allocated to the respective tribe or nation, the use of which shall be free from regulation by the Secretary: *Provided, however,* That the Passamaquoddy Tribe and the Penobscot Nation annually shall each expend the income from $1,000,000 of their portion of the Settlement Fund for the benefit of their respective members who are over the age of sixty.

(c) The Secretary of the Treasury shall establish an account in the Treasury of the United States to be known as the Maine Indian Claims Land Acquisition Fund and shall transfer $54,500,000 from the general funds of the Treasury into such account following the appropriation authorized by section 13 of this Act.

(d) The principal of the Land Acquisition Fund shall be held in trust by the Secretary as follows:

(1) $900,000 shall be held for the benefit of the Houlton Band of Maliseet Indians to be used to purchase 5,000 acres of Maine woodland;

(2) one-half of the balance of the principal of the Land Acquisition Fund shall be held by the Secretary for the benefit of the Passamaquoddy Tribe; and

(3) the other half of the balance of the principal of the Land Acquisition Fund shall be held for the benefit of the Penobscot Nation.

1 The Secretary shall expend, with the consent of the affected
2 tribe, nation, or band, the principal and any income accruing
3 to this Land Acquisition Fund for the purpose of acquiring
4 land for the Passamaquoddy Tribe, the Penobscot Nation,
5 and the Houlton Band of Maliseet Indians and for no other
6 purpose. If the Houlton Band of Maliseet Indians should
7 cease to exist, any lands acquired for the Maliseet Tribe pur-
8 suant to section 5 shall be divided equally and held in trust,
9 one-half for the benefit of the Passamaquoddy Tribe and one-
10 half for the benefit of the Penobscot Nation.

11 (e)(1) The provisions of section 177 of title 25 of the
12 United States Code shall not be applicable to (i) the Passa-
13 maquoddy Tribe, the Penobscot Nation, or the Houlton Band
14 of Maliseet Indians or any other Indian, Indian nation, or
15 tribe or band of Indians in the State of Maine, and (ii) any
16 land or other natural resources owned by or held in trust for
17 the Passamaquoddy Tribe, the Penobscot Nation, or the
18 Houlton Band of Maliseet Indians or any other Indian,
19 Indian nation, or tribe or band of Indians in the State of
20 Maine. Except as provided in subsection (e)(2), such land or
21 other natural resources shall not otherwise be subject to any
22 restraint on alienation by virtue of being held in trust by the
23 United States or the Secretary.

24 (2) Any transfer of land or other natural resources
25 within the Passamaquoddy Indian Territory or the Penobscot

Indian Territory, except takings for public uses consistent with the Maine Implementing Act or the laws of the United States, or transfers of individual Indian assignments from one member of the Passamaquoddy Tribe or Penobscot Nation to another member of the same tribe or nation shall be void ab initio and without any validity in law or equity unless made by or with the consent of the respective tribe or nation and with the approval of the Secretary: *Provided, however,* That the Secretary and the respective tribe or nation shall have authority to approve only transfers of timber and other natural resources; leases of land for a term not to exceed fifty years; exchanges of land; and transfers of land or other natural resources the proceeds of which are reinvested in land within two years of the date of the receipt of such proceeds.

(f) Land acquired and held by the Secretary for the benefit of the Passamaquoddy Tribe and the Penobscot Nation shall be managed and administered in accordance with terms established by the respective tribe or nation and agreed to by the Secretary. The Secretary shall accept reasonable terms for management and administration proposed by the Passamaquoddy Tribe or the Penobscot Nation within thirty days of the date on which he receives the proposed terms, and until such terms have been agreed upon shall fix the terms for management and administration of said lands. The Passmaquoddy Tribe or the Penobscot Nation may

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obtain judicial review in the United States District Court for the District of Maine of any refusal of the Secretary to accept reasonable terms put forth by the respective tribe or nation, or of any failure of the Secretary to administer such lands in accordance with such terms.

(g) In the event of a taking of land or any interest in land owned by or held in trust for the Passamaquoddy Tribe, the Penobscot Nation or the Houlton Band of Maliseet Indians for public uses pursuant to the laws of the State or the laws of the United States, the Secretary shall reinvest the money received in other lands for the respective tribe, nation or band within two years of the date on which the money is received. Any lands so acquired shall be approved by the affected tribe, nation, or band, and shall be subject to the terms of this Act and the Maine Implementing Act.

APPLICATION OF STATE LAWS

SEC. 6. (a) Except as otherwise provided in subsections (b), (d), and (e) of this section, all Indians, Indian nations, tribes, and bands of Indians in the State of Maine, other than the Passamaquoddy Tribe and the Penobscot Nation and their members, and all lands or other natural resources owned by or held in trust by the United States, or by any other person or entity for any such Indian, Indian nation or tribe, or band of Indians, shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and

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to the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

(b) The Passamaquoddy Tribe, the Penobscot Nation, their members, and the land owned by or held for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act. The Maine Implementing Act is hereby approved, ratified and confirmed, and the provisions of the Maine Implementing Act which hereafter become effective, including any subsequent amendments pursuant to subsection (d), are incorporated by reference as fully as if set forth herein. The Maine Implementing Act shall not be subject to the provisions of section 1919 of title 25 of the United States Code.

(c) The Passamaquoddy Tribe, the Penobscot Nation, 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: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and their officers and employees shall be immune from suit to the extent provided in the Maine Imple-

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menting Act. In the event that either the Passamaquoddy Tribe or the Penobscot Nation fails to pay any money judgment entered against it within ninety days after entry of final judgment, the Secretary shall pay any such money judgment from that portion of the income of the Settlement Fund held for the respective tribe or nation. Any person asserting a money judgment against either the Passamaquoddy Tribe or the Penobscot Nation may sue the Secretary in the United States District Court for the District of Maine for any such amount due.

(d) Congress hereby consents to any amendment to the Maine Implementing Act with respect to either the Passamaquoddy Tribe or Penobscot Nation provided that such amendment is made with the agreement of such tribe or nation.

(e) The Passamaquoddy Tribe and the Penobscot Nation are hereby authorized to exercise jurisdiction, separate and distinct from the civil and criminal jurisdiction of the State of Maine, to the extent authorized by the Maine Implementing Act, and any subsequent amendments thereto.

(f) The United States, every State, every territory or possession of the United States, and every Indian nation and tribe and band of Indians shall give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe and the Penobscot Nation. The Passamaquoddy Tribe and the Penobscot Nation shall give full faith and credit to the judicial pro-

ceedings of each other and to the judicial proceedings of the United States, every State, every territory or possession of the United States, and every recognized Indian nation and tribe and band of Indians.

(g) Except as provided in this Act, the laws of the United States which relate or accord special status or rights to Indians, Indian nations, tribes, and bands of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or lands held in trust for Indians, shall not apply within the State of Maine: *Provided, however*, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all the financial benefits which the United States provides to Indians, Indian nations and tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations, or tribes or bands of Indians and for the purposes of determining eligibility for such financial benefits, the respective tribe, nation, and band shall be deemed to be federally recognized Indian tribes: *And provided further*, That the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be considered federally recognized Indian tribes for the purposes of Federal taxation and any lands owned by or held in trust for the respective tribe, nation, or band shall

be considered Federal Indian reservations for purposes of Federal taxation.

IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 7. (a) The Passamaquoddy Tribe or the Penobscot Nation may assume exclusive jurisdiction over Indian child custody proceedings pursuant to section 1901 of title 25, United States Code. Before the respective tribe or nation may assume such jurisdiction over Indian child custody proceedings, the respective tribe or nation shall present to the Secretary for approval a petition to assume such jurisdiction and the Secretary shall approve that petition in the manner prescribed by section 1918(a)–(c) of title 25, United States Code.

(b) Any petition to assume jurisdiction over Indian child custody proceedings by the Passamaquoddy Tribe or the Penobscot Nation shall be considered and determined by the Secretary in accordance with section 1918 (b) and (c) of title 25, United States Code.

(c) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction.

(d) For the purposes of this section, the Passamaquoddy Indian Reservation and the Penobscot Indian Reservation shall be deemed to be "reservations" within section 1903(10) of title 25, United States Code, and the Passamaquoddy

Tribe and the Penobscot Nation shall be deemed to be "Indian tribes" within section 1903(8) of title 25, United States Code.

(c) Until the Passamaquoddy Tribe or the Penobscot Nation has assumed exclusive jurisdiction over the Indian child custody proceedings pursuant to this section, the State of Maine shall have exclusive jurisdiction over the Indian child custody proceedings of that tribe or nation.

EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE, PENOBSCOT NATION, AND HOULTON BAND OF MALISEET INDIANS

SEC. 8. (a) No payments to be made for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians pursuant to the terms of this Act shall be considered by any agency or department of the United States in determining or computing the State of Maine's eligibility for participation in any financial aid program of the United States.

(b) The eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation or any of their members pursuant to the Maine Implementing Act or any other law of the State of Maine shall not be considered by any department or agency of the United States in determining the eligibility of or computing payments to the Passamaquoddy Tribe or the Penobscot

Nation or any of their members under any financial aid program of the United States.

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

DEFERRAL OF CAPITAL GAINS

SEC. 9. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer by private owners of land purchased by the Secretary with moneys from the Land Acquisition Fund shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, as amended.

TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE OF MAINE

SEC. 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 to the

Secretary to be held in trust for the respective tribe or nation and shall be added to the principal of the Settlement Fund allocated to that tribe or nation. The delivery of said State funds to the Secretary shall be accepted in full discharge of any claim of the respective tribe or nation, its predecessors and successors in interest, and its members, against the State of Maine, its officers, employees, agents, and representatives, arising from the administration or management of said State funds. Upon receipt of said State funds, the Secretary, on behalf of the respective tribe and nation, shall execute general releases of all claims against the State of Maine, its officers, employees, agents, and representatives arising from the administration or management of said State funds.

OTHER CLAIMS DISCHARGED BY THIS ACT

SEC. 11. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Maine and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of, any Indian, Indian nation, or tribe or band of Indians or the United States as trustee therefor, including those actions presently pending in the United States District Court for the District of Maine captioned United States of America against State of Maine (Civil Action Nos. 1966-ND and 1969-ND).

LIMITATION OF ACTIONS

SEC. 12. Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to any Indian, Indian nation or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

AUTHORIZATION

SEC. 13. There is hereby authorized to be appropriated $81,500,000 for transfer to the funds established by section 5 of this Act.

INSEPARABILITY

SEC. 14. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

Nos. 2016-1424, 2016-1435, 2016-1474, 2016-1482

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PENOBSCOT NATION; UNITED STATES, on its own behalf, and for the benefit of the Penobscot Nation,

Plaintiffs-Appellants/Cross-Appellees,

v.

AARON M. FREY, Attorney General for the State of Maine; JUDY A. CAMUSO, Commissioner for the Maine Department of Inland Fisheries and Wildlife; JOEL T. WILKINSON, Colonel for the Maine Warden Service; STATE OF MAINE; TOWN OF HOWLAND; TRUE TEXTILES, INC.; GUILFORD-SANGERVILLE SANITARY DISTRICT; CITY OF BREWER; TOWN OF MILLINOCKET; KRUGER ENERGY (USA) INC.; VEAZIE SEWER DISTRICT; TOWN OF MATTAWAMKEAG; COVANTA MAINE LLC; LINCOLN SANITARY DISTRICT; TOWN OF EAST MILLINOCKET; TOWN OF LINCOLN; VERSO PAPER CORPORATION,

Defendants-Appellees/Cross-Appellants,

EXPERA OLD TOWN; TOWN OF BUCKSPORT; LINCOLN PAPER AND TISSUE LLC; GREAT NORTHERN PAPER COMPANY LLC,

Defendants-Appellees.

TOWN OF ORONO,

Defendant.

Appeal from the United States District Court for the District of Maine

AMICUS BRIEF OF TIMOTHY C. WOODCOCK, ESQ.

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I. INTRODUCTION

A. INTRODUCTION TO AMICUS

Undersigned counsel (hereinafter "Amicus") submits this Amicus Brief in response to this Court's invitation of April 8, 2020. Amicus represents no party in the matter now pending before this Court.

From March of 1980 to June of 1983, Amicus served as an attorney on the Senate Select Committee on Indian Affairs (United States Senate) ("the Committee"). From March of 1980 until January of 1981, Amicus was minority staff counsel on the Committee. Amicus was appointed to this position by Ranking Minority Member. William S. Cohen (R Maine). It was during this period that the Committee considered and Congress ultimately enacted the Maine Indian Claims Settlement Act, now codified as 25 U.S.C. §1721, *et seq.*

During the 97th Congress, Amicus served as the Committee's Staff Director. From January of 1983 to June of 1983, Amicus served as a staff attorney for the majority, preparatory to moving to Maine to join the United States Attorney's Office as an Assistant United States Attorney.

B. INTRODUCTION TO AMICUS BRIEF

This Amicus Brief will not attempt to brief the legal issues now before this Court. Instead, this Amicus Brief will set forth Amicus' personal knowledge of the following: S. 2829, (hereinafter, variously "S. 2829" and "the Bill) the Maine Indian Claims Settlement Act, as introduced in the Senate; the hearings that the Senate committee of jurisdiction, the Senate Select Committee on Indian Affairs (unless otherwise stated, references herein to "Committee" mean the Senate Select Committee on Indian Affairs"), held on S. 2829; the Committee's post-hearing consideration of S. 2829; the Committee's revision of Section 6(g) of S. 2829 as introduced, which became Section 6(h) of S. 2829 (codified as 25 U.S.C. § 1725(h)), and, the Committee's addition of Section 16(b) to S. 2829 (now codified as 25 U.S.C. §1735(b)).

S. 2829 arose out of negotiations between the State of Maine and the Passamaquoddy-Penobscot Negotiating Committee reached agreement on the terms of settlement of land claims that the Passamaquoddy Tribe and the Indian Nation had brought against the State of Maine. Not long after that, the Maine Legislature enacted the Maine Implementing Act, 30 MRS § 6201, et seq., conditioned on Congress enacting companion legislation, the Maine Indian Claims Settlement Act. *S. Rept. 96-957, Report of the Senate Select Committee*

on Indian Affairs on S. 2929, the Maine Indian Claims Settlement Act (hereinafter "Senate Report" and "Report") at 13.

Given its limited purpose, this brief will not attempt to address all the questions this Court has posed. Amicus believes that this brief may be helpful on Questions 1-4 and may be relevant to this Court's assessment of Question 6. This brief will not, however, argue those points but, rather, will set forth the circumstances under which S. 2829 was introduced and in what ways and how the Committee revised it.

II. INDIAN AFFAIRS COMMITTEE CONSIDERATION OF S. 2829

Senator William Cohen and Senator George Mitchell introduced S. 2829 as a Senate Bill on June 13, 1980 whereupon it was referred to the Committee. Attachment A.[1] On July 1 and 2, the Committee held hearings on the Bill.

A. PARTIES TO THE SETTLEMENT AGREEMENT

The parties to the proposed settlement agreement were the State of Maine, the Passamaquoddy Tribe and the Penobscot Indian Nation, who functioned through their joint negotiating committee, and the Houlton Band of Maliseet Indians. *Proposed Settlement of Maine Indian Land Claims. S. 2829. before the Senate Select Committee on Indian Affairs*, 96th Congress, 2nd Session,

[1] Attachment A is S. 2829 as introduced and as reprinted in the Indian Affairs Committee's record of its hearings on S. 2829, *Proposed Settlement of Maine Indian Land Claims*, Hearing before the Select Committee on Indian Affairs, 96th Cong. 2nd Session, Vol. 1 at 3-25.

Government Printing Office, Washington, D.C. (1980) at 136-144, 156 -180 (hereinafter "Hearing Record").

These Parties were ably represented. The State of Maine was represented by the Office of the Attorney General and attorney James St. Clair. Id. at 156, 180. The Tribes were represented by Thomas Tureen, Esq., an attorney with the Native American Rights Fund, as well as Archibald Cox, Esq., then of the Harvard Law School, and the Washington, D.C. law firm of Hogan & Hartson. *Id.* at 187.[2]

Speaking to the settlement discussions, themselves, attorney Tureen testified that the parties negotiated from "mutual strength." *Id.* at 181. He then captured the essence of what it meant to have reached agreement on a negotiated settlement when asked whether, if subsequent legal decisions strengthened the tribes' position, they should not seek more favorable terms, to which he responded: "We have negotiated in good faith. We assume the other side has, and that would preclude that kind of behavior." *Id.* at 183.

B. COMMITTEE HEARINGS ON THE SETTLEMENT AGREEMENT

The first witness was Secretary of the Interior, Cecil Andrus.[3] In his written testimony, Secretary Andrus made it clear that the State of Maine and the

[2] The Houlton Band of Maliseet Indians were not included in the Maine Implementing Act but were included in S. 2829 and in the Maine Indian Claims Settlement Act, as enacted.
[3] Secretary Andrus was accompanied by Timothy Vollmann, Assistant Solicitor for Indian Affairs, Hearing Record at 34. Associate Solicitor Vollmann was an expert on not only federal Indian law but on

Maine Tribes had formulated the terms of the settlement without the participation of the United States. Secretary Andrus raised several questions about the terms of the settlement which included, *inter alia*, Section 6 (g) of the Bill, as introduced. (See, Attachment A, at Section 6 (g)).[4]

Section 6(g) provided in pertinent part that,

> "[e]xcept as provided in this Act, the law of the United States which relate or accord special status or rights to Indian, Indian nations, tribes, and bands of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or lands held in trust for Indians, shall not apply within the State of Maine[.]"

Section 6(g) provided an exception for federal programs providing "financial benefits." Attachment A at Section 6(g).

Secretary Andrus' concerns about Section 6(g) were serious. He explained. "[t]his single provision would make inapplicable every provision of Federal law in title 25 of the United States Code and all other Federal Indian laws except certain unspecified provisions respecting 'financial benefits.' *Id.* at 135. He explained that. {t]he task of identifying those provisions would be a time-consuming and probably litigious one." *Id.* The Interior Department's potion on Section 6(g), he said was, "that any laws not intended to apply should be specifically enumerated in S. 2829. *Id.*

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the Eastern Indian Land Claims in particular. See, 31 Maine Law Rev. 1 "A Survey of Eastern Indian Law Claims 1970-1979" at 1-16 (1979).

[4] As will be explained below, in S. 2829 as reported form the Committee, Section 6(g) of S. 2829 was amended and renumbered as Section 6(h), now codified at 25 U.S.C. §1725(h).

Secretary Andrus was right about Section 6(g). It did propose a broad, standing exclusion of federal Indian law from the state of Maine and its description of the exception to this general rule was imprecise and potentially unworkable.

In raising these serious concerns, Secretary Andrus also made it clear that the Carter Administration supported the settlement and pledged that the Interior Department would. "work with the tribes, the State, and Congress to make this agreement a clear and acceptable one." *Id.* at 132.

Later in the hearing, attorney Tureen was questioned about why the tribes had acceded to the language in Section 6(g). He explained: There is no simple answer. The general body of federal Indian law is excluded in part because that was the position that the State held to in the negotiations." *Id.* at 181-182.

C. POST-HEARING SETTLEMENT DISCUSSIONS

Following the hearings, the Department of the Interior, staff from the Senate Indian Affairs and the House Interior and Insular Affairs, Committee, the State, the tribes, as well as legal representatives of the landowners of property eligible for inclusion in "Indian Territory" under the Maine Implementing Act met to discuss resolutions for the several points Secretary Andrus had raised. Amicus

and his colleague on the Committee, Peter S. Taylor, participated in all those meetings.[5]

By letter dated August 8. 1980, Secretary Andrus reported back to Indian Affairs Committee chairman, John Melcher. on the progress of negotiations with the Parties. *Id.* at 95-104. He included with his letter a draft revision of S. 2829, designated as a potential amendment in the nature of a substitute. *Id.* at 105-127.

In his introductory remarks, he emphasized that, "[i]t has not been our intent to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and the Penobscot Nation with respect to their relationship. We have only sought to assist in in making that agreement completely workable." *Id.* at 95. This was in keeping with the negotiated character of the settlement. See discussion above at 4.

In addition to other points, Secretary Andrus addressed Section 6(g). He observed that, in addition to containing language that was "troublesome and confusing" because under its terms. "Federal benefits to the tribes would be divorced from general Federal statutes applicable to Indians." *Id.* at 103. Both in his letter and the draft amendment to S. 2829. Section 6(g)—which had been

[5] Peter S. Taylor was Special Counsel to the Indian Affairs Committee. working for the Chairman, John Melcher. (D. Mont.) He had also served as Special Counsel to the American Indian Policy Review Commission ("AIPRC"). Congress had stablished the AIPRC to conduct a thorough review and assessment of federal Indian policy.

re-designated 6(h)—had undergone a complete reversal. Under the revised version. Federal Indian law in general was not be excluded from Maine. To the contrary. it was to apply to Maine; but, subject to a significant proviso: Federal Indian law that would "affect or preempt the civil, criminal or regulatory jurisdiction or laws of the State of Maine" would not apply. *Id.* at 103, 121-122. Secretary Andrus illustrated how the jurisdiction exception would work by citing two statutes which, under the newly-designated Section 6(h), would **not** apply in Maine. The first was the Indian trader statutes (25 USC §261-264) and the second was the congressional grant to tribal government to designate air quality standards under the Clean Air Act (42 USC §7474). *Id.* at 103.

The reversal of the wording of Section 6(g) in the newly-designated Section 6(h) solved the particular problem that Secretary Andrus had raised in his testimony about Section 6(g) but, as discussions continued, it was apparent that it had raised another question which had the potential to undermine the integrity of the jurisdictional component of the settlement—that is, with general federal Indian law no longer excluded. how would new Section 6(h)'s jurisdictional proviso be affected if. in the future, Congress enacted general legislation—similar to the Clean Air Act?

Everyone to the agreement understood that, for the State of Maine, the jurisdictional terms of the settlement were material. The general rule of

construction that later legislation controlled earlier legislation placed the long term status of Section 6(h)'s jurisdictional proviso in question, by creating the risk that, for subsequent legislation, Congress might be deemed, wittingly or otherwise, to have overruled it.

Section 16(b) was added to S. 2829 to address this problem. Recognizing that an earlier Congress could not bind a future Congress, Section 16(b) simply provided that, if in the future Congress intended to override Section 6(h)'s jurisdictional proviso, Congress would just have to say so. Section 16(b) was added to S.2829 while the Bill was in the Indian Affairs Committee.[6]

The House Interior and Insular Affairs Committee held hearings on the House Bill—H.R. 7919—on August 25, 1980. *Senate Report* at 20.

Negotiations on and clarification of various aspects of the settlement legislation continued almost up to the point where S. 2829 was reported from the Indian Affairs Committee on September 17, 1980,[7] as is evidenced by explanatory and confirming letters incorporated into Letter from Secretary Cecil D. Andrus to Senator John Melcher, September 10, 1980, Letter from Thomas

[6] Amicus is unaware of any contemporaneous writing documenting that this was the Committee's reason for adding Section 16(b). Amicus would only note the following facts: 1) the State of Maine had bargained for broad jurisdiction and for the State; 2) that the jurisdictional agreement was a material term; 3) that Section 6(g)'s general exclusion of Federal Indian law was reversed in favor of Section 6(h)'s general inclusion of Federal Indian law, subject only to the proviso; 4) that without the addition of Section 16(b), Section 6(h)'s proviso would have been vulnerable to challenge if subsequent congressional grants of tribal jurisdiction appeared to conflict with it; and, 5) that, in practice, Section 16(b) does not purport to bar Congress from overriding 6(h)'s jurisdictional proviso, it only requires that Congress do so knowingly.

[7] *Senate Report*, at 1.

N. Tureen, Esq. to Senator Melcher, dated September 6, 1980, Letter from Attorney General Richard S. Cohen to Senator John Melcher dated August 22, 1980. *Senate Report* at 46-55.

D. INDIAN AFFAIRS COMMITTEE MARK-UP AND COMMITTEE REPORT

On September 17, 1980, the Indian Affairs Committee conducted a mark-up on S. 2829. At that time, the Committee members approved an amendment in the nature of a substitute which included a substantially rewritten bill. S. 2829, as reported from Committee, included by the revised and renumbered Section 6(h) as well as the prospective legislation provision at Section 16(b). *Senate Report* at 8, 11.

The Senate Committee Report included extensive discussions about how the settlement legislation had been forged and how it was to work. With respect to the jurisdictional provision at Section 6(h), the Report also advised how it was to be construed.

First, the Report confirmed that the S. 2829, as revised, constituted "Congressional ratification and implementation of a settlement of land claim[s]" and that the terms of the settlement had been "negotiated by the three Maine Tribes, the State of Maine, and those private landowners who are willing to transfer a portion of their holdings to fulfill its purposes." *Id.* at 11. The Report noted that the impetus to settle the case came from several sources which included

that litigation involved "a host of novel issues", could affect as much as 12.5 million acres and affect up to 350,000 people", that litigation could "range from five to more than fifteen years", during which time "titles to land in the entire claim area would be clouded, and the sale of municipal bonds would become difficult if not impossible and property would be difficult to alienate." *Id.* at 13-14. The Maine Indian Claims Settlement Act, therefore, was understood to be a settlement agreement which, requiring Congressional approval and Executive Branch participation, required enactment in the form of a statute.

The Committee Report reflects the Committee's clear understanding that Maine Indian Claims Settlement Act would govern relations between the State of Maine and the Tribes—all sovereign entities representing dynamic communities for a long time—as has proved the case. Therefore, the Committee Report included extended discussions not only of certain aspect of S. 2829, but also of the Maine Implementing Act. See, *e.g.*, Report at 37-44 (discussing the Maine Implementing Act, Sections 6207-6211).

For purposes of this Court's *en banc* consideration of this issues the pending case presents, the most pertinent portions of the Committee Report would appear to be its discussion of Section 6(h)—now 25 USC § 1725(h). The relatively extensive treatment Section 6(h) received reflects the Committee's understanding that the legislation embodied a negotiated settlement; that, for the State of Maine,

the jurisdictional arrangement was material element: and, that the Section 6(h) had reversed Section 6(g)'s general exclusion of Federal Indian law but preserved the State's jurisdictional agreement in Section 6(h)'s proviso language.

On this point, the Report said, "[t]he phrase 'civil, criminal, or regulatory jurisdiction' as used in this section is intended to be broadly construed to encompass all statutes and regulations of the State of Maine as well of the jurisdiction of the courts of the State." *Id.* at 30. To make this clear the Report cited for comparison the then-recent United States Supreme Court decision, *Bryan v. Itasca County*, 426 U.S. 373 (1976) in which the Supreme Court had narrowly construed state jurisdiction under Public Law 83-280, saying that, unlike *Bryan*, when interpreting Section 6(h), "the word 'jurisdiction' is **not** be narrowly construed. " *Id.* at 30 (emphasis supplied).

Bryan, involved the meaning Public Law 83-280 had limited application and that jurisdictional questions arising under that statutes particular terms as well as related statutes, such as Title IV of the Civil Rights Act of 1968. *Bryan*, 426 U.S. at 386. In addition to these considerations, the *Bryan* Court also concluded that state jurisdiction should be narrowly construed by applying "that eminently sound and vital canon"—that is the Indian canon. *Id.* at 392, citing, *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 655, n. 7 (1976).

The Committee closed its discussion of Section 6(h) by noting, consistent with Secretary Andrus' August 8. 1980 letter, that, Section 6(h)'s proviso meant that the tribal authority under the Clean Air Act would not apply in Maine as well as tribal police power on matters such as "safety, health, environmental regulations or land use". *Report* at 31.

After the Committee reported S. 2829, it was passed by the Senate. It went to the House of Representatives, where the Interior and Insular Affairs Committee replaced it its own bill—H.R. 7919—which had been amended to be essentially the same as S. 2829. The House passed H.R. 7919 and sent it to the Senate where Senator Mitchell, serving as President Pro Temporare of the Senate, signed it on September 30, 1980. It was then sent to President Cater who signed it into law on October 10, 1980.

III. SUMMARY

In reciting this legislative history, Amicus has not attempted to evaluate the competing legal arguments in this case. In addition, Amicus expresses no opinion on whether the statutory language at issue in this matter is sufficiently ambiguous to warrant this Court's consideration of the Indian Canon.

Amicus would note, however, that the Eastern Indian Land Claims as a group were *sui generis* in the area of Indian law, that for the most part they were resolved by settlement, that because they involved agreements between states and

tribes—both sovereign entities—and because of Congress's authority under Article I, Section 8 of the United States Constitution, these settlement agreement had to be enacted into law as statutes.

Therefore, although this settlement had to be enacted into federal and state law, it is clear that the Committee and the Department of the Interior treated the agreement as a negotiated settlement which required Congressional and Executive Branch approval and participation to become effective.

Dated this 15th day, July, 2020.

By: /s/ Timothy C. Woodcock

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the word limit of Fed. R. App. P. 29(a)(5) because this brief contains 3,159 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as determined by the word counting feature of Microsoft Word 2016.

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DATED: July 15, 2020

/s/ Timothy C. Woodcock
Timothy C. Woodcock, Esq.

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I hereby certify that, on July 15, 2020, I electronically the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

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DATED: July 15, 2020

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DATED: July 15, 2020

/s/ Timothy C. Woodcock
Timothy C. Woodcock, Esq.

Maine Forest Products Council

The voice of Maine's forest economy

Companies represented on the MFPC Board

- American Forest Mgmt.
- Baskahegan Co
- BBC Land, LLC
- Columbia Forest Prod.
- Cross Insurance
- Family Forestry
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- Fontaine Inc
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- TD Bank
- Timber Resource Group
- Timberstate G.
- Wadsworth Woodlands
- Wagner Forest Mgt.
- Weyerhauser
- Woodland Pulp

April 14, 2022

EXHIBIT
tabbies
J

Richard Bronson, Town Manager,
Town of Lincoln
29 Main Street
Lincoln, ME 04457

Re: H.R. 6707, "Advancing Equality for Wabanaki Nations Act"

Dear Mr. Bronson:

I am forwarding questions that Representative Bruce Westerman of the House Natural Resources Committee's Subcommittee on Indigenous Peoples of the United States has asked me to answer on behalf of the Maine Forest Products Council with respect to H.R. 6707, "Advancing Equality for Wabanaki Nations Act."

Questions 10 under Topic 5 seeks information on the impact of H.R. 6707 on governmental entities and quasi-governmental entities. Question 11 under Topic 5 seeks additional information on the impact of H.R. 6707 on governmental entities, though it would seem appropriate to include quasi-governmental entities, as well.

The Maine Forest Products Council, of course, is neither a governmental entity nor a quasi-governmental entity. I am aware, however, that you are a member of a group of governmental and quasi-governmental entities which may be affected by changes to the Maine Implementing Act by the Maine Legislature the changes that might arise if H.R. 6707 were enacted into law. I am also aware that Matt Manahan, Esq. represents this group.

I am writing, therefore, to draw your attention to you to Questions 10 and 11 under topic 5 on behalf of the governmental and quasi-governmental entities. In addition, I would draw your attention to all the questions raised by Representative Westerman, I would invite you to do so, but would ask that, in each instance, you specify the question to which you are responding by identifying the topic number and, by number, the sequence of the particular question under that particular topic. In closing, I would note that if you believe that attorney Manahan is in a better position to answer these questions, please forward this letter to him with the request that he respond to them.

Finally, I must submit answers to Representative Westerman's questions by no later than 5:00 p.m. today. I will be submitting the Maine Forest Products Council's responses to the subcommittee by e-mail.

Please let me know if you have any questions.

Sincerely,

Patrick Strauch
Executive Director