

**TESTIMONY OF TIMOTHY C. WOODCOCK ON  
L.D. 2094, “AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE TASK  
FORCE ON CHANGES TO THE MAINE INDIAN CLAIMS IMPLEMENTING ACT”**

**The Judiciary Committee is considering L.D. 2094, “An Act to Implement the Recommendations of the Task Force on Changes to the Maine Indian Claims Implementing Act.” The Maine Implementing Act (“MIA”) and the Maine Indian Claims Settlement Act (“MICA”) were enacted by the Maine Legislature (April of 1980) and the Congress. President Carter signed MICA into law on October 10, 1980.**

**At various points the Task Force Report as well as testimony at the January 14, 2020 Judiciary Committee hearing on the Task Force Report raised questions about Congress’s consideration of and amendments to MICA. In 1980, I was Minority Staff Counsel for the Senate Select Committee on Indian Affairs. I was appointed to the committee by Senator William Cohen, who was Ranking Minority Member on the committee. Senator George Mitchell had only recently been appointed to the Senate. Senator Mitchell worked closely with Senator Cohen, the parties—the State, the Joint Tribal Negotiating Committee and its attorney, Tom Tureen, the landowners, and, representatives of the Department of Interior to consider the settlement legislation, make revisions to it, and, forward it in a timely manner to President Carter. The year 1980 was an Election Year and everyone understood there was no guarantee that President Carter would be reelected.**

**As Minority Staff Counsel, I was deeply involved in the hearings on S. 2829 before the Senate Select Committee on Indian Affairs. I was also deeply involved in post-hearing discussions of problems with the bill as well as revisions that were made to address those problems. As some evidence of my involvement in these matters, I have attached a very**

**thoughtful and gracious letter that Senator Mitchell sent to me on September 30, 1980 acknowledging my involvement in this matter.**

**The Judiciary Committee is familiar with the background to the enactment of the MIA and MICSA. I offer the following points to place the settlement bills in broader context.**

**The legal claims that the Penobscot and Passamaquoddy Tribes had brought implicated land title to as much as two-thirds of the state of Maine. The mere pendency of this litigation threatened to disrupt the most basic transactions and activities in those areas. No one wanted that situation to continue. A joint desire to avoid protected and potentially uncertain litigation led the Tribes and the State to work out their differences. Under the agreements they reached, the Tribes secured their essential goals:**

- 1. The right to purchase up to 300,000 acres of land (150,000 acres for the Penobscot and 150,000 acres for the Passamaquoddy;**
- 2. They obtained the agreement of the federal government to fund those land acquisitions with \$54,500,000;**
- 3. They obtained the agreement of the federal government to pay to establish trust funds of equal size for each tribe of \$13,500,000;**
- 4. They obtained much greater control over the investment of those trust funds than was true of most other Indian tribes; and,**
- 5. They obtained legislation ending for all time longstanding claims by the State of Maine to interfere in internal tribal matters.**

**For its part, the State sought to regain jurisdiction that had been placed in question by the court decisions favoring the Tribes' claims. This was not an easy task because, in**

many western states, the point where state jurisdiction ended and tribal jurisdiction began was unclear resulting in considerable litigation which goes on to this day. They ended up using the model of Maine municipalities—which, as you know, have broad jurisdiction over many areas of policy-making. And they agreed to a broad reestablishment of State jurisdiction with a proviso that the State could not interfere in “internal tribal matters.”

The MIA was introduced to the Legislature and passed in April of 1980. Its effectiveness was contingent on Congress enacting MICSA. S. 2829, the Senate Bill containing MICSA’s terms was introduced on June 13, 1980. A copy S. 2829 is attached.

When the Tribes agreed to the settlement terms, they fully understood and respected the State’s interest in reasserting its jurisdiction. At the Legislature’s hearing on the settlement legislation, Attorney Tureen testified that in the course of negotiations, the Tribes came to “the legitimate interest of the State in having basic laws such as those dealing with the environment apply uniformly throughout Maine.” Legislative Hearing at 25. He added that, as the negotiations continued, “[i]ncreasingly, both sides found areas of mutual interest as, for example, in the general body of federal Indian law which the Tribes came to see as a source of unnecessary interference in the management of Tribal property and the State came to see as a source of uncertainty in future Tribal-State relations. *Id.* In testimony before the Senate Select Committee on Indian Affairs, attorney Tureen expanded on this point saying that the Tribes “were concerned about the problems in the West because of pervasive interference in internal tribal matters.” Hearing on S. 2829 at 182.

When asked about the proposal to define Tribal governmental power by reference to Maine municipalities, he said, by establishing Maine municipal law as the general reference point for tribal governmental powers, MIA and MICSA were creating a unique

tribal-state relationship—one unlike any other in the United States. Attorney Tureen spoke to this point, too, saying “...there was only one kind of relationship the Indians had to the United States, one might be more concerned about the precedential nature of this settlement. The fact is there are a myriad of different kinds of relationships that Indian tribes have with the United States.” *Id.* Speaking further to the range of relationships, he said, “they are all different. They range from terminated tribes to the Alaska Natives to the [P.L. 83-] 280 tribes. He concluded that another “unique” relationship between the United States and the Penobscot and Passamaquoddy Tribes should be problematical.” *Id.* He explained this point further by adding that “it is already the nature of Federal Indian law [that] it is already highly idiosyncratic.” *Id.*

From this testimony, two points emerge: 1) the Tribes, themselves, had concluded that they did not want to become subject to general federal Indian law and, 2) they were not concerned about the use of the Maine municipal model as a reference for their governmental powers.

S. 2829 was amended in committee. Several provisions were revised, including original Section 6(g) which became 6(h) in the bill as reported. Section 16(b) was also added to the bill. These changes were made with the agreement of the parties. They were not added secretly to the bill. Given Senate procedures, there would have been no way to do that.

On September 17, 1980, the amended version of S. 2829 was reported out of the Indian Affairs Committee. The committee issued a report—S. Rept. 96-957. S. 2829 was sent to the House and referred to the House Interior and Insular Affairs Committee which

**replaced it with H.R. 7919. On September 19, 1980, the Interior and Insular Committee issued the amended bill with its report, H. Rept. 96-1353.**

**On September 30, 1980, while serving as President Pro Tempore of the Senate, Senator Mitchell signed H.R. 7919 when it was returned from the House.**

**On October 10, 1980, in a White House ceremony attended by members of the Joint Tribal Negotiating Committee, Tribal leaders, State officials, and, Senator Mitchell, President Carter signed MICSA into law.**

**I hope this background is helpful on the origins and progress of MICSA as it made its way through Congress to President Carter's desk. There is, of course, much more detail about these events and, if members of the Judiciary Committee are interested, I would be willing to offer that additional testimony when the Judiciary Committee is ready.**

**###**

GEORGE J. MITCHELL  
NAME

**United States Senate**

WASHINGTON, D.C. 20510

September 30, 1980

Dear Tim:

Earlier today, while serving as Acting President Pro Tempore of the Senate, I had the privilege of signing H.R. 7919, the "Maine Indian Claims Settlement Act of 1980."

A great deal of the credit belongs to you for the successful negotiation and enactment of this settlement.

I am enclosing, as a memento, one of the pens with which I signed the bill before it was sent to the President.

With best regards.

Sincerely,



George J. Mitchell  
United States Senator

Mr. Tim Woodcock  
Office of Senator William S. Cohen  
United States Senate  
Washington, D.C. 20510



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

## 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Maine Indian Claims  
4 Settlement Act of 1980".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

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

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

8           (2) The Indians, Indian nations, and tribes and  
9       bands of Indians, other than the Passamaquoddy Tribe,  
10      the Penobscot Nation, and the Maliseet Tribe, that  
11      once may have held aboriginal title to lands within the  
12      State of Maine long ago have lost their aboriginal hold-  
13      ings and have ceased to exist.

14          (3) The Penobscot Nation, as represented as of  
15      the time of passage of this Act by the Penobscot Na-  
16      tion's Governor and Council, is the successor in inter-  
17      est to the aboriginal entity generally known as the Pe-  
18      nobscot Nation, which years ago claimed aboriginal  
19      title to certain lands in the State of Maine.

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

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(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.

(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.

1 (b) "Land or other natural resources" means any  
2 real property or other natural resources, or any inter-  
3 est in or right involving any real property or other nat-  
4 ural resources, including but without limitation miner-  
5 als and mineral rights, timber and timber rights, water  
6 and water rights, and hunting and fishing rights.

7 (c) "Land Acquisition Fund" means the Maine  
8 Indian Claims Land Acquisition Fund established  
9 under section 5(c) of this Act.

10 (d) "Laws of the State" means the Constitution,  
11 and all statutes, regulations, and common laws of the  
12 State of Maine and its political subdivisions, and all  
13 subsequent amendments thereto or judicial interpreta-  
14 tions thereof.

15 (e) "Maine Implementing Act" means the "Act to  
16 Implement the Maine Indian Claims Settlement" en-  
17 acted by the State of Maine in chapter of the Pri-  
18 vate and Special Laws of 1979.

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

21 (g) "Passamaquoddy Territory" means those lands  
22 as defined in the Maine Implementing Act.

23 (h) "Passamaquoddy Tribe" means the Passama-  
24 quoddy Indian Tribe, as constituted on March 4, 1789,  
25 and all its predecessors and successors in interest,

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1 which as of the date of passage of this Act, are repre-  
2 sented by the Joint Tribal Council of the Passama-  
3 quoddy Tribe, with separate Councils at the Indian  
4 Township and Pleasant Point Reservations.

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

7 (j) "Penobscot Indian Territory" means those  
8 lands defined in the Maine Implementing Act.

9 (k) "Penobscot Nation" means the Penobscot  
10 Indian Nation as constituted on March 4, 1789, and all  
11 its predecessors and successors in interest, which as of  
12 the date of passage of this Act are represented by the  
13 Penobscot Nation Governor and Council.

14 (l) "Secretary" means the Secretary of the  
15 Interior.

16 (m) "Settlement Fund" means the Maine Indian  
17 Claims Settlement Fund established under section 5(a)  
18 of this Act.

19 (n) "Transfer" includes but is not limited to any  
20 voluntary or involuntary sale, grant, lease, allotment,  
21 partition, or other conveyance; any transaction the pur-  
22 pose of which was to effect a sale, grant, lease, allot-  
23 ment, partition, or conveyance; and any act, event, or  
24 circumstance that resulted in a change in title to, pos-

1 session of, dominion over, or control of land or other  
2 natural resources.

3 APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT  
4 OF INDIAN TITLE AND CLAIMS OF THE PASSAMA-  
5 QUODDY TRIBE, THE PENOBSCOT NATION, THE HOUL-  
6 TON BAND OF MALISEET INDIANS, AND ANY OTHER  
7 INDIANS, INDIAN NATION, OR TRIBE OR BAND OF IN-  
8 DIANS WITHIN THE STATE OF MAINE

9 SEC. 4. (a)(1) Any transfer of land or other natural re-  
10 sources located anywhere within the United States from, by,  
11 or on behalf of the Passamaquoddy Tribe, the Penobscot  
12 Nation, the Houlton Band of Maliseet Indians, or any of their  
13 members, and any transfer of land or other natural resources  
14 located anywhere within the State of Maine, from, by, or on  
15 behalf of any Indian, Indian nation, or tribe or band of Indi-  
16 ans, including but without limitation any transfer pursuant to  
17 any treaty, compact, or statute of any State, shall be deemed  
18 to have been made in accordance with the Constitution and  
19 all laws of the United States, including but without limitation  
20 the Trade and Intercourse Act of 1790, Act of July 22, 1790  
21 (ch. 33, sec. 4, 1 Stat. 137, 138), and all amendments there-  
22 to and all subsequent reenactments and versions thereof, and  
23 Congress hereby does approve and ratify any such transfer  
24 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.



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

#### 15 ESTABLISHMENT OF FUNDS

16 SEC. 5. (a) The Secretary of the Treasury shall estab-  
 17 lish an account in the Treasury of the United States to be  
 18 known as the Maine Indian Claims Settlement Fund and  
 19 shall transfer \$27,000,000 from the general funds of the  
 20 Treasury into such account following the appropriation au-  
 21 thorized by section 13 of this Act.

22 (b)(1) One-half of the principal of the Settlement Fund  
 23 shall be held in trust by the Secretary for the benefit of the  
 24 Passamaquoddy Tribe, and the other half of the Settlement  
 25 Fund shall be held in trust for the benefit of the Penobscot



1 Nation. Each portion of the Settlement Fund shall be in-  
 2 vested and administered by the Secretary in accordance with  
 3 terms established by the Passamaquoddy Tribe or the Penob-  
 4 scot Nation, respectively, and agreed to by the Secretary.  
 5 The Secretary shall accept reasonable terms for investment  
 6 and administration proposed by the Passamaquoddy Tribe or  
 7 the Penobscot Nation within thirty days of the date on which  
 8 he receives the proposed terms, and, until such terms have  
 9 been agreed upon, shall fix the terms for the administration of  
 10 the Settlement Fund. The Passamaquoddy Tribe or the Pe-  
 11 nobscot Nation may obtain judicial review in the United  
 12 States District Court for the District of Maine of any refusal  
 13 by the Secretary to accept reasonable terms put forth by the  
 14 respective tribe or nation, or of any failure of the Secretary  
 15 to administer such funds in accordance with such terms.

16 (2) Under no circumstances shall any part of the princi-  
 17 pal of the Settlement Fund be distributed to either the Passa-  
 18 maquoddy Tribe or the Penobscot Nation, or to any member  
 19 of either tribe or nation: *Provided, however,* That nothing  
 20 herein shall prevent reasonable investment of the principal of  
 21 said Fund by the Secretary.

22 (3) The Secretary, on a quarterly basis, shall make  
 23 available to the Passamaquoddy Tribe and the Penobscot  
 24 Nation, without liability to or on the part of the United  
 25 States, and without any deductions, any income derived from

22 (3) the other half of the balance of the principal of  
23 the Land Acquisition Fund shall be held for the benefit  
24 of the Penobscot Nation.

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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

1 Indian Territory, except takings for public uses consistent  
 2 with the Maine Implementing Act or the laws of the United  
 3 States, or transfers of individual Indian assignments from one  
 4 member of the Passamaquoddy Tribe or Penobscot Nation to  
 5 another member of the same tribe or nation shall be void ab  
 6 initio and without any validity in law or equity unless made  
 7 by or with the consent of the respective tribe or nation and  
 8 with the approval of the Secretary: *Provided, however, That*  
 9 the Secretary and the respective tribe or nation shall have  
 10 authority to approve only transfers of timber and other natu-  
 11 ral resources; leases of land for a term not to exceed fifty  
 12 years; exchanges of land; and transfers of land or other natu-  
 13 ral resources the proceeds of which are reinvested in land  
 14 within two years of the date of the receipt of such proceeds.  
 15 (f) Land acquired and held by the Secretary for the  
 16 benefit of the Passamaquoddy Tribe and the Penobscot  
 17 Nation shall be managed and administered in accordance  
 18 with terms established by the respective tribe or nation and  
 19 agreed to by the Secretary. The Secretary shall accept rea-  
 20 sonable terms for management and administration proposed  
 21 by the Passamaquoddy Tribe or the Penobscot Nation within  
 22 thirty days of the date on which he receives the proposed  
 23 terms, and until such terms have been agreed upon shall fix  
 24 the terms for management and administration of said lands.  
 25 The Passamaquoddy Tribe or the Penobscot Nation may

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1 obtain judicial review in the United States District Court for  
 2 the District of Maine of any refusal of the Secretary to accept  
 3 reasonable terms put forth by the respective tribe or nation,  
 4 or of any failure of the Secretary to administer such lands in  
 5 accordance with such terms.

6 (g) In the event of a taking of land or any interest in  
 7 land owned by or held in trust for the Passamaquoddy Tribe,  
 8 the Penobscot Nation or the Houlton Band of Maliseet Indi-  
 9 ans for public uses pursuant to the laws of the State or the  
 10 laws of the United States, the Secretary shall reinvest the  
 11 money received in other lands for the respective tribe, nation  
 12 or band within two years of the date on which the money is  
 13 received. Any lands so acquired shall be approved by the  
 14 affected tribe, nation, or band, and shall be subject to the  
 15 terms of this Act and the Maine Implementing Act.

#### 16 APPLICATION OF STATE LAWS

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

1 to the civil and criminal jurisdiction of the courts of the State,  
2 to the same extent as any other person or land therein.

3 (b) The Passamaquoddy Tribe, the Penobscot Nation,  
4 their members, and the land owned by or held for the benefit  
5 of the Passamaquoddy Tribe, the Penobscot Nation, and their  
6 members, shall be subject to the jurisdiction of the State of  
7 Maine to the extent and in the manner provided in the Maine  
8 Implementing Act. The Maine Implementing Act is hereby  
9 approved, ratified and confirmed, and the provisions of the  
10 Maine Implementing Act which hereafter become effective,  
11 including any subsequent amendments pursuant to subsection  
12 (d), are incorporated by reference as fully as if set forth  
13 herein. The Maine Implementing Act shall not be subject to  
14 the provisions of section 1919 of title 25 of the United States  
15 Code.

16 (c) The Passamaquoddy Tribe, the Penobscot Nation,  
17 the Houlton Band of Maliseet Indians, and all members  
18 thereof, and all other Indians, Indian nations, or tribes, or  
19 bands of Indians in the State of Maine may sue and be sued  
20 in the courts of the State of Maine and the United States to  
21 the same extent as any other entity or person residing in the  
22 State of Maine may sue and be sued in those courts: *Pro-*  
23 *vided, however,* That the Passamaquoddy Tribe, the Penob-  
24 scot Nation, and their officers and employees shall be  
25 immune from suit to the extent provided in the Maine Imple-

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1 menting Act. In the event that either the Passamaquoddy  
2 Tribe or the Penobscot Nation fails to pay any money judg-  
3 ment entered against it within ninety days after entry of final  
4 judgment, the Secretary shall pay any such money judgment  
5 from that portion of the income of the Settlement Fund held  
6 for the respective tribe or nation. Any person asserting a  
7 money judgment against either the Passamaquoddy Tribe or  
8 the Penobscot Nation may sue the Secretary in the United  
9 States District Court for the District of Maine for any such  
10 amount due.

11 (d) Congress hereby consents to any amendment to the  
12 Maine Implementing Act with respect to either the Passama-  
13 quoddy Tribe or Penobscot Nation provided that such amend-  
14 ment is made with the agreement of such tribe or nation.

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

20 (f) The United States, every State, every territory or  
21 possession of the United States, and every Indian nation and  
22 tribe and band of Indians shall give full faith and credit to the  
23 judicial proceedings of the Passamaquoddy Tribe and the Pe-  
24 nobscot Nation. The Passamaquoddy Tribe and the Penob-  
25 scot Nation shall give full faith and credit to the judicial pro-



1 ceedings of each other and to the judicial proceedings of the  
2 United States, every State, every territory or possession of  
3 the United States, and every recognized Indian nation and  
4 tribe and band of Indians.

5 (g) Except as provided in this Act, the laws of the  
6 United States which relate or accord special status or rights  
7 to Indians, Indian nations, tribes, and bands of Indians,  
8 Indian lands, Indian reservations, Indian country, Indian ter-  
9 ritory, or lands held in trust for Indians, shall not apply  
10 within the State of Maine: *Provided, however,* That the  
11 Passamaquoddy Tribe, the Penobscot Nation, and the Houl-  
12 ton Band of Maliseet Indians shall be eligible to receive all  
13 the financial benefits which the United States provides to In-  
14 dians, Indian nations and tribes or bands of Indians to the  
15 same extent and subject to the same eligibility criteria gener-  
16 ally applicable to other Indians, Indian nations, or tribes or  
17 bands of Indians and for the purposes of determining eligibil-  
18 ity for such financial benefits, the respective tribe, nation,  
19 and band shall be deemed to be federally recognized Indian  
20 tribes: *And provided further,* That the Passamaquoddy Tribe,  
21 the Penobscot Nation, and the Houlton Band of Maliseet In-  
22 dians shall be considered federally recognized Indian tribes  
23 for the purposes of Federal taxation and any lands owned by  
24 or held in trust for the respective tribe, nation, or band shall

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1 be considered Federal Indian reservations for purposes of  
2 Federal taxation.

### 3 IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

4 SEC. 7. (a) The Passamaquoddy Tribe or the Penobscot  
5 Nation may assume exclusive jurisdiction over Indian child  
6 custody proceedings pursuant to section 1901 of title 25,  
7 United States Code. Before the respective tribe or nation  
8 may assume such jurisdiction over Indian child custody pro-  
9 ceedings, the respective tribe or nation shall present to the  
10 Secretary for approval a petition to assume such jurisdiction  
11 and the Secretary shall approve that petition in the manner  
12 prescribed by section 1918(a)-(c) of title 25, United States  
13 Code.

14 (b) Any petition to assume jurisdiction over Indian child  
15 custody proceedings by the Passamaquoddy Tribe or the Pe-  
16 nobscot Nation shall be considered and determined by the  
17 Secretary in accordance with section 1918 (b) and (c) of title  
18 25, United States Code.

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

22 (d) For the purposes of this section, the Passamaquoddy  
23 Indian Reservation and the Penobscot Indian Reservation  
24 shall be deemed to be "reservations" within section 1903(10)  
25 of title 25, United States Code, and the Passamaquoddy

1 Tribe and the Penobscot Nation shall be deemed to be  
2 "Indian tribes" within section 1903(8) of title 25, United  
3 States Code.

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

9 EFFECT OF PAYMENTS TO PASSAMAQUODDY TRIBE,  
10 PENOBSCOT NATION, AND HOULTON BAND OF MALI-  
11 SEET INDIANS

12 SEC. 8. (a) No payments to be made for the benefit of  
13 the Passamaquoddy Tribe, the Penobscot Nation, and the  
14 Houlton Band of Maliseet Indians pursuant to the terms of  
15 this Act shall be considered by any agency or department of  
16 the United States in determining or computing the State of  
17 Maine's eligibility for participation in any financial aid pro-  
18 gram of the United States.

19 (b) The eligibility for or receipt of payments from the  
20 State of Maine by the Passamaquoddy Tribe and the Penob-  
21 scot Nation or any of their members pursuant to the Maine  
22 Implementing Act or any other law of the State of Maine  
23 shall not be considered by any department or agency of the  
24 United States in determining the eligibility of or computing  
25 payments to the Passamaquoddy Tribe or the Penobscot

1 Nation or any of their members under any financial aid pro-  
2 gram of the United States.

3 (c) The availability of funds or distribution of funds pur-  
4 suant to section 5 of this Act may not be considered as  
5 income or resources or otherwise utilized as the basis (1) for  
6 denying any Indian household or member thereof participa-  
7 tion in any federally assisted housing program, (2) for deny-  
8 ing or reducing the Federal financial assistance or other Fed-  
9 eral benefits to which such household or member would oth-  
10 erwise be entitled, or (3) for denying or reducing the Federal  
11 financial assistance or other Federal benefits to which the  
12 Passamaquoddy Tribe or Penobscot Nation would otherwise  
13 be entitled.

#### 14 DEFERRAL OF CAPITAL GAINS

15 SEC. 9. For the purpose of subtitle A of the Internal  
16 Revenue Code of 1954, any transfer by private owners of  
17 land purchased by the Secretary with moneys from the Land  
18 Acquisition Fund shall be deemed to be an involuntary con-  
19 version within the meaning of section 1033 of the Internal  
20 Revenue Code of 1954, as amended.

#### 21 TRANSFER OF TRIBAL TRUST FUNDS HELD BY THE STATE

#### 22 OF MAINE

23 SEC. 10. All funds of either the Passamaquoddy Tribe  
24 or the Penobscot Nation held in trust by the State of Maine  
25 as of the effective date of this Act shall be transferred to the

1 Secretary to be held in trust for the respective tribe or nation  
2 and shall be added to the principal of the Settlement Fund  
3 allocated to that tribe or nation. The delivery of said State  
4 funds to the Secretary shall be accepted in full discharge of  
5 any claim of the respective tribe or nation, its predecessors  
6 and successors in interest, and its members, against the State  
7 of Maine, its officers, employees, agents, and representatives,  
8 arising from the administration or management of said State  
9 funds. Upon receipt of said State funds, the Secretary, on  
10 behalf of the respective tribe and nation, shall execute  
11 general releases of all claims against the State of Maine, its  
12 officers, employees, agents, and representatives arising from  
13 the administration or management of said State funds.

14 OTHER CLAIMS DISCHARGED BY THIS ACT

15 SEC. 11. Except as expressly provided herein, this Act  
16 shall constitute a general discharge and release of all obliga-  
17 tions of the State of Maine and all of its political subdivisions,  
18 agencies, departments, and all of the officers or employees  
19 thereof arising from any treaty or agreement with, or on  
20 behalf of, any Indian, Indian nation, or tribe or band of Indi-  
21 ans or the United States as trustee therefor, including those  
22 actions presently pending in the United States District Court  
23 for the District of Maine captioned United States of America  
24 against State of Maine (Civil Action Nos. 1966-ND and  
25 1969-ND).

## LIMITATION OF ACTIONS

1  
2 SEC. 12. Except as provided in this Act, no provision of  
3 this Act shall be construed to constitute a jurisdictional act,  
4 to confer jurisdiction to sue, nor to grant implied consent to  
5 any Indian, Indian nation or tribe or band of Indians to sue  
6 the United States or any of its officers with respect to the  
7 claims extinguished by the operation of this Act.

## AUTHORIZATION

8  
9 SEC. 13. There is hereby authorized to be appropriated  
10 \$81,500,000 for transfer to the funds established by section 5  
11 of this Act.

## INSEPARABILITY

12  
13 SEC. 14. In the event that any provision of section 4 of  
14 this Act is held invalid, it is the intent of Congress that the  
15 entire Act be invalidated. In the event that any other section  
16 or provision of this Act is held invalid, it is the intent of  
17 Congress that the remaining sections of this Act shall  
18 continue in full force and effect.

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

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

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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.

(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 land-owners, 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 80, and Section 81, 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. 88, Sec. 4, 1 Stat. 187, 188), 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, 1878, 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 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 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. 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 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. 857), 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 6218 of the Main Implementing Act, including stipulations to the final judicial dismissal with prejudice of their claims.

(g) (1) The provisions of Section 2718 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 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 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 1862 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 8477 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 preempts the civil,

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

(1) 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 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 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 applicable within the State of Maine.

## PURPOSE

The purpose of H.R. 7919<sup>1</sup> is to provide Congressional ratification and implementation of a settlement of land claims 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 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

<sup>1</sup> 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 1976, 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 "home rule" 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 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 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 outlaid 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 800,000 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 Non-intercourse 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 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. 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 800,000 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, 188), 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. 847), 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) 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 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 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-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 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 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.*

○

Timothy C. Woodcock  
Bangor, Maine  
LD2094

will also include Senate Rep. 96-957 to follow.