

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Tenth  
Legislature***

OF THE

**STATE OF MAINE**

**SECOND REGULAR SESSION**

**January 6, 1982 to April 13, 1982**

**INDEX**

**FOURTH SPECIAL SESSION**

**April 28, 1982 and April 29, 1982**

**INDEX**

**FIFTH SPECIAL SESSION**

**May 13, 1982**

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**SECOND CONFIRMATION SESSION**

**July 16, 1982**

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An Act to Establish Standard Procedures Enabling the Formation of Municipal Power Districts (H. P. 1959) (L. D. 1932) (H. "A" H-760 to C. "A" H-715)

An Act to Provide for a Comprehensive Career and Occupational Information System (H. P. 2015) (L. D. 1985) (S. "A" S-411)

An Act to Adjust Levels of Compensation for Members of the Legislature and the Senate Secretary and House Clerk (H. P. 2233) (L. D. 2091) (S. "B" S-469 to C. "A" H-746 and H. "A" H-748)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith.

The following papers appearing on Supplement No. 1 were taken up out of order by unanimous consent:

#### Passed to Be Enacted Emergency Measures

An Act to Make Corrections of Errors and Inconsistencies in the Laws of Maine (S. P. 969) (L. D. 2136) (H. "D" H-741 and H. "E" H-744)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 123 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

#### Finally Passed Emergency Measure

RESOLVE, to Establish a Commercial Whitewater Study Commission (S. P. 981) (L. D. 2140) (H. "A" H-755)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken.

Whereupon, Mr. MacEachern of Lincoln requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Jacques.

Mr. JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: Just one thing before we vote. I am kind of surprised to see all the red lights here and I think it is because some people are under the assumption that this is going to cost the taxpayers of the State of Maine some money; that is not correct, that is not what is going to happen. Hopefully, if the money matter is a problem, then the people that are involved in the industry themselves, the ones that have the greatest concerns about what is going on in whitewater rafting, will be coming up with the money to fund this study committee. I think it is very necessary, and I hope those of you who voted against it will reconsider what you did and vote to pass this Resolve so we can come up with something positive on this whitewater rafting.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker, Ladies and Gentlemen of the House: I would like to reiterate what I said the other day, what has caused the problem.

A few years ago, on our rivers there were probably 1,000 or 1,500 people a year going down the rivers with whitewater rafts. At the present time, it is up around 20,000 and it is still growing. It is going to reach a point where we

are going to either have some bad accidents on the rivers or we are going to have to regulate what is happening.

I wish you would vote to pass this study so that we can come up with some regulations at the next session.

The SPEAKER: A roll call has been ordered. The pending question is on final passage. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA—Armstrong, Baker, Beaulieu, Benoit, Bordeaux, Boyce, Brannigan, Brennerman, Brodeur, Brown, A.; Carrier, Carroll, Carter, Chonko, Clark, Conary, Connors, Connolly, Cox, Crowley, Damren, Davies, Davis, Day, Dexter, Diamond, G.W.; Diamond, J.N.; Drinkwater, Dudley, Erwin, Fitzgerald, Foster, Gillis, Gowen, Gwadosky, Hall, Hanson, Hayden, Hickey, Hobbins, Holloway, Ingraham, Jackson, P.C.; Jacques, Joyce, Kane, Kany, Kelleher, Ketover, Kilcoyne, LaPlante, Lisnik, Livesay, Locke, MacBride, MacEachern, Macomber, Mahany, Manning, Martin, H.C.; Masterman, Masterton, Matthews, McColister, McGowan, McSweeney, Michael, Michaud, Mitchell, E.H.; Moholland, Murphy, Nadeau, Nelson, M.; Norton, Paradis, E.; Parady, P.; Paul, Pearson, Perry, Peterson, Pines, Post, Pouliot, Racine, Richard, Ridley, Roberts, Smith, C.B.; Soulas, Stevenson, Strout, Studley, Swazey, Theriault, Thompson, Treadwell, Twitchell, Vose, Walker, Webster, Wentworth, The Speaker.

NAY—Aloupis, Austin, Bell, Brown, D.; Brown, K.L.; Cahill, Callahan, Curtis, Dillenback, Gavett, Higgins, L.M.; Huber, Hunter, Hutchings, Jordan, Kiesman, Lancaster, Lewis, McHenry, McPherson, Nelson, A.; Perkins, Reeves, J.; Salsbury, Sherburne, Small, Smith, C.W.; Stover, Tarbell, Weymouth, Willey.

ABSENT—Berube, Boisvert, Cunningham, Fowle, Higgins, H.C.; Jackson, P.T.; Jalbert, Laverriere, Lund, Martin, A.; Mitchell, J.; O'Rourke, Randall, Reeves, P.; Rolde, Soule, Telow, Tuttle.

Yes, 102; No, 31; Absent, 18.

The SPEAKER: One hundred two having voted in the affirmative and thirty-one in the negative, with eighteen being absent, the Resolve is finally passed.

Signed by the Speaker and sent to the Senate.

By unanimous consent, all preceding matters were ordered sent forthwith to the Senate.

#### Orders of the Day

The Chair laid before the House the first item of Unfinished Business:

COMMUNICATION—Relative to Nomination of Robert Marden to the Commission on Governmental Ethics and Election Practices.

Tabled—April 6 (Until Later Today) by Representative Mitchell of Vassalboro.

Pending—Confirmation (Two-thirds of members present and voting, in accordance with Title 1, Section 1002 of the Maine Revised Statutes Annotated needed)

The SPEAKER: Pursuant to Title 1, Section 1002 of the Maine Revised Statutes Annotated, confirmation of the nominee requires a two-thirds vote of all the members present and voting. All those in favor of confirming the nomination of Robert Marden to the Commission on Governmental Ethics and Election Practices will vote yes; those opposed will vote no.

A vote of the House was taken.

127 voted in the affirmative and none in the negative, the nomination was confirmed.

The Chair laid before the House the second item of Unfinished Business:

HOUSE DIVIDED REPORT—Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (H-732)—Minority (6) "Ought to Pass" as amended by Committee

Amendment "B" (H-733)—Committee on Taxation on Bill, "An Act Providing for Administrative Changes in the Maine Tax Laws" (H. P. 1746) (L. D. 1735)

Tabled—April 6 (Until Later Today) by Representative Mitchell of Vassalboro.

Pending—Acceptance of either Report.

On motion of Mrs. Mitchell of Vassalboro, retable pending acceptance of either Report and later today assigned.

The Chair laid before the House the third item of Unfinished Business:

An Act to Amend the Maine Implementing Act with Respect to the Houlton Band of Maliseet Indians (S. P. 931) (L. D. 2076) (C. "A" S-463)

Tabled—April 6 (Until Later Today) by Representative Hobbins of Saco.

Pending—Passage to be Enacted.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: Today, I got a document from Jon Hull, who was in the Legislative Assistants Office, and he raised some questions in regard to this bill. For you people who might not know who Jon Hull is, he was working for the legislative staff when we were dealing with the Indian Lands Claim case, and when the federal act was passed in regards to that issue that raised a great deal of attention across the state, the act that was finally passed in Washington, we in this House and in this state can take pride in the fact that Representative Post and Senator Collins and Mr. Hull, through their expertise in this particular matter, probably did more to assist the federal people in Washington in drafting the document that we know today as the Indian Land Claim case. They are our in-house experts in this state. I am certainly proud to know the three of them and their capabilities, but Mr. Hull raised some questions in regards to this particular document that we have for enactment, and I would like to share them with you.

He says the first problem with this bill is that it does not formally and expressly set forth the consent of the Maliseets to this bill, and I would like to know from the committee that drafted this bill and presented it to us, what does it mean? I have a series of questions I want to ask and this is just one of them.

He further says, "this consent is required under the federal act, Section 6 (e) (2), and should be included in the bill." My question is, why isn't it?

"The consent of the Penobscot's and the Passamaquoddy's is not formally required as the bill does not apply to the provisions relating to their jurisdiction under the federal act, Sec. 6 (e) (1)."

He raises another problem with this particular document concerning the drafting. Under Sec. 1 30 MRSA 6203, subsection 2-A, he says this section enacts a definition of the Houlton Band trust land. It includes the phrase "land or other natural resources" in identifying what may be acquired.

"In the Maine Implementing Act, that phrase includes hunting and fishing rights. This may present a possible problem of misinterpretation, as the bill does not include any grant of power over hunting and fishing other than obtained by any private owner of land." I would like to know what that means.

Under Sec. 2 30 MRSA, subsection 1. "This subsection provides for the acquisition of land by the Maliseets. Unlike the Implementing Act in regard to the Penobscot and Passamaquoddy land, and despite the federal act's requirement, there is no identification of the general location of the Maliseet lands." I would like to know what that means.

Subsection 2. "This provision allows for condemnation proceedings against Maliseet lands. It provides that the federal government shall be a party, and that the federal courts may ex-

exercise jurisdiction. Though such a provision in relation to Penobscot and Passamaquoddy land is not provided in the Maine Act, it is in the federal act.

"However, there is no requirement for re-investment in new land within 2 years, as there is for Penobscot or Passamaquoddy land under Me. Act 6205 (3) (B)."

Subsection 3. "This provision provides that any attempted transfer of Houlton Band land is 'void ab initio' rather than merely voidable. This means that legally such a transfer is considered never to have taken place, rather than being only vulnerable to subsequent legal attack."

The next two sections probably bother me more than anything. This section states that the Houlton Band does have the "governmental status of the Penobscot or Passamaquoddy tribes." What does that mean? However, the last phrase of this section suggest that "future legislation may change their status." What does that mean? "This section is unnecessary," he says, "as the Maine Implementing Act provides in several places that the Houlton Band has no such status." I really don't know what that means, whether they belong here in the United States or not. The specific reference in 6206, 6207, 6209, and 6910, which are all limited to the Penobscot and Passamaquoddy, why not the Maliseets? At the very least, it concludes, the ending phrase beginning with "prior" is unnecessary and subject to an implication that may be misconstrued.

In Section 4. "This section provides for payment in lieu of taxes. However, it does not include 'personal property' but is limited to real property. That is not consistent with the provisions applying to the Penobscot and Passamaquoddy. They pay on all real and personal property within their respective Indian territory"—and here is where I think the Judiciary Committee, after their work on this bill, should have referred it, when it came out, to the Committee on Taxation, because this is an important section of the bill and in my humble opinion, that should have been clarified by Mrs. Post and her committee. As I said before, she and Senator Collins and Mr. Hull were particularly important to the Indian Land Claim Legislation that was drafted in the federal Congress and they were down there on five separate occasions, not to just see the Washington Monument, by the way, but to assist the federal government in dealing with the historic Land Claim Case that came to us here in Maine.

Section 7. "This provision establishes a fund that will satisfy obligations unmet by the Maliseets. This fund has a maximum of \$100,000 and a minimum of \$25,000. Presumably, if the fund drops to the minimum, it will have to be rebuilt by interest from that minimum. If it exceeds the maximum, this excess will be distributed to the Maliseets," whatever that means.

"Unlike the federal act provisions for the Penobscot and Passamaquoddy, this fund is not available to private judgment creditors (Sec. 6 (d) (2)). It is only available for claims based on failure to pay taxes, or payments in lieu of taxes. The federal act also uses the phrase 'valid final orders of a Federal, State or territorial court,' rather than the phrase in the bill," I wonder why.

Section 8. "This provision sets out the conditions for effectiveness of this Act. It requires in subsection 2 that Houlton Band agree to this Act as it is finally enacted. It would seem that this condition raises serious questions and is probably unnecessary."

He concludes, "Finally, I have not seen the accompanying federal legislation." That means that nobody else has as well, but this legislation should be reviewed prior to enactment of this Act.

Just dealing with the tax questions, I certainly do not have the answers, but there are members on the Taxation Committee who were here when we passed the famous act of a few years

ago, and I certainly can commend the efforts of the Judiciary Committee but I am somewhat surprised why the section dealing with taxes and taxation wasn't then referred to the Committee on Taxation. I am sure that Mr. Hobbins and others will attempt to honestly answer the questions and I wait with great interest.

The SPEAKER: The gentleman from Bangor, Mr. Kelleher, has posed a series of questions through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, Men and Women of the House: I am glad there was no roll call called on this matter because this could take a few minutes to explain.

First of all, let me also commend the good gentledady from Owl's Head, Mrs. Post, Jon Hull and others who went to Washington on many occasions and worked on the Indian Land Claims case. As you know it was a monumental effort. We passed this legislation and it has, in fact, been implemented with respect to the Penobscot and Passamaquoddyes.

Let me give you a little brief background before I address the good gentleman's questions point by point.

This legislation represents the tying up of one of the last significant loose ends of the enormously complicated settlement of the Maine Indian Claims litigation. You may recall that when Congress enacted legislation to settle the Indian Land Claims Case, it extended federal recognition to the Houlton Band of Maliseet Indians and also established a \$900,000 trust fund for the Band. That trust fund is administered by the United States Secretary of Interior and is to be used to purchase land for the Houlton Band of Maliseet Indians. Congress provided, however, that the secretary would not purchase any land for the Houlton Band of Maliseet Indians until the Maine Legislature enacted legislation addressing the following issues:

1. Imposing restrictions against alienation or taxation of land to be purchased by the Secretary for the Houlton Band of Maliseet Indians;

2. Provisions limiting the power of the state of Maine to condemn such lands;

3. Providing for the making of payments in lieu of taxes on land acquired in trust by the secretary for the Houlton Band of Maliseet Indians;

4. Providing for the payment of all other taxes by the Houlton Band of Maliseet Indians;

5. Providing for the establishment of a fund to assure the payment of obligations incurred by the Houlton Band of Maliseet Indians;

6. Providing a mechanism whereby the Secretary of Interior can determine which lands in Maine are eligible to purchase.

L. D. 2076 addresses all of these matters.

First, the Bill authorizes the secretary of interior to purchase lands without any additional approval in the unorganized territory of the state. It provides further that land which lies within the boundaries or a municipality may not be purchased without the prior approval of the legislative body of that municipality. That is very important.

The Secretary of Interior is required to file with the Maine Secretary of State certified copies of deeds, or other legal documents, describing the boundaries and location of every parcel of land which he buys for the Houlton Band of Maliseet Indians.

The Secretary of Interior may not purchase any land for the Houlton Band of Maliseet Indians until he establishes a trust fund to guarantee the payment of taxes and other obligations owed to Maine governmental entities (including towns, counties, school districts) by the Houlton Band of Maliseet Indians. This provision will assure a fund out of which payments in lieu of taxes and other governmental obligations can be paid. This is necessary, in our

view, because no effective lien for nonpayment of taxes can be imposed on the land which the secretary will purchase in trust for the Houlton Band of Maliseet Indians.

This bill provides that the Houlton Band or Maliseet Indians will make payments in lieu of taxes on the land which is purchased for them by the secretary of interior. On all other property which they own or which is held in trust for them, the Houlton Band of Maliseet Indians will pay real and personal taxes.

In addition, the bill provides that all other taxes and fees shall apply to the Houlton Band, including income taxes, sales taxes, and excise taxes. The bill further provides that land or natural resources acquired by the secretary of interior for the Houlton Band or Maliseet Indians may be condemned by the State of Maine to the same extent that privately-owned land may be condemned. Such land may also be condemned for public purposes by the United States government. In other respects, such land shall be, for the most part, inalienable.

The act provides that the Houlton Band of Maliseet Indians shall not exercise any governmental powers in the State of Maine. This means that the Houlton Band cannot establish its own court system. It cannot regulate hunting and fishing. It is not considered to be a municipal government for purposes of tax exemption. In other words, although the Band is a federally-recognized tribe, it cannot exercise governmental powers. Furthermore, there is no requirement or implied commitment that the Maine Legislature adopt a measure giving them such power in the future.

That gives you a little background on what we are dealing with. Unfortunately, it is taking a little time but this is a very important issue. It is one which, hopefully, will tie up the last aspect of this whole matter which, as you know, emotionally divided this state and which came to a logical conclusion with the settlement of the Indian Land Claims case.

I have a memo from Thomas Tureen, who, as you know, represents the Maliseet Indians and Andre Janelle, who is an Assistant Attorney General who drafted this legislation and was involved with the negotiations between the Maliseet Indians and the State of Maine. Before I go into the memo, it should be noted that the document before you is a result of negotiation. It is what was negotiated in good faith by the State of Maine and the Houlton Band of Maliseet Indians.

If you will bear with me, I will address in the memo the concerns which were raised by the good gentleman from Bangor, Mr. Kelleher, in relationship to a memo which he addressed.

(1) It is suggested that Sec. 5 (e) (2) of the Maine Indian Claims Settlement Act of 1980 requires that the formal and express consent of the Houlton Band of Maliseet Indians be set forth in L. D. 2076. Sec. 6 (e) (2), however, deals with future modifications of the jurisdictional relationship between the State of Maine and the Houlton Band. The current legislation does not deal with jurisdiction and thus Sec. 6 (e) (2) does not apply. The relevant provision in Sec. 5 (d) (4) of the Settlement Act only requires that the State and the Houlton Band reach agreement on the issues dealt with in L. D. 2076, and merely provides that this agreement be embodied in legislation passed by the State. There is no explicit requirement that the legislation set forth Houlton Band consent. This consent, of course, has already been obtained from the Houlton Band.

(2) It is suggested that the inclusion of "hunting and fishing rights" as property interests, which can be acquired by the Houlton Band of Maliseet Indians might give rise to "misinterpretation." The apparent suggestion is that if the Houlton Band were to acquire private hunting or fishing rights, that such rights would not be regulated by state law. This, however, is not the case in addressing this document. L. D. 2076 only provides for acquisition of property

rights. Any property rights acquired pursuant to this legislation are subject to regulation by the State of Maine.

(3) It is suggested that L. D. 2076 must specify the "general location" of the future Maliseet Indians. The L. D. deals with this question by indicating that the Houlton Band may acquire trust land anywhere within the State of Maine, providing the legislative body of any organized area give its prior consent to acquisition of land within any such organized area. Sec. 5(d) (4) (D) of the federal act merely requires that the agreement between the Houlton Band and the State of Maine make "provisions on the location of" lands to be acquired in trust for the Houlton Band. There is no requirement that the agreement between the Houlton Band and the state specify location. The taxation issue was addressed by the Band and the state and the provision which appears in L. D. 2076 is the product of those negotiations.

The memo also notes that there is no requirement in L. D. 2076 for the reinvestment of the proceeds of any condemnation of Houlton Band trust land and new lands within two years. This provision works to the mutual advantage of the Houlton Band and the State of Maine. It benefits the State of Maine in that it leaves open the possibility that additional Indian land will not be acquired. It benefits the Houlton Band in that it provides more flexibility concerning the use of Band funds.

The memorandum implies that the state is giving away something by agreeing that unauthorized transfers of Houlton Band trust land will be "void ab initio." Sec. 5 (d) (4) of the federal act requires that Houlton Band trust lands have this degree of protection.

The question is raised concerning the statement in Section 3 of L. D. 2076 that the Houlton Band should not exercise governmental powers absent subsequent legislation specifically authorizing the exercise of such powers. This provision is consistent with Sec. 6 (e) (2) of the Maine Indian Settlement Act which provides for future alteration of the jurisdiction of the State of Maine over lands held in trust for the Houlton Band.

It is suggested that the absence of a reference to "personal property" in Sec. 4 is inconsistent with the language in Sec. 6208 (2) of the Maine Implementing Act concerning the Passamaquoddy Tribe and the Penobscot Nation. The Implementing Act provides that real and personal property within Indian territory shall be subject to payments in lieu of taxes. The implication is that real and personal property within Indian territory is not subject to direct taxation. The second sentence of the present section 6208 (2) provides that "any other real or personal property owned by or held in trust for any Indian, Indian Nation or Tribe or Band of Indians and not within Indian territory" is subject to levy and collection of real and personal property taxes. Since Houlton Band trust lands will not be a part of "Indian territory," real property within this Houlton Band trust land will be subject to property taxation.

The memorandum which was addressed to you correctly notes that the trust fund established pursuant to Sec. 7 of L. D. 2076 is not available for satisfaction of private judgment creditors. This provision was the result of negotiation, and it is the Governor's position that since the state did not require private corporations to provide trust funds for the satisfaction of private debts, it should not require the Houlton Band to do so.

It is suggested that §2 of Sec. 8 of L.D. 2076 requires the subsequent approval of the Houlton Band to the agreement embodied in the bill. This is not correct. The approvals referred to in Sec. 2 of Sec. 8 relate to any potential future modification of the Maine Implementing Act.

The federal legislation to effectuate the provisions of Sec. 8 of L.D. 2076 have not been drafted. Sec. 1 of Sec. 8 provides, however, that L.D. 2076 will not become effective unless Con-

gress ratifies the Act without modification.

I respect individuals such as Representative Kelleher or anyone else in this body to question a document of this nature because of the effects it could have.

The Judiciary Committee has gone over this document, it has been looked at very closely, and as I mentioned before, it is basically a negotiation between two parties and it is presented here for our acceptance or rejection. It is my hope that we can act upon this matter favorably today. The concerns which were raised, and cogent concerns which were raised by an individual I have great respect for, I think have been addressed and I know have been addressed in that memorandum which I have just shared with you.

I appreciate all of your concerns, but I can assure you that I would not stand here before you and present a document, make a presentation, unless I didn't think in my gut that it was the best thing for the State of Maine. I urge passage this morning.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker and Members of the House: Thank you, Mr. Hobbins, for your remarks.

I have a question I would like to pose through the Chair to the Taxation Committee, and primarily to the gentlelady that Chairs that committee.

Had the Judiciary Committee referred this document to your committee the sole consideration of dealing with the tax questions involved, would your committee be making any different recommendations to this House and, if so, if they were to be different, what would they have been?

The SPEAKER: The gentleman from Bangor, Mr. Kelleher, has posed a question through the Chair to anyone on the Taxation Committee or anyone who may respond if they so desire.

The Chair recognizes the gentleman from Portland, Mr. Brenerman.

Mr. BRENERMAN: Mr. Speaker and Members of the House: I would like to pose a question through the Chair to anyone who might answer and possibly Representative Post might be able to answer it and I thought she could answer both my question and Representative Kelleher's at the same time.

This bill provides that the Houlton Band of Maliseet Indians should make payment in lieu of property taxes on land which is purchased in trust for them by the Secretary of the Interior of the United States. I was wondering, considering the Constitutional Amendment that we passed several years ago which says that any new property tax exemptions passed by the legislature requires a 50 percent reimbursement by the state, whether the state has to reimburse municipalities for the property tax revenue loss suffered by that municipality if the land is bought by the Secretary of the Interior in trust for the Maliseet Indians?

The SPEAKER: The gentleman from Portland, Mr. Brenerman, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentlewoman from Owl's Head, Mrs. Post.

Mrs. POST: Mr. Speaker and Members of the House: I will answer the question for which I am better prepared first.

By its terms, this constitutional provision that was related to earlier requires the legislature to reimburse municipalities for lost property taxes which are enacted by the Maine Legislature after April 1, 1978. L.D. 2076 does not trigger this reimbursement provision in the Constitution. I would like to give you some of the reasons for that in an expedited opinion that was given to us by the Attorney General's Office.

First, it is the United States Congress, not the Maine Legislature, which has ordered that

land purchased by the Secretary of Interior in trust for the Houlton Band of Maliseet Indians be subject to payments in lieu of property taxes. Congress, at 25 U.S.C. § 1724(d) (4), requires the Maine Legislature to enact "provisions providing restrictions against alienation or taxation of lands or natural resources held in trust for the Houlton Band no less restrictive than those provided (by Congress) in the Maine Implementing Act for land or natural resources to be held in trust for the Passamaquoddy Tribe or Penobscot Nation." In addition, Congress has stated that land purchased for the Houlton Band by the Secretary of Interior shall be subject to "payments by the Houlton Band in lieu of payment of property taxes on land or natural resources held in trust for the Band."

Accordingly, since it is Congress, not the Maine Legislature, that has fixed the "tax" status of land for the Houlton Band of Maliseet Indians, it is clear that the Maine Legislature has no reimbursement liability under the Maine Constitution.

Second, L.D. 2076 specifies that the Secretary of Interior may not purchase any land lying within the boundaries of a municipality unless he secures the approval of the Legislative body of that municipality. Thus, it is the town, ultimately, and not the Legislature which decides whether it will receive property taxes or payments in lieu of taxes from the Houlton Band of Maliseet Indians. Again, the decision is being made at the local level and not at the state legislative level.

Third, the assessment of payments in lieu of property taxes is made against the property purchased in trust by the Secretary of Interior for the Houlton Band of Maliseet Indians. Since the assessment of the payment, like the assessment of property taxes, falls on the property itself, the Legislature has no duty to reimburse municipalities. The payments to be made by the Houlton Band will be equal to the property tax payments they would otherwise have to make.

In light of the foregoing, there appears to be no basis upon which municipalities who authorize the Secretary of Interior to purchase land for the Maliseet Indians can claim any type of reimbursement under Article IV, Part 3, Section 23 of the Maine Constitution.

To answer Representative Kelleher's question, which is not an easy one, as Representative Hobbins mentioned, the bill before us is a negotiated settlement and it is always difficult when this Maine Legislature has to deal with a settlement which has been negotiated amongst other parties, in this instance at least three other parties, that is presented to us for ratification because we have to make the difficult decision to either make changes in that settlement which all parties may agree to or to turn the settlement itself down.

I had raised some concerns on some taxation issues to some of the individuals involved in the Attorney General's Office concerning the payments in lieu and what type of property in the future may be subject to either property taxation or payment in lieu of taxes. One issue that had some concern for me which I think maybe does need some clarification on the record is that when land or other natural resources is purchased in trust, that, in some instances, will include real estate or buildings. When that is purchased in trust, both land and the buildings will be subject not to property taxation but payments in lieu of taxes.

Personal property which is placed on that land or, in fact, major renovations to building at a future time be subject to taxation, not payment in lieu of taxes, I think this may cause some problems for assessors in the future if, in fact, there is default on taxes, as you may try to treat those buildings, that real estate that has made major renovations or additions as to what sections or what valuation you go, to the trust account which has been set up and what sections you take other actions under the law.

I guess all I can say in answer to the gentleman's questions, as we did when the implementing legislation for the Passamaquoddis and the Penobscots were referred to this legislature, there were some changes made on which there was agreement by our parties. Had I had my choice, I might have tried to do that in this instance. I think the issues have at least been clarified by what is on the Legislative Record by statements that I read in terms of reimbursement of property taxation and some of the statements that Representative Hobbins has made.

It is clearer, perhaps, if it is in the bill itself, and I have my particular concerns over any implications that this legislature has made any commitment or has any responsibility in the future to give the Maliseets municipal powers because that is simply not true and I think it needs to be said again and maybe say it again later, that this legislature, by enacting this legislation, is making no commitment whatsoever and is binding no future legislature in any way to give the Maliseet municipal powers. The legislature is always free to do that but it has no moral commitment to do that in the future.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I appreciate, as I am sure the House does, the answer given by Representative Post on this historic document and, ladies and gentlemen, this certainly is one for us to be considering here today. I appreciate the cautiousness in the way the gentlelady answered the questions knowing full well that if there were any legal implications raised that the lawyers representing the Indian tribes may not misinterpret it or those representing the state of Maine could not misinterpret it and I can appreciate the caution that she was giving to us in the House on suggesting any amendment in clarifying this particular document.

However, I honestly think there should be clarification on this matter and it should be done in the Taxation Committee. I think if we want to attempt to be consistent with our actions, as we did in the other settlement case, that this be referred to the Committee on Taxation for that clarification and there will be no misimplications or attempts by amendments presented on the floor of this House because of the magnitude of this document; I know the lateness of the hour and we should not act with any haste or speed in passing this document without those clarifications.

Mr. Speaker, I move this bill be recommitted to the Committee on Taxation.

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I would like to reiterate and support the comments that the Chairwoman of the Taxation Committee made, although there may be some questions raised by this legislation, that the clarifications that we give on the floor here today can sufficiently answer them. I don't think it is necessary for this bill to be recommitted to the Taxation Committee so long as we have made clear, as we have, what our intentions are with this bill, and I think we have done that already.

In addition to that, I would like to further clarify what our legislative intent, as I understand it, should be if we vote on this bill here today with respect to the section that both Representative Post and Representative Hobbins have referred to, which is Section 3 of Act, referring to the powers of the Houlton Band of the Maliseet Indians. Not only does this refer to the powers or the privileges and immunities of municipalities but also to the exercise of civil or criminal jurisdiction within their lands, and in each case, it is conceivable that an implication or the suggestion of an implication could arise that this legislature may have meant to give some type of commitment for this legislature or some future legislature to take any

action whatsoever in granting authorities not only of municipalities but also the authority of criminal or civil jurisdiction of the lands within the territory and authority of the Houlton Band of the Maliseet Indians. I think we should make clear that it is our legislative intent that we do not intend this legislature or any future legislature to have any commitment whatsoever to take any action or even consider taking any action, not only with regard to municipal powers, privileges and immunities but also with regard to the criminal or civil jurisdiction of the Houlton Band to the territories referred to in this bill.

I think with those clarifications, the legislative intent here is clear and that the questions that are unstandable and important questions that have been raised are sufficiently answered, and it won't be necessary for this bill to be recommitted to the Taxation Committee, the Judiciary Committee or any other committee in this body.

The SPEAKER: The Chair recognizes the gentleman from East Millinocket, Mr. Michaud.

Mr. MICHAUD: Mr. Speaker, Ladies and Gentlemen of the House: You have on your desks an amendment to the bill which takes care of one of my greatest concerns with the bill, and that is the implementation that the state will have to negotiate in the future.

I have a letter from the Attorney General's Office which I would like to read into the record. It says: "Dear Representative Michaud: I am writing to address the concerns you expressed regarding the language of Section 2 in L. D. 2076. The language of Section 3 expressly provides the Houlton Band of Maliseet Indians cannot exercise any governmental powers over the land which they own or which is held in trust for them. The language is susceptible to no other interpretation. The language also reserves the right for future legislatures to confer governmental powers on the Houlton Band of Maliseet Indians. The language does not, however, obligate this legislature or any future legislature to confer such governmental powers on the Houlton Band of Maliseet Indians.

"To state it differently, this legislation or future legislatures have no legal or no moral obligations to confer governmental powers on the Houlton Band of Maliseet Indians. There is nothing in the language of Section 3, nor can it be implied, that requirement of the legislature to confer governmental powers on the Houlton Band of Maliseet Indians. This point cannot be emphasized enough. L. D. 2076 represents the sum total of the legislature's commitment to the Houlton Band of Maliseet Indians. There are other agreements, there are no promises of future action by the Maine Legislature or by the Governor."

Mr. Speaker, may I pose a question though the Chair?

The SPEAKER: The gentleman may pose his question.

Mr. MICHAUD: If we enact this piece of legislation, in the future if we decide to change it, what is the process of amending? Can the legislature amend this once it is enacted by the state and federal government?

The SPEAKER: The gentleman from East Millinocket, Mr. Michaud, has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker, Ladies and Gentlemen of the House: I really don't know if this is the answer you are looking for, but if the federal government passes laws on this particular issue, you will not be able in the legislature over here to put anything less than what they have in the federal legislation.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, Men and

Women of the House: In order to address the concerns and possibly expedite the issue, I would make a suggestion that the Taxation Committee and the Judiciary Committee could meet and address the concerns raised by the good gentleman from Bangor, Mr. Kelleher, without having to formally recommit the bill to committee. I would suggest that possibly someone could table this until later in today's session so we can get together, those particular individuals involved, and try to address the concerns in order to determine whether or not this legislation should be amended or whether or not what has been placed in the record is enough to cover any possible problems in the future concerning legislation interpretation or interpretation of the intent.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I think the remarks that have been made by the gentleman from Saco we should listen to in terms of tabling this bill. He has clearly indicted more than once today that he wants to be sure the record is clear and, believe me, we all want it to be clear. His asking to table this to try to satisfy this House and the other body in its action on this document, I think we should at least accept the tabling motion to be made simply to allow the Taxation Committee and the Judiciary Committee to clear it up. He has some problems, I have some problems, we know the AG's office has problems, they don't want any amendments put on up here at all, in case they fail, for future implications. So I would suggest that someone move to table this to see if we can clarify the issues for everybody.

On motion of Mr. Hobbins of Saco, tabled pending the motion of the gentleman from Bangor, Mr. Kelleher, that this bill be recommitted to the Committee on Taxation and later today assigned.

The Chair laid before the House the first tabled and today assigned matter:

An Act to Require the Maine Guarantee Authority in Certain Instances to Repay the State for Money Borrowed on its Behalf by the State (Emergency) (H. P. 2261) (L. D. 2107)

Tabled—April 6 by Representative Carter of Winslow.

Pending—Passage to be Enacted. (Roll Call Requested)

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, I move suspension of the rules for the purpose of reconsideration.

The SPEAKER: The gentleman from Bangor, Mr. Diamond, moves the rules be suspended for the purpose of reconsideration. Is their objection.

Mr. Carter of Winslow objected.

The SPEAKER: There is objection.

In order for the Chair to suspend the rules, it requires a two-thirds vote of all the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

47 having voted in the affirmative and 22 in the negative, the rules were suspended.

On motion of Mr. Diamond of Bangor, the House reconsidered its action where by the Bill was passed to be engrossed.

The same gentleman offered House Amendment "A" moved its adoption.

House Amendment "A" (H-765) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, Ladies and Gentlemen of the House: The amendment that I am presenting is an attempt to conform this particular piece of legislation dealing with the Maine Guarantee Authority to a section of the errors bill which we passed earlier today. There was some conflict in the language and it