

ADVANCING EQUALITY FOR WABANAKI NATIONS ACT

DECEMBER 7, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 6707]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6707) to amend the Maine Indian Claims Settlement Act of 1980 to advance equality for Wabanaki nations, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Advancing Equality for Wabanaki Nations Act”.

**SEC. 2. APPLICATION OF CERTAIN LAWS.**

(a) APPLICATION OF STATE LAWS.—The Maine Indian Claims Settlement Act of 1980 (Public Law 96-420) is amended—

(1) in section 3—

(A) in subsection (m), by striking “and” at the end;

(B) in subsection (n), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

“(o) ‘Mi’kmaq Nation’ means the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest, and which is represented, as of the date of enactment of this subsection, as to lands within the United States, by the Mi’kmaq Council.”; and

(2) in section 6—

(A) in subsection (a), by striking “provided in section 8(e) and section 5(d)(4)” and inserting “otherwise provided in this Act”; and

- (B) in subsection (h)—
- (i) by striking “Except as other wise provided in this Act, the” and inserting “The”;
  - (ii) by inserting “or enacted for the benefit of” before “Indians, Indian nations” the second place it appears;
  - (iii) by inserting “that is in effect as of the date of the enactment of the Advancing Equality for Wabanaki Nations Act, (2)” after “United States (1)”;
  - (iv) by striking “also (2)” and inserting “also (3)”; and
  - (v) by inserting “, unless Federal law or the State laws of Maine provide for the application of such Federal law or regulation” before the period at the end.
- (b) IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.—Section 8 of the Maine Indian Claims Settlement Act of 1980 (Public Law 96–420) is amended—
- (1) in subsection (a)—
    - (A) by striking “or” after “Passamaquoddy Tribe” and inserting a comma;
    - (B) by inserting “, the Houlton Band of Maliseet Indians, or the Mi’kmaq Nation” after “Penobscot Nation”; and
    - (C) in the second sentence, by striking “respective tribe or nation” each place it appears and inserting “respective tribe, nation, or band”;
  - (2) in subsection (b)—
    - (A) by striking “or” after “Passamaquoddy Tribe” and inserting a comma; and
    - (B) by inserting “, the Houlton Band of Maliseet Indians, or the Mi’kmaq Nation” after “Penobscot Nation”;
  - (3) by striking subsection (e);
  - (4) by redesignating subsection (f) as subsection (e); and
  - (5) in subsection (e), as so redesignated—
    - (A) by striking “or” after “Passamaquoddy Tribe” and inserting a comma;
    - (B) by inserting “, the Houlton Band of Maliseet Indians, or the Mi’kmaq Nation” after “Penobscot Nation”; and
    - (C) by striking “or nation” and inserting “, nation, or band”.
- (c) CONSTRUCTION.—Section 16 of the Maine Indian Claims Settlement Act of 1980 (Public Law 96–420) is amended—
- (1) by striking “(a)” at the beginning; and
  - (2) by striking subsection (b).
- (d) AMENDMENT TO THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT.—The Aroostook Band of Micmacs Settlement Act (Public Law 102–171) is amended by striking section 8.

#### PURPOSE OF THE BILL

The purpose of H.R. 6707 is to amend the Maine Indian Claims Settlement Act of 1980 to advance equality for Wabanaki nations.

#### BACKGROUND AND NEED FOR LEGISLATION

Enacted in 1980, the Maine Indian Claims Settlement Act (MICSA) extinguished the legal claims of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians to their historic lands in Maine in exchange for funds to allow the tribes to purchase lands, provide general revenue, and establish old-age pensions for their members. In addition, MICSA ratified the state-level Maine Implementing Act, which extended state civil and criminal jurisdiction over each of the tribes.

Notably, Section 6(h) of MICSA blocked any federal law previously enacted for the benefit of tribes from applying to Maine if the law would affect state jurisdiction, with limited exceptions. Section 16(b) of MICSA similarly restrained the application of future federal Indian laws in Maine, unless the law specified that it would apply to Maine. This exclusion is unique to the Wabanaki—no other federally-recognized tribes are subject to such a sweeping exclusion from federal Indian laws. In addition to other critical laws, MICSA has prevented the application of the Violence Against

Women Act, the Indian Health Care Improvement Act, and the Stafford Act to the Wabanaki tribes. Removing this unique exclusion would have significant economic and social benefits for the Wabanaki nations. As concluded by a recent report by the Harvard Project on American Indian Economic Development, the current restriction has the “consequence of handcuffing Wabanaki self-government[, which] is today visible in the stark economic under-performance of all four of the tribes” compared to other tribes.<sup>1</sup>

H.R. 6707 will begin to address this inequity by allowing the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Mi'kmaq Nation—known collectively as the Wabanaki tribes—to benefit from future enacted federal Indian laws.

#### COMMITTEE ACTION

H.R. 6707 was introduced on February 11, 2022, by Representative Jared F. Golden (D–ME). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee for Indigenous Peoples of the United States. On March 31, 2022, the Subcommittee held a hearing on the bill. On June 15, 2022, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Chair Raúl M. Grijalva (D–AZ) offered an amendment in the nature of a substitute. Rep. Jay Obernolte (R–CA) offered an amendment designated Obernolte #1 to the amendment in the nature of a substitute. The amendment was not agreed to by voice vote. Rep. Obernolte offered an amendment designated Obernolte #2 to the amendment in the nature of a substitute. The amendment was not agreed to by a roll call vote of 18 yeas and 24 nays, as follows:

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<sup>1</sup>HARV. PROJECT ON AM. INDIAN ECON. DEV., JOSEPH P. KALT, AMY BESAW MEDFORD & JONATHAN B. TAYLOR, ECONOMIC AND SOCIAL IMPACTS OF RESTRICTIONS ON THE APPLICABILITY OF FEDERAL INDIAN POLICIES TO THE WABANAKI NATIONS IN MAINE 54 (2022), [https://ash.harvard.edu/sites/hwpi.harvard.edu/files/ash/files/wabanaki\\_report\\_vfin\\_for\\_dist\\_2022-12-02.pdf](https://ash.harvard.edu/sites/hwpi.harvard.edu/files/ash/files/wabanaki_report_vfin_for_dist_2022-12-02.pdf).

Date: June 15, 2022

**COMMITTEE ON NATURAL RESOURCES  
117<sup>TH</sup> CONGRESS — ROLL CALL**

Bill / Motion: H.R. 6707

Amendment: Rep. Obernolte amendment #2 to the ANS

Disposition: Was not agreed to by a roll call vote of 18 yeas and 24 nays.

	DEM. MEMBERS (26)	YEAS	NAYS	PRESENT
1	Ms. Brownley, CA		X	
2	Mr. Case, HI		X	
3	Mr. Cohen, TN		X	
4	Mr. Costa, CA		X	
5	Ms. DeGette, CO		X	
6	Mrs. Dingell, MI		X	
7	Mr. Gallego, AZ		X	
8	Mr. Garcia, IL		X	
9	Mr. Grijalva, AZ (Chair)		X	
10	Mr. Huffman, CA		X	
11	Ms. Leger Fernández, NM		X	
12	Mr. Levin, CA		X	
13	Mr. Lowenthal, CA		X	
14	Ms. McCollum, MN		X	
15	Mr. McEachin, VA		X	
16	Mrs. Napolitano, CA		X	
17	Mr. Neguse, CO		X	
18	Ms. Porter, CA		X	
19	Mr. Sablan, MP		X	
20	Mr. San Nicolas, GU			
21	Mr. Soto, FL		X	
22	Ms. Stansbury, NM		X	
23	Ms. Tlaib, MI		X	
24	Mr. Tonko, NY		X	
25	Ms. Trahan, MA		X	
26	Ms. Velázquez, NY			
	<b>REP. MEMBERS (20)</b>	<b>Y</b>	<b>N</b>	<b>P</b>
1	Mr. Bentz, OR	X		
2	Mrs. Boebert, CO	X		
3	Mr. Carl, AL	X		
4	Mr. Fulcher, ID	X		
5	Mr. Gohmert, TX	X		
6	Miss González-Colón, PR	X		
7	Mr. Graves, LA	X		
8	Ms. Herrell, NM			
9	Mr. Hice, GA	X		
10	Mr. Lamborn, CO	X		
11	Mr. McClintock, CA	X		
12	Mr. Moore, UT	X		
13	Mr. Obernolte, CA	X		
14	Mrs. Radewagen, AS			
15	Mr. Rosendale, MT	X		
16	Mr. Stauber, MN	X		
17	Mr. Tiffany, WI	X		
18	Mr. Webster, FL	X		
19	Mr. Westerman, AR (RM)	X		
20	Mr. Wittman, VA	X		
	<b>TOTALS</b>	<b>18</b>	<b>24</b>	
	Total: 46 / Quorum: 15 / Report: 24	<b>YEAS</b>	<b>NAYS</b>	<b>PRESENT</b>

The amendment in the nature of a substitute was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 24 yeas and 17 nays, as follows:

Date: June 15, 2022

**COMMITTEE ON NATURAL RESOURCES  
117<sup>TH</sup> CONGRESS — ROLL CALL**

Bill / Motion: H.R. 6707

Amendment:

Disposition: Final Passage: H.R. 6707, as amended, was ordered favorably reported to the House of Representatives by a roll call vote 24 yeas and 17 nays.<sup>1</sup>

	DEM. MEMBERS (26)	YEAS	NAYS	PRESENT
1	Ms. Brownley, CA	X		
2	Mr. Case, HI	X		
3	Mr. Cohen, TN	X		
4	Mr. Costa, CA	X		
5	Ms. DeGette, CO	X		
6	Mrs. Dingell, MI	X		
7	Mr. Gallego, AZ			
8	Mr. Garcia, IL	X		
9	Mr. Grijalva, AZ (Chair)	X		
10	Mr. Huffman, CA	X		
11	Ms. Leger Fernández, NM	X		
12	Mr. Levin, CA	X		
13	Mr. Lowenthal, CA	X		
14	Ms. McCollum, MN	X		
15	Mr. McEachin, VA	X		
16	Mrs. Napolitano, CA	X		
17	Mr. Neguse, CO	X		
18	Ms. Porter, CA	X		
19	Mr. Sablan, MP			
20	Mr. San Nicolas, GU	X		
21	Mr. Soto, FL	X		
22	Ms. Stansbury, NM	X		
23	Ms. Tlaib, MI	X		
24	Mr. Tonko, NY	X		
25	Ms. Trahan, MA	X		
26	Ms. Velázquez, NY			
	<b>REP. MEMBERS (20)</b>	<b>Y</b>	<b>N</b>	<b>P</b>
1	Mr. Bentz, OR		X	
2	Mrs. Boebert, CO		X	
3	Mr. Carl, AL		X	
4	Mr. Fulcher, ID		X	
5	Mr. Gohmert, TX		X	
6	Miss González-Colón, PR		X	
7	Mr. Graves, LA		X	
8	Ms. Herrell, NM			
9	Mr. Hice, GA		X	
10	Mr. Lamborn, CO		X	
11	Mr. McClintock, CA		X	
12	Mr. Moore, UT		X	
13	Mr. Obernölte, CA		X	
14	Mrs. Radewagen, AS		X	
15	Mr. Rosendale, MT			
16	Mr. Stauber, MN	X		
17	Mr. Tiffany, WI		X	
18	Mr. Webster, FL		X	
19	Mr. Westerman, AR (RM)		X	
20	Mr. Wittman, VA		X	
	<b>TOTALS</b>	<b>24</b>	<b>17</b>	
	Total: 46 / Quorum: 15 / Report: 24	<b>YEAS</b>	<b>NAYS</b>	<b>PRESENT</b>

<sup>1</sup> During the markup, the total on this vote was announced incorrectly. The numbers above are accurate and authoritative.

## HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee for Indigenous Peoples of the United States held on March 31, 2022.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) and clause 3(d) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee adopts as its own cost estimate the forthcoming cost estimate of the Director of the Congressional Budget Office, should such cost estimate be made available before House passage of the bill.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Maine Indian Claims Settlement Act of 1980 to advance equality for Wabanaki nations.

## EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

## UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee, if such estimate is not publicly available on the Congressional Budget Office website.

## EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980**

\* \* \* \* \*

## DEFINITIONS

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

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

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

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

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

(e) "Maine Implementing Act" means section 1, section 30, and section 31, of the "Act to Implement the Maine Indian Claims Settlement" enacted by the State of Maine in chapter 732 of the public laws of 1979;



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

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

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

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

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

(k) “Penobscot Nation” means the Penobscot Indian Nation as constituted in aboriginal times, and all its predecessors and successors in interest. The Penobscot Nation is represented, as of the date of 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~~[\.]~~; *and*

(o) *“Mi’kmaq Nation” means the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest, and which is represented, as of the date of enactment of this subsection, as to lands within the United States, by the Mi’kmaq Council.*

\* \* \* \* \*

#### APPLICATION OF STATE LAWS

SEC. 6. (a) Except as **[provided in section 8(e) and section 5(d)(4)]** *otherwise provided in this Act*, 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 of Indians shall be subject to the civil and criminal jurisdiction of the State, the laws of the State, and the civil and criminal jurisdiction of the courts of the State, to the same extent as any other person or land therein.

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

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

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

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

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

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

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

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

(e)(1) The consent of the United States is hereby given to the State of Maine to amend the Maine Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation: Provided, That such amendment is made with the agreement of the affected tribe or nation, and that such amendment relates to (A) the enforcement or application of civil, criminal, or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions; (B) the allocation or determination of governmental responsibility of the State and the tribe

or nation over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the tribe or nation; or (C) the allocation of jurisdiction between tribal courts and State courts.

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

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

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

(h) **[Except as otherwise provided in this Act, the]** *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 or enacted for the benefit of 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) *that is in effect as of the date of the enactment of the Advancing Equality for Wabanaki Nations Act*, (2) 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)]** *also* (3) 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, *unless Federal law or the State laws of Maine provide for the application of such Federal law or regulation.*

(i) As federally recognized Indian tribes, the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations, or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians. The Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be treated in the same manner as other federally recognized tribes for the purposes of Federal taxation and any lands which are held by the respective tribe, nation, or band subject to a restriction against alienation or which are held in trust for the benefit of the respective tribe, nation, or band shall be considered Federal Indian reservations for purposes of Federal taxation. Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to Indians because of their status as Indians, any member of the Houlton Band of Maliseet Indians in or near the town of Houlton, Maine, shall be eligible for such programs and services without regard to the existence of a reservation or of the residence of such member on or near a reservation.

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## IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT

SEC. 8. (a) The Passamaquoddy Tribe **[or]**, the Penobscot Nation, *the Houlton Band of Maliseet Indians*, or *the Mi'kmaq 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]** *respective tribe, nation, or band* may assume such jurisdiction over Indian child custody proceedings, the **[respective tribe or nation]** *respective tribe, nation, or band* 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, *the Houlton Band of Maliseet Indians*, or *the Mi'kmaq 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)]** (e) Until the Passamaquoddy Tribe **[or]**, the Penobscot Nation, *the Houlton Band of Maliseet Indians*, or *the Mi'kmaq 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]**, *nation, or band*.

\* \* \* \* \*

## 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.]

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**SECTION 8 OF THE AROOSTOOK BAND OF MICMACS  
SETTLEMENT ACT**

**[SEC. 8. IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.**

**[For the purposes of this section, the Band is an “Indian tribe” within the meaning of section 4(8) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(8)), except that nothing in this section shall alter or affect the jurisdiction of the State of Maine over child welfare matters as provided by the Maine Indian Claims Settlement Act of 1980.]**

## DISSENTING VIEWS

I strongly oppose H.R. 6707, the Advancing Equality for Wabanaki Nations Act, as reported by the Committee on Natural Resources.

H.R. 6707 would extend the applicability of future federal Indian laws to the Wabanaki tribes and extend the applicability of the Indian Child Welfare Act to the Houlton Band of Maliseet Indians. Under current law, the four federally recognized tribes in the State of Maine, collectively known as the Wabanaki, are excluded from federal Indian law application, unless explicitly included.

The intent of H.R. 6707 is to apply Indian laws to Tribes in Maine, but it is vague regarding how federal law will be implemented when involving federal laws that the state has been delegated authority to carry out, such as the Clean Air Act and Clean Water Act. If not done correctly, this bill could result in great uncertainty for Mainers, creating a patchwork of state, federal and tribal regulatory structures with no requirement to coordinate.

The four federally recognized Indian tribes in Maine are the Houlton Band of Maliseet Indians, the Mi'kmaq Nation (formerly known as the Aroostook Band of Micmacs), the Passamaquoddy Tribe, and the Penobscot Nation, known collectively as the Wabanaki people, or "People of the Dawnland."<sup>1</sup> From 1794 to the 1800s, millions of acres of Wabanaki lands were transferred from the tribes to Massachusetts and then Maine, as well as to private individuals, through a mix of treaties and other dealings.<sup>2</sup> In 1972, the Passamaquoddy tribe filed a lawsuit challenging whether these land transfers were legal under the *Nonintercourse Act*, passed by Congress in 1790 (P.L. 10 24).<sup>3</sup> This law prohibited any transfer of land from Indian tribes to another state or person unless the sale or transfer was ratified through a treaty with the United States. In 1975, the First Circuit ruled that the *Nonintercourse Act* applied to the Passamaquoddy Tribe and Penobscot Nation, even though they were not federally recognized at the time.<sup>4</sup> This revived the land claims of the Wabanaki tribes.

In 1980, the *Maine Indian Claims Settlement Act* (MICSA) was enacted to extinguish the legal claims of the Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians to their historic lands in Maine in exchange for trust funds to allow the tribes to purchase lands and provide general revenue and old-age pensions to their members.<sup>5</sup> In addition, MICSA ratified the state-level *Maine Implementing Act*, which extended state civil and

<sup>1</sup>Abbe Museum, *About the Wabanaki Nations*, <https://www.abbemuseum.org/about-the-wabanaki-nations>.

<sup>2</sup>H. Report 96-1353 accompanying H.R. 7919, the Maine Indian Claims Settlement Act 1980 at 12.

<sup>3</sup>25 USC 177.

<sup>4</sup><https://law.justia.com/cases/federal/appellate-courts/F2/528/370/178873/>.

<sup>5</sup>P.L. 96-420.

criminal jurisdiction over the Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians.<sup>6</sup>

Notably, Section 6(h) of MICSA prohibited any federal law previously enacted for the benefit of Indian tribes from applying to tribes in the State of Maine if the law would affect state jurisdiction, with limited exceptions. Section 16(b) of MICSA similarly restrained the application of future beneficial federal Indian laws in Maine, unless the law specified that it would apply in Maine. This exclusion is unique to the Wabanaki tribes.

While the intent of H.R. 6707 is to extend future federal Indian law applicability to the Wabanaki tribes, it is critically important that the Committee work with the State of Maine on any amendments to the MICSA. The MICSA was a ratification of a settlement entered into between the tribes and the state. Congress should give deference to the State of Maine to determine which changes, if any, should be made to the MICSA if those changes will directly impact the state. For the last forty years, the State of Maine has exercised certain jurisdiction over civil and criminal matters over all persons in the state, as well as an assumption of certain federal delegations of authorities. Unless carefully executed in close coordination with the state, new authorizations and changes to existing Indian law, may cause confusion over what the state or tribe's responsibilities are under the statutes. Implementation of this bill would also raise costs on the residents of Maine during a time of unprecedented inflation.

This Committee should ensure that there is close coordination with states when we pass laws that change their sovereignty and existing authority. All governments involved in this sort of legislation—tribal, state, and federal—should coordinate such a change.

For these reasons, I oppose this legislation.

BRUCE WESTERMAN,  
*Ranking Member.*



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<sup>6</sup>30 M.R.S.A. 6201 et. seq.