

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 573

S. P. 187

In Senate, February 22, 1977

Referred to Committee on Appropriations and Financial Affairs. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary

Presented by Senator Huber of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Providing for a Program of Support for Destitute Persons on Indian Reservations and Appropriating Additional Funds for the Department of Indian Affairs.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, additional funds are necessary to provide basic necessities, such as food, clothing and fuel, to Maine Indians; and

Whereas, similar situations have occurred in the past and have a potential for future occurrence; and

Whereas, current statutes of the Department of Indian Affairs do not provide the basic language to initiate management control; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 22 MRSA § 4702, first ¶, as last amended by PL 1975, c. 293, § 4, is further amended to read:

The duties and powers heretofore given the Commissioner of Human Services relating to Indians, except their education and except ~~sections~~ **section** 4713 ~~and 4772~~, are transferred to the Department of Indian Affairs, herein-

after in this part called the "department," which is created to exercise general supervision over the Indian tribes.

Sec. 2. 22 MRSA § 4713, as last amended by PL 1975, c. 293, § 4, is repealed and the following enacted in its place:

§ 4713. Relief of Indians not members of tribes; statements; reimbursement

Whenever any Indian, or any member of the family of such Indian, is found destitute and in distress, and is relieved by the overseers of the poor of the municipality required by law to provide relief for such persons, pursuant to chapter 1251, the overseers of the poor shall transmit to the Department of Human Services a statement specifying the nature, dates and amounts of the assistance furnished and such other information as may be required by the Department of Human Services. The State shall reimburse municipalities for the expenditures made for the relief so furnished which the Department of Human Services considers to be reasonable and appropriate. The Department of Human Services may refuse to accept and pay any claim for reimbursement which is not submitted by a municipality to that department within 90 days of the payment upon which the claim is based.

Sec. 3. 22 MRSA §§ 4722 - 4725 are enacted to read:

§ 4722. Tribal relief of the poor

Tribal overseers of the poor, appointed in accordance with section 4705, shall have the care of all eligible persons, whether or not they are members of the Passamaquoddy or Penobscot Tribes, who are found destitute and in distress upon tribal reservations and shall cause them to be relieved at the expense of the tribe.

The Department of Indian Affairs shall reimburse the tribe for 100% of the amount expended for furnishing such relief which the department considers to be reasonable, appropriate and furnished in accordance with section 4723. Either the tribal overseers of the poor or the tribal clerk, if authorized by the tribal governor and council, shall submit to the Department of Indian Affairs a monthly return on forms provided by the department stating the amount of expenditures made for furnishing this assistance. The Department of Indian Affairs may refuse to accept and pay any claim for reimbursement which is not submitted by a tribe to the department within 90 days of the payment upon which the claim is based.

Tribal overseers of the poor as well as all other tribal officers having charge of the administration of assistance furnished pursuant to this section shall keep full and accurate records of the names of persons so relieved or supported, including the amounts and kinds of relief provided to them.

The records required under this section shall be maintained in such a manner and contain information in such detail as may be required by the commissioner. The records required to be kept under this section are subject to audit by the Department of Audit.

§ 4723. Program for relief; rule making

The program for tribal relief of indigent persons shall be operated and administered in accordance with written rules which shall include standards of eligibility based upon need and shall define the amount and kind of assistance to be furnished to eligible persons.

The commissioner shall promulgate these rules after consultation with the tribal governors within 6 months after the effective date of this Act. The rules shall not be effective until filed with the Secretary of State and the respective tribal clerks.

In addition to defining need and specifying the amount and kind of assistance available, the rules shall provide the following.

1. **Application.** All persons wishing to apply for relief shall have an opportunity to do so and relief shall be furnished to eligible persons within 24 hours of the time of application.

2. **Action denying, reducing or terminating assistance.** Any action denying, reducing or terminating assistance shall be communicated to the applicant or recipient in writing and shall include the specific reason for such action making reference to the relevant sections of the rules upon which the decision was based.

3. **Fair hearing.** A fair hearing before a person or persons designated by the tribal governor who did not participate or have any responsibility for making the decision being questioned shall be available to any applicant who has been denied relief. The fair hearing shall be held within 7 days following the receipt of the request by an applicant for a fair hearing. The person requesting the hearing shall be afforded the right to confront and cross examine any witnesses against him, present witnesses in his own behalf and be represented by counsel or other spokesman and must be advised of these rights in writing. The decision of the fair hearing shall be based solely upon evidence presented at the hearing. The Maine rules of evidence shall not apply at the fair hearing. Within a reasonable time after the hearing, the applicant shall be furnished with a written decision detailing the reasons for it.

4. **Pretermination hearing.** A recipient of assistance shall be afforded a right to a pretermination hearing in the event that assistance of a continuing nature, which may be provided to him, will be terminated or reduced. The pretermination hearing shall be conducted in the same manner as outlined in subsection 3 for the conduct of fair hearings. The impending action of termination or reduction shall not be carried out until the pretermination hearing has been held, if requested, and written notice of the decision has been given to the recipient. The recipient shall be given a timely and advanced notice of termination or reduction in relief being provided which details the reasons for the proposed action and informs the recipient of his right to request a pretermination evidentiary hearing within 5 days following receipt of the notice. Nothing in this subsection shall be construed to require pretermination hearing when assistance is furnished for a stated period of time and the recipient is advised, in writing, of the time limitations at the time that eligibility for such assistance is communicated to him.

§ 4724. Superior Court jurisdiction

Review of fair hearing and pretermination evidentiary hearing decisions shall be within the jurisdiction of the Superior Court and shall proceed in accordance with the Maine Rules of Civil Procedure, Rule 80B.

§ 4725. Confidentiality of information

Records, papers, files and communications relating to an applicant or recipient made or received by persons charged with responsibility of administering this program of relief for indigent persons are confidential and no information relating to a person who is an applicant or recipient may be disclosed to the general public, unless expressly permitted by that person.

Sec. 4. 22 MRSA § 4771 is repealed.

Sec. 5. 22 MRSA § 4772, as last amended by PL 1975, c. 293, § 4, is repealed.

Sec. 6. 22 MRSA § 4793, last sentence, as enacted by PL 1973, c. 130, § 2, is repealed and the following enacted in its place:

No private organization, church organization, state department, civic group or individual shall submit legislation affecting the Penobscot Tribe of Indians to the State Legislature without first providing a copy of it to the Penobscot governor and council.

Sec. 7. 22 MRSA § 4837, as last amended by PL 1975, c. 293, § 4, is repealed.

Sec. 8. **Appropriation.** There is appropriated from the General Fund to the Department of Indian Affairs the sum of \$150,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1976-77
INDIAN AFFAIRS, DEPARTMENT OF	
All Other	\$140,000
Penobscot Indian Housing Authority	10,000
	\$150,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to establish a program of general relief for indigent persons upon tribal reservations which is similar to general relief furnished to indigent persons by Maine municipalities under Title 22, section 4450, et seq. The emergency "all other" appropriation will provide funds made necessary by the present lack of provisions which are contained in this bill and provide a current year appropriation requested by the authority.