

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Samuel Senft, Legislative Analyst

LD 159 An Act to Extend Time Limits for Placing Land in Trust Status under the Maine Indian Claims Settlement

Public Hearing Date: February 11, 2020

SUMMARY This bill extends all time limits for both the Passamaquoddy Tribe and the Penobscot Nation to add to their respective trust lands under the Act to Implement the Maine Indian Claims Settlement to January 31, 2030. Because this bill amends the Act to Implement the Maine Indian Claims Settlement, this bill does not take effect unless the Joint Tribal Council of the Passamaquoddy Tribe and the Tribal Chief and Council of the Penobscot Nation agree to these changes and certify their agreement to the Secretary of State within 60 days of the adjournment of the First Regular Session of the 130th Legislature.

TESTIMONY

Proponents

- Rep. Barb Wood: This bill extends the time limits for both the Passamaquoddy Tribe and the Penobscot Nation to add to their respective trust lands under the Act to Implement the Maine Indian Claims Settlement to January 31, 2030. A version of it was brought in the 128th Legislature, and the committee voted unanimously to amend and pass the bill. While the bill passed in the House and the Senate, it was vetoed by the former Chief Executive and an override was unsuccessful in the Senate. This bill came before the committee again in the 129th Legislature, but because of the pandemic the work was left uncompleted.
- Representative Rena Newell: The Passamaquoddy Tribe has yet to reach the allocated 150,000 acres as indicated in the Maine Implementing Act, having only acquired approximately 90,000 acres. Included links to legislative history (see below)
- Ambassador Maulian Dana, Penobscot Nation: The time limits placed on trust land acquisition have created an undue hardship. The lands within the state are the Wabanaki nations' ancestral territory. The nations have yet to attain the 150,000 acres set forth in the 1980 settlement. Increasing land base is key to strengthening status as sovereign nations and continuing cultural value and practices. Tribal nations are caretakers of the land and have the goal of keeping the land in a healthy and pristine environment. The time limits should be removed; this is part of the larger effort that is underway regarding recognition of tribal sovereignty.
- Paul Thibeault, MITSC: The time limit for placing land into trust has been extended several times. For the Tribes, the restoration and development of an adequate land base to support their people and their way of life was a critical element of the Settlement. For various reasons the Tribes have not yet been able to acquire and place into trust all of the 300,000 acres provided for in the 1980 Settlement. Since the Settlement, the Tribes have developed land-based economic activity such as maple syrup and blueberry production, forest products and

eco-tourism. Extending the time limit will promote further economic activity that will mutually benefit the Tribes, the surrounding non-Indian communities, and the State of Maine.

- Matt Monnen: A version of this bill was presented to the Committee four years ago. Committee voted the bill out unanimously but it was vetoed and the veto could not be overridden. Reason given by the Governor for veto was that the Act could not be changed, though it has in fact been changed multiple times in the past. Should be noted that the Micmacs and Maliseets are not subject to time limits at all. Most fair thing would be to eliminate time limits. Also, should be mentioned that over past four years legislature has refused to take up this legislation and hold a public hearing. This resulted in lost opportunities for land acquisition as time expired. Most opportunities will be lost if this is not acted on now.
- Shirley Hager, The Friends Committee on Maine Public Policy: The Passamaquoddy Tribe and Penobscot Nation have yet to attain the acquisition of even the 150,000 acres mentioned in the Act due to numerous obstacles placed in their path. The time limits are unnecessary and create additional barriers. Extending these limits to 2030 is a step toward the State of Maine fulfilling its responsibilities, and its promises, to the Tribes. However, the Legislature should support the omnibus bill.
- Michael Kebede, ACLU Maine: It the general policy of the ACLU to support indigenous self-government. The Settlement Act is an outlier in the United States. In 2015, a United Nations investigation found that the “Maine Indian Claims Settlement Act and Maine Implementing Act create structural inequalities that limit the self-determination of Maine tribes. It is a travesty that time limits on land acquisition exist at all. In the meantime, this bill is necessary to extend the time limits for the Passamaquoddy Tribe and the Penobscot Nation to add to their respective trust lands, subject to approval by Tribal Chiefs.
- Eileen Kurtis-Kleinman: Extending all time limits for taking land into trust supports the effective self-governance of the Passamaquoddy Tribe and the Penobscot Indian Nation. Though the Maine Implementing Act specified a time limit for the Secretary of the Interior to take these lands into trust, the original and subsequently amended timelines have proven completely unrealistic, and they have seriously disadvantaged the Tribes when negotiating with land owners to acquire these lands. Extending all time limits supports Passamaquoddy and Penobscot self-determination. The time limits have been extended several time sin the past. As written, the bill proposes a sixty-day period for the Passamaquoddy Joint Tribal Council and Penobscot Nation Chief and Tribal Council to provide written certification to the Secretary of State that the respective Wabanaki governments approve the legislation. In the past, the Maine Indian Tribal-State Commission has recommended that period should extend to 90 days.

Opponents

- None

Neither for nor against

- Attorney General Aaron Frey: L.D. 159 extends the time for the Penobscot Nation and the Passamaquoddy Tribe to take land into trust pursuant to the Maine Implementing Act (MIA) and the Maine Indian Claims Settlement Act (MICSA) until 2030. Some of the deadlines the bill proposes to extend have already passed, and some of the deadlines for trust acquisition are set to expire at the end of 2021. The bill does not increase the total amount of land that can be taken into trust, which MICSA caps at 150,000 acres per tribe. Time periods have

been extended in past as well. This legislation is consistent with previous bills. These are policy matters for the Legislature.

POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

- None

INFORMATION REQUESTED

- *Information on the Trust land acquisition process was requested.*

Rep Newell Provided a link to the BIA trust process in her testimony. That link is below.

Land purchased pursuant to the MIA and MICSA is initially fee land. To become trust land it must go through the federal fee to trust process. This process is managed by the Bureau of Indian Affairs. Trust acquisition is described in federal law at [25 CFR 151](#). See attached information sheet for more details on the trust land process.

It should be noted that the MIA identifies certain tracts of land that are considered “mandated” and subject to an expediated trust process. However, outside of these lands, the Passamaquoddy Tribe and the Penobscot Nation must go through the “discretionary” process to obtain BIA approval to put land into trust status. The MIA additionally requires that the Tribe and Nation obtain State and local government approval.¹

- *Information was requested as to whether there were any time limits on land acquisition by the Houlton Band of Maliseet Indians and Aroostook Band of Micmacs.*

There are no such time limitations.

- *Information was requested regarding barrier experienced by the Passamaquoddy Tribe and Penobscot Nation in acquiring land. Tribal leaders report the following challenges:*

- Time constraints. It can take a long time to negotiate land deals. Once land is acquired, the trust process can be quite lengthy, sometime stretching several years.
- Funds.
 - The settlement funds are not worth the same as they were in 1980 due to inflation and lack of generation of interest.
 - Land itself is expensive and becoming more expensive.
 - Local consent has been a significant barrier. In order to obtain sign off from localities for trust status for certain lands, tribes sometimes have to pay additional funds to these localities. As a result, there are lands that the tribes own that they cannot afford to put into trust.
 - Re-acquired ancestral lands sometimes require environmental remediation, which can be costly. Many of these lands had been deforested.
 - Taxes paid on fee land or payments in lieu of taxes can be expensive

¹ 30 M.R.S.A. § 6205(5)

- Legal costs to negotiate land deals and prepare BIA trust applications are expensive.

LEGISLATIVE HISTORY

There have been a number of bills that have extended the land acquisition timelines or added tracts of land under the Maine Implementing Act:

- [LD 1136](#) (111th): An amended version of this bill was [enacted](#). It extended the timeline for certain land acquisitions from 1983 to 1985.
- [LD 1822](#) (111th): This bill was [enacted](#). It extended the timeline for certain land acquisitions from 1983 to 1986.
- [LD 297](#) (112th): An amended version of this bill was [enacted](#). It extended the timeline for certain land acquisitions from 1986 to 1987.
- [LD 1680](#) (112th): An amended version of this bill was [enacted](#). It extended the timeline for certain land acquisitions from 1985 to 1988.
- [LD 1717](#) (112th): An amended version of this bill was [enacted](#). It extended the timeline for certain land acquisitions from 1986 to 1988.
- [LD 1844](#) (112th): An amended version of this bill was [enacted](#). It extended the timeline for certain land acquisitions from 1986 to 1988.
- [LD 488](#) (113th): An amended version of this bill was [enacted](#). It extended the timeline for certain land acquisitions from 1988 to 1991.
- [LD 2081](#) (115th): This bill was [enacted](#). It provided for the Passamaquoddy Tribe to place into trust a small farm that the Tribe acquired from a member of the Passamaquoddy Tribe in 1988.
- [LD 2084](#) (115th): This bill was [enacted](#). It extended the timeline for certain land acquisitions by the Penobscot Nation from 1991 to 2001. It reflected the agreement of the Town of Lakeville and the Penobscot Nation to have 18,000 acres owned by the nation put into trust status.
- [LD 2010](#) (116th): An amended version of this bill was [enacted](#). This bill provided for the Passamaquoddy Tribe to acquire and have taken into trust 100 acres of land in the City of Calais if the tribe and the State agreed to a compact under the federal Indian Gaming Regulatory Act or if the State is ordered by a court to negotiate such a compact.
- [LD 1787](#) (117th): An amended version of this bill was [enacted](#). This bill allowed the Penobscot Nation to proceed with seeking of trust status for 5,464 acres of land owned by the Penobscot Nation 12 that was acquired by quit claim deeds from Herbert C. Haynes, Jr., Herbert C. Haynes, Inc. and Five Islands Land Corporation.
- [LD 2499](#) (119th): This bill was [enacted](#). It extended the timeline for certain land acquisitions by the Penobscot Nation from 2001 to 2021.
- [LD 1658](#) (120th): This bill was [enacted](#). It extended the deadline for the Secretary of the Interior of the United States to acquire and place in trust lands acquired by the Passamaquoddy Tribe to January 31, 2020.
- [LD 73](#) (123rd): An amended version of this bill was [enacted](#). This bill provided that the Passamaquoddy Tribe had until January 31, 2017 to acquire and have placed into trust all land acquired in Centerville.
- [LD 169](#) (123rd): An amended version of this bill was [enacted](#). This bill provided that the Passamaquoddy Tribe had until January 31, 2017 to acquire and have placed into trust all land acquired in Township 21.
- [LD 64](#) (126th): This bill was [enacted](#). This bill provided that the Passamaquoddy Tribe had until January 31, 2023 to acquire and have placed into trust land acquired in Centerville.

- [LD 921](#) (128th). This bill removed the time and acreage limits for placing land in trust status for the Passamaquoddy Tribe and the Penobscot Nation. An [amended version](#) of the bill retained the acreage limitations and extended all time limits for both the Passamaquoddy Tribe and the Penobscot Nation to add to their respective trust lands to January 31, 2025. The amended version received a unanimous ought to pass vote out of committee and a majority vote out of the Legislature but was vetoed by the governor. The veto was sustained.
- [LD 573](#) (129th). This bill extended all time limits for both the Passamaquoddy Tribe and the Penobscot Nation to add to their respective trust lands under the Act to Implement the Maine Indian Claims Settlement to January 31, 2030. This bill was not acted upon and died in committee at adjournment.

FISCAL IMPACT: Not yet determined

Links

1. Current State law: [30 MRSA §6205. Indian territory](#)
2. [25 CFR 151](#)
3. [Legislative history on extension of land claim timeline](#) (provided by Rep Newell):
4. [BIA Trust Process](#) (provided by Rep Newell)

Tribal Land Terminology and Trust Land Acquisition Process

Tribal Land Categories

- 1) **Reservation Land:** An area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands.
- 2) **Trust Land:** Land held in trust by the United States government, through the Secretary of the Interior, on behalf of an individual Indian or Tribe.
- 3) **Restricted Fee Land:** Land the title to which is held by an individual Indian or tribe and which can only be alienated with approval by the Secretary.
- 4) **Fee Land:** Form of ownership in which the owner may freely alienate and encumber title to the land without federal approval.

Trust Land Types

The Indian Reorganization Act of 1934 (48 Stat. 984, 25 U.S.C. § 461 et seq.) Title 25 CFR Part 151 describes the conditions under which trust title to land may be acquired.

There are two general types of land acquisition: mandatory and discretionary

- 1) *Mandatory:* Trust acquisition that is directed by Congress or a court that *requires* the Secretary to accept land into trust for an individual Indian or Tribe.
- 2) *Discretionary:* Trust acquisition that does not *require* the Secretary to acquire title to any interest in land to be held in trust by the United States on behalf of an individual Indian or Tribe. The Secretary may accept or deny the request for acquisition.

Trust Land Acquisition

Fee to Trust: Fee to trust land acquisitions involve the acquisition in trust of whole or undivided interests in fee lands. There are three types:

- ***On-reservation discretionary trust acquisitions:*** Requires written application, site inspection, certification of inspection and possession, a preliminary title opinion, a notice of application, an environmental compliance review, comments on the notice to application, response to title objections, publication notice, a final certification of inspection, acceptance of conveyance, and recording.
- ***Off-reservation discretionary trust acquisitions:*** Requires written application, site inspection, certification of inspection and possession, a preliminary title opinion, a notice of application, an environmental compliance review, comments on the notice to application, response to title objections, an analysis and notice of decision, a final certification of inspection, acceptance of conveyance, and recording.
- ***Mandatory trust acquisitions:*** Requires written application, site inspection, submission of title evidence, an environmental compliance review, preparation of a note of acquisition, a final inspection, acceptance of conveyance, and recording.

Sources: Bureau of Indian Affairs Fee to Trust Handbook Release # 16-47, Version IV (rev. 1), Issued: 6/28/16; Bureau of Indian Affairs website at www.bia.gov

**Fee-to-Trust
Step-by-step process for
On-Reservation (Discretionary)**

STEP 1 Encode to the Fee-to-Trust System of Record
STEP 2 Review of Written Request to Initiate Process
STEP 3 Respond to an Incomplete Case
STEP 4 Conduct Site Inspection & Complete CIP
STEP 5 Prepare Preliminary Title Opinion (FTO)
STEP 6 Prepare Notice of Application (NOA)
STEP 7 Environmental Compliance Review
STEP 8 Comments to Notice of Application
STEP 9 Satisfy Preliminary Title Opinion Objections
STEP 10 Prepare Analysis and Notice of Decision (NOD)
STEP 11 Provide Notice of Decision
STEP 12 Prepare Final Certificate of Inspection (CIP)

Steps Continued ➡

STEP 13 Acceptance of Conveyance
STEP 14 Final Title Opinion & (County) Recordation
STEP 15 Recording at Land Titles & Records Office
STEP 16 Completed Application Packet

Fee-to-Trust Handbook
Release #13-90, Version III (rev 4)
Issued 06/16/14

For more information about this process contact:

the Division of Real Estate Services,
(Local Agency)
(Ph#)

**UNDERSTANDING
THE**

**Fee-to-Trust
Process
For Discretionary
Acquisitions**



**DEPARTMENT OF
THE INTERIOR
2015**

**BUREAU OF INDIAN
AFFAIRS**

Frequently Asked Questions

1. **What is a fee-to-trust land acquisition?** A fee-to-trust land acquisition is a transfer of land title from an eligible Indian Tribe or eligible Indian individual(s) to the United States of America, in trust, for the benefit of the eligible Indian Tribe or eligible Indian individual(s).
2. **Who is eligible to apply for a fee-to-trust land acquisition?** Indian Tribes and individual Indian people who meet the requirements established by federal statutes and further defined in federal regulations are eligible to apply for a fee-to-trust land acquisition. See 25 Code of Federal Regulations (CFR) § 151.2; 25 United States Code (USC) § 479 and § 2201.
3. **If you are eligible, how do you submit an application?** All applications for a fee-to-trust acquisition must be in writing and specifically request that the Secretary of the Interior take land into trust for the benefit of the applicant. If you are an eligible Indian Tribe, the request may be in the form of a Tribal Resolution. See 25 CFR § 151.9.
4. **Where should an eligible applicant submit an application to?** Applications shall be submitted to the Bureau of Indian Affairs (BIA) office that has jurisdiction over the lands contained in the application. If the applicant does not know what BIA office has jurisdiction over the lands the applicant should contact the Division of Real Estate Services at (202) 208-7737 or at <http://www.bia.gov/WhoWeAre/RegionalOffices/index.htm>
5. **What information is the applicant required to provide to accompany the application for a fee-to-trust acquisition?** The applicant must provide a legal description of the land to be acquired, the legal name of the eligible Indian Tribe or individual, proof of an eligible Indian Tribe or eligible individual(s), the specific reason the applicant is requesting that the United States of America acquire the land for the applicant's

benefit, a title insurance commitment addressing the lands to be acquired and information that allows the Secretary of the Interior to comply with the National Environmental Policy Act (NEPA) and 602 Departmental Manual 2 (602 DM 2) – Hazardous Substances.

6. **What laws, regulations and standards apply to a fee-to-trust acquisition?** There are different laws that must be satisfied. Most acquisitions are authorized under 25 USC § 465, Section 5 Indian Reorganization Act (1934) and reviewed under 25 CFR § 151. However, the Department of the Interior must comply with all federal laws, including compliance with NEPA, 602 DM 2 Hazardous Substances Determinations, National Historical Preservation Act (NHPA) and US Department of Justice Title Standards. See 25 CFR § 151.13.
7. **What are the applicant's responsibilities if they receive a written request from the Bureau of Indian Affairs requesting additional information to process an application?** The applicant must reply back to the BIA within the time frames identified in the written correspondence requesting additional information. All correspondence from the BIA requesting additional information will include each specific document needed to proceed with processing the application and will include the specific time the applicant has to provide the requested information. It is very important that applicant maintains written communication with the BIA throughout the process when the applicant is contacted by the BIA. If applicant needs additional time to respond to a request from the BIA for additional information, they must contact the BIA as soon as possible and make the request for an extension of time in writing. The BIA will reasonably accommodate requests from applicant for additional time to provide information, and will notify the applicant in writing of the decision regarding the applicant's request.
8. **What happens if I do not respond?** If the applicant does not respond in the time stated in the letter or any extension, BIA will either return the application or take into consideration failure to provide the information. If the applicant has failed to provide information on a non-critical title issue, BIA will take into consideration that there is insufficient or negative information in forming BIA's decision on your application and may result in a denial of your application.
9. **Are there entities that will be provided notice of an application for a fee-to-trust acquisition?** Yes. State and local governments, including Tribal governments having regulatory jurisdiction over the land contained in the application, will be notified upon written receipt of an application for a fee-to-trust acquisition. The notice will inform the entities that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.
10. **Will all applications from eligible Indian Tribes and eligible Indian Individuals result in a fee-to-trust acquisition?** No. Each application will be evaluated to determine if the applicable criteria defined in the CFR has been addressed (25 CFR § 151.10), and the official authorized to accept the fee-to-trust acquisition will decide whether to accept the fee-to-trust acquisition. All decisions to accept or deny a fee-to-trust acquisition shall be in writing. If the acquisition is denied, the applicant will be advised of the reasons for the denial and will be notified of the right to appeal the decision and where the applicant's appeal must be filed.
11. **How long does the process take?** The length of time to complete the process varies depending on the required steps. The required steps differ for on-reservation or off-reservation trust acquisitions and mandatory or discretionary acquisitions.
12. **Can I get a report on the progress of my application?** Yes. BIA tracks the steps and progress of applications. BIA will provide you a report upon your request.

Source: BIA. Website at: https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/pdf/Fee-to-Trust_Process_for_Discretionary_Acquisitions.pdf