

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 3/16/00 Public Hearing: 3/15/00

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 2607 An Act Concerning Previous Passamaquoddy Indian Territory Legislation

SUMMARY

The Maine Supreme Judicial Court in Kimball v. LURC found that the land owned by the Passamaquoddy Tribe in Albany Township is not part of Passamaquoddy Indian Territory because the Legislature, while adding the land to the list of eligible trust lands, did not take the final step by amending the deadline by which the land must be certified by the Secretary of the Interior. That deadline (January 31, 1991) had already passed when the legislation was enacted. The Secretary of the Interior certified the land as Trust land in 1994.

Sections 1 and 2 of the bill amend the definition of Passamaquoddy Indian Territory in the Maine Implementing Act to delete the Albany Township land from land that is eligible to be trust land as held by the Secretary of the Interior in trust for the Passamaquoddy Tribe. The Secretary must have acted on the land by the deadline, currently January 31, 1991. The Albany Township land is then added to the definition of Passamaquoddy Indian Territory (not trust lands) by enacting a new paragraph B-1.

Section 3 declares that the rezoning decision and the issuance of the development permit by LURC are deemed effective without further action.

Section 4 states the legislative intent to ratify and validate all actions taken that relied on the Albany Township land being Indian Territory.

Section 5 makes the Act retroactive to June 30, 1992, the effective date of the law adding Albany Township lands to eligible trust lands.

Section 6 is the standard effective date section for legislation amending the Implementing Act – it is effective only if the Joint Tribal Council of the Passamaquoddy Tribe agrees.

TESTIMONY

Proponents

- In 1992, Passamaquoddy Tribe followed all procedures and made it over all the hurdles. Secretary of Interior certified land in 1994. In 1997, decided to use for Beano – went through all the procedures, including LURC
- On face of statute, can't become Indian Territory without further legislation
- Bill attempts to correct drafting error – gives effect that was intended in 1992
- Tribe and investors acted in good faith reliance

Opponents

- Albany Township is 230 miles away from the Eastern Maine Passamaquoddy Reservations
- We don't want Beano or ultimately a casino
- This is two bites of the apple – they had their chance to get their language right in 1992
- Concerned about change in lifestyle
- Concerned about anticipated traffic and burden on volunteer fire and ambulances
- Indian Territory means special treatment, different government – shouldn't be established

- on 1992 legislation
- Sponsor of original bill in 1992 agrees that intent then was to place farm in trust – supports correcting any flaws
- Not about bingo, but about clarifying mutual intent
- We just want to develop our property like everyone else in the room
- Court will have terminated the Settlement Act if we can't correct this
- MITSC in 1992 - intent was to make part of Trust lands
- Thought that going through MITSC and the Legislature was an alternate procedure
- MITSC voted 5 in favor of this bill, 3 opposed because procedure not followed
- Law Court decision is unique – upheld 1992 statute yet held more is necessary. Decision not a nullity – Albany Township lands now in list that can be Trust lands
- MITSC has no role now under subsection 5 because lands already in
- Didn't change date in 1992 because relied on Attorney General's opinion that more than one way to add land. AG opinion said "notwithstanding the expiration of the deadlines" – people thought it worked, the Court said no
- so far from other territory
- Would result in commercial development
- Crime element always follows business no matter what business – Sheriff's Dept. can't handle with current resources
- Concerned about pollution from the parking lot into the Crooked River, noisy traffic and litter
- More acreage planned
- Area floods regularly – septic tank buried in flood plain
- Court never said there was an error in the law, but that Legislature took one step, has to take another to be Trust Lands. Court found no legislative intent to establish land in Albany Township as Trust Land
- Very complicated issue – overturning a court decision is a violation of separation of powers doctrine
- LURC permits expired in 2 years, and LURC refused to renew
- Tribe petitioned court to keep open so Legislature can correct and court can look at other issues. Court said doesn't matter what Legislature does, the case is over
- Self-determination – Albany Township should determine what happens to Albany Township
- Albany Township is a place where people go to get away from it all
- Should not have been added in 1992 - no one from town ever notified, MITSC didn't follow guidelines
- Experience from other states shows that when located in backwards, rural community, the backwards, rural community dies
- Not NIMBY because not an essential public service
- Legislation does not cure the current situation
- Lights from gambling place will block out the stars
- All that they hold sacred is important to us
- Development would be tax free
- Route 5 hugs Songo Pond
- Lose historical nature
- You're being asked to rubber stamp permit, but court hasn't looked at yet
- No beano or bingo in Albany now

FISCAL IMPACT:

Not yet determined



119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2607

H.P. 1871

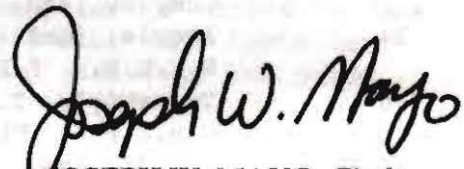
House of Representatives, March 6, 2000

An Act Concerning Previous Passamaquoddy Indian Territory Legislation.

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative SOCTOMAH of the Passamaquoddy Tribe.
Cosponsored by Representatives: AHEARNE of Madawaska, GOODWIN of Pembroke,
MARTIN of Eagle Lake, MAYO of Bath, McKEE of Wayne, SHOREY of Calais,
WHEELER of Eliot, Senator: PARADIS of Aroostook.

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

2
4 **Sec. 1. 30 MRSA §6205, sub-§1, ¶B**, as amended by PL 1993, c.
713, §1, is further amended to read:

6 B. The first 150,000 acres of land acquired by the
8 secretary for the benefit of the Passamaquoddy Tribe from
10 the following areas or lands to the extent that those lands
12 are acquired by the secretary prior to January 31, 1991, are
not held in common with any other person or entity and are
certified by the secretary by January 31, 1991, as held for
the benefit of the Passamaquoddy Tribe:

14 The lands of Great Northern Nekoosa Corporation located in
16 T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb),
18 T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of
Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond),
20 T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6,
B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the
22 heirs of David Pingree located in T.6, R.8, W.E.L.S.; any
portion of Sugar Island in Moosehead Lake; the lands of
24 Prentiss and Carlisle Company located in T.9, S.D.; any
portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff
26 or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.;
any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5,
28 W.B.K.P. (Alder Stream); the lands of Dead River Company in
T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and
30 T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any
portion of T.3, N.D.; any portion of T.4, N.D.; any portion
32 of T.39, M.D.; any portion of T.40, M.D.; any portion of
T.41, M.D.; any portion of T.42, M.D.B.P.P.; the lands of
34 Diamond International Corporation, International Paper
Company and Lincoln Pulp and Paper Company located in
36 Argyle; and the lands of the Dyer Interests in T.A.R.7
W.E.L.S., T.3 R.9 N.W.P., T.3 R.3. N.B.K.P. (Alder Brook
38 Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4
N.B.K.P. (Pittston Academy Grant), T.2 R.3 N.B.K.P.
(Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss
40 Township), ~~and any lands in Albany Township acquired by the
Passamaquoddy Tribe before January 1, 1991; and~~

42 **Sec. 2. 30 MRSA §6205, sub-§1, ¶B-1** is enacted to read:

44 B-1. Any lands in Albany Township acquired by the
46 Passamaquoddy Tribe before January 1, 1991; and

48 **Sec. 3. Nonduplication of effort.** The decision to rezone the
property affected by this Act and the development permit for that
50 property issued by the Maine Land Use Regulation Commission to
the Passamaquoddy Tribe are deemed effective without further
action by either party.

2 **Sec. 4. Legislative intent.** The Legislature intends by passage
4 of this Act to ratify and validate any action taken by a state
6 official or entity concerning land acquired by the Passamaquoddy
Tribe and assumed to be Indian territory in reliance on Public
Law 1991, chapter 720.

8 **Sec. 5. Retroactivity.** This Act applies retroactively to June
10 30, 1992.

12 **Sec. 6. Effective date; certification.** This Act does not take
14 effect unless, within 60 days of the adjournment of the
16 Legislature, the Secretary of State receives written
18 certification by the Joint Tribal Council of the Passamaquoddy
20 Tribe that the tribe has agreed to the provisions of this Act
pursuant to 25 United States Code, Section 1725(e), copies of
22 which must be submitted by the Secretary of State to the
24 Secretary of the Senate, the Clerk of the House of
Representatives and the Revisor of Statutes, except that in no
event may this Act become effective until 90 days after the
adjournment of the Legislature.

24 **SUMMARY**

26 The purpose of this bill is to effectuate Public Law 1991,
28 chapter 720 to include certain lands in Albany Township as
Passamaquoddy Indian territory. In response to Kimball v. LURC,
30 2000 ME 20, the bill removes the land in question from the
provision that required certification by the Secretary of the
32 Interior of the United States by January 31, 1991 and clarifies
that the land in question is within Passamaquoddy Indian
34 territory. The bill applies retroactively to the effective date
of Public Law 1991, chapter 720, and provides that decisions of
36 the Maine Land Use Regulation Commission affecting the property
are effective.