

NACO *National Association of Counties*



The Voice of America's Counties

1. INTERGOVERNMENTAL TAX POLICY

1.6 [text of 1.1-1.6.1 not reproduced]

1.6.2. **Reimbursement.** Legislation must be enacted by the federal government or the states to reimburse counties for any loss in property tax revenues caused by legislation or by administrative action which reduces or exempts property from taxation, such as the holding of lands in trust for the benefit of Native Americans.

Comment: Derived from Finance & Intergovernmental Affairs Legislative Conference, Interim Policy Resolution adopted March 2009 and entitled "Create a New Program to Pay Counties in Lieu of Lost Property Tax Revenue from Tribally Owned Lands and Property Held in Trust by the Federal Government".

Deletions: ~~crossed out~~ Additions: underlined

PROPOSED RESOLUTION TO CREATE A NEW PROGRAM TO PAY COUNTIES IN LIEU OF LOST PROPERTY TAX REVENUE FROM TRIBALLY OWNED LANDS AND PROPERTY HELD IN TRUST BY THE FEDERAL GOVERNMENT

Issue: Counties are unable to collect property taxes on Indian properties held in trust by the Federal Government.

Proposed policy: NACo supports the creation of a new Federal program that would reimburse county and local government for lost property taxes incurred due to Indian properties held in trust by the federal government. Funding allocations shall not negatively impact the payment in Lieu of Taxes program (31 U.S.C. Chapter 69).

Background: The federal government declares to have a trust responsibility for Indians. This trust relationship includes holding title to properties in their names for their benefit. These properties are exempt from state and local taxation. The Indian Reorganization Act of 1934 allows certain Indian tribes and individuals that are Native American, to convert privately owned lands in fee status to trust status. Fee lands are under the jurisdiction of the State, county, and local governments, and as such are taxable by county and local governments.

Trust properties have title held by the federal government, are under federal oversight, and are not taxable by county and local governments. County and local governments provide essential services to all citizens, including citizens that are tribal members, whether the land on which they reside is taxable or not. Those services include, but are not limited to; road construction and maintenance, law enforcement, State and county welfare services, emergency services, and services provided by all county offices. Taxes collected by the county also maintain the properties of the county for all citizens to enjoy, and pay the wages of elected county officials, many of whom are Native American. Indian tribes and Indian individuals throughout the country own trust lands and properties with title held by the federal government and are continuing to apply to the U.S. Department of the Interior to get additional fee lands placed into trust with the federal government.

Property improvements, such as businesses and homes located on trust land are not taxable by counties and local governments. This creates financial hardship on counties and local governments, as they must continue to provide quality services with less revenue. This also creates an unfair tax burden on citizens that are not Indian and cannot qualify per lack of tribal membership to remove their land from county and local taxation. Due to the loss in tax revenue created by federal law, county governments are forced to set levies higher. Some counties with large amounts of trust properties are already at the maximum levy allowed by state law.

Existing law fails to address the financial burden to county governments when land is removed from county and local taxation. Although the tax impact is among the criteria for the U.S. Department of the Interior to consider before taking land into trust, it rarely is the cause for denying trust applications.

Fiscal/Urban/Rural Impacts: Adoption of such a program would lead to potential increases in county general fund levels that would allow for greater availability of county services to the community.

4. INTERGOVERNMENTAL ISSUES

4.9 Tribal/County Government Relations [text of 4.9.1-4.9.4 not reproduced]

4.9.5 NACo supports the improvement of the process by which lands are considered to be taken into trust, including revision of the Indian Reorganization Act of 1934 to require (i) adequate advance notice of applications, (ii) actual meaningful consultation (including providing counties 120 days to respond to applications and requiring the Department of the Interior/Bureau of Indian Affairs to respond within 90 days, in writing, to such comments explaining the rationale for acceptance or rejection of those comments), and (iii) to the extent constitutionally permissible, the consent of the affected counties.

Comment: Derived from two Finance & Intergovernmental Affairs Policy Resolutions adopted July 15, 2009 and entitled "Resolution on Improving the Process by which Lands are Taken into Trust for Native American Purposes" and "Resolution on Lands Taken Into Trust".

Additions: underlined

PROPOSED RESOLUTION ON IMPROVING THE PROCESS BY WHICH LANDS ARE TAKEN INTO TRUST FOR NATIVE AMERICAN PURPOSES

Issue: Improving Bureau of Indian Affairs processes for taking lands into trust.

Proposed policy: NACo supports revisions to the Indian Reorganization Act of 1934 which would require preliminary notification, which would not commence the formal comment period, to counties of applications for lands into trust in those counties by the Bureau of Indian Affairs, and extend the official comment period for affected local governments from 30 to 120 days, and require the Bureau of Indian Affairs (BIA) to respond, within 90 days in writing, to such comments explaining the rationale for the acceptance or rejection of those comments. The Secretary of the Interior shall fully consider the public comments and the response before making a determination that the lands should be taken into trust for Native American purposes.

Background: The Indian Reorganization Act was intended to restore some of the traditional lands to Native Americans to provide primarily for economic development for the benefit of tribal members.

When lands are taken into trust for Native purposes, local governments are affected because, since such lands are not subject to local taxation, revenues are lost that otherwise would provide county services to all the residents of the county. Local land use decisions are not applicable to Indian Country lands, and local environmental and consumer protections are also not applicable.

Currently, the Bureau of Indian Affairs notifies the affected governments and allows under regulation 30 days for the government to comment. This is hardly sufficient for the local government to solicit impacts of taking lands into trust, hold appropriate public hearings, analyze the implications of the possible action, write comments and submit them to BIA. BIA has not traditionally shown any serious interest in accepting and/or acting on comments provided by local governments before submitting recommendations to the Secretary on taking lands into trust for Indian Country.

NACo believes more serious consideration should be given to local government concerns before the Secretary makes a determination. By extending the comment and review deadlines, county governments will be able to provide better information to the BIA and the Secretary before a determination is made.

Fiscal/Urban/Rural Impact: When lands are taken into trust, regardless of whether they are urban or rural, tax revenues are lost based on the acreage taken off the property tax rolls and sales tax revenues lost to Native businesses.

PROPOSED RESOLUTION ON LANDS TAKEN INTO TRUST

Issue: Acquisition of trust lands by the U.S. Department of Interior.

Proposed policy: NACo supports policies which would require that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without adequate notice, actual meaningful consultation and, to the extent constitutionally permissible, the consent of the affected counties. To facilitate such consultation, the Department of the Interior shall contact the affected county to determine the net effect of taking particular lands into trust. This should include off-reservation impacts. The Secretary should place greater weight on the revenue implications for county government when considering such lands, and deny applications to take land into trust when it determines that the loss of property tax revenue would have negative financial impact on affected counties.

Background: The Indian Reorganization Act of 1934 authorizes the Secretary of the United States Department of the Interior to acquire land to be held in trust for the use of American Indian tribes. In California a significant number of ratified tribal gaming compacts do not restrict gaming facilities to areas within a tribe's current trust land or legally recognized aboriginal territory. Such compacts are negotiated with the state's governor.

In addition, issues are beginning to emerge with non-gaming tribal development projects. In some California counties, land developers are seeking partnerships with tribes in order to avoid local land use controls and to build projects, which would not otherwise be allowed under the local land use regulations. Some tribes are seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of a county's land use jurisdiction. These acquisitions are not automatically taken into trust; the Secretary of the Interior must review and ratify any trust land recommendation.

Existing law fails to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors.

Further, although tax impact is among the criteria for taking land into trust, many county officials do not believe that they are meaningfully involved in the process or that their concerns are given sufficient weight. The federal government does not make any payment in lieu of taxes to affected local governments or require the tribe or any other party to do so.

Fiscal/Urban/Rural Impact: Land that is taken into trust is exempt from county land use and state and local taxing authority.

4. INTERGOVERNMENTAL ISSUES

4.9 Tribal/County Government Relations [text of 4.9.1-4.9.5 not reproduced]

4.9.6 NACo supports the revision of the Indian Gaming Regulatory Act (IGRA) to require consultation with, and mitigation of identified impacts on, affected local governments and the implementation of accountability procedures.

Comment: Derived from the Finance & Intergovernmental Affairs Policy Resolution adopted July 15, 2009 and entitled "Resolution Seeking Mitigation for the Impact of Indian Gaming". Additions: underlined

PROPOSED RESOLUTION SEEKING MITIGATION FOR THE IMPACT OF INDIAN GAMING

Issue: Consideration and mitigation of the impact on counties of Indian gaming.

Proposed policy: The National Association of Counties seeks an amendment to the Indian Gaming Regulatory Act (IGRA) to require consultation with, and mitigation of identified impacts on, affected local governments and accountability procedures to be implemented.

Background: The Indian Gaming Regulatory Act (IGRA) of 1988 provides a framework for state regulation of Indian gaming. 'Class III' or casino-style gaming is restricted to states where the particular form of gaming is permitted for other purposes within the state and where the tribe has negotiated a compact with the state that has been approved by the Secretary of the Interior. However, the Interior Department has the authority and is moving forward to overrule states and authorize Class III gaming where the tribe and state have not successfully negotiated a compact. This has served in some instances as a disincentive for meaningful negotiation.

The Interior Department is responsible for discharging the federal government's trust obligation to Indian tribes and has no commensurate responsibility for protecting the interests of the surrounding community. There is no statutory guidance for the Interior Department with regard to mitigation nor any obligation on the part of the state to provide for local mitigation as a part of its compact.

IGRA also created the National Indian Gaming Regulatory Commission, which has authority to regulate 'Class II', which includes bingo and certain card games. However, federal courts have ruled that the National Indian Gaming Regulatory Commission does not have authority to regulate Class III gaming, which was intended under IGRA to be regulated according to terms of the state compact. As a result there has been strong interest in strengthening IGRA to explicitly provide regulatory authority over Class III gaming to the National Indian Gaming Regulatory Commission, particularly in instances – such as in Wyoming – where Secretarial procedures are being used by the Interior Department to authorize gaming in the absence of a state compact.

Fiscal/Urban/Rural Impact: Counties can incur significant costs from tribal gaming for which the county has no authority to recoup costs. The proposed amendment would require the Department of the Interior to consider and provide for mitigation of costs incurred by counties.