

118TH CONGRESS
1ST SESSION

S. 1492

To provide for the settlement of claims relating to the Shab-eh-nay Band
Reservation in Illinois, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2023

Mr. MORAN (for himself and Mr. MARSHALL) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide for the settlement of claims relating to the Shab-
eh-nay Band Reservation in Illinois, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prairie Band Pota-
5 watomi Nation Shab-eh-nay Band Reservation Settlement
6 Act of 2023”.

7 **SEC. 2. FINDINGS; PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

9 (1) pursuant to the Treaty of July 29, 1829,
10 made and concluded at Prairie du Chien (7 Stat.

1 320) (commonly known as the “Second Treaty of
2 Prairie du Chien”), the Potawatomi and other af-
3 fected Indian Tribes ceded certain land in northern
4 Illinois, except for 2 parcels totaling 1,280 acres for
5 Potawatomi Chief Shab-eh-nay and his Band at
6 their village near Paw Paw Grove, Illinois;

7 (2)(A) pursuant to the Treaty of September 26,
8 1833, made at Chicago (7 Stat. 431) (commonly
9 known as the “Treaty of Chicago”), the Potawatomi
10 and other Indians ceded approximately 5,000,000
11 acres of land, including the Shab-eh-nay Band Res-
12 ervation; but

13 (B) the Senate rejected the provision that ceded
14 that reservation, with the effect of affirming the In-
15 dian-held title and boundaries of the Shab-eh-nay
16 Band Reservation;

17 (3)(A) in 1849, while Chief Shab-eh-nay was
18 visiting his relatives in Kansas, the Commissioner of
19 the General Land Office of the United States sold
20 the Shab-eh-nay Band Reservation at public auction
21 to non-Indians who erroneously believed that they
22 had acquired good title to the land on which the
23 Shab-eh-nay Band Reservation is located; and

1 (B) the Shab-eh-nay Band Reservation is ille-
2 gally occupied as of the date of enactment of this
3 Act;

4 (4) the Shab-eh-nay Band Reservation con-
5 tinues to exist;

6 (5)(A) there is no evidence that Chief Shab-eh-
7 nay and his Band abandoned the Shab-eh-nay Band
8 Reservation; but

9 (B) even if Chief Shab-eh-nay and his band did
10 abandon the Shab-eh-nay Band Reservation, that
11 abandonment could not be the basis for extin-
12 guishing the treaty-recognized Indian title to the
13 Reservation;

14 (6) the Shab-eh-nay Band held recognized title
15 to the Shab-eh-nay Band Reservation;

16 (7) Congress has never acted by treaty or stat-
17 ute to extinguish the recognized Indian title to the
18 Shab-eh-nay Band Reservation;

19 (8) the Tribe is the successor in interest to
20 Chief Shab-eh-nay and his Band and the rightful
21 owner and occupant of the Shab-eh-nay Band Res-
22 ervation;

23 (9) the United States continues to bear a trust
24 responsibility to the Tribe for the Shab-eh-nay Band
25 Reservation;

1 (10) the Tribe pursued a claim against the
2 United States under the Act of August 13, 1946
3 (Public Law 79–726; 60 Stat. 1049) (commonly
4 known as the “Indian Claims Commission Act”) and
5 was paid for the loss of certain land in northern Illi-
6 nois, but the Shab-eh-nay Band Reservation was
7 specifically excluded by the Indian Claims Commis-
8 sion from the land for which the Commission award-
9 ed additional compensation;

10 (11) the Federal Government, through the ac-
11 tions of the General Land Office, has deprived the
12 Tribe of the right of exclusive use and occupancy of
13 the Shab-eh-nay Band Reservation without legal au-
14 thorization or just compensation;

15 (12) certain non-Indian individuals, entities,
16 and local governments occupying land within the
17 boundaries of the Shab-eh-nay Band Reservation as
18 of the date of enactment of this Act, including the
19 State and the County—

20 (A) acquired ownership interests to the
21 land in good faith; and

22 (B) should be able to possess clear title to
23 the land; and

24 (13) the United States has a moral and legal
25 responsibility—

1 (A) to help secure a fair and equitable set-
2 tlement of past inequities to the Tribe; and

3 (B) to ensure protection of the ownership
4 interests of non-Indian occupants of the Shab-
5 eh-nay Band Reservation.

6 (b) PURPOSES.—The purposes of this Act are—

7 (1) to acknowledge the unlawful sale by the
8 Federal Government of the valuable right held by
9 the Tribe to the exclusive use and occupancy of the
10 Shab-eh-nay Band Reservation;

11 (2) to reaffirm Federal recognition of the own-
12 ership by the Tribe of, and jurisdiction over, land
13 that the Tribe owns within the Shab-eh-nay Band
14 Reservation;

15 (3) to promote the economic self-sufficiency of
16 the Tribe and the members of the Tribe;

17 (4) to extinguish the Indian title to, and con-
18 firm the ownership by the State, the County, and
19 certain individuals and entities of, certain land with-
20 in the boundaries of the Shab-eh-nay Band Reserva-
21 tion;

22 (5) to provide stability and security to the State
23 and residents of the State, the local governments
24 and the areas over which the local governments exer-
25 cise jurisdiction, and businesses regarding the own-

1 ership and use by the Tribe of the Reaffirmed Res-
2 ervation;

3 (6) to extinguish potential claims by the Tribe
4 against the United States, the State, the local gov-
5 ernments, and private individuals and entities that
6 could be a direct consequence of not reaching a set-
7 tlement with the Tribe;

8 (7) to require the Secretary to preserve and
9 protect, but not manage, the Reaffirmed Reservation
10 in furtherance of the trust responsibility of the Fed-
11 eral Government; and

12 (8) to authorize the Secretary—

13 (A) to execute the waiver and release of
14 claims and compensate the Tribe; and

15 (B) to take any other action necessary to
16 carry out this Act.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) COUNTY.—The term “County” means
20 DeKalb County in the State.

21 (2) LOCAL GOVERNMENT.—The term “local
22 government” means any unit of local government ex-
23 ercising authority over land located within the Res-
24 ervation as of the date of enactment of this Act.

1 (3) REAFFIRMED RESERVATION.—The term
2 “Reaffirmed Reservation” means—

3 (A) the Reservation; and

4 (B) any land located within the Replace-
5 ment Area that is held in trust after being
6 taken into trust by the Secretary for the benefit
7 of the Tribe pursuant to section 4(b).

8 (4) REPLACEMENT AREA.—The term “Replace-
9 ment Area” means the aboriginal territory of the
10 Tribe, located in the State near Shabbona, which is
11 all of the land contained within the area that is
12 bounded as follows:

13 (A) On the north by Interstate 88.

14 (B) On the west by Interstate 39.

15 (C) On the south by State Route 30 and
16 Preserve Road.

17 (D) On the east by South 4th Street and
18 State Route 23.

19 (5) REPURCHASED LANDS.—The term “Repur-
20 chased Lands” means the approximately 129 acres
21 of land purchased and owned by the Tribe within
22 the Reservation as of the date of enactment of this
23 Act.

1 (6) RESERVATION.—The term “Reservation”
2 means the approximately 1,280 acres of land in the
3 State—

4 (A) reserved in the Treaty of July 29,
5 1829, made and concluded at Prairie du Chien
6 (7 Stat. 320) (commonly known as the “Second
7 Treaty of Prairie du Chien”) and the Treaty of
8 September 26, 1833, made at Chicago (7 Stat.
9 431) (commonly known as the “Treaty of Chi-
10 cago”); and

11 (B) described as follows: sec. 23, the W¹/₂
12 of sec. 25, and the E¹/₂ of sec. 26 in T. 38 N.,
13 R. 3 E., Third Principal Meridian.

14 (7) SECRETARY.—The term “Secretary” means
15 the Secretary of the Interior.

16 (8) STATE.—The term “State” means the State
17 of Illinois.

18 (9) TRIBE.—The term “Tribe” means the Prai-
19 rie Band Potawatomi Nation, a federally recognized
20 Indian Tribe.

21 **SEC. 4. REAFFIRMATION OF SHAB-EH-NAY BAND RESERVA-**
22 **TION.**

23 (a) REAFFIRMATION OF RESERVATION STATUS.—
24 The Repurchased Lands is reaffirmed as Indian country

1 (as defined in section 1151 of title 18, United States
2 Code).

3 (b) TRANSFER OF LANDS INTO TRUST.—Not later
4 than 180 days after the date of enactment of this Act,
5 if the Tribe transfers title to any or all of the Repurchased
6 Lands to the United States, the Secretary, not later than
7 180 days after the date of that transfer, shall take the
8 transferred land into trust for the benefit of the Tribe.

9 (c) ADMINISTRATION.—The Repurchased Lands
10 transferred and taken into trust under subsection (b) shall
11 be part of the Reaffirmed Reservation and administered
12 in accordance with the laws and regulations generally ap-
13 plicable to land held in trust by the United States for an
14 Indian Tribe.

15 **SEC. 5. EXTINGUISHMENT OF INDIAN TITLE; CONFIRMA-**
16 **TION OF LAND OWNERSHIP.**

17 (a) EXTINGUISHMENT OF INDIAN TITLE.—The title
18 to all land within the exterior boundaries of the Reserva-
19 tion held by the Tribe on the date of enactment of this
20 Act, except for the Repurchased Lands, is extinguished.

21 (b) CONFIRMATION OF LAND OWNERSHIP.—Title to
22 land and interests in land within the exterior boundaries
23 of the Reservation held by the State, the local govern-
24 ments, or any individual or entity on November 5, 1849,
25 is recognized and confirmed.

1 **SEC. 6. WAIVER AND RELEASE OF CLAIMS.**

2 (a) CLAIMS AGAINST UNITED STATES, STATE,
3 LOCAL GOVERNMENTS, AND OTHER PARTIES.—The
4 Tribe and the Secretary shall execute appropriate docu-
5 ments providing for the relinquishment by the Tribe of
6 all claims against—

7 (1) the United States for a breach of the trust
8 responsibility associated with any sale of any portion
9 of the Reservation; and

10 (2) the State, local governments, and any other
11 individual or entity occupying the Reservation for
12 any trespass and related damages in connection with
13 the occupation and use of the Reservation during
14 the period beginning on November 5, 1849, and end-
15 ing on the effective date described in subsection (b).

16 (b) EFFECTIVE DATE.—The relinquishment of
17 claims under subsection (a) shall take effect on the later
18 of—

19 (1) the date on which the Tribe receives pay-
20 ment of all of the settlement funds under section 7;
21 and

22 (2) the date on which the Secretary publishes in
23 the Federal Register a notice that the documents de-
24 scribed in subsection (a) have been executed by the
25 Secretary and the Tribe.

1 **SEC. 7. SETTLEMENT FUNDS.**

2 Subject to the appropriation of funds, the Secretary
3 shall pay to the Tribe \$50,000,000 over 5 years in full
4 settlement of the claims of the Tribe, to be managed, in-
5 vested, and used by the Tribe to promote economic devel-
6 opment and land acquisition, as determined by the Tribe
7 in accordance with the constitution and laws of the Tribe.

8 **SEC. 8. LAND ACQUISITION; TRIBAL AUTHORITY TO ENTER**

9 **INTO AGREEMENTS; NO USE OF CONDEMNATION OR EMINENT DOMAIN.**
10

11 (a) LAND ACQUISITION.—

12 (1) IN GENERAL.—After the date of enactment
13 of this Act, the Tribe may acquire from 1 or more
14 willing sellers not more than a total of 1,151 acres
15 of land within the exterior boundaries of or abutting
16 the Reservation or within the exterior boundaries of
17 the Replacement Area using the settlement funds re-
18 ceived by the Tribe under section 7 or other funds
19 of the Tribe.

20 (2) TRANSFER OF ADDITIONAL LANDS INTO
21 TRUST.—At the request of the Tribe, the Secretary
22 shall take into trust for the benefit of the Tribe any
23 land acquired under paragraph (1) not later than
24 180 days after the date on which the Tribe transfers
25 title to such land to the United States.

1 (b) RECOGNITION OF TRIBAL GOVERNMENT AU-
 2 THORITY TO ENTER INTO AGREEMENTS WITH STATE
 3 AND LOCAL GOVERNMENTS.—The Tribe may enter into
 4 agreements with the State and any local government re-
 5 garding the Reaffirmed Reservation and activities occur-
 6 ring on the Reaffirmed Reservation, including agreements
 7 relating to jurisdiction, land use, and services.

8 (c) NO USE OF CONDEMNATION OR EMINENT DO-
 9 MAIN.—Land or interests in land within the exterior
 10 boundaries of the Reservation or the Replacement Area—

11 (1) may not be acquired by condemnation or
 12 eminent domain under this Act; and

13 (2) shall be acquired only by purchase with pay-
 14 ment of fair market value.

15 (d) CULTURAL AND HISTORIC PRESERVATION OF
 16 RESERVATION.—Land owned by the State and local gov-
 17 ernments located within the boundaries of the Reservation
 18 shall be managed to protect any human or cultural re-
 19 mains, consistent with applicable Federal and State law
 20 and subject to the consent of the Tribe.

21 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

22 There is authorized to be appropriated to the Sec-
 23 retary to carry out this Act \$10,000,000 for each of fiscal
 24 years 2024 through 2028.

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