

117TH CONGRESS
1ST SESSION

S. 3242

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

NOVEMBER 18, 2021

Mr. MORAN 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 2021”.

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 Associate Solicitor of the Department of
5 the Interior issued an opinion on July 24, 2000,
6 that concluded that—

7 (A) “the Shab-eh-nay Band Reservation
8 continues to exist”;

9 (B) there is no evidence that Chief Shab-
10 eh-nay abandoned the Shab-eh-nay Band Res-
11 ervation; and

12 (C) “even if it were true that Shab-eh-
13 nay’s Band had abandoned the land, the Band’s
14 treaty recognized title to that land could not be
15 extinguished without Congressional action”;

16 (5) the Solicitor of the Department of the Inte-
17 rior issued an opinion on January 18, 2001, that—

18 (A) confirmed the findings of the Associate
19 Solicitor of the Department of the Interior
20 under paragraph (4); and

21 (B) stated that—

22 (i) the Shab-eh-nay Band held recog-
23 nized title to the Shab-eh-nay Band Res-
24 ervation;

1 (ii) Congress never authorized the
2 conveyance of the Shab-eh-nay Band Res-
3 ervation;

4 (iii) the Tribe is the lawful successor
5 in interest to Chief Shab-eh-nay and his
6 Band; and

7 (iv) the Department of the Interior
8 believes that the United States continues
9 to bear a trust responsibility to the Tribe
10 for the Shab-eh-nay Band Reservation;

11 (6) Congress has never acted by treaty or stat-
12 ute to extinguish the recognized Indian title to the
13 Shab-eh-nay Band Reservation;

14 (7) the Tribe is the successor in interest to
15 Chief Shab-eh-nay and his Band and the rightful
16 owner and occupant of the Shab-eh-nay Band Res-
17 ervation;

18 (8) the Federal Government, through the ac-
19 tions of the General Land Office, has deprived the
20 Tribe of the right of exclusive use and occupancy of
21 the Shab-eh-nay Band Reservation without legal au-
22 thorization or just compensation;

23 (9) certain non-Indian individuals, entities, and
24 local governments occupying land within the bound-
25 aries of the Shab-eh-nay Band Reservation as of the

1 date of enactment of this Act, including the State
2 and the County—

3 (A) acquired ownership interests to the
4 land in good faith; and

5 (B) should be able to possess clear title to
6 the land; and

7 (10) the United States has a moral and legal
8 responsibility—

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

11 (B) to ensure protection of the ownership
12 interests of non-Indian occupants of the Shab-
13 eh-nay Band Reservation.

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

15 (1) to acknowledge the unlawful sale by the
16 Federal Government of the valuable right held by
17 the Tribe to the exclusive use and occupancy of the
18 Shab-eh-nay Band Reservation;

19 (2) to reaffirm Federal recognition of the own-
20 ership by the Tribe of, and jurisdiction over, land
21 that the Tribe owns within the Shab-eh-nay Band
22 Reservation;

23 (3) to promote the economic self-sufficiency of
24 the Tribe and the members of the Tribe;

1 (4) to extinguish the Indian title to, and con-
2 firm the ownership by the State, the County, and
3 certain individuals and entities of, certain land with-
4 in the boundaries of the Shab-eh-nay Band Reserva-
5 tion;

6 (5) to provide stability and security to the State
7 and residents of the State, the local governments
8 and the areas over which the local governments exer-
9 cise jurisdiction, and businesses regarding the own-
10 ership and use by the Tribe of the Reaffirmed Res-
11 ervation;

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

17 (7) to require the Secretary to preserve and
18 protect, but not manage, the Reaffirmed Reservation
19 in furtherance of trust responsibility of the Federal
20 Government; and

21 (8) to authorize the Secretary—

22 (A) to execute the waiver and release of
23 claims and compensate the Tribe; and

24 (B) to take any other action necessary to
25 carry out this Act.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) COUNTY.—The term “County” means
4 Dekalb County in the State.

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

9 (3) REAFFIRMED RESERVATION.—The term
10 “Reaffirmed Reservation” means—

11 (A) the land recognized as being under the
12 ownership of the Tribe under section 4(a); and

13 (B) any land located within the Replace-
14 ment Area that is acquired by the Tribe in re-
15 stricted fee status after the date of enactment
16 of this Act.

17 (4) REPLACEMENT AREA.—The term “Replace-
18 ment Area” means the aboriginal territory of the
19 Tribe, located near Shabbona, Illinois, which is con-
20 tained within the area bounded—

21 (A) on the north by Interstate 88;

22 (B) on the west by Interstate 39;

23 (C) on the south by State Route 30 and
24 Preserve Road; and

25 (D) on the east by South 4th Street and
26 State Route 23.

1 (5) RESERVATION.—The term “Reservation”
2 means the 1,280 acres of land in the State located
3 in sec. 23, the W¹/₂ of sec. 25, and the E¹/₂ of sec.
4 26 in T. 38 N., R. 3 E., Third Principal Meridian.

5 (6) RESTRICTED FEE STATUS.—The term “re-
6 stricted fee status”, with respect to land, means that
7 the land—

8 (A) is—

9 (i) owned in fee by the Tribe by ab-
10 original title or conveyance;

11 (ii) held by the Tribe subject to a re-
12 striction against alienation and taxation,
13 and therefore may not be sold by the Tribe
14 without the consent of Congress; and

15 (iii) expressly subject to the jurisdic-
16 tion of the Tribe; and

17 (B) is not subject to—

18 (i) taxation by any State or local gov-
19 ernment other than the Tribe; or

20 (ii) any provision of law governing
21 land use that provides for the review or ap-
22 proval by the Secretary, directly or
23 through agreement with another party, be-
24 fore the Tribe may use the land for any
25 purpose.

1 with another party, before the Tribe may use
2 the land for any purpose.

3 **SEC. 5. EXTINGUISHMENT OF INDIAN TITLE; CONFIRMA-**
4 **TION OF LAND OWNERSHIP.**

5 (a) EXTINGUISHMENT OF INDIAN TITLE.—Title held
6 by the Tribe to the Reservation (other than the Re-
7 affirmed Reservation) as of the date of enactment of this
8 Act is extinguished.

9 (b) CONFIRMATION OF LAND OWNERSHIP.—Each
10 title to land and right-of-way within the Reservation held
11 by the State, the local governments, or any individual or
12 entity as of November 5, 1849, is recognized and con-
13 firmed.

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

15 (a) CLAIMS AGAINST UNITED STATES, STATE,
16 LOCAL GOVERNMENTS, AND OTHER PARTIES.—The
17 Tribe and the Secretary shall execute appropriate docu-
18 ments providing for the relinquishment by the Tribe of
19 all claims against—

20 (1) the United States for a breach of trust re-
21 sponsibility associated with any sale of any portion
22 of the Reservation; and

23 (2) the State, the local governments, and any
24 individuals or entities occupying the Reservation for
25 any trespass and related damages in connection with

1 the occupation and use of the Reservation during
2 the period beginning on November 5, 1849, and end-
3 ing on the effective date described in subsection (b).

4 (b) EFFECTIVE DATE.—The relinquishment of
5 claims under subsection (a) shall take effect on the later
6 of—

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

10 (2) the date on which the Secretary publishes in
11 the Federal Register a notice that the documents de-
12 scribed in subsection (a) have been executed by the
13 Secretary and the Tribe.

14 **SEC. 7. SETTLEMENT FUNDS.**

15 (a) INITIAL PAYMENT.—Not later than 30 days after
16 the date of enactment of this Act, the Secretary shall pay
17 to the Tribe \$10,000,000 in partial settlement of the
18 claims of the Tribe, to be managed, invested, and used
19 by the Tribe to promote economic development and land
20 acquisition, as determined by the Tribe in accordance with
21 the constitution and laws of the Tribe.

22 (b) SUBSEQUENT PAYMENTS.—

23 (1) ASSESSMENT.—

24 (A) IN GENERAL.—Not later than 180
25 days after the date of enactment of this Act,

1 the Secretary, in consultation with the Tribe,
2 shall calculate an assessment of the total dam-
3 ages to the Tribe associated with the liability of
4 the United States for the illegal sale of the Res-
5 ervation, including the current land value of all
6 land located within the Reservation.

7 (B) REPORT.—The Secretary shall submit
8 to the Committees on Appropriations and In-
9 dian Affairs of the Senate and the Committees
10 on Appropriations and Natural Resources of the
11 House of Representatives a report describing
12 the assessment calculated under subparagraph
13 (A).

14 (2) FINAL SETTLEMENT AGREEMENT.—The
15 Secretary and the Tribe shall negotiate and execute
16 a final settlement agreement in lieu of litigation to
17 resolve the claims of the Tribe, in a form and man-
18 ner acceptable to the Attorney General, which shall
19 include terms for the payment of the remaining set-
20 tlement funds to the Tribe, as calculated under
21 paragraph (1)(A).

22 (3) REQUIREMENT.—The Secretary shall pay to
23 the Tribe $\frac{1}{3}$ of the remaining settlement funds, as
24 described in the final settlement agreement executed
25 under paragraph (2), on each of—

1 (A) the date that is 3 years after the date
2 of enactment of this Act;

3 (B) the date that is 6 years after that date
4 of enactment; and

5 (C) the date that is 9 years after that date
6 of enactment.

7 **SEC. 8. LAND ACQUISITION; TRIBAL AUTHORITY TO ENTER**
8 **INTO AGREEMENTS; NO USE OF CONDEMNA-**
9 **TION OR EMINENT DOMAIN.**

10 (a) LAND ACQUISITION.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 after the date of enactment of this Act, the Tribe
13 may acquire from a willing seller in restricted fee
14 status not more than a total of 1,151 acres of land
15 within the Reservation or the Replacement Area
16 using the settlement funds received by the Tribe
17 under section 7 or other funds of the Tribe.

18 (2) NOTICE.—

19 (A) IN GENERAL.—Before acquiring land
20 under paragraph (1), the Tribe shall give notice
21 to the Secretary.

22 (B) DEADLINE.—On the date that is 60
23 days after receipt of the notice under subpara-
24 graph (A), the land shall automatically—

- 1 (i) convert to ownership by the Tribe
2 in restricted fee status; and
3 (ii) be considered to be part of the Re-
4 affirmed Reservation.

5 (b) RECOGNITION OF TRIBAL GOVERNMENT AU-
6 THORITY TO ENTER INTO AGREEMENTS WITH STATE
7 AND LOCAL GOVERNMENTS.—The Tribe shall have the
8 authority to enter into agreements with the State and any
9 local government regarding the Reaffirmed Reservation
10 and activities occurring on the Reaffirmed Reservation, in-
11 cluding agreements relating to jurisdiction, land use, and
12 services.

13 (c) NO USE OF CONDEMNATION OR EMINENT DO-
14 MAIN.—Land or interests in land—

15 (1) may not be acquired by condemnation or
16 eminent domain under this Act; but

17 (2) shall be acquired by purchase by payment
18 of fair market value.

19 (d) CULTURAL AND HISTORIC PRESERVATION OF
20 RESERVATION.—Land owned by the State and the local
21 governments located within the boundaries of the Reserva-
22 tion shall be managed to protect any human or cultural
23 remains, consistent with applicable Federal and State law
24 and subject to consultation with the Tribe.

1 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated to carry out
3 this Act \$10,000,000.

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