

95TH CONGRESS  
2D SESSION

**H. R. 12834**

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IN THE HOUSE OF REPRESENTATIVES

MAY 23, 1978

Mr. COHEN (for himself and Mr. EMERY) introduced the following bill; which was referred jointly to the Committees on Interior and Insular Affairs and the Judiciary

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**A BILL**

To settle Indian land claims within the State of Maine, 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 That this Act may be cited as the "Maine Indian Claims  
4 Settlement Act".

5 CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

6 SECTION 1. Congress finds and declares that—

7 (1) the Passamaquoddy and Penobscot Indian  
8 Tribes have raised certain claims seeking the return of  
9 vast areas of land in Maine to which they claim aborigi-  
10 nal title, as well as damages from, among others, the  
11 present owners of these lands, on the grounds that the

1 original transfers of these lands by the tribes to the  
2 States of Massachusetts and Maine were made in viola-  
3 tion of the Trade and Intercourse Act of 1790, or subse-  
4 quent version thereof;

5 (2) other claims to land in Maine may be raised  
6 in the future by other Indian tribes or nations;

7 (3) there are many unique and complicated ques-  
8 tions of law and fact that would be raised in the litigation  
9 of each of the claims, which would take many years to  
10 resolve;

11 (4) the mere pendency of these claims, irrespective  
12 of the ultimate outcome of any litigation testing their  
13 validity, may result in irreparable damage and sub-  
14 stantial adverse consequences to the State of Maine and  
15 its citizens, who have acted in good faith in acquiring  
16 their present titles to the lands involved;

17 (5) the United States has at all times since the  
18 founding of the Nation until 1975 disclaimed any and  
19 all trust or fiduciary responsibility for the Indian tribes  
20 in Maine and has permitted and encouraged responsi-  
21 bility to reside in the Commonwealth of Massachusetts  
22 which, upon the separation of Maine from Massachu-  
23 setts in 1820, transferred such responsibility to the  
24 State of Maine;

25 (6) since 1820 the State of Maine, has assumed

1 and fulfilled numerous responsibilities, including trust  
2 responsibilities, to the Indian tribes in the State of  
3 Maine with the full knowledge and approval of the  
4 Federal Government;

5 (7) at all times prior to 1975 the United States  
6 acted in a manner consistent with the understanding  
7 that the Trade and Intercourse Act was not applicable  
8 to Indian tribes in Maine and Massachusetts, or al-  
9 ternatively, consistent with the premise that, if the  
10 Trade and Intercourse Act were applicable, the trans-  
11 fers of land by Indian tribes in the land area now com-  
12 prising the State of Maine had received the express or  
13 implicit approval of Congress;

14 (8) based on the actions and inactions of the  
15 United States, the States of Maine and Massachusetts,  
16 and their citizens have justifiably relied on the belief  
17 that the Trade and Intercourse Act was inapplicable  
18 to Indian tribes in said States, or if the Act were ap-  
19 plicable, the transfers of land by Indian tribes in the  
20 land area now comprising the State of Maine had re-  
21 ceived the approval of Congress;

22 (9) as a result of Federal court decisions in 1975,  
23 the issue has now been raised whether the Trade and  
24 Intercourse Act does apply to land transfers made by  
25 Indian tribes in the land area now comprising the

1 State of Maine, and the United States has stated that,  
2 despite its failure to recognize any trust or fiduciary  
3 responsibilities to these tribes for one hundred and eighty-  
4 eight years, it is prepared to bring suit against the  
5 State of Maine and innocent present landowners in the  
6 State seeking the return of vast land areas to the Indian  
7 tribes and recovery of substantial money damages on  
8 their behalf;

9 (10) the current problems caused by the pendency  
10 of the claims are the direct result of the United States'  
11 failure to recognize that for the past one hundred eighty-  
12 eight years it may have had a trust or fiduciary respon-  
13 sibility to the Indian tribes in the State of Maine and  
14 Massachusetts under the Trade and Intercourse Act;

15 (11) Judge William B. Gunter, the Special Repre-  
16 sentative of President Carter, who was assigned by the  
17 President in 1977 to study the case and recommend  
18 Federal action to resolve the problem, has properly con-  
19 cluded that the United States is primarily liable for the  
20 creation of these problems; and

21 (12) in light of the foregoing, it would be unfair  
22 and inequitable for innocent parties in the State of  
23 Maine to be subject to the risks and hardships that  
24 would be caused by litigation of the claims, and justice  
25 and sound public policy require that the United States

1 accept responsibility and liability to any Indian tribe in  
2 the State of Maine that may have transferred its land in  
3 violation of the Trade and Intercourse Act.

4 RATIFICATION OF ALL PRIOR LAND AND WATER CONVEY-  
5 ANCE AND EXTINGUISHMENT OF ABORIGINAL TITLE

6 SEC. 2. (a) All claims, including but not limited to,  
7 claims for possession, occupancy, or trespass against any  
8 State or subdivision thereof, or any other person or entity  
9 by any Indian involving any transfer of lands or waters  
10 located within the State of Maine from, by, or on behalf of  
11 any Indian, including but not limited to, transfers pursuant  
12 to State statutes, is hereby extinguished and the exclusive  
13 remedy for any claimant shall be a claim against the United  
14 States under section 3 of this Act. This section shall not be  
15 deemed to constitute a finding by Congress that any provi-  
16 sion of the Constitution or any laws of the United States  
17 were applicable to any such transfer.

18 (b) To the extent that any transfer of lands or waters  
19 described in subsection (a) may involve lands or waters to  
20 which any Indian had aboriginal title, subsection (a) shall  
21 be regarded as an extinguishment of such aboriginal title  
22 as of the date of said transfer.

23 (c) As used in this Act, the phrase "lands or waters"  
24 shall include any interest in or right involving lands or  
25 waters; the term "transfer" shall include, but not be lim-

1 ited to, any sale, grant, lease, allotment, partition, convey-  
2 ance, release, quitclaim, cession, adverse possession, or any  
3 event or events that resulted in a change in possession or  
4 control of lands or waters or a relinquishment of rights in  
5 lands or waters, including, without limitation, hunting and  
6 fishing rights; and the terms "Indian" or "Indians" shall  
7 include any Indian, Indian tribe, nation, band, or other  
8 identifiable group of Indians.

9 RECOVERY AGAINST THE UNITED STATES

10 SEC. 3. (a) Any Indian whose claim to occupancy,  
11 possession, or trespass was extinguished by section 2 of this  
12 Act shall have the right to maintain an action against the  
13 United States for damages on the grounds that the transfers,  
14 when made, were in violation of the laws of the United  
15 States. The Court of Claims shall have exclusive jurisdiction  
16 to hear any such claim under the provisions of section 1505  
17 of title 28, United States Code.

18 (b) The amount of any judgment awarded under this  
19 section shall equal the value of the claimant's interest in the  
20 land or water at the date of transfer, less any payments  
21 made in consideration of the transfer plus reasonable annual  
22 simple interest from the date of the transfer to the date of  
23 judgment. Any judgment in favor of a claimant shall in-  
24 clude reasonable expenses, including attorney and expert  
25 witness fees.

1 (c) Every claim for which jurisdiction is hereby es-  
2 tablished in the Court of Claims shall be barred unless a  
3 claim is filed within six years from the effective date of  
4 this Act.

5 JURISDICTION OF THE STATE

6 SEC. 4. Any lands currently held or hereafter acquired  
7 by any Indian in the State of Maine, or any persons resid-  
8 ing or found thereon, shall be subject to all laws of the  
9 State of Maine.