

SENATE No. 1780

By Mr. Doane, a petition (accompanied by bill, Senate, No. 1780) of Paul V. Doane and Howard C. Cahoon, Jr., for legislation to implement the settlement of the Gay Head Indian land claims. Local Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-five.

AN ACT TO IMPLEMENT THE SETTLEMENT OF GAY HEAD INDIAN LAND CLAIMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. LEGISLATIVE FINDINGS AND DECLARA-
2 TION OF POLICY

3 It is found and declared that: —

4 (a) there is pending before the United States Court for the
5 District of Massachusetts a civil action that involves Indian
6 claims to certain lands within the Town of Gay Head;

7 (b) pendency of this lawsuit has resulted in severe eco-
8 nomic hardships for the residents of the Town of Gay Head
9 by clouding the titles to much of the land in the town, includ-
10 ing lands not involved in the lawsuits;

11 (c) the General Court shares with the United States and
12 the parties to the lawsuit a desire to remove all clouds on
13 titles resulting from such Indian land claims; and

14 (d) the parties to lawsuit and others interested in the set-
15 tlement of Indian land claims within the Commonwealth exe-
16 cuted a Settlement Agreement which requires implementing
17 legislation by the Congress of the United States and the Gen-
18 eral Court.

1 SECTION 2. DEFINITIONS

2 For the purpose of this Act, the term: —

3 (a) "tribal land corporation" means the Massachusetts
4 chartered corporation created by the Wampanoag Tribal Coun-
5 cil of Gay Head, Inc.;

6 (b) "tribal council" means the Wampanoag Tribal Council

7 of Gay Head, Inc.;

8 (c) "lawsuit" means the actions entitled *Wampanoag Tribal*
9 *Council of Gay Head, et al v. Town of Gay Head, et al.*, C.A.
10 No. 74-5826-McN (D. Masss.).

11 (d) "private settlement lands" means approximately 175
12 acres of privately held land described in paragraph 6 of the
13 Settlement Agreement that are to be acquired by the Secre-
14 tary of the Interior from certain private landowners;

15 (e) "public settlement lands" means the lands described in
16 paragraph 4 of the Settlement Agreement that are to be con-
17 veyed by the Town of Gay Head to the tribal land corpora-
18 tion;

19 (f) "settlement lands" means those lands defined in sub-
20 sections (d) and (e) of this section;

21 (g) "settlement agreement" means the document entitled
22 "Joint Memorandum of Understanding concerning Settlement
23 of the Gay Head, Massachusetts Indian Land Claims", ex-
24 cited as of Nov. 19 & Nov. 20, 1983, by representatives of the
25 parties to the lawsuit, as filed with the Secretary of the Com-
26 monwealth.

27 (h) "Cook Lands" means the lands described in paragraph
28 5 of the Settlement Agreement that are to be conveyed by the
29 Town of Gay Head to the tribal land corporations.

1 SECTION 3. The Town of Gay Head is authorized to convey
2 to the tribal land corporation the Cook Lands and the public
3 settlement lands.

1 SECTION 4. All Federal, State, and Town laws shall apply
2 to the Settlement Lands subject only to the following special
3 provisions: —

4 (a) The Settlement Lands will not be treated as real prop-
5 erty subject to taxation pursuant to Massachusetts General
6 Laws, Chapter 59, or any successor provision of law, but the
7 Tribal Land Corporation or any successor in interest will
8 make payments in lieu of property taxes to the Town of Gay
9 Head or other appropriate entity on the former Strock Estate,
10 if and when improvements are placed on those lands. The
11 quantity of land subject to such payments in connection with
12 each improvement shall be the minimum land area established

13 by the density requirements of the Town zoning ordinance
14 for such an improvement. The amount of such payment shall
15 be determined by assessing the value of the improvements and
16 the value of the land attributable to such improvement, as de-
17 termined in accordance with this section, and applying the
18 Town property tax rate or any other applicable tax rates just
19 as though the improvements and attributable land were held
20 by any private person. With respect to in-lieu payments that
21 remain unpaid, neither the Town nor any other person will
22 have the right of foreclosure against the Settlement Lands.
23 Instead of its right of foreclosure, the Town or any other per-
24 son otherwise entitled to foreclosure may enforce a lien
25 against other assets of the Tribal Land Corporation or any
26 subsidiary thereof, or any other entity controlled by the Tribal
27 Council. If the in-lieu payments are not fully paid three years
28 after they are due, the Town may seize the land and improve-
29 ments on which the in-lieu payments are in arrears and lease
30 such land and improvements on reasonable terms for periods
31 of time not to exceed five years, the sums realized from such
32 leases to be applied, after costs, to the payment of the amount
33 in arrears. Seizure by the Town under this provision shall in
34 no way affect title to the land, which shall remain with the
35 Tribal Land Corporation, and at the expiration of any lease
36 period during which all arrearages have been paid in full, con-
37 trol of the land and improvements shall be returned to the
38 Tribal Land Corporation.

39 (b) The Tribal Land Corporation or any successor in in-
40 terest will have the right, after consultation with appropriate
41 State and local officials, to establish its own regulations con-
42 cerning hunting, but not trapping or fishing, by Indians on the
43 Settlement Lands by means other than firearms or crossbow.
44 These regulations by the Tribal Land Corporation need not
45 conform to State or local law, but shall impose reasonable
46 standards of safety for persons and protection of wild life, and
47 the absence of such safety regulations shall be deemed unrea-
48 sonable. These safety and protection standards shall be sub-
49 ject to review for reasonableness in an action in the Superior
50 Court and may be enforced by State and local law enforce-
51 ment officers. Hunting by firearm or crossbow shall remain
52 subject to State law.

53 (c) The zoning and subdivision ordinances and regulations
54 of the Town of Gay Head shall not be applicable to the settle-
55 ment lands except to the extent and in the manner provided
56 in the Settlement Agreement. The Settlement Lands shall be
57 subject to the Land Use Plan made a part of the Settlement
58 Agreement which shall be enacted as part of the zoning ordi-
59 nance of Gay Head, and such Plan as embodied in the zoning
60 ordinance may be amended only with the agreement of the
61 Tribal Land Corporation or any successor in interest, and by
62 the Town of Gay Head at two town meeting not less than one
63 month apart, at least one of which shall be held during the
64 month of July or August.

65 (d) The zoning laws of the Town of Gay Head which are
66 currently in force shall continue to apply to the Cook Lands
67 and any changes in those zoning laws shall apply to the Cook
68 Lands only if adopted in the manner provided by the Settle-
69 ment Agreement.

1 SECTION 5. Except as provided in this Act, all laws, statutes
2 and bylaws of the Commonwealth of Massachusetts, the Town
3 of Gay Head, and any other properly constructed legal body,
4 shall apply to all settlement lands and any other lands owned
5 now or at any time in the future by the tribal land corpora-
6 tion, the Wampanoag Tribal Council of Gay Head, Inc., or
7 any successor organization, in the same manner as if such
8 lands were owned by any private land owner.

1 SECTION 6. This Act shall take effect upon enactment of
2 legislation by the United States providing for extinguishment
3 of aboriginal and all other Indian tribal land claims in the
4 Town of Gay Head which are maintained under laws of the
5 United States that are specifically applicable to transfers of
6 land or natural resources from, by or on behalf of any Indian
7 nation or tribe of Indians and further providing that all laws,
8 statutes and ordinances of the Commonwealth of Massachu-
9 setts, the Town of Gay Head, and any other properly consti-
10 tuted legal body, with the exceptions noted in Section 4 of
11 this chapter, shall continue to apply to all settlement lands and
12 any other lands owned by the tribal land corporation or any
13 successor organization.