

108TH CONGRESS
1ST SESSION

S. 578

To amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2003

Mr. INOUE (for himself, Mr. CAMPBELL, Mr. AKAKA, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, 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 “Tribal Government
5 Amendments to the Homeland Security Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) there is a government-to-government rela-
2 tionship between the United States and each Indian
3 tribal government;

4 (2) through statutes and treaties, Congress has
5 recognized the inherent sovereignty of Indian tribal
6 governments and the rights of Native people to self-
7 determination and self-governance;

8 (3) each Indian tribal government possesses the
9 inherent sovereign authority—

10 (A)(i) to establish its own form of govern-
11 ment;

12 (ii) to adopt a constitution or other organic
13 governing documents; and

14 (iii) to establish a tribal judicial system;
15 and

16 (B) to provide for the health and safety of
17 those who reside on tribal lands, including the
18 provision of law enforcement services on lands
19 under the jurisdiction of the tribal government;

20 (4) tribal emergency response providers, such
21 as tribal emergency public safety officers, law en-
22 forcement officers, emergency response personnel,
23 emergency medical personnel and facilities (including
24 tribal and Indian Health Service emergency facili-

1 ties), and related personnel, agencies, and authori-
2 ties—

3 (A) play a crucial role in providing for the
4 health and safety of those who reside on tribal
5 lands; and

6 (B) are necessary components of a com-
7 prehensive system to secure the homeland of
8 the United States;

9 (5) there are more than 25 Indian tribes that
10 have primary jurisdiction over—

11 (A) lands within the United States that
12 are adjacent to the Canadian or Mexican bor-
13 der; or

14 (B) waters of the United States that pro-
15 vide direct access by boat to lands within the
16 United States;

17 (6) the border lands under the jurisdiction of
18 Indian tribal governments comprise more than 260
19 miles of the approximately 7,400 miles of inter-
20 national border of the United States;

21 (7) numerous Indian tribal governments exer-
22 cise criminal, civil, and regulatory jurisdiction over
23 lands on which dams, oil and gas deposits, nuclear
24 or electrical power plants, water and sanitation sys-

1 tems, or timber or other natural resources are lo-
2 cated; and

3 (8) the involvement of tribal governments in the
4 protection of the homeland of the United States is
5 essential to the comprehensive maintenance of the
6 homeland security of the United States.

7 (b) PURPOSES.—The purposes of this Act are to en-
8 sure that—

9 (1) the Department of Homeland Security
10 consults with, involves, coordinates with, and in-
11 cludes Indian tribal governments in carrying out the
12 mission of the Department under the Homeland Se-
13 curity Act of 2002 (Public Law 107–296); and

14 (2) Indian tribal governments participate fully
15 in the protection of the homeland of the United
16 States

17 **SEC. 3. TABLE OF CONTENTS; DEFINITIONS.**

18 (a) TABLE OF CONTENTS.—The table of contents of
19 the Homeland Security Act of 2002 (Public Law 107–296;
20 116 Stat. 2135) is amended in the item relating to section
21 801 by inserting “, Tribal,” after “State”.

22 (b) DEFINITIONS.—Section 2 of the Homeland Secu-
23 rity Act of 2002 (6 U.S.C. 101) is amended—

24 (1) in paragraph (6), by inserting “tribal,”
25 after “State,”;

1 (2) by redesignating paragraphs (9), (10), (11),
2 (12), (13), (14), (15), and (16) as paragraphs (10),
3 (11), (12), (13), (14), (15), (16), and (19), respec-
4 tively;

5 (3) by inserting after paragraph (8) the fol-
6 lowing:

7 “(9) INDIAN TRIBE.—The term ‘Indian tribe’
8 means any Indian tribe, band, nation, or other orga-
9 nized group or community located in the continental
10 United States (excluding the State of Alaska) that
11 is recognized as being eligible for the special pro-
12 grams and services provided by the United States to
13 Indians because of their status as Indians.”;

14 (4) in paragraph (11) (as redesignated by para-
15 graph (2)), by striking subparagraph (B) and insert-
16 ing the following:

17 “(B) an Alaska Native village or organiza-
18 tion; and”;

19 (5) by inserting after paragraph (16) (as redesi-
20 gnated by paragraph (2)) the following:

21 “(17) TRIBAL COLLEGE OR UNIVERSITY.—The
22 term ‘tribal college or university’ has the meaning
23 given the term in section 316(b) of the Higher Edu-
24 cation Act of 1965 (20 U.S.C. 1059c(b)).

1 “(18) TRIBAL GOVERNMENT.—The term ‘tribal
2 government’ means the governing body of an Indian
3 tribe that is recognized by the Secretary of the Inte-
4 rior.”.

5 **SEC. 4. DEPARTMENT OF HOMELAND SECURITY.**

6 (a) EXECUTIVE DEPARTMENT; MISSION.—Section
7 101(b)(2) of the Homeland Security Act of 2002 (6
8 U.S.C. 111(b)(2)) is amended by inserting “tribal,” after
9 “State,”.

10 (b) SECRETARY; FUNCTIONS.—Section 102(c) of the
11 Homeland Security Act of 2002 (6 U.S.C. 112(c)) is
12 amended—

13 (1) in the matter preceding paragraph (1), by
14 inserting “, Tribal,” after “of State”; and

15 (2) by inserting “, tribal,” after “State” each
16 place it appears.

17 **SEC. 5. INFORMATION ANALYSIS AND INFRASTRUCTURE**
18 **PROTECTION.**

19 (a) DIRECTORATE FOR INFORMATION ANALYSIS AND
20 INFRASTRUCTURE PROTECTION.—Section 201(d) of the
21 Homeland Security Act of 2002 (6 U.S.C. 121(d)) is
22 amended—

23 (1) in paragraphs (1), (3), (6), (7)(B), (8), (9),
24 (11), and (13), by inserting “, tribal,” after “State”
25 each place it appears;

1 (2) in paragraph (16), by inserting “, tribal,”
2 after “State”; and

3 (3) in paragraph (17), by inserting “tribal,”
4 after “State,”.

5 (b) ACCESS TO INFORMATION.—Section 202(d)(2) of
6 the Homeland Security Act of 2002 (6 U.S.C. 122(d)(2))
7 is amended by inserting “, tribal,” after “State”.

8 (c) CRITICAL INFRASTRUCTURE INFORMATION;
9 DEFINITIONS.—Section 212 of the Homeland Security
10 Act of 2002 (6 U.S.C. 131) is amended in paragraphs
11 (3)(A) and (5)(C) by inserting “tribal,” after “State,”
12 each place it appears.

13 (d) PROTECTION OF VOLUNTARILY SHARED CRIT-
14 ICAL INFRASTRUCTURE INFORMATION.—Section 214 of
15 the Homeland Security Act of 2002 (6 U.S.C. 133) is
16 amended—

17 (1) in subsection (a)(1)—

18 (A) in subparagraph (C)—

19 (i) by inserting “tribal,” after
20 “State,”; and

21 (ii) by striking “or State” and insert-
22 ing “, State, or tribal”; and

23 (B) in subparagraph (E)—

24 (i) in the matter preceding clause (i),
25 by inserting “, tribal,” after “State”;

1 (ii) in clause (i), by inserting “, trib-
2 al,” after “State”; and

3 (iii) in clause (ii), by inserting “, trib-
4 al,” after “State”;

5 (2) in subsection (c), by inserting “tribal,” after
6 “State,”; and

7 (3) in subsection (e)(2)(D), by inserting “, trib-
8 al,” after “State”.

9 (e) ENHANCEMENT OF NON-FEDERAL
10 CYBERSECURITY.—Section 223(1) of the Homeland Secu-
11 rity Act of 2002 (6 U.S.C. 143(1)) is amended by insert-
12 ing “, tribal,” after “State”.

13 (f) MISSION OF OFFICE; DUTIES.—Section 232 of
14 the Homeland Security Act of 2002 (6 U.S.C. 162) is
15 amended—

16 (1) in subsection (a)(2), by inserting “tribal,”
17 after “State,”;

18 (2) in subsection (b)—

19 (A) in paragraphs (2) and (3), by inserting
20 “tribal,” after “State,” each place it appears;

21 (B) in paragraph (6)—

22 (i) in the matter preceding subpara-
23 graph (A), by inserting “tribal,” after
24 “State,”; and

1 (ii) in subparagraph (H), by inserting
2 “, tribal,” after “State”; and

3 (C) in paragraphs (9), (11), and (14), by
4 inserting “, tribal,” after “State” each place it
5 appears; and

6 (3) in subsection (g)(1)(A), by inserting “trib-
7 al,” after “State,”.

8 (g) NATIONAL LAW ENFORCEMENT AND CORREC-
9 TIONS TECHNOLOGY CENTERS.—Section 235(d) of the
10 Homeland Security Act of 2002 (6 U.S.C. 165(d)) is
11 amended by inserting “tribal,” after “State,”.

12 **SEC. 6. SCIENCE AND TECHNOLOGY IN SUPPORT OF HOME-**
13 **LAND SECURITY.**

14 (a) RESPONSIBILITIES AND AUTHORITIES OF THE
15 UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.—
16 Section 302(6) of the Homeland Security Act of 2002 (6
17 U.S.C. 182(6)) is amended by inserting “tribal,” after
18 “State,”.

19 (b) CONDUCT OF CERTAIN PUBLIC HEALTH-RE-
20 LATED ACTIVITIES.—Section 304(a) of the Homeland Se-
21 curity Act of 2002 (6 U.S.C. 184(a)) is amended by in-
22 serting “and the Indian Health Service” after “Public
23 Health Service”.

24 (c) CONDUCT OF RESEARCH, DEVELOPMENT, DEM-
25 ONSTRATION, TESTING, AND EVALUATION.—Section

1 308(b) of the Homeland Security Act of 2002 (6 U.S.C.
2 188(b)) is amended—

3 (1) in paragraph (1)(A), by striking “colleges,
4 universities,” and inserting “colleges and universities
5 (including tribal colleges and universities),”; and

6 (2) in paragraph (2)(B), by inserting “(includ-
7 ing tribal colleges or universities)” after “univer-
8 sities”.

9 (d) UTILIZATION OF DEPARTMENT OF ENERGY NA-
10 TIONAL LABORATORIES AND SITES IN SUPPORT OF
11 HOMELAND SECURITY ACTIVITIES.—Section 309(d) of
12 the Homeland Security Act of 2002 (6 U.S.C. 189(d)) is
13 amended by inserting “, tribal,” after “State”.

14 (e) HOMELAND SECURITY INSTITUTE.—Section
15 312(d) of the Homeland Security Act of 2002 (6 U.S.C.
16 192(d)) is amended by inserting “tribal colleges and uni-
17 versities,” after “education,”.

18 (f) TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE
19 AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE
20 HOMELAND SECURITY.—Section 313 of the Homeland
21 Security Act of 2002 (6 U.S.C. 193) is amended—

22 (1) in paragraphs (1) and (4) of subsection (b),
23 by inserting “tribal,” after “State,” each place it ap-
24 pears; and

1 (2) in subsection (c)(1), by inserting “, tribal,”
2 after “State”.

3 **SEC. 7. DIRECTORATE OF BORDER AND TRANSPORTATION**
4 **SECURITY.**

5 (a) OFFICE FOR DOMESTIC PREPAREDNESS.—Sec-
6 tion 430(c)(5) of the Homeland Security Act of 2002 (6
7 U.S.C. 238(c)(5)) is amended by inserting “, tribal,” after
8 “State”.

9 (b) REPORT ON IMPROVING ENFORCEMENT FUNC-
10 TIONS.—Section 445(b) of the Homeland Security Act of
11 2002 (6 U.S.C. 255(b)) is amended by inserting “, tribal,”
12 after “State”.

13 **SEC. 8. EMERGENCY PREPAREDNESS AND RESPONSE.**

14 (a) RESPONSIBILITIES.—Section 502(5) of the
15 Homeland Security Act of 2002 (6 U.S.C. 312(5)) is
16 amended by inserting “tribal,” after “State”.

17 (b) CONDUCT OF CERTAIN PUBLIC HEALTH-RE-
18 LATED ACTIVITIES.—Section 505(a) of the Homeland Se-
19 curity Act of 2002 (6 U.S.C. 315(a)) is amended—

20 (1) by inserting “tribal,” after “State,”; and

21 (2) by inserting “and the Indian Health Serv-
22 ice” after “Public Health Service”.

1 **SEC. 9. TREATMENT OF CHARITABLE TRUSTS FOR MEM-**
2 **BERS OF THE ARMED FORCES OF THE**
3 **UNITED STATES AND OTHER GOVERN-**
4 **MENTAL ORGANIZATIONS.**

5 Section 601(c)(9)(B) of the Homeland Security Act
6 of 2002 (6 U.S.C. 331(c)(9)(B)) is amended by inserting
7 “tribal,” after “State,”.

8 **SEC. 10. COORDINATION WITH NON-FEDERAL ENTITIES; IN-**
9 **SPECTOR GENERAL; UNITED STATES SECRET**
10 **SERVICE; COAST GUARD; GENERAL PROVI-**
11 **SIONS.**

12 (a) OFFICE FOR STATE AND LOCAL GOVERNMENT
13 COORDINATION.—Section 801 of the Homeland Security
14 Act of 2002 (6 U.S.C. 361) is amended—

15 (1) in the section heading, by inserting “,
16 **TRIBAL,**” after “**STATE**”;

17 (2) in subsection (a)—

18 (A) by inserting “, Tribal,” after “State”;

19 and

20 (B) by inserting “, tribal,” after “State”;

21 and

22 (3) in subsection (b), by inserting “, tribal,”
23 after “State” each place it appears.

24 (b) LITIGATION MANAGEMENT.—Section 863(a)(1)
25 of the Homeland Security Act of 2002 (6 U.S.C.
26 442(a)(1)) is amended in the second sentence by inserting

1 “, or area under the jurisdiction of an Indian tribe,” after
2 “State”.

3 (c) DEFINITIONS FOR SUPPORT ANTI-TERRORISM BY
4 FOSTERING EFFECTIVE TECHNOLOGIES ACT.—Section
5 865(6) of the Homeland Security Act of 2002 (6 U.S.C.
6 444(6)) is amended by inserting “, tribal,” after “State”.

7 (d) REGULATORY AUTHORITY AND PREEMPTION.—
8 Section 877(b) of the Homeland Security Act of 2002 (6
9 U.S.C. 457(b)) is amended—

10 (1) in the subsection heading, by inserting “,
11 TRIBAL,” after “STATE”; and

12 (2) by inserting “, tribal,” after “State” each
13 place it appears.

14 (e) INFORMATION SHARING.—Section 891 of the
15 Homeland Security Act of 2002 (6 U.S.C. 481) is amend-
16 ed—

17 (1) in subsection (b)—

18 (A) in paragraphs (2), (4), (5), (7), (8),
19 and (9), by inserting “, tribal,” after “State”
20 each place it appears;

21 (B) in paragraph (6)—

22 (i) by inserting “, tribal,” after “cer-
23 tain State”; and

24 (ii) by inserting “tribal,” after
25 “State,”; and

1 (C) in paragraphs (10) and (11), by insert-
2 ing “tribal,” after “State,” each place it ap-
3 pears; and

4 (2) in subsection (c), by inserting “tribal,” after
5 “State,”.

6 (f) FACILITATING HOMELAND SECURITY INFORMA-
7 TION SHARING PROCEDURES.—Section 892 of the Home-
8 land Security Act of 2002 (6 U.S.C. 482) is amended—

9 (1) in subsection (a)(1)(A), by inserting “, trib-
10 al,” after “State”;

11 (2) in paragraphs (1), (2)(D), and (6) of sub-
12 section (b), by inserting “, tribal,” after “State”
13 each place it appears;

14 (3) in subsection (c), by inserting “, tribal,”
15 after “State” each place it appears;

16 (4) in subsection (e), by inserting “, tribal,”
17 after “State” each place it appears;

18 (5) in subsection (f)—

19 (A) in paragraph (1), by inserting “tribal,”
20 after “State,”; and

21 (B) in paragraph (3)—

22 (i) in the matter preceding subpara-
23 graph (A), by inserting “, tribal,” after
24 “State”;

1 (ii) in subparagraph (A), by inserting
2 “tribally or” after “other”;

3 (iii) in subparagraph (B), by inserting
4 “, tribal,” after “State”; and

5 (iv) in subparagraph (D), by inserting
6 “tribal,” after “State,”; and

7 (6) in subsection (g), by inserting “, tribal,”
8 after “State”.

9 (g) REPORT.—Section 893(a) of the Homeland Secu-
10 rity Act of 2002 (6 U.S.C. 483(a)) is amended in the sec-
11 ond sentence by inserting “tribal,” after “State,”.

12 **SEC. 11. DEPARTMENT OF JUSTICE DIVISIONS.**

13 Section 1114(b) of the Homeland Security Act of
14 2002 (6 U.S.C. 532(b)) is amended by inserting “tribal,”
15 after “State,”.

16 **SEC. 12. AMENDMENTS TO OTHER LAWS.**

17 (a) CYBER SECURITY ENHANCEMENT ACT OF
18 2002.—

19 (1) EMERGENCY DISCLOSURE EXCEPTION.—
20 Section 2702(b)(7) of title 18, United States Code
21 (as added by section 225(d) of the Homeland Secu-
22 rity Act of 2002 (Public Law 107–296; 116 Stat.
23 2157)), is amended by inserting “tribal,” after
24 “State,”.

1 (2) PROTECTING PRIVACY—Section 2701(b)(1)
2 of title 18, United States Code (as amended by sec-
3 tion 225(j)(2)(A) of the Homeland Security Act of
4 2002 (Public Law 107–296; 116 Stat. 2158)), is
5 amended by inserting “or Indian tribe” after “or
6 any State”.

7 (b) NATIONAL INSTITUTE OF JUSTICE.—Section
8 202(e)(11) of the Omnibus Crime Control and Safe
9 Streets Act of 1968 (42 U.S.C. 3722(e)(11)) (as added
10 by section 237(2) of the Homeland Security Act of 2002
11 (Public Law 107–296; 116 Stat. 2162)) is amended by
12 inserting “tribal,” after “State,”.

13 (c) HOMELAND SECURITY FUNDING ANALYSIS IN
14 PRESIDENT’S BUDGET.—Section 1105(a)(33)(A)(iii) of
15 title 31, United States Code (as added by section 889(a)
16 of the Homeland Security Act of 2002 (Public Law 107–
17 296; 116 Stat. 2250) is amended by inserting “, tribal,”
18 after “State”.

19 (d) AUTHORITY TO SHARE GRAND JURY INFORMA-
20 TION.—Rule 6(e)(3)(C) of the Federal Rules of Criminal
21 Procedure (as amended by section 895(2) of the Home-
22 land Security Act of 2002 (Public Law 107–296; 116
23 Stat. 2256)) is amended—

24 (1) in clause (i)(VI), by striking “federal,
25 state,” and inserting “Federal, State, tribal,”; and

1 (2) in the last sentence of clause (iii), by strik-
2 ing “state,” and inserting “State, tribal,”

3 (e) **AUTHORITY TO SHARE ELECTRONIC, WIRE, AND**
4 **ORAL INTERCEPTION INFORMATION.**—Section 2517(8) of
5 title 18, United States Code (as added by section 896 of
6 the Homeland Security Act of 2002 (Public Law 107–296;
7 116 Stat. 2257)), is amended by inserting “tribal,” after
8 “State,” each place it appears.

9 (f) **FOREIGN INTELLIGENCE INFORMATION.**—Section
10 203(d)(1) of the Uniting and Strengthening America by
11 Providing Appropriate Tools Required to Intercept and
12 Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
13 (50 U.S.C. 403–5d) (as amended by section 897(a) of the
14 Homeland Security Act of 2002 (Public Law 107–296;
15 116 Stat. 2257)) is amended by inserting “tribal,” after
16 “State,” each place it appears.

17 (g) **FOREIGN INTELLIGENCE SURVEILLANCE.**—

18 (1) **INFORMATION ACQUIRED FROM AN ELEC-**
19 **TRONIC SURVEILLANCE.**—Section 106(k)(1) of the
20 Foreign Intelligence Surveillance Act of 1978 (50
21 U.S.C. 1806) (as amended by section 898 of the
22 Homeland Security Act of 2002 (Public Law 107–
23 296; 116 Stat. 2258)) is amended by inserting “or
24 Indian tribe” after “subdivision)”.

1 (2) INFORMATION ACQUIRED FROM A PHYSICAL
 2 SEARCH.—Section 305(k)(1) of the Foreign Intel-
 3 ligence Surveillance Act of 1978 (50 U.S.C. 1825)
 4 (as amended by section 899 of the Homeland Secu-
 5 rity Act of 2002 (Public Law 107–296; 116 Stat.
 6 2258)) is amended by inserting “or Indian tribe”
 7 after “subdivision)”.

8 (h) TRANSFER OF CERTAIN SECURITY AND LAW EN-
 9 FORCEMENT FUNCTIONS AND AUTHORITIES.—Section
 10 1315 of title 40, United States Code (as amended by sec-
 11 tion 1706(b)(1) of the Homeland Security Act of 2002
 12 (Public Law 107–296; 116 Stat. 2316)), is amended—

13 (1) in subsection (d)(3), by inserting “tribal,”
 14 after “State,”; and

15 (2) in subsection (e), by inserting “, tribal,”
 16 after “State” each place it appears.

17 **SEC. 13. CONGRESSIONAL AFFIRMATION AND DECLARA-**
 18 **TION OF TRIBAL GOVERNMENT AUTHORI-**
 19 **TIES.**

20 (a) IN GENERAL.—For the purpose of this Act, Con-
 21 gress affirms and declares that the inherent sovereign au-
 22 thority of an Indian tribal government includes the au-
 23 thority to enforce and adjudicate violations of applicable
 24 criminal, civil, and regulatory laws committed by any per-

1 son on land under the jurisdiction of the Indian tribal gov-
2 ernment, except as expressly and clearly limited by—

3 (1) a treaty between the United States and an
4 Indian tribe; or

5 (2) an Act of Congress.

6 (b) SCOPE.—The authority of an Indian tribal gov-
7 ernment described in subsection (a) shall—

8 (1) be concurrent with the authority of the
9 United States; and

10 (2) extend to—

11 (A) all places and persons within the In-
12 dian country (as defined in section 1151 of title
13 18, United States Code) under the concurrent
14 jurisdiction of the United States and the Indian
15 tribal government; and

16 (B) any person, activity, or event having
17 sufficient contacts with that land, or with a
18 member of the Indian tribal government, to en-
19 sure protection of due process rights.

○