

104TH CONGRESS
1ST SESSION

S. 286

To amend the Solid Waste Disposal Act to grant State status to Indian tribes for purposes of the enforcement of such Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 10), 1995

Mr. MCCAIN (for himself, Mr. INOUE, Mr. CAMPBELL, Mr. THOMAS, and Mrs. KASSEBAUM) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Solid Waste Disposal Act to grant State status to Indian tribes for purposes of the enforcement of such Act, 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. AUTHORITY TO GRANT STATE STATUS TO IN-**
4 **DIAN TRIBES FOR ENFORCEMENT OF SOLID**
5 **WASTE DISPOSAL ACT.**

6 (a) DEFINITIONS.—Section 1004 of the Solid Waste
7 Disposal Act (42 U.S.C. 6903) is amended—

1 (1) in paragraph (13)(A), by striking “or au-
2 thorized tribal organization or Alaska Native village
3 or organization,”;

4 (2) in paragraph (15), by inserting after
5 “State,” the following: “Indian tribe,”; and

6 (3) by adding at the end the following new
7 paragraphs:

8 “(42) The term ‘Indian country’ means—

9 “(A) all land within the limits of any Indian
10 reservation under the jurisdiction of the Federal
11 Government (including any right-of-way running
12 through the reservation), notwithstanding the issu-
13 ance of any patent;

14 “(B) all dependent Indian communities within
15 the borders of the United States, including depend-
16 ent Indian communities—

17 “(i) within the original territory or terri-
18 tory that is subsequently acquired; and

19 “(ii) within or without the limits of a
20 State; and

21 “(C) all Indian allotments with respect to which
22 the Indian titles have not been extinguished, includ-
23 ing rights-of-way running through the allotments.

24 “(43) The term ‘Indian tribe’ means any Indian
25 tribe, band, group, or community, including any Alaska

1 Native village, organization, or regional corporation (as
2 defined in, or established pursuant to, the Alaska Native
3 Claims Settlement Act (43 U.S.C. 1601 et seq.)) that—

4 “(A) is recognized by the Secretary of the Inte-
5 rior; and

6 “(B) exercises governmental authority within
7 Indian country.”.

8 (b) TREATMENT OF INDIAN TRIBES AS STATES.—
9 Subtitle A of such Act (42 U.S.C. 6901 et seq.) is amend-
10 ed by adding at the end the following new section:

11 **“SEC. 1009. INDIAN TRIBES.**

12 “(a) IN GENERAL.—Subject to subsection (b), the
13 Administrator may—

14 “(1) treat an Indian tribe as a State for the
15 purposes of this Act;

16 “(2) delegate to an Indian tribe primary en-
17 forcement responsibility for programs and projects
18 established under this Act; and

19 “(3) provide Indian tribes grant and contract
20 assistance to carry out functions of a State pursuant
21 to this Act.

22 “(b) ENVIRONMENTAL PROTECTION AGENCY REGU-
23 LATIONS.—

24 “(1) IN GENERAL.—

1 “(A) TREATMENT.—Not later than 18
2 months after the date of the enactment of this
3 section, the Administrator shall issue final reg-
4 ulations that specify the manner in which In-
5 dian tribes shall be treated as States for the
6 purposes of this Act.

7 “(B) AUTHORIZATION.—Under the regula-
8 tions issued by the Administrator, the treat-
9 ment of an Indian tribe as a State shall be au-
10 thorized only if—

11 “(i) the Indian tribe has a governing
12 body carrying out substantial governmental
13 duties and powers;

14 “(ii) the functions that the Indian
15 tribe will exercise pertain to land and re-
16 sources that are—

17 “(I) held by the Indian tribe, the
18 United States in trust for the Indian
19 tribe, or a member of the Indian tribe
20 (if the property interest is subject to
21 a trust restriction on alienation); or

22 “(II) are otherwise within Indian
23 country; and

24 “(iii) in the judgment of the Adminis-
25 trator, the Indian tribe is reasonably ex-

1 pected to be capable of carrying out the
2 functions to be exercised in a manner con-
3 sistent with the requirements of this Act
4 (including all applicable regulations).

5 “(2) EXCEPTIONS.—

6 “(A) IN GENERAL.—If, with respect to a
7 provision of this Act, the Administrator deter-
8 mines that the treatment of an Indian tribe in
9 the same manner as a State is inappropriate,
10 administratively infeasible, or otherwise incon-
11 sistent with the purposes of this Act, the Ad-
12 ministrator may include in the regulations is-
13 sued under this section a mechanism by which
14 the Administrator directly implements and car-
15 ries out the provision in lieu of the Indian tribe.

16 “(B) STATUTORY CONSTRUCTION.—Sub-
17 ject to subparagraph (C), nothing in this sec-
18 tion is intended to permit an Indian tribe to as-
19 sume or maintain primary enforcement respon-
20 sibility for programs established under this Act
21 in a manner that is less protective of human
22 health and the environment than the manner in
23 which a State may assume or maintain the re-
24 sponsibility.

1 “(C) CRIMINAL ENFORCEMENT.—An In-
2 dian tribe shall not be required to exercise ju-
3 risdiction over the enforcement of criminal pen-
4 alties.

5 “(c) COOPERATIVE AGREEMENTS.—In order to en-
6 sure the consistent implementation of the requirements of
7 this Act, an Indian tribe and each State in which the lands
8 of the Indian tribe are located may, subject to review and
9 approval by the Administrator, enter into a cooperative
10 agreement to cooperatively plan and carry out the require-
11 ments of this Act.

12 “(d) REPORT.—Not later than 2 years after the date
13 of enactment of this section, the Administrator, in co-
14 operation with the Secretary of the Interior, the Director
15 of the Indian Health Service, and Indian tribes, shall sub-
16 mit to Congress a report that includes—

17 “(1) recommendations for addressing hazardous
18 and solid wastes and underground storage tanks
19 within Indian country;

20 “(2) methods to maximize the participation in,
21 and administration of, programs established under
22 this Act by Indian tribes;

23 “(3) an estimate of the amount of Federal as-
24 sistance that will be required to carry out this sec-
25 tion; and

1 “(4) a discussion of proposals by the Adminis-
2 trator concerning the provision of assistance to In-
3 dian tribes for the administration of programs and
4 projects pursuant to this Act.

5 “(e) TRIBAL HAZARDOUS WASTE SITE INVEN-
6 TORY.—

7 “(1) INVENTORY.—Not later than 2 years after
8 the date of enactment of this section, the Adminis-
9 trator shall undertake a continuing program to es-
10 tablish an inventory of sites within Indian country at
11 which hazardous waste has been stored or disposed
12 of.

13 “(2) CONTENTS OF INVENTORY.—The inven-
14 tory shall include—

15 “(A) the information required to be col-
16 lected by States pursuant to section 3012; and

17 “(B) sites located at Federal facilities
18 within Indian country.”.

19 (c) TECHNICAL AMENDMENT.—The table of contents
20 for subtitle A of such Act (contained in section 1001 of
21 such Act (42 U.S.C. prec. 6901)) is amended by adding
22 at the end the following new item:

“Sec. 1009. Indian tribes.”.

1 **SEC. 2. LEAKING UNDERGROUND STORAGE TANK TRUST**
2 **FUND.**

3 Section 9508(c)(1) of the Internal Revenue Code of
4 1986 is amended—

5 (1) by striking “Except as provided” and in-
6 serting the following:

7 “(A) PURPOSES.—Except as provided”;
8 and

9 (2) by adding at the end the following new sub-
10 paragraph:

11 “(B) SET ASIDE FOR INDIAN TRIBES.—
12 Notwithstanding any other provision of law, for
13 each of fiscal years 1996 through 2000, the
14 Secretary shall reserve an amount equal to not
15 less than 3 percent of the amounts made avail-
16 able to States pursuant to subparagraph (A).
17 Such amount shall be used only by Indian
18 tribes (as defined in section 1004(43) of the
19 Solid Waste Disposal Act) to carry out the pur-
20 poses referred to in subparagraph (A).”.

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