

**Calendar No. 270**106TH CONGRESS  
1ST SESSION**S. 613****[Report No. 106-150]**

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

MARCH 15, 1999

Mr. CAMPBELL (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 8, 1999

Reported by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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**A BILL**

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Indian Tribal Eco-  
3 nomic Development and Contract Encouragement Act of  
4 1999”.

5 **SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN**  
6 **TRIBES.**

7 Section 2103 of the Revised Statutes (25 U.S.C. 81)  
8 is amended—

9 (1) by inserting “(a)” before “No agreement”;

10 (2) in subsection (a), as designated by para-  
11 graph (1) of this section—

12 (A) by striking “, or individual Indians not  
13 citizens of the United States,”;

14 (B) by striking “First. Such agreement”  
15 and inserting the following:

16 “(1) Such contract or agreement”;

17 (C) by striking “Second. It shall bear the  
18 approval of the Secretary of the Interior and  
19 the Commissioner of Indian Affairs endorsed up  
20 on it.” and inserting the following:

21 “(2) Except as provided in subsection (b), it  
22 shall bear the approval of the Secretary of the Inte-  
23 rior (referred to in this section as the ‘Secretary’) or  
24 a designee of the Secretary of the Interior endorsed  
25 upon it.”;

1           (D) by striking “Third. It” and inserting  
2           the following:

3           “~~(3)~~ It”;

4           (E) by striking “Fourth. It” and inserting  
5           the following:

6           “~~(4)~~ It”; and

7           (F) by striking “Fifth. It” and inserting  
8           the following:

9           “~~(5)~~ It”;

10          ~~(3)~~ by inserting “(d)” before “All contracts”;

11          ~~(4)~~ by inserting after subsection (a) the fol-  
12          lowing:

13          “(b) Subsection (a)(2) shall not apply to a contract  
14          or agreement in any case in which—

15                 “(1) the Secretary (or a designee of the Sec-  
16                 retary) fails to approve or disapprove the contract or  
17                 agreement by the date that is 90 days after the date  
18                 on which the contract or agreement is filed with the  
19                 Secretary under this section; or

20                 “(2)(A) the tribe notifies the Secretary in a  
21                 manner prescribed by the Secretary under sub-  
22                 section (c)(3) that a contract or agreement is not  
23                 covered under subsection (a); and

24                 “(B) the Secretary (or a designee of the Sec-  
25                 retary) fails to inform the tribe in writing; by the

1 date that is 45 days after receipt of the notification  
 2 under subparagraph (A), that the Secretary (or des-  
 3 ignee) intends to review the contract agreement by  
 4 the date specified in paragraph (1).

5 “(e)(1) The Secretary (or a designee of the Sec-  
 6 retary) shall refuse to approve a contract or agreement  
 7 that is filed with the Secretary under this section if the  
 8 Secretary (or designee) determines that the contract or  
 9 agreement—

10 “(A) violates Federal law; or

11 “(B)(i) is covered under subsection (a); and

12 “(ii) does not include a provision that—

13 “(I) provides for remedies in the case of a  
 14 breach of the contract or agreement;

15 “(II) references a tribal code, ordinance, or  
 16 ruling of a court of competent jurisdiction that  
 17 discloses the right of the tribe to assert sov-  
 18 ereign immunity as a defense in an action  
 19 brought against the tribe; or

20 “(III) includes an express waiver of the  
 21 right of the tribe to assert sovereign immunity  
 22 as a defense in an action brought against the  
 23 tribe (including a waiver that limits the nature  
 24 of relief that may be provided or the jurisdic-  
 25 tion of a court with respect to such an action).

1       “(2)(A) The Secretary (or a designee of the Sec-  
2 retary) shall not approve any contract or agreement that  
3 is submitted to the Secretary for approval under this sec-  
4 tion if the Secretary (or designee) determines that the con-  
5 tract or agreement is not covered under subsection (a).

6       “(B) If the Secretary determines that a contract or  
7 agreement is not covered under subsection (a), the Sec-  
8 retary shall notify the tribe of that determination.

9       “(3) To assist tribes in providing notice under sub-  
10 section (b)(2), the Secretary shall—

11           “(A) issue guidelines for identifying types of  
12 contracts or agreements that are not covered under  
13 subsection (a); and

14           “(B) establish procedures for providing that no-  
15 tice.

16       “(4) The failure of the Secretary to approve a con-  
17 tract or agreement under this subsection or to provide no-  
18 tice under paragraph (2)(B) shall not affect the applica-  
19 bility of a requirement under any other provision of Fed-  
20 eral law.”;

21       (5) in subsection (d), as redesignated by para-  
22 graph (3) of this section, by striking “paid to any  
23 person by any Indian tribe” and all that follows  
24 through the end of the subsection and inserting  
25 “paid to any person by any tribe or any other person

1 on behalf of the tribe on account of such services in  
 2 excess of the amount approved by the Secretary of  
 3 the Interior, may be recovered in an action brought  
 4 by the tribe or the United States. Such an action  
 5 may be brought in any district court of the United  
 6 States, without regard to the amount in controversy.  
 7 Any amount recovered under this subsection shall be  
 8 paid to the Treasury of the United States for use by  
 9 the tribe for whom it was recovered.”; and

10 (6) by adding at the end the following:

11 “(e) Nothing in this section shall be construed to re-  
 12 quire the Secretary of the Interior to approve a contract  
 13 for legal services by an attorney.”.

14 **SEC. 3. CHOICE OF COUNSEL.**

15 Section 16(e) of the Act of June 18, 1934 (commonly  
 16 referred to as the “Indian Reorganization Act”) (48 Stat.  
 17 987, chapter 576; 25 U.S.C. 476(e)) is amended by strik-  
 18 ing “; the choice of counsel and fixing of fees to be subject  
 19 to the approval of the Secretary”.

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Indian Tribal Economic*  
 22 *Development and Contract Encouragement Act of 1999”.*

1 **SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN**  
2 **TRIBES.**

3 *Section 2103 of the Revised Statutes (25 U.S.C. 81)*  
4 *is amended to read as follows:*

5 “SEC. 2103. (a) *In this section:*

6 “(1) *The term ‘Indian lands’ means lands the*  
7 *title to which is held by the United States in trust for*  
8 *an Indian tribe or lands the title to which is held by*  
9 *an Indian tribe subject to a restriction by the United*  
10 *States against alienation.*

11 “(2) *The term ‘Indian tribe’ has the meaning*  
12 *given that term in section 4(e) of the Indian Self-De-*  
13 *termination and Education Assistance Act (25 U.S.C.*  
14 *450b(e)).*

15 “(3) *The term ‘Secretary’ means the Secretary of*  
16 *the Interior.*

17 “(b) *No agreement or contract with an Indian tribe*  
18 *that encumbers Indian lands for a period of 7 or more years*  
19 *shall be valid unless that agreement or contract bears the*  
20 *approval of the Secretary of the Interior or a designee of*  
21 *the Secretary.*

22 “(c) *Subsection (b) shall not apply to any agreement*  
23 *or contract that the Secretary (or a designee of the Sec-*  
24 *retary) determines is not covered under that subsection.*

25 “(d) *The Secretary (or a designee of the Secretary)*  
26 *shall refuse to approve an agreement or contract that is cov-*

1 *ered under subsection (b) if the Secretary (or a designee*  
2 *of the Secretary) determines that the agreement or*  
3 *contract—*

4 *“(1) violates Federal law; or*

5 *“(2) does not include a provision that—*

6 *“(A) provides for remedies in the case of a*  
7 *breach of the agreement or contract;*

8 *“(B) references a tribal code, ordinance, or*  
9 *ruling of a court of competent jurisdiction that*  
10 *discloses the right of the Indian tribe to assert*  
11 *sovereign immunity as a defense in an action*  
12 *brought against the Indian tribe; or*

13 *“(C) includes an express waiver of the right*  
14 *of the Indian tribe to assert sovereign immunity*  
15 *as a defense in an action brought against the In-*  
16 *dian tribe (including a waiver that limits the*  
17 *nature of relief that may be provided or the ju-*  
18 *risdiction of a court with respect to such an ac-*  
19 *tion).*

20 *“(e) Not later than 180 days after the date of enact-*  
21 *ment of the Indian Tribal Economic Development and Con-*  
22 *tract Encouragement Act of 1999, the Secretary shall issue*  
23 *regulations for identifying types of agreements or contracts*  
24 *that are not covered under subsection (b).*

25 *“(f) Nothing in this section shall be construed to—*

1           “(1) require the Secretary to approve a contract  
2           for legal services by an attorney;

3           “(2) amend or repeal the authority of the Na-  
4           tional Indian Gaming Commission under the Indian  
5           Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or

6           “(3) alter or amend any ordinance, resolution,  
7           or charter of an Indian tribe that requires approval  
8           by the Secretary of any action by that Indian tribe.”.

9   **SEC. 3. CHOICE OF COUNSEL.**

10          Section 16(e) of the Act of June 18, 1934 (commonly  
11          referred to as the “Indian Reorganization Act”) (48 Stat.  
12          987, chapter 576; 25 U.S.C. 476(e)) is amended by striking  
13          “, the choice of counsel and fixing of fees to be subject to  
14          the approval of the Secretary”.

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1<sup>ST</sup> Session

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**A BILL**

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