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.

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IN THE SENATE OF THE UNITED STATES

MARCH 1, 2005

Mr. Dorgan (for himself and Mr. Inouye) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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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 Amendments to the Homeland Security Act of 2002”.

5 SEC. 2. FINDINGS AND PURPOSES.

6 (a) FINDINGS.—Congress finds that—
(1) there is a government-to-government relationship between the United States and each Indian tribal government;

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

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

(A)(i) to establish its own form of government;

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

(iii) to establish a tribal judicial system; and

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

(4) tribal emergency response providers, such as tribal emergency public safety officers, law enforcement officers, emergency response personnel, emergency medical personnel and facilities (including tribal and Indian Health Service emergency facili-
ties), and related personnel, agencies, and authorities—

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

(B) are necessary components of a comprehensive system to secure the homeland of the United States;

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

(A) lands within the United States that is adjacent to the Canadian or Mexican border; or

(B) waters of the United States that provide direct access by boat to lands within the United States;

(6) the border lands under the jurisdiction of Indian tribal governments comprises more than 260 miles of the approximately 7,400 miles of international border of the United States;

(7) numerous Indian tribal governments exercise criminal, civil, and regulatory jurisdiction over lands on which dams, oil and gas deposits, nuclear or electrical power plants, water and sanitation systems, or timber or other natural resources are located; and
(8) the involvement of tribal governments in the protection of the homeland of the United States is essential to the comprehensive maintenance of the homeland security of the United States.

(b) PURPOSES.—The purposes of this Act are to ensure that—

(1) the Department of Homeland Security consults with, involves, coordinates with, and includes Indian tribal governments in carrying out the mission of the Department under the Homeland Security Act of 2002 (Public Law 107–296); and

(2) Indian tribal governments participate fully in the protection of the homeland of the United States.

SEC. 3. TABLE OF CONTENTS; DEFINITIONS.

(a) TABLE OF CONTENTS.—The table of contents of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2135) is amended by striking the item relating to section 801 and inserting the following:

“Sec. 801. Office of State, Tribal, and Local Government Coordination.”.

(b) DEFINITIONS.—Section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101) is amended—

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

(2) by redesignating paragraphs (9), (10), (11), (12), (13), (14), (15), and (16) as paragraphs (10),
• (11), (12), (13), (14), (15), (16), and (19), respectively;

(3) by inserting after paragraph (8) the following:

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

(4) by inserting after paragraph (16) (as redesignated by paragraph (2)) the following:

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

“(18) TRIBAL GOVERNMENT.—The term ‘tribal government’ means the governing body of an Indian tribe that is recognized by the Secretary of the Interior.”.

SEC. 4. DEPARTMENT OF HOMELAND SECURITY.

(a) SECRETARY; FUNCTIONS.—Section 102 of the Homeland Security Act of 2002 (6 U.S.C. 112) (as amended by section 7402 of the Intelligence Reform and
Terrorism Prevention Act of 2004 (Public Law 108–458)) is amended—

(1) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking “Office of State and Local Coordination” and inserting “Office of State, Tribal, and Local Government Coordination and Preparedness”; and

(B) in paragraphs (1), (2), and (3), by inserting “, tribal,” after “State” each place it appears; and

(2) in subsection (f)—

(A) in paragraph (8), by inserting “tribal,” after “State,”; and

(B) in paragraph (10), by striking “Office of State and Local Government Coordination and Preparedness” and inserting “Office of State, Tribal, and Local Government Coordination and Preparedness”.

(b) CONFORMING AMENDMENT.—Section 7405 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 112 note; Public Law 108–458) is amended by striking “Office of State and Local Government Coordination and Preparedness” and inserting “Office of
SEC. 5. INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

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

(1) in paragraphs (1), (3), (6), (7)(B), (8), (9), (11), (13), and (16), by inserting “tribal,” after “State” each place it appears; and

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

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

(c) PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.—Section 214 of the Homeland Security Act of 2002 (6 U.S.C. 133) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (D)(ii)(II), by striking “General Accounting Office.” and inserting “Government Accountability Office;”; and
(B) in subparagraph (E), by inserting “, tribal,” after “State” each place it appears;

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

(3) in subsection (e)(2)(D), by inserting “, tribal,” after “State”.

(d) ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.—Section 223(1) of the Homeland Security Act of 2002 (6 U.S.C. 143(1)) is amended by inserting “, tribal,” after “State”.

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

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

(2) in subsection (b)—

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

(B) in paragraph (6)—

(i) in the matter preceding subparagraph (A), by inserting “tribal,” after “State,”; and

(ii) in subparagraph (H), by inserting “, tribal,” after “State”; and
(C) in paragraphs (9), (11), and (14), by inserting “, tribal,” after “State” each place it appears; and
(3) in subsection (g)(1)(A), by inserting “tribal,” after “State,”.

(f) NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.—Section 235(d) of the Homeland Security Act of 2002 (6 U.S.C. 165(d)) is amended by inserting “tribal,” after “State,”.

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


(b) CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.—Section 304(a) of the Homeland Security Act of 2002 (6 U.S.C. 184(a)) is amended by inserting “and the Indian Health Service” after “Public Health Service”.

(c) CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING, AND EVALUATION.—Section 308(b) of the Homeland Security Act of 2002 (6 U.S.C. 188(b)) is amended—
(1) in paragraph (1)(A), by striking “colleges, universities,” and inserting “colleges and universities (including tribal colleges and universities),”; and

(2) in paragraph (2)(B), by inserting “(including tribal colleges or universities)” after “universities”.


(1) in paragraphs (1) and (4) of subsection (b), by inserting “tribal,” after “State,” each place it appears; and

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

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SEC. 7. DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY.

(a) Office for Domestic Preparedness.—Section 430(c)(5) of the Homeland Security Act of 2002 (6 U.S.C. 238(c)(5)) is amended by inserting “, tribal,” after “State”.

(b) Report on Improving Enforcement Functions.—Section 445(b) of the Homeland Security Act of 2002 (6 U.S.C. 255(b)) is amended by inserting “, tribal,” after “heads of State”.

SEC. 8. EMERGENCY PREPAREDNESS AND RESPONSE.


(b) Conduct of Certain Public Health-related Activities.—Section 505(a) of the Homeland Security Act of 2002 (6 U.S.C. 315(a)) is amended—

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

(2) by inserting “and the Indian Health Service” after “Public Health Service”.
SEC. 9. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.


SEC. 10. COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS.

(a) Office for State and Local Government Coordination.—Section 801 of the Homeland Security Act of 2002 (6 U.S.C. 361) is amended—

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

(2) in subsection (a)—

(A) by inserting “, Tribal,” after “Office for State”; and

(B) by inserting “, tribal,” after “relationships with State”; and

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

(b) Definitions for Support Anti-Terrorism by Fostering Effective Technologies Act.—Section

(c) Regulatory Authority and Preemption.—

Section 877(b) of the Homeland Security Act of 2002 (6 U.S.C. 457(b)) is amended—

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

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

(d) Information Sharing.—Section 891 of the Homeland Security Act of 2002 (6 U.S.C. 481) is amended—

(1) in subsection (b)—

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

(B) in paragraph (6)—

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

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

(C) in paragraphs (10) and (11), by inserting “tribal,” after “State,” each place it appears; and
(2) in subsection (c), by inserting “tribal,” after “State,”.

(c) FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.—Section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482) is amended—

(1) in subsection (a)(1)(A), by inserting “tribal,” after “State”;

(2) in paragraphs (1), (2)(D), and (6) of subsection (b), by inserting “tribal,” after “State” each place it appears;

(3) in subsection (c)—

(A) in the subsection heading, by inserting “tribal,” after “STATE”; and

(B) by inserting “tribal,” after “State” each place it appears;

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

(5) in subsection (f)—

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

(B) in paragraph (3)—

(i) in the matter preceding subpara-

graph (A), by inserting “tribal,” after “State”;
(ii) in subparagraph (A), by inserting “tribally or” after “other”;  
(iii) in subparagraph (B), by inserting “, tribal,” after “State”; and  
(iv) in subparagraph (D), by inserting “tribal,” after “State,”; and  
(6) in subsection (g), by inserting “, tribal,” after “State”.  
(f) REPORT.—Section 893(a) of the Homeland Security Act of 2002 (6 U.S.C. 483(a)) is amended in the second sentence by inserting “tribal,” after “State,”.

SEC. 11. DEPARTMENT OF JUSTICE DIVISIONS.

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

SEC. 12. AMENDMENTS TO OTHER LAWS.

(a) CYBER SECURITY ENHANCEMENT ACT OF 2002.—

(1) EMERGENCY DISCLOSURE EXCEPTION.—Section 2702(b)(8) of title 18, United States Code, is amended by inserting “tribal,” after “State,.”.  
(2) PROTECTING PRIVACY.—Section 2701(b)(1) of title 18, United States Code, is amended by inserting “or Indian tribe” after “or any State”.
(b) NATIONAL INSTITUTE OF JUSTICE.—Section 202(c)(11) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3722(c)(11)) is amended by inserting “tribal,” after “State,”.

(c) HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT’S BUDGET.—Section 1105(a)(33)(A)(iii) of title 31, United States Code, is amended by inserting “, tribal,” after “State”.

(d) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.—Section 2517(8) of title 18, United States Code, is amended by inserting “tribal,” after “State,” each place it appears.

(e) FOREIGN INTELLIGENCE INFORMATION.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (50 U.S.C. 403–5d) is amended by inserting “tribal,” after “State,” each place it appears.

(f) FOREIGN INTELLIGENCE SURVEILLANCE.—

(1) INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.—Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)) is amended by inserting “or Indian tribe” after “subdivision”).
(2) INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.—Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825(k)(1)) is amended by inserting “or Indian tribe” after “subdivision”).

(g) TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.—Section 1315 of title 40, United States Code (as amended by section 1706(b)(1) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2316)), is amended—

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

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

SEC. 13. AUTHORIZATION FOR DIRECT FUNDING.

The Secretary of Homeland Security may provide any funds made available under the Homeland Security Act of 2002 (Public Law 107–296) directly to any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.