

105TH CONGRESS  
2D SESSION

# S. 2301

To provide for accountability by Indian tribes under certain Federal environmental laws, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 14, 1998

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To provide for accountability by Indian tribes under certain Federal environmental laws, 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 Environmental  
5       Accountability Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) Federal environmental laws are in effect for  
9       the benefit of the citizens of the United States, in-  
10      cluding members of Indian tribes;

1           (2) certain Federal environmental laws allow  
 2           citizens to initiate an action to provide for enforce-  
 3           ment, including, in some cases, injunctions to pre-  
 4           vent a proposed activity from occurring until such  
 5           time as certain procedural and substantive require-  
 6           ments are met; and

7           (3) the assertion of tribal immunity used to  
 8           shield an Indian tribe from remedies necessary to  
 9           achieve compliance with Federal environmental laws  
 10          impedes the application of those laws for the pur-  
 11          pose specified in paragraph (1).

12 **SEC. 3. DEFINITIONS.**

13          In this Act:

14           (1) **FEDERAL ENVIRONMENTAL LAW.**—The  
 15           term “Federal environmental law” means any Fed-  
 16           eral law affecting the environment, fish and wildlife  
 17           conservation, or the use of land or water.

18           (2) **INDIAN TRIBE.**—The term “Indian tribe”  
 19           has the meaning given that term in section 4(e) of  
 20           the Indian Self-Determination and Education Assist-  
 21           ance Act (25 U.S.C. 450b(e)).

22           (3) **TRIBAL IMMUNITY.**—The term “tribal im-  
 23           munity” means the immunity of an Indian tribe  
 24           from jurisdiction of the courts, judicial review of an  
 25           action of that Indian tribe, and other remedies.

1           (4) TRIBAL ORGANIZATION.—The term “tribal  
2           organization” has the meaning given that term in  
3           section 4(*l*) of the Indian Self-Determination and  
4           Education Assistance Act (25 U.S.C. 450b(*l*)).

5   **SEC. 4. APPLICABILITY OF NATIONAL ENVIRONMENTAL**  
6                           **POLICY ACT OF 1969.**

7           (a) IN GENERAL.—An Indian tribe (including a tribal  
8           organization) shall be subject to any requirements that are  
9           applicable to any other governmental entity for any action  
10          that is subject to the National Environmental Policy Act  
11          of 1969 (42 U.S.C. 4331 et seq.).

12          (b) WAIVER OF TRIBAL IMMUNITY.—To the extent  
13          necessary to enforce this section, the tribal immunity of  
14          an Indian tribe is waived.

15   **SEC. 5. CERTAIN CIVIL ACTIONS.**

16          (a) IN GENERAL.—A person or entity may commence  
17          a civil action against an Indian tribe under any provision  
18          of any Federal environmental law that authorizes a civil  
19          action by that person or entity against that Indian tribe.

20          (b) WAIVER OF TRIBAL IMMUNITY.—With respect to  
21          a civil action commenced under subsection (a)—

22                 (1) the tribal immunity of the Indian tribe in-  
23                 volved is waived; and

24                 (2) that Indian tribe may not assert tribal im-  
25                 munity as a defense.

1 **SEC. 6. APPLICABILITY.**

2 (a) NATIONAL ENVIRONMENTAL POLICY ACT OF  
3 1969.—Section 4 applies to any action described in sec-  
4 tion 4(a) with respect to any project or activity of an In-  
5 dian tribe that has not been completed as of the date of  
6 enactment of this Act.

7 (b) CIVIL ACTIONS.—Section 5 applies to any civil  
8 action described in that section commenced on or after the  
9 date of enactment of this Act.

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