

105TH CONGRESS  
2D SESSION

# S. 2097

To encourage and facilitate the resolution of conflicts involving Indian tribes,  
and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 20, 1998

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

---

## A BILL

To encourage and facilitate the resolution of conflicts  
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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Indian Tribal Conflict  
5       Resolution and Tort Claims and Risk Management Act  
6       of 1998”.

7       **SEC. 2. FINDINGS; PURPOSES.**

8       (a) FINDINGS.—Congress finds that—

1           (1) Indian tribal sovereignty predates the for-  
2           mation of the United States and the United States  
3           Constitution;

4           (2) a unique legal and political relationship ex-  
5           ists between the United States and Indian tribes;

6           (3) through treaties, statutes, Executive orders,  
7           and course of dealing, the United States has recog-  
8           nized tribal sovereignty and the unique relationship  
9           that the United States has with Indian tribes;

10          (4) Indian tribal governments exercise govern-  
11          mental authority and powers over persons and ac-  
12          tivities within the territory and lands under the ju-  
13          risdiction of those governments;

14          (5) conflicts involving Indian tribal governments  
15          may necessitate the active involvement of the United  
16          States in the role of the trustee for Indian tribes;

17          (6) litigation involving Indian tribes, that often  
18          requires the United States to intervene as a litigant,  
19          is costly, lengthy, and contentious;

20          (7) for many years, alternative dispute resolu-  
21          tion has been used successfully to resolve disputes in  
22          the private sector, and in the public sector;

23          (8) alternative dispute resolution—

24                (A) results in expedited decisionmaking;

25                and

1 (B) is less costly, and less contentious than  
2 litigation;

3 (9) it is necessary to facilitate intergovern-  
4 mental agreements between Indian tribes and States  
5 and political subdivisions thereof;

6 (10) Indian tribes have made significant  
7 achievements toward developing a foundation for  
8 economic self-sufficiency and self-determination, and  
9 that economic self-sufficiency and self-determination  
10 have increased opportunities for the Indian tribes  
11 and other entities and persons to interact more fre-  
12 quently in commerce and intergovernmental relation-  
13 ships;

14 (11) although Indian tribes have sought and se-  
15 cured liability insurance coverage to meet their  
16 needs, many Indian tribes are faced with significant  
17 barriers to obtaining liability insurance because of  
18 the high cost or unavailability of such coverage in  
19 the private market;

20 (12) as a result, Congress has extended liability  
21 coverage provided to Indian tribes to organizations  
22 to carry out activities under the Indian Self-Deter-  
23 mination and Education Assistance Act (25 U.S.C.  
24 450 et seq.); and

1           (13) there is an emergent need for comprehen-  
2       sive and cost-efficient insurance that allows the  
3       economy of Indian tribes to continue to grow and  
4       provides compensation to persons that may suffer  
5       personal injury or loss of property.

6       (b) PURPOSES.—The purposes of this Act are to en-  
7       able Indian tribes, tribal organizations, States and politi-  
8       cal subdivisions thereof, through viable intergovernmental  
9       agreements to—

10           (1) achieve intergovernmental harmony; and

11           (2) enhance intergovernmental commerce.

12   **SEC. 3. DEFINITIONS.**

13       In this Act:

14           (1) FEDERAL AGENCY.—The term “Federal  
15       agency” has the meaning given the term “Executive  
16       agency” in section 105 of title 5, United States  
17       Code.

18           (2) INDIAN COUNTRY.—The term “Indian coun-  
19       try” has the meaning given that term in section  
20       1151 of title 18, United States Code.

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

1           (4) PANEL.—The term “Panel” means the  
2           Intergovernmental Alternative Dispute Panel estab-  
3           lished under section 103.

4           (5) SECRETARY.—The term “Secretary” means  
5           the Secretary of the Department of the Interior.

6           (6) STATE.—The term “State” means each of  
7           the 50 States and the District of Columbia.

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

12 **SEC. 4. DECLARED POLICY OF THE UNITED STATES.**

13          It is the policy of the United States—

14               (1) to continue to preserve and protect Indian  
15          tribes, Indian people, and trust resources and prop-  
16          erty of Indian tribes; and

17               (2) that the settlement of issues and disputes  
18          involving Indian tribes and States or political sub-  
19          divisions thereof, through negotiation and accommo-  
20          dation, may be advanced by making available full  
21          and adequate governmental facilities for fact finding,  
22          conciliation, mediation, and voluntary arbitration to  
23          aid and encourage Indian tribes, States, and political  
24          subdivisions thereof—

25                       (A) to reach and maintain agreements; and

1 (B) to make reasonable efforts to settle  
2 differences by mutual agreement reached by  
3 such methods as may be provided for in any ap-  
4 plicable agreement for the settlement of dis-  
5 putes.

6 **TITLE I—INTERGOVERNMENTAL**  
7 **AGREEMENTS**

8 **SEC. 101. INTERGOVERNMENTAL COMPACT AUTHORIZA-**  
9 **TION.**

10 (a) IN GENERAL.—The consent of the United States  
11 is granted to States and Indian tribes to enter into com-  
12 pacts and agreements in accordance with this title.

13 (b) COLLECTION OF TAXES.—Consistent with the  
14 United States Constitution, treaties, and principles of trib-  
15 al and State sovereignty, and consistent with Supreme  
16 Court decisions regarding the collection and payment of  
17 certain retail taxes of a State or political subdivision  
18 thereof, the consent of the United States is hereby given  
19 to Indian tribes, tribal organizations, and States and  
20 States and Indian tribes may to enter into compacts and  
21 agreements relating to the collection and payment of cer-  
22 tain retail taxes.

23 (c) FILING.—Not later than 30 days after entering  
24 into an agreement or compact under this section, a State  
25 or Indian tribe shall submit a copy of the compact or

1 agreement to the Secretary. Upon receipt of the compact  
2 or agreement, the Secretary shall publish the compact or  
3 agreement in the Federal Register.

4 (d) LIMITATIONS.—

5 (1) IN GENERAL.—An agreement or compact  
6 under this section shall not affect any action or pro-  
7 ceeding over which a court has assumed jurisdiction  
8 at the time that the agreement or compact is exe-  
9 cuted.

10 (2) PROHIBITION.—No action or proceeding de-  
11 scribed in paragraph (1) shall abate by reason of  
12 that agreement or compact unless specifically agreed  
13 upon by all parties—

14 (A) to the action or proceedings; and

15 (B) to the agreement or compact.

16 (e) REVOCATION.—An agreement or compact entered  
17 into under this section shall be subject to revocation by  
18 any party to that agreement or compact. That revocation  
19 shall take effect on the earlier of—

20 (1) the date that is 180 days after the date on  
21 which notice of revocation is provided to each party  
22 to that agreement or compact; or

23 (2) any date that is agreed to by all parties to  
24 that agreement or compact.

1       (f) REVISION OR RENEWAL.—Upon the expiration or  
 2       revocation of an agreement or compact under this section,  
 3       the parties to such agreement or compact may enter into  
 4       a revised agreement or compact, or may renew that agree-  
 5       ment or compact.

6       (g) EFFECT OF RENEWAL.—For purposes of this  
 7       title, the renewal of an agreement or compact entered into  
 8       under this title shall be treated as a separate agreement  
 9       or compact and shall be subject to the limitations and re-  
 10      quirements applicable to an initial agreement or compact.

11      (h) STATUTORY CONSTRUCTION.—Nothing in this  
 12      title shall be construed to—

13           (1) except as expressly provided in this title, ex-  
 14           pand or diminish the jurisdiction over civil or crimi-  
 15           nal matters that may be exercised by a State or the  
 16           governing body of an Indian tribe; or

17           (2) authorize or empower a State or tribal gov-  
 18           ernment, either separately or pursuant to agree-  
 19           ment, to expand or diminish the jurisdiction exer-  
 20           cised by the Government of the United States to—

21                   (A) make criminal, civil, or regulatory  
 22                   laws; or

23                   (B) enforce those laws in Indian country.



1 **SEC. 102. INTERGOVERNMENTAL NEGOTIATIONS-PROCE-**  
2 **DURES.**

3 (a) GOOD FAITH NEGOTIATIONS.—In negotiating a  
4 claim, the parties shall conduct full and fair good faith  
5 negotiations pursuant to this title, with the objective of  
6 achieving an intergovernmental agreement or compact  
7 that meets the requirement of this title.

8 (b) REQUEST FOR NEGOTIATIONS.—

9 (1) IN GENERAL.—An Indian tribe or a State  
10 may request the Secretary to initiate negotiations to  
11 address a claim covered under this title.

12 (2) NOTIFICATION.—The Secretary shall notify  
13 the parties of any request made under paragraph  
14 (1).

15 (3) REQUESTS.—Any request made to the Sec-  
16 retary under this subsection shall be in writing.

17 (4) PARTICIPATION AS A PREREQUISITE TO IN-  
18 VOKE PROCEDURES UNDER SECTION 103.—

19 (A) IN GENERAL.—A party may not file a  
20 claim under section 103 unless that party is  
21 available for, agrees to, and participates in, ne-  
22 gotiations under this section.

23 (B) NOTICE.—Upon receipt of any request  
24 made pursuant to paragraph (1), the Secretary  
25 shall, not later than 30 days after such receipt,  
26 send a notice by registered mail, return receipt

1 requested, advising the parties that are subject  
 2 to a request made under paragraph (1), that no  
 3 party may file a claim under section 103 with-  
 4 out having participated in negotiations under  
 5 this section.

6 (c) NEGOTIATIONS.—

7 (1) IN GENERAL.—The Secretary shall, in a  
 8 manner consistent with section 103, cause to occur  
 9 and facilitate negotiations that are subject to a re-  
 10 quest under subsection (a).

11 (2) NON-BINDING NATURE OF NEGOTIA-  
 12 TIONS.—Consistent with the purposes of this title,  
 13 the negotiations referred to in paragraph (1) shall—

14 (A) be nonbinding; and

15 (B) be facilitated by a mediator selected in  
 16 accordance with section 103.

17 (3) SELECTION OF MEDIATOR.—

18 (A) IN GENERAL.—The Secretary shall se-  
 19 lect 3 mediators from a list supplied by the  
 20 Federal Mediation and Conciliation Service and  
 21 submit a list of these mediators to the parties.

22 (B) CHALLENGES.—Each party may chal-  
 23 lenge the selection of 1 of the mediators listed  
 24 by the Secretary under subparagraph (A).

1 (C) SELECTION.—After each party has  
2 had an opportunity to challenge the list made  
3 by the Administrator under subparagraph (B),  
4 the Secretary shall select a mediator from the  
5 list who is not subject to such a challenge.

6 (4) PAYMENT.—The expenses and fees of the  
7 mediator selected under paragraph (3) in facilitating  
8 negotiations under paragraph (1) shall be paid by  
9 the Secretary.

10 (5) REIMBURSEMENT.—If a party that files a  
11 claim under section 103 and that party is not the  
12 prevailing party in that claim, that party shall reim-  
13 burse the Secretary for any fees and expenses in-  
14 curred by the Secretary pursuant to paragraph (4).

15 (d) PROCEDURES.—Negotiations conducted under  
16 this title shall be subject to the following procedures:

17 (1) COMMENCEMENT.—Negotiations conducted  
18 under this section shall commence as soon as prac-  
19 ticable after the party that receives notice under  
20 subsection (b)(4)(B) responds to the Secretary.

21 (2) ADDITIONAL INVESTIGATION, RESEARCH,  
22 OR NEGOTIATION.—

23 (A) IN GENERAL.—Each party that enters  
24 into negotiation under this section and the Sec-  
25 retary may agree to additional investigation, re-

1 search, or analysis to facilitate a negotiated set-  
2 tlement.

3 (B) PAYMENTS.—The cost of the addi-  
4 tional investigation, research, or analysis re-  
5 ferred to in subparagraph (A) shall be borne by  
6 the party that undertakes that investigation, re-  
7 search, or analysis, or causes that investigation,  
8 research, and analysis.

9 (3) EXCHANGE OF RECORDS AND DOCUMENTA-  
10 TION.—Each party that enters into negotiations  
11 under this section shall exchange, and make avail-  
12 able to the Secretary, any records, documents, or  
13 other information that the party may have with re-  
14 gard to transactions within the scope of the claims  
15 alleged that—

16 (A) may be relevant to resolving the nego-  
17 tiations; and

18 (B) are not privileged information under  
19 applicable law, or otherwise subject to restric-  
20 tions on disclosure under applicable law.

21 (4) TERMINATION.—

22 (A) IN GENERAL.—

23 (i) TERMINATION.—Except as pro-  
24 vided in clause (i) and subparagraph (B),  
25 negotiations conducted under this section

1 shall terminate on the date that is 1 year  
2 after the date of the first meeting of the  
3 parties to conduct negotiations under this  
4 section.

5 (ii) MUTUAL AGREEMENT.—The pe-  
6 riod for negotiations under clause (i) may  
7 be extended if the parties and the Sec-  
8 retary agree that there is a reasonable like-  
9 lihood that the extension may result in a  
10 negotiated settlement.

11 (B) MUTUAL AGREEMENT.—At any time  
12 during negotiations under this section, the par-  
13 ties may mutually agree to terminate the nego-  
14 tiations.

15 (C) FULFILLMENT OF CERTAIN REQUIRE-  
16 MENTS.—A party shall be considered to have  
17 met the requirements described in subsection  
18 (b)(4) in any case in which negotiations are ter-  
19 minated by mutual agreement of the parties  
20 under subparagraph (B).

21 (e) NEGOTIATED SETTLEMENTS.—

22 (1) IN GENERAL.—A negotiated settlement of a  
23 claim covered by this title reached by the parties  
24 under this section shall constitute the final, com-  
25 plete, and conclusive resolution of that claim.

1           (2) ALTERNATIVE DISPUTE RESOLUTION.—Any  
 2           claim, setoff, or counterclaim (including any claim,  
 3           setoff, or counterclaim described in section 103(c))  
 4           that is not subject to a negotiated settlement under  
 5           this section may be pursued by the parties or the  
 6           Secretary pursuant to section 103.

7   **SEC. 103. INTERGOVERNMENTAL ALTERNATIVE DISPUTE**  
 8           **RESOLUTION PANEL—ESTABLISHMENT.**

9           (a) IN GENERAL.—If negotiations conducted under  
 10          section 103 do not result in a settlement, the Secretary  
 11          may refer the State and Indian tribe involved to the Panel  
 12          established under subsection (b).

13          (b) AUTHORITY OF PANEL.—To the extent allowable  
 14          by law, the Panel may consider and render a decision on  
 15          a dispute referred to the Panel under this section.

16          (c) TAXATION.—Any claim involving the legitimacy of  
 17          a claim for the collection or payment of certain retail taxes  
 18          owed by an Indian tribe to a State or political subdivision  
 19          thereof and shall include or admit of counterclaims,  
 20          setoffs, or related claims submitted or filed by the tribe  
 21          in question regarding the original claim.

22          (d) MEMBERSHIP OF THE PANEL.—

23                 (1) IN GENERAL.—The Panel shall consist of—

24                         (A) 1 representative from the Department  
 25                         of the Interior;

1 (B) 1 representative from the Department  
2 of Justice;

3 (C) 1 representative from the Department  
4 of the Treasury;

5 (D) 1 representative of State governments;  
6 and

7 (E) 1 representative of tribal governments  
8 of Indian tribes.

9 (2) CHAIRPERSON.—The members of the Panel  
10 shall select a Chairperson from among the members  
11 of the Panel.

12 (e) FEDERAL MEDIATION CONCILIATION SERVICE.—

13 (1) IN GENERAL.—In a manner consistent with  
14 this title, the Panel shall consult with the Federal  
15 Mediation Conciliation Service (referred to in this  
16 subsection as the “Service”) established under sec-  
17 tion 202 of the National Labor Relations Act (29  
18 U.S.C. 172).

19 (2) DUTIES OF SERVICE.—The Service shall,  
20 upon request of the Panel and in a manner consist-  
21 ent with applicable law—

22 (A) provide services to the Panel to aid in  
23 resolving disputes brought before the Panel;

24 (B) furnish employees to act as neutrals  
25 (as that term is defined in section 571(9) of

1 title 5, United States Code) in resolving the dis-  
 2 putes brought before the Panel; and

3 (C) consult with the Administrative Con-  
 4 ference of the United States to maintain a ros-  
 5 ter of neutrals and arbitrators.

6 **SEC. 104. JUDICIAL ENFORCEMENT.**

7 (a) INTERGOVERNMENTAL AGREEMENTS.—

8 (1) IN GENERAL.—

9 (A) JURISDICTION.—Except as provided in  
 10 subparagraph (B), the district courts of the  
 11 United States shall have original jurisdiction  
 12 with respect to—

13 (i) any civil action, claim, counter-  
 14 claim, or setoff, brought by any party to  
 15 an agreement or compact entered into in  
 16 accordance with this title to secure equi-  
 17 table relief, including injunctive and declar-  
 18 atory relief; and

19 (ii) the enforcement of any agreement  
 20 or compact.

21 (B) DAMAGES.—No action to recover dam-  
 22 ages arising out of or in connection with an  
 23 agreement or compact entered into under this  
 24 section may be brought, except as specifically  
 25 provided for in that agreement or compact.



1           (2) CONSENT TO SUIT.—Each compact or  
2           agreement entered into under this title shall specify  
3           that the partner consent to litigation to enforce the  
4           agreement, and to the extent necessary to enforce  
5           that agreement, each party waives any defense of  
6           sovereign immunity.

7   **SEC. 105. JOINT TRIBAL-FEDERAL-STATE COMMISSION ON**  
8                           **INTERGOVERNMENTAL AFFAIRS.**

9           (a) IN GENERAL.—The Secretary shall establish a  
10          tribal, Federal, and State commission (to be known as the  
11          “Tribal-Federal-State Commission”) (referred to in this  
12          section as the “Commission”).

13          (b) MEMBERS.—

14               (1) IN GENERAL.—The Commission shall be  
15          comprised of representatives of Indian tribes, the  
16          States, and the Federal Government.

17               (2) DUTIES OF THE COMMISSION.—The Com-  
18          mission shall advise the Secretary concerning issues  
19          of intergovernmental concern with respect to Indian  
20          tribes, States, and the Federal Government, includ-  
21          ing—

22                       (A) law enforcement;

23                       (B) civil and criminal jurisdiction;

24                       (C) taxation;

25                       (D) transportation;

1 (E) economy development; and

2 (F) other matters related to a matter de-  
3 scribed in subparagraph (A), (B), (C), (D), or  
4 (E).

5 (3) PERIOD OF APPOINTMENT.—Members shall  
6 be appointed for the life of the Commission. Any va-  
7 cancy in the Commission shall not affect its powers,  
8 but shall be filled in the same manner as the origi-  
9 nal appointment.

10 (4) INITIAL MEETING.—No later than 30 days  
11 after the date on which all members of the Commis-  
12 sion have been appointed, the Commission shall hold  
13 its first meeting.

14 (5) MEETINGS.—The Commission shall meet at  
15 the call of the Chairman.

16 (6) QUORUM.—A majority of the members of  
17 the Commission shall constitute a quorum, but a  
18 lesser number of members may hold hearings.

19 (7) CHAIRMAN AND VICE CHAIRMAN.—The  
20 Commission shall select a Chairman and Vice Chair-  
21 man from among its members.

22 (8) POWERS.—

23 (A) HEARINGS.—The Commission may  
24 hold such hearings, sit and act at such times  
25 and places, take such testimony, and receive

1 such evidence as the Commission considers ad-  
2 visable to carry out the purposes of this section.

3 (B) INFORMATION FROM FEDERAL AGEN-  
4 CIES.—The Commission may secure directly  
5 from any Federal department or agency such  
6 information as the Commission considers nec-  
7 essary to carry out the provisions of this Act  
8 section. Upon request of the Chairman of the  
9 Commission, the head of such department or  
10 agency shall furnish such information to the  
11 Commission.

12 (C) POSTAL SERVICES.—The Commission  
13 may use the United States mails in the same  
14 manner and under the same conditions as other  
15 departments and agencies of the Federal Gov-  
16 ernment.

17 (D) GIFTS.—The Commission may accept,  
18 use, and dispose of gifts or donations of serv-  
19 ices or property.

20 (9) COMMISSION PERSONNEL MATTERS.—

21 (A) COMPENSATION OF MEMBERS.—Each  
22 member of the Commission who is not an offi-  
23 cer or employee of the Federal Government  
24 shall be compensated for each day (including  
25 travel time) during which such member is en-

1 gaged in the performance of the duties of the  
2 Commission. All members of the Commission  
3 who are officers or employees of the United  
4 States shall serve without compensation in addition  
5 to that received for their services as officers  
6 or employees of the United States.

7 (B) TRAVEL EXPENSES.—The members of  
8 the Commission shall be allowed travel expenses,  
9 including per diem in lieu of subsistence,  
10 at rates authorized for employees of agencies  
11 under subchapter I of chapter 57 of title 5,  
12 United States Code, while away from their  
13 homes or regular places of business in the performance  
14 of services for the Commission.

15 (c) REPORT.—Not later than 2 years after the date  
16 of enactment of this Act, and annually thereafter, the  
17 Commission shall prepare and submit to the President, the  
18 Committee on Indian Affairs of the Senate, and the Committee  
19 on Resources of the House of Representatives a report  
20 on the implementation of this title that includes any  
21 recommendations that the Commission determines to be  
22 appropriate.

23 **SEC. 106. FUNDING AND IMPLEMENTATION.**

24 (a) IN GENERAL.—With respect to any agreement or  
25 compact between an Indian tribe and a State, the United

1 States, upon agreement of the parties and the Secretary,  
 2 may provide financial assistance to such parties for costs  
 3 of personnel or administrative expenses in an amount not  
 4 to exceed 100 percent of the costs incurred by the parties  
 5 as a consequence of that agreement or compact, including  
 6 any indirect costs of administration that are attributable  
 7 to the services performed under the agreement or compact.

8 (b) ASSISTANCE.—The head of each Federal agency  
 9 may, to the extent allowable by law and subject to the  
 10 availability of appropriations, provide technical assistance,  
 11 material support, and personnel to assist States and In-  
 12 dian tribes in the implementation of the agreements or  
 13 compacts entered into under this title.

## 14 **TITLE II—TORT LIABILITY** 15 **INSURANCE**

### 16 **SEC. 201. LIABILITY INSURANCE, WAIVER OF DEFENSE.**

17 (a) TRIBAL PRIORITY ALLOCATION DEFINED.—The  
 18 term “tribal priority allocation” means an allocation to a  
 19 tribal priority account of an Indian tribe by the Bureau  
 20 of Indian Affairs to allow that Indian tribe to establish  
 21 program priorities and funding levels.

22 (b) INSURANCE.—

23 (1) IN GENERAL.—Except as provided in para-  
 24 graph (3), not later than 2 years after the date of  
 25 enactment of this Act, the Secretary shall obtain or

1 provide tort liability insurance or equivalent coverage  
2 for each Indian tribe that receives a tribal priority  
3 allocation from amounts made available to the Bu-  
4 reau of Indian Affairs for the operation of Indian  
5 programs.

6 (2) COST-EFFECTIVENESS.—In carrying out  
7 paragraph (1), the Secretary shall—

8 (A) ensure that the insurance or equivalent  
9 coverage is provided in the most cost-effective  
10 manner available; and

11 (B) for each Indian tribe referred to in  
12 paragraph (1), take into consideration the ex-  
13 tent to which the tort liability is covered—

14 (i) by privately secured liability insur-  
15 ance; or

16 (ii) chapter 171 of title 28, United  
17 States Code (commonly referred to as the  
18 “Federal Tort Claims Act”) by reason of  
19 an activity of the Indian tribe in which the  
20 Indian tribe is acting in the same capacity  
21 as an agency of the United States.

22 (3) LIMITATION.—If the Secretary determines  
23 that an Indian tribe, described in paragraph (1), has  
24 obtained liability insurance in an amount and of the  
25 type that the Secretary determines to be appropriate

1 by the date specified in paragraph (1), the Secretary  
2 shall not be required to provide additional coverage  
3 for that Indian tribe.

4 (c) REQUIREMENTS.—A policy of insurance or a doc-  
5 ument for equivalent coverage under subsection (a)(1)  
6 shall—

7 (1) contain a provision that the insurance car-  
8 rier shall waive any right to raise as a defense the  
9 sovereign immunity of an Indian tribe with respect  
10 to an action involving tort liability of that Indian  
11 tribe, but only with respect to tort liability claims of  
12 an amount and nature covered under the insurance  
13 policy or equivalent coverage offered by the insur-  
14 ance carrier; and

15 (2) not waive or otherwise limit the sovereign  
16 immunity of the Indian tribe outside or beyond the  
17 coverage or limits of the policy of insurance or  
18 equivalent coverage.

19 (d) PROHIBITION.—No waiver of the sovereign im-  
20 munity of a Indian tribe under this section shall include  
21 a waiver of any potential liability for—

22 (1) interest that may be payable before judg-  
23 ment; or

24 (2) exemplary or punitive damages.

1 (e) PREFERENCE.—In obtaining or providing tort li-  
 2 ability insurance coverage for Indian tribes under this sec-  
 3 tion, the Secretary shall, to the greatest extent practicable,  
 4 give preference to coverage underwritten by Indian-owned  
 5 economic enterprises, as defined in section 3 of the Indian  
 6 Financing Act of 1974 (25 U.S.C. 1452), except that for  
 7 the purposes of this subsection, those enterprises may in-  
 8 clude non-profit corporations.

9 (f) REGULATIONS.—To carry out this title, the Sec-  
 10 retary shall promulgate regulations that—

11 (1) provide for the amount and nature of claims  
 12 to be covered by an insurance policy or equivalent  
 13 coverage provided to an Indian tribe under this title;  
 14 and

15 (2) establish a schedule of premiums that may  
 16 be assessed against any Indian tribe that is provided  
 17 liability insurance under this title.

18 **SEC. 202. STUDY AND REPORT TO CONGRESS**

19 (a) IN GENERAL.—

20 (1) STUDY.—In order to minimize and, if pos-  
 21 sible, eliminate redundant or duplicative liability in-  
 22 surance coverage and to ensure that the provision of  
 23 insurance of equivalent coverage under this title is  
 24 cost-effective, before carrying out the requirements  
 25 of section 201, the Secretary shall conduct a com-



1       prehensive survey of the degree, type, and adequacy  
 2       of liability insurance coverage of Indian tribes at the  
 3       time of the study.

4               (2) CONTENTS OF STUDY.—The study con-  
 5       ducted under this subsection shall include—

6                       (A) an analysis of loss data;

7                       (B) risk assessments;

8                       (C) projected exposure to liability, and re-  
 9       lated matters; and

10                      (D) the category of risk and coverage in-  
 11       volved which may include—

12                               (i) general liability;

13                               (ii) automobile liability;

14                               (iii) the liability of officials of the In-  
 15       dian tribe;

16                               (iv) law enforcement liability;

17                               (v) workers' compensation; and

18                               (vi) other types of liability contin-  
 19       gencies.

20               (3) ASSESSMENT OF COVERAGE BY CATEGORIES  
 21       OF RISK.—For each Indian tribe described in section  
 22       201(a)(1), for each category of risk identified under  
 23       paragraph (2), the Secretary, in conducting the  
 24       study, shall determine whether insurance coverage  
 25       other than coverage to be provided under this title

1 or coverage under chapter 171 of title 28, United  
2 States Code, applies to that Indian tribe for that ac-  
3 tivity.

4 (b) REPORT.—Not later than 3 years after the date  
5 of enactment of this Act, and annually thereafter, the Sec-  
6 retary shall submit a report to Congress concerning the  
7 implementation of this title, that contains any legislative  
8 recommendations that the Secretary determines to be ap-  
9 propriate to improve the provision of insurance of equiva-  
10 lent coverage to Indian tribes under this title, or otherwise  
11 achieves the goals and objectives of this title.

○