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To provide for the better governance of Indian tribes

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IN THE SENATE

SEPTEMBER #, 2021

Mr. Cody5200 (for himself), introduced the following bill; which  
was subsequently referred to the Senate:

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**AN ACT**

To provide for the better governance of Indian tribes

*Be it enacted by the Senate and House of Representatives of the United States of America  
in Congress assembled,*

**SECTION 1. SHORT TITLE, ETC.**

(a) This Act may be cited as the “Tribal Government Act of 2021”.

(b) This Act shall come into effect thirty days upon its passing into law.

(c) If any provision of this Act is ruled unconstitutional or otherwise unenforceable, the rest of the Act shall pass into law.

## **SEC. 2. SUPERSEDING OF PREVIOUS STATUTES.**

Notwithstanding any provision of law, the provisions of this Act shall supersede any provision of any other law governing the constitution and affairs of Indian tribes.

## **SEC. 3. TABLE OF CONTENTS.**

The table of contents for this Act shall be as follows:

Section 1. Short title, etc.

Sec. 2. Superseding of previous statutes.

Sec. 3. Table of contents.

Sec. 4. “Tribe” or “Indian tribe”.

### **TITLE I—THE LEGISLATURE**

Sec. 101. Legislative power vested in tribal legislature.

Sec. 102. Assembly to be unicameral.

Sec. 103. Composition of tribal Assembly.

Sec. 104. Sessions and rules of the Assembly.

Sec. 105. Remuneration.

Sec. 106. Passing legislation.

Sec. 107. Powers of the Assembly.

Sec. 108. Limitations on the Assembly.

## TITLE II—THE EXECUTIVE

Sec. 201. Executive power vested in the President.

Sec. 202. Election and term of President.

Sec. 203. Powers of the President.

Sec. 204. Remuneration and oath.

Sec. 205. Impeachment.

Sec. 206. Vice President.

Sec. 207. Cabinet.

## TITLE III—THE JUDICIARY

Sec. 301. Judicial power vested in courts.

Sec. 302. Composition of the Court.

Sec. 303. Jurisdiction of the Court.

Sec. 304. Appeals to the Supreme Court.

## TITLE IV—RIGHTS

Sec. 401. Freedom of worship; right to free speech; free press; freedom of assembly.

Sec. 402. Right to bear arms.

Sec. 403. Ban on quartering.

Sec. 404. Searches, seizures, and arrests to be made by warrant only.

Sec. 405. Ban on double jeopardy; right to silence.

Sec. 406. Right to property.

Sec. 407. Right to a speedy and public trial; impartial jury; right to counsel.

Sec. 408. Fines, bail, and cruel and unusual punishment.

Sec. 409. Ban on slavery and involuntary servitude.

Sec. 410. Equality under the law.

Sec. 411. Right of suffrage.

#### TITLE V—TAXATION AND FINANCES

Sec. 501. General Fund.

Sec. 502. Borrowing and debts.

Sec. 503. Appropriations.

Sec. 504. Taxation.

#### TITLE VI—LOCAL GOVERNMENT

Sec. 601. Establishment of local governments by law.

#### TITLE VII—MISCELLANEOUS

Sec. 701. Laws of States to not apply to tribes.

Sec. 702. Right of way and tribal lands.

Sec. 703. Tribal lands held in trust by the United States.

Sec. 704. Authority of Assembly to amend the provisions of this Act.

#### **SEC. 4. “TRIBE” OR “INDIAN TRIBE”.**

- (a) “Tribe” or “Indian tribe” shall refer to any ethnographic or cultural group of Indians that has been recognized as a tribe by the Department of the Interior.
- (b) Whenever “tribe” or “Indian tribe” is mentioned on an individual basis, it shall be construed to apply to all tribes individually and shall not be construed to mean a unified tribal government consolidating all tribes.
- (c) Whenever the context demands, “tribe” shall also refer to the nation and territory thereof in which a tribe is situated.

## **TITLE I—THE LEGISLATURE**

#### **SEC. 101. LEGISLATIVE POWER VESTED IN TRIBAL LEGISLATURE.**

All legislative power in the tribe shall be vested in the tribal legislature, hereafter “the Assembly”.

#### **SEC. 102. ASSEMBLY TO BE UNICAMERAL.**

The Assembly shall be composed of one chamber.

### **SEC. 103. COMPOSITION OF ASSEMBLY.**

- (a) The Assembly shall be composed of Members elected every two years by the members of the tribe as defined by tribal law who are above eighteen years of age and citizens of the United States for three years.
- (b) The Assembly shall, by law, prescribe for the time, place, and manner of election of Members.
- (c) No person shall be a Member unless he is at least twenty-five years of age, a citizen of the United States for at least seven years, and a member of the tribe as defined by tribal law: *Provided*, That the Assembly may waive the requirement for Members to be a member of the tribe on an individual basis.
- (d) The Assembly shall have seven Members in total, elected in a closed list D'Hondt method with a minimum vote threshold of five percent to be represented in the Assembly.
- (e) Whenever a vacancy may arise, the Speaker shall issue a writ of election to fill such vacancy.

### **SEC. 104. SESSIONS AND RULES OF THE ASSEMBLY.**

- (a) The Assembly shall choose a Speaker with a simple majority of the Members.
- (b) The Assembly shall meet at least once every year, and such day shall be the first day of February, unless the Assembly appoints a different day by law.
- (c) The Assembly shall, by a simple majority of the Members, promulgate rules of procedure governing all affairs thereof and shall provide for the enforcement of order in the chamber, establishment of penalties, and, by two thirds of Members concurring, the expulsion of a Member.
- (d) The Assembly shall be the judge of the elections, returns, and qualifications of its Members, and three Members of seven shall constitute a Quorum to do business.

- (e) Members may be compelled to attend a session unless they have a specified emergency, which the Assembly shall prescribe in the rules of procedure.
- (f) The Assembly shall keep a Journal of its proceedings and publish the same from time to time, except for matters that require secrecy; the Yeas and Nays shall be published alongside the contents of the Journal.

#### **SEC. 105. REMUNERATION.**

- (a) The Members shall receive remuneration as established by law.
- (b) Any amendments to the amount of remuneration shall come into effect in the next session of the Assembly after such amendment was passed.

#### **SEC. 106. PASSING LEGISLATION.**

- (a) Whenever a bill has been approved by a simple majority of the Members, the bill shall be sent to the President of the tribe for his approval or disapproval.
- (b) If the President disapproves of legislation, he shall return the bill to the Assembly with his remarks as to why he returned it.
- (c) If the President does not act upon a bill within ten days, excluding Sundays, the bill shall automatically pass into law.

#### **SEC. 107. POWERS OF THE ASSEMBLY.**

The Assembly shall have the power to legislate on all matters not reserved to the United States Congress or entirely prohibited from pursuant to section 108.

#### **SEC. 108. LIMITATIONS ON THE ASSEMBLY.**

- (a) The Assembly shall not legislate on the matters of defense, foreign affairs, interstate commerce, or commercial and trade restrictions and shall not lay any imposts, excises, or tariffs on imports and exports.
- (b) The Assembly shall not legislate for the establishment of titles of nobility.

- (c) The tribe shall not enter into any treaty, except with the United States as the Federal Government and the government of the tribe see fit; alliance, or confederation.
- (d) The tribe shall not mint money nor issue bills of credit.
- (e) The tribe shall not pass a bill of attainder or an ex post facto law.
- (f) The tribe shall not maintain troops or armies of any kind, except as provided under the Militia Act of 1903 ([32 Stat. 775](#)), nor declare war or take belligerent action unless the tribe is being directly invaded.
- (g) The Assembly shall not legislate for a compact between the tribe and a State or consortium of States without the approval of Congress.
- (h) The tribe shall not hinder the privileges and immunities of citizens of the several States and the members of the tribe are guaranteed the equal privileges and immunities as citizens of the United States.

## **TITLE II—THE EXECUTIVE**

### **SEC. 201. EXECUTIVE POWER VESTED IN THE PRESIDENT.**

All executive power shall be vested in the President of the tribe.

### **SEC. 202. ELECTION AND TERM OF PRESIDENT.**

- (a) The President shall be elected by a simple majority of the members of the tribe who are above eighteen years of age and are citizens of the United States for at least three years.
- (b) No person shall become President unless he is at least thirty-five years of age, a citizen of the United States for seven years, and a member of the tribe.



## **SEC. 203. POWERS OF THE PRESIDENT.**

- (a) The President shall be the commander-in-chief of the militia of the tribe and shall have the power to call out the militia to execute the laws of the tribe or to suppress insurrection or to repel invasion.
- (b) The President shall have the power to grant reprieves and pardons for offenses under the criminal law of the tribe.
- (c) The President shall, by and with the advice and consent of the Assembly, appoint officers and civil servants for the executive Departments of Cabinet; appoint Supreme Court Justices and inferior judicial officers; appoint chief tribal law enforcement officers; and other officers of the tribe that may be established by law.
- (d) The President shall have the power to promulgate executive orders acting upon and pursuant to the authority of statutes of the tribe passed by the Assembly, which may be, should the Assembly demand, submitted to the Assembly for referral and approval.
- (e) The President shall have the power to negotiate treaties with the United States by and with the advice and consent of two thirds of the Assembly.

## **SEC. 204. REMUNERATION AND OATH.**

- (a) The President and other officers of the executive, including the heads of the Department of Cabinet, shall be provided with remuneration according to law.
- (b) The oath of office for the President and the heads of the Departments of Cabinet shall recite the following oath to officially enter office: “I, A.B., do solemnly swear that I will support the United States, the tribe, and the laws of the United States and the tribe.”

## **SEC. 205. IMPEACHMENT.**

- (a) The President and all other civil officers of the tribe may be subject to impeachment for the commitment of felonies or high crimes as may be established under tribal or federal law.
- (b) The Assembly shall convene to debate on articles of impeachment and a vote of a simple majority of Members shall be sufficient to declare the President or relevant civil officer impeached.
- (c) Upon impeachment, the Assembly shall present a case for removal to the Supreme Court of the tribe, whereupon the President or the civil officer impeached may be represented in the Court by an attorney.
- (d) If the Supreme Court ruled in favor of removal, the President or the relevant civil officer shall be stripped of his powers, privileges, and position; barred from serving in public office again; and, if the situation depends on it, convicted for a sentence prescribed by the Court.

## **SEC. 206. VICE PRESIDENT.**

- (a) In the event of the President's death, resignation, removal, absence, or incapacitation, the power of the President shall be vested in the Vice President.
- (b) The Vice President shall be elected on a joint ticket with the President.
- (c) If a Vice President is required to permanently assume the office of the President, he shall appoint a new Vice President by and with the consent of the Assembly.

## **SEC. 207. CABINET.**

- (a) The powers of the President may be vested by him in the heads of the Departments of Cabinet, hereafter referred to as "Secretaries".

- (b) There shall be a Secretary of State, tasked with the representation of the tribe in engagements with the Federal Government.
- (c) There shall be an Attorney General, tasked with the role of legal representation and attorney on behalf of the tribal government in tribal court or federal court.
- (d) There shall be a Secretary of the Treasury, tasked with the administration of the tribal finances and the collection of taxes imposed by the tribal government.
- (e) There shall be a Secretary of the Interior, tasked with the administration of public tribal lands, administration of the tribal election system, and other such powers as may be vested from time to time in the Secretary.
- (f) There shall be a Secretary of Public Safety, tasked with the administration of law enforcement in the tribe and the coordination of local law enforcement throughout the tribe.
- (g) Additional Departments and Secretaries may be established according to tribal law.
- (h) Hereafter, all mentions of “Secretary”, unless otherwise specified, shall be construed to mean the tribal Secretaries.

## **TITLE III—THE JUDICIARY**

### **SEC. 301. JUDICIAL POWER VESTED IN COURTS.**

The judicial power shall be vested in the Supreme Court of the tribe and such inferior courts as may be established, from time to time, by tribal law.

### **SEC. 302. COMPOSITION OF THE COURT.**

The tribal Supreme Court shall comprise seven Justices: six Associate Justices and one Chief Justice.

### **SEC. 303. JURISDICTION OF THE COURT.**

The tribal Supreme Court shall have appellate jurisdiction on all matters arising from the inferior courts, criminal or civil, that occur within the boundaries of tribal land, regardless if one party is not a member of the tribe.

### **SEC. 304. APPEALS TO THE SUPREME COURT.**

The Supreme Court shall have appellate jurisdiction over all cases ruled upon by the tribal Supreme Court.

## **TITLE IV—RIGHTS**

### **SEC. 401. FREEDOM OF WORSHIP; RIGHT TO FREE SPEECH; FREE PRESS; FREEDOM OF ASSEMBLY.**

- (a) The Assembly shall make no law respecting the establishment of a religion or hindering the free exercise thereof.
- (b) The Assembly shall make no law abridging the freedom of speech, except to the extent such restriction is paramount to the maintenance of law and order in the face of riot or insurrection.
- (c) The Assembly shall make no law abridging the free press, except to the extent such restriction is paramount to the maintenance of law and order in the face of riot or insurrection.
- (d) The Assembly shall make no law abridging the freedom of assembly, except to the extent such restriction is paramount to the maintenance of law and order in the face of riot or insurrection.

## **SEC. 402. RIGHT TO BEAR ARMS.**

All members of the tribe shall have the right to bear arms, which the Assembly shall not infringe upon whatsoever, for the protection of self, family, neighborhood, and tribe.

## **SEC. 403. BAN ON QUARTERING.**

No soldier or militiaman or National Guardsman shall, in times of peace, be quartered in any house without the consent of the owner nor, in times of war, but in a manner prescribed by law.

## **SEC. 404. SEARCHES, SEIZURES, AND ARRESTS TO BE MADE BY WARRANT ONLY.**

- (a) Searches, seizures, and arrests may only be conducted upon a valid warrant issued by a court of competent jurisdiction and signed by a superior officer.
- (b) A search warrant shall not be a general warrant and must contain the specific locations that law enforcement wishes to search.
- (c) No warrant shall be issued except on probable cause.
- (d) The exception to the requirement for a search warrant is if there is an exigent circumstance whereby the life or wellbeing of a person is in jeopardy.
- (e) The exception to the requirement for an arrest warrant is if a law enforcement officer witnesses a crime being committed in front of him.

## **SEC. 405. BAN ON DOUBLE JEOPARDY; RIGHT TO SILENCE.**

- (a) No person may be charged or prosecuted for the same offense twice.
- (b) No person shall be compelled to incriminate himself in a criminal case.

#### **SEC. 406. RIGHT TO PROPERTY.**

Each person has the right to his own property and shall not have such property taken for public use without just compensation.

#### **SEC. 407. RIGHT TO A SPEEDY AND PUBLIC TRIAL; IMPARTIAL JURY; RIGHT TO COUNSEL.**

- (a) In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial in a court of law.
- (b) Such trial shall be conducted with an impartial jury constituted and appointed as prescribed by law.
- (c) The accused shall have the right to the assistance of counsel in interrogation by law enforcement and in trial as his representation, and those accused who cannot afford counsel must be provided counsel by the tribal government.
- (d) The tribe shall not deprive any person of life, liberty, or property without due process of law.

#### **SEC. 408. FINES, BAIL, AND CRUEL AND UNUSUAL PUNISHMENT.**

- (a) Excessive fines shall not be imposed, nor excessive bail required.
- (b) Cruel and unusual punishment, including acts constituting torture and the death penalty, shall not be inflicted upon any individual.

#### **SEC. 409. BAN ON SLAVERY AND INVOLUNTARY SERVITUDE.**

- (a) Under no circumstances shall any person be subject to slavery, involuntary servitude, forced labor, or labor without pay.

- (b) An exception to the ban on labor without pay may be if the person performing the labor does it on a voluntary basis, which must be expressed before performing the labor.

#### **SEC. 410. EQUALITY BEFORE THE LAW.**

All persons shall have equal status before the law and may not be preferred or marginalized by the tribal government or the tribal judicial system.

#### **SEC. 411. RIGHT TO SUFFRAGE.**

All persons above eighteen years of age who reside within the territory of the tribe or who are members of the tribe, as prescribed by law, residing without the territory of the tribe shall be eligible to, and have the right to, vote in an election for the government of the tribe.

## **TITLE V—TAXATION AND FINANCES**

#### **SEC. 501. GENERAL FUND.**

- (a) Herein is established the General Fund of the tribe.
- (b) The General Fund shall consist of all of the revenue earned by the tribal government consolidated and administered therein.
- (c) The tribe may, by law, establish individual accounts pertaining to certain projects.
- (d) The Secretary of the Treasury shall administer the General Fund.

## **SEC. 502. BORROWING AND DEBTS**

- (a) The tribe shall be able to borrow on the credit thereof, but the debts accrued, excluding interest, shall not exceed two percent of the assessed valuation of the tribe, as detailed in reports to the Secretary of the Treasury.
- (b) The tribe shall not assume the debt of a local subdivision unless such debt was incurred to repel an invasion, to suppress insurrection, or to provide for the public defense.

## **SEC. 503. APPROPRIATIONS.**

- (a) The government shall, each fiscal year, provide for the appropriation of money from the General Fund for the general administration of the tribe.
- (b) No appropriation may be conducted except by law passed by the Assembly.

## **SEC. 504. TAXATION.**

- (a) The Assembly may impose taxation on the annual income of an individual or of a corporation, which shall not exceed ten percent.
- (b) The Assembly may impose taxation on the value of a good when purchased, which shall not exceed one percent.
- (c) The Assembly shall not impose a tax on estate or inheritance.
- (d) The Assembly shall provide for a uniform system of taxation and collection of money from taxation throughout the tribe.



# **TITLE VI—LOCAL GOVERNMENT**

## **SEC. 601. ESTABLISHMENT OF LOCAL GOVERNMENTS BY LAW.**

The Assembly shall provide for procedures to establish and name local subdivisions, to provide for governments thereof, to establish and name cities, and to provide for governments thereof.

# **TITLE VII—MISCELLANEOUS**

## **SEC. 701. LAWS OF STATES TO NOT APPLY TO TRIBES.**

- (a) The laws, regulations, and court jurisprudence of the several States shall not apply to the tribes present within the boundaries of the States.
- (b) Subsection (a) shall not apply to those members of the tribes who are not present within the tribal lands but residing in the jurisdiction of the States.

## **SEC. 702. RIGHT OF WAY AND TRIBAL LANDS.**

- (a) Unless explicitly agreed to by contract between the tribal government and an individual or corporation, there shall be no right of way through tribal lands.
- (b) Subsection (a) shall not be construed to apply to right of way contracts already in effect before the passing of this Act.
- (c) The tribal government, through the Secretary of State, shall negotiate a final treaty between the United States and the tribe on the explicit demarcations and boundaries of the tribe.

### **SEC. 703. TRIBAL LANDS HELD IN TRUST BY THE UNITED STATES.**

All tribal lands held in trust by the United States through the Department of the Interior or its subsidiary agency, the Bureau of Indian Affairs, shall hereafter be transferred to the jurisdiction of the tribe.

### **SEC. 704. AUTHORITY OF ASSEMBLY TO AMEND THE PROVISIONS OF THIS ACT.**

Notwithstanding any provision of law, the Assembly shall have the equal authority to amend the provisions of this Act; *Provided, however,* That any amendments enacted by Congress shall be supreme to any similar amendments enacted by the Assembly.