

117TH CONGRESS
1ST SESSION

H. R. 3587

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.

IN THE HOUSE OF REPRESENTATIVES

MAY 28, 2021

Mr. GRIJALVA (for himself, Ms. LEGER FERNANDEZ, Mr. HUFFMAN, Mrs. NAPOLITANO, Mr. COHEN, Ms. TLAIB, Mr. SOTO, Mr. GARCÍA of Illinois, and Mr. LOWENTHAL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.

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 (a) SHORT TITLE.—This Act may be cited as the
3 “Requirements, Expectations, and Standard Procedures
4 for Effective Consultation with Tribes Act” or the “RE-
5 SPECT Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
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- Sec. 201. Assessing Tribal impacts.
- Sec. 202. Consultation stage.
- Sec. 203. Decision stage for proposed activity.
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- Sec. 401. Designated agency official.
- Sec. 402. Consultation policy.
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- Sec. 501. Tribal sovereignty.
- Sec. 502. Sensitive Tribal information.

TITLE VI—JUDICIAL REVIEW

Sec. 601. Judicial review.

8 **SEC. 3. FINDINGS AND PURPOSES.**

9 (a) FINDINGS.—Congress finds that—

1 (1) the United States has a unique, legally af-
2 firmed government-to-government relationship with
3 Tribal Governments, as set forth in the Constitution
4 of the United States, treaties, statutes, Executive or-
5 ders, and court decisions;

6 (2) the United States recognizes the right of
7 Tribal Governments to self-govern and supports
8 Tribal sovereignty and self-determination;

9 (3) the United States, through treaties, stat-
10 utes, and historical relations, has defined a unique
11 trust relationship and responsibility to protect and
12 support Tribal Governments;

13 (4) owing to this trust relationship, the United
14 States has a responsibility to consult with Tribal
15 Governments on a government-to-government basis
16 when formulating policies and undertaking activities
17 that may have impacts on Tribal lands and interests;

18 (5) procedures for such consultation should be
19 designed and structured to give Tribal Governments
20 the opportunity to provide meaningful, informed
21 input throughout the development and decision-mak-
22 ing processes;

23 (6) increasing Federal and Tribal capacities for
24 effective consultation while building institutional

1 knowledge fosters greater efficiency and will benefit
2 future actions;

3 (7) the consultation process should be formal-
4 ized according to best practices that are designed
5 and administered by the agency and that fulfill the
6 legal requirements mandated by this Act;

7 (8) consulting with Tribal Governments during
8 the formulation of long-term management plans re-
9 duces the likelihood of project delays and increases
10 the efficiency of project implementations; and

11 (9) effective consultation demands ongoing, re-
12 spectful communication between agencies and Tribal
13 Governments.

14 (b) PURPOSES.—The purposes of this Act are—

15 (1) to establish and support a process of reg-
16 ular, meaningful consultation and collaboration with
17 Tribal Governments in the initiation of Federal ac-
18 tivities and the development of Federal policies and
19 regulations that impact Tribal lands and interests;

20 (2) to strengthen the United States govern-
21 ment-to-government relationship with Tribal Govern-
22 ments; and

23 (3) to establish minimum standard procedures
24 to ensure the above goals are achieved.

1 **SEC. 4. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) consultation constitutes more than simply
4 notifying an Tribal Government about a planned un-
5 dertaking;

6 (2) effective, meaningful consultation requires a
7 two-way exchange of information, a willingness to
8 listen, an attempt to understand and to genuinely
9 consider each other’s opinions, beliefs, and desired
10 outcomes, and a seeking of agreement on how to
11 proceed concerning the issues at hand; and

12 (3) consultation can be considered effective and
13 meaningful when each party demonstrates a genuine
14 commitment to learn, acknowledge, and respect the
15 positions, perspectives, and concerns of the other
16 parties and when Federal agencies accommodate
17 Tribal concerns to the extent feasible and consistent
18 with applicable law.

19 **SEC. 5. DEFINITIONS.**

20 For the purposes of this Act:

21 (1) **ACTIVITY.**—The term “activity” means any
22 plan, project, or program funded in whole or in part
23 under the direct or indirect jurisdiction of a Federal
24 agency, including—

25 (A) those carried out by or on behalf of an
26 agency;

1 (B) those carried out with Federal finan-
2 cial assistance;

3 (C) those requiring a Federal permit, li-
4 cense, or approval; and

5 (D) those subject to state or local regula-
6 tion administered pursuant to a delegation or
7 approval by a Federal agency.

8 (2) AGENCY.—The term “agency” means any
9 authority of the United States that is an agency
10 under section 551 of title 5, United States Code.

11 (3) LEAD AGENCY.—The term “lead agency”
12 means a designated agency that will fulfill the collec-
13 tive consultation responsibilities under this Act if
14 more than one agency is involved in an activity or
15 regulatory action. Any agency that does not des-
16 ignate a lead agency shall remain individually re-
17 sponsible for the consultation responsibilities of that
18 agency under this Act.

19 (4) MEMORANDUM OF AGREEMENT.—The term
20 “memorandum of agreement” means a document
21 that records the terms and conditions agreed upon
22 by an agency, or lead agency, and a Tribal Govern-
23 ment or designated Tribal Leader Task Force
24 through the consultation process regarding an activ-
25 ity or regulatory action.

1 (5) NEW DISCOVERY.—The term “new dis-
2 covery” means any unexpected development that oc-
3 curs during the course of an activity, such as the
4 discovery of a new archeological site, unanticipated
5 impacts on organisms or ecosystems, or the realiza-
6 tion of unintended consequences that may have im-
7 pacts on Tribal lands and interests.

8 (6) REGULATORY ACTION.—The term “regu-
9 latory action” means any regulation, policy, guid-
10 ance, or grant funding formula change that is pro-
11 posed by an agency.

12 (7) SACRED SITE.—The term “sacred site”
13 means any geophysical or geographical area or fea-
14 ture that is identified by a Tribal Government—

15 (A) as sacred by virtue of its established
16 religious significance to, or ceremonial use by,
17 a Tribal religion; or

18 (B) to be of established cultural signifi-
19 cance.

20 (8) STANDARD METHOD OF COMMUNICATION.—
21 The term “standard method of communication”
22 means the mode of communication that the agency
23 uses in the typical course of communicating with
24 persons outside the Federal Government.

1 (9) STANDARD PROCESS.—The term “standard
2 process” means a process for Federal agency and
3 Tribal Government interactions agreed to by both
4 parties through consultation and certified in a
5 memorandum of agreement that applies to certain
6 specified activities or regulatory actions, or to lim-
7 ited categories of activities or regulatory actions.

8 (10) TRIBAL GOVERNMENT.—The term “Tribal
9 Government” means the governing body of any In-
10 dian or Alaska Native Tribe, band, nation, pueblo,
11 village, community, component band or component
12 reservation, individually identified (including par-
13 enthetically) in the list published most recently as of
14 the date of enactment of this Act pursuant to sec-
15 tion 104 of the Federally Recognized Indian Tribe
16 List Act of 1994 (25 U.S.C. 5131).

17 (11) TRIBAL IMPACT.—The term “Tribal im-
18 pact” means any Federal action that may have an
19 impact on one or more Tribal Governments on mat-
20 ters, including—

21 (A) Tribal cultural practices, lands, re-
22 sources, or access to traditional areas of cul-
23 tural or religious importance;

24 (B) Tribal treaty-protected rights;

1 (C) the ability of a Tribal Government to
2 govern or provide services to its members;

3 (D) a Tribal Government’s formal relation-
4 ship with the Federal Government; or

5 (E) the consideration of the Federal Gov-
6 ernment’s trust responsibility to Tribal Govern-
7 ments.

8 (12) TRIBAL LEADER TASK FORCE.—The term
9 “Tribal Leader Task Force” means a task force that
10 is collaboratively determined by affected Tribal Gov-
11 ernments.

12 **TITLE I—STANDARDS FOR** 13 **CONSULTATION**

14 **SEC. 101. STANDARDS FOR CONSULTATION.**

15 (a) SCOPE.—Consultation with Tribal Governments
16 shall occur before undertaking any proposed Federal activ-
17 ity or finalizing any Federal regulatory action that may
18 have Tribal impacts. Additionally, consultation with Tribal
19 Governments shall occur for all activities that would affect
20 any part of any Federal land that shares a border with
21 Indian Country, as defined in section 1151 of title 18,
22 United States Code, but is not limited to activities on such
23 lands.

24 (b) LIMITATION.—Nothing in this Act shall—

1 (1) exempt an agency from additional consulta-
2 tion required under any other law or from taking
3 any other consultative actions as required by any
4 other law or agency prerogative in addition to those
5 required by this Act; or

6 (2) preclude an agency from additional con-
7 sultation that complies with agency regulations for
8 consultation, advances agency consultation practices,
9 or supports agency efforts to build or strengthen
10 government-to-government relationships with Tribal
11 Governments.

12 **TITLE II—CONSULTATION** 13 **PROCEDURES**

14 **SEC. 201. ASSESSING TRIBAL IMPACTS.**

15 As early as possible in the planning stage of an activ-
16 ity or a regulatory action, the agency, or lead agency,
17 shall—

18 (1) prepare a Tribal Impact Statement that
19 identifies any potential Tribal impacts of the pro-
20 posed activity or regulatory action. At a minimum,
21 the Tribal Impact Statement shall include the scope
22 of the activity or regulatory action being considered,
23 including any geographic areas important to Tribal
24 Governments that might be affected, as well as a list
25 of all affected Tribal Governments;

1 (2) make a good faith effort to identify areas
2 that contain sacred sites important to Tribal Gov-
3 ernments, whether such sacred sites are explicitly
4 known to an agency or not; and

5 (3) publish the completed Tribal Impact State-
6 ment in the Federal Register, excluding all informa-
7 tion designated as sensitive by a Tribal Government
8 pursuant to section 502, before any further action
9 on the proposed activity or regulatory action.

10 **SEC. 202. CONSULTATION STAGE.**

11 (a) INITIAL CONSULTATION OUTREACH.—The agen-
12 cy, or lead agency, shall—

13 (1) transmit, via the agency’s standard method
14 of communication, a formal request for a consulta-
15 tion meeting, along with along with a copy of the
16 proposed activity or regulatory action as well as copy
17 of the Tribal Impact Statement as prepared accord-
18 ing to section 201, to each affected Tribal Govern-
19 ment identified in the Tribal Impact Statement. In
20 the case of a proposed activity, the documents shall
21 also be transmitted to relevant Tribal governmental
22 agencies (including the Tribal Historic Preservation
23 Officer or cultural resource manager), and relevant
24 non-Tribal stakeholders (including the State Historic
25 Preservation Officer and local governments that

1 have jurisdiction on any affected land via agreement
2 with the agency);

3 (2) at the request of an affected Tribal Govern-
4 ment, transmit, via the agency's standard method of
5 communication, a copy of the Tribal Impact State-
6 ment and the letter requesting a consultation meet-
7 ing to non-governmental Tribal stakeholders;

8 (3) not request consultation with non-govern-
9 mental Tribal stakeholders without the written con-
10 sent of the affected Tribal Government;

11 (4) follow up within 5 business days to ensure
12 receipt of the documents by all intended recipients;
13 and

14 (5) if the documents were not received by any
15 of the intended recipients, retransmit all materials
16 via a form of communication that is suitable to the
17 recipient.

18 (b) NON-RESPONSE TO CONSULTATION OUT-
19 REACH.—If, after a good faith effort, the agency, or lead
20 agency, fails to engage an affected Tribal Government in
21 the consultation process, the agency, or lead agency, may
22 conclude its consultation efforts by providing the Tribal
23 Government with a written notification and explanation
24 for its decision, signed by the head of the agency, or lead

1 agency, which shall be made part of the official consulta-
2 tion record as described in section 301(a).

3 (c) MEETING ARRANGEMENTS.—

4 (1) The agency, or lead agency, shall negotiate
5 with each affected Tribal Government to determine
6 the format, agenda, and goals of a consultation
7 meeting, and shall keep thorough documentation of
8 all steps taken to engage the affected Tribal Govern-
9 ment in consultation meetings.

10 (2) In appropriate circumstances, affected Trib-
11 al Governments may elect to form a Tribal Leader
12 Task Force, to aid in consultation on activities that
13 are regional in scope or that affect multiple Tribal
14 Governments. To the maximum extent possible, the
15 Tribal Leader Task Force shall represent a cross-
16 section of Tribal interests with respect to the pro-
17 posed activity or regulatory action. Affected Tribal
18 Governments that do not elect to join a Tribal Lead-
19 er Task Force shall be consulted separately.

20 (d) CONSULTATION MEETING REQUIREMENTS.—A
21 consultation meeting shall—

22 (1) begin with confirmation of the format,
23 agenda, and goals of the meeting, with adequate
24 time scheduled for introductions and any ceremonial
25 proceedings;

1 (2) be structured to allow for meaningful and
2 respectful interaction throughout the meeting among
3 all meeting participants; and

4 (3) conclude with planning for the next meet-
5 ing, if necessary, as well as confirmation of the
6 method of any potential interim communications be-
7 tween all parties participating in the consultation.

8 (e) CONCLUSION OF CONSULTATION WITH A MEMO-
9 RANDUM OF AGREEMENT.—

10 (1) Except as provided by subsection (b), sub-
11 section (f), and subsection (g), consultation shall
12 conclude only upon the execution of a memorandum
13 of agreement signed by the head of the agency, or
14 lead agency, and the head of the affected Tribal
15 Government or the members of the designated Trib-
16 al Leader Task Force.

17 (2) The memorandum of agreement—

18 (A) may address multiple activities or reg-
19 ulatory actions if the activities or regulatory ac-
20 tions are similar and repetitive in nature, or are
21 multistate or regional in scope, or where routine
22 management activities are undertaken at Fed-
23 eral installations, facilities, or other land man-
24 agement units;

1 (B) may establish standard processes for
2 certain categories of activities and regulatory
3 actions determined through consultation and
4 defined in the memorandum of agreement;

5 (C) shall, in the case of a proposed activ-
6 ity—

7 (i) include a provision for monitoring
8 and reporting on the implementation of the
9 activity;

10 (ii) include provisions for reconsider-
11 ation if the activity has not been completed
12 within a specified time; and

13 (iii) include provisions to address new
14 discoveries, which may include halting the
15 activity and returning to the consultation
16 stage.

17 (3) The signed memorandum of agreement may
18 be amended at any time by the joint approval of all
19 signatories.

20 (f) CONCLUSION OF CONSULTATION WITHOUT A
21 MEMORANDUM OF AGREEMENT.—

22 (1) The agency, or lead agency, shall make a
23 good faith effort through sustained interaction and
24 collaboration to reach a consensus resulting in a
25 memorandum of agreement.

1 (2) If, after a good faith effort, the agency, or
2 lead agency, determines that further consultation
3 will not be productive, it may conclude consultation
4 by providing the Tribal Government with a written
5 notification and explanation for its decision, includ-
6 ing identification of any legal, policy, or factual bar-
7 riers that prevented the agency from reaching agree-
8 ment with the affected Tribal Government, signed by
9 the head of the agency, or lead agency, which shall
10 be made part of the official consultation record as
11 described in section 301(a).

12 (g) TRIBAL WITHDRAWAL FROM CONSULTATION.—
13 An affected Tribal Government may at any point decide
14 to withdraw from the consultation process. In such case,
15 the agency, or lead agency, shall provide the affected Trib-
16 al Government with the opportunity to submit a written
17 statement, explanation, or comment on the consultation
18 proceedings that will become part of the official consulta-
19 tion record as described in section 301(a).

20 **SEC. 203. DECISION STAGE FOR PROPOSED ACTIVITY.**

21 (a) PROPOSAL DOCUMENT.—Upon completion of the
22 consultation stage pursuant to section 202, the agency,
23 or lead agency, shall—

24 (1) compile a proposal document consisting of
25 the plan for the proposed activity, its anticipated

1 Tribal impacts, and any signed memorandum of
2 agreement;

3 (2) include sufficient supporting documentation
4 to the extent permitted by law to enable any review-
5 ing parties to understand its basis;

6 (3) transmit, via the agency's standard method
7 of communication, a copy of the proposal document
8 to the affected Tribal Governments, including those
9 that withdrew from the process;

10 (4) follow up within 5 business days to ensure
11 receipt of the proposal document by all intended re-
12 cipients;

13 (5) if the proposal document was not received
14 by an intended recipient, retransmit all material via
15 a form of communication that is suitable to the re-
16 cipient; and

17 (6) after the verified receipt of the proposal
18 document by all intended recipients, the proposal
19 document shall be published in the Federal Register,
20 excluding all information designated as sensitive by
21 a Tribal Government pursuant to section 502.

22 (b) PUBLIC COMMENT PERIOD.—The agency, or lead
23 agency, shall provide a period of not less than 90 days
24 after publication of the proposal document in the Federal
25 Register for public comment. A 30-day extension of the

1 90-day period shall be automatically granted upon request
2 by an affected Tribal Government.

3 (c) PRELIMINARY DECISION DOCUMENT.—After ex-
4 piration of the public comment period pursuant to sub-
5 section (b), the agency, or lead agency, shall prepare a
6 preliminary decision letter, signed by the head of the agen-
7 cy, or lead agency, that shall—

8 (1) state the decision to proceed or not proceed
9 with the activity;

10 (2) state the rationale for the decision;

11 (3) list any changes to the proposed activity
12 made in response to the comments filed pursuant to
13 subsection (b);

14 (4) specifically address any points where the de-
15 cision conflicts with the request of an affected Tribal
16 Government, including a detailed explanation of why
17 the request was disregarded;

18 (5) transmit, via the agency’s standard method
19 of communication, a copy of the preliminary decision
20 letter to the affected Tribal Governments, including
21 those that withdrew from the process;

22 (6) follow up within 5 business days to ensure
23 receipt of the preliminary decision letter by all in-
24 tended recipients; and

1 (7) if the preliminary decision letter was not re-
2 ceived by an intended recipient, retransmit the mate-
3 rial via a form of communication that is suitable to
4 the recipient.

5 (d) TRIBAL RESPONSE PERIOD.—The agency, or
6 lead agency, shall provide a period of no less than 45 days
7 after issuance of the preliminary decision letter for a re-
8 sponse by an affected Tribal Government.

9 (e) FINAL DECISION DOCUMENT.—After expiration
10 of the Tribal Response Period pursuant to subsection (d),
11 the agency, or lead agency, shall prepare a letter stating
12 the final decision of the agency, signed by the head of the
13 agency, or lead agency, that shall—

14 (1) state the decision to proceed or not proceed
15 with the activity;

16 (2) state the rationale for the decision;

17 (3) list any changes to the preliminary decision
18 in response to comments received from an affected
19 Tribal Government pursuant to subsection (d);

20 (4) specifically address any points where the
21 final decision conflicts with the request of an af-
22 fected Tribal Government, including a detailed ex-
23 planation of why the request was disregarded;

24 (5) transmit, via the agency’s standard method
25 of communication, a copy of the final decision letter

1 to the affected Tribal Governments, including those
2 that withdrew from the process;

3 (6) follow up after 5 business days to ensure re-
4 ceipt of the final decision letter by all intended re-
5 cipients; and

6 (7) if the final decision letter was not received
7 by an intended recipient, retransmit the material via
8 a form of communication that is suitable to the re-
9 cipient.

10 (f) PUBLICATION OF LETTER.—The agency shall
11 make public the final decision letter, excluding all informa-
12 tion designated as sensitive by a Tribal Government pur-
13 suant to section 502.

14 **SEC. 204. DECISION STAGE FOR PROPOSED REGULATORY**
15 **ACTION.**

16 (a) DECISION DOCUMENT.—Upon completion of the
17 consultation stage pursuant to section 202, the agency,
18 or lead agency, shall prepare a decision letter, signed by
19 the head of the agency, or lead agency, that shall—

20 (1) state the decision to proceed or not proceed
21 with the proposed regulatory action;

22 (2) state the rationale for the decision;

23 (3) list any changes to the proposed regulatory
24 action made at the request of an affected Tribal

1 Government during the consultation process as out-
2 lined in section 202;

3 (4) specifically address any points where the de-
4 cision conflicts with the request of an affected Tribal
5 Government, along with a detailed explanation of
6 why the request was disregarded;

7 (5) transmit, via the agency's standard method
8 of communication, a copy of the decision letter to
9 the affected Tribal Governments, including those
10 that withdrew from the process;

11 (6) follow up within 5 business days to ensure
12 receipt of the decision letter by all intended recipi-
13 ents; and

14 (7) if the decision letter was not received by an
15 intended recipient, retransmit the material via a
16 form of communication that is suitable to the recipi-
17 ent.

18 (b) PUBLICATION IN FEDERAL REGISTER.—The de-
19 cision letter shall be published in the Federal Register
20 alongside the final decision on the regulatory action, ex-
21 cluding all information designated as sensitive by a Tribal
22 Government pursuant to section 502.

1 **TITLE III—DOCUMENTATION**
2 **AND REPORTING**

3 **SEC. 301. DOCUMENTATION AND REPORTING.**

4 (a) OFFICIAL CONSULTATION RECORD.—The agen-
5 cy, or lead agency, shall—

6 (1) keep an official consultation record that al-
7 lows accurate tracking of the process so that the
8 agency and all consulting parties can correct any er-
9 rors or omissions, and provides an official record of
10 the process that can be referred to in any litigation
11 that may arise;

12 (2) document all efforts to initiate consultation
13 as well as documenting the process once it has
14 begun, such as correspondence, telephone logs, and
15 emails;

16 (3) keep notes so that the consultation record
17 documents the content of consultation meetings, site
18 visits, and phone calls in addition to information
19 about dates and who participated;

20 (4) include all documentation in the official con-
21 sultation record; and

22 (5) ensure that all information designated as
23 sensitive by a Tribal Government pursuant to sec-
24 tion 502 is kept confidential.

1 (b) PAYMENT FOR TRIBAL DOCUMENTATION
2 WORK.—If the agency, or lead agency, asks a Tribal Gov-
3 ernment for specific information or documentation that in
4 any way fulfills the duties of the agency in a role similar
5 to that of a consultant or contractor, then the agency, or
6 lead agency, must pay for such services, if so requested
7 by the Tribal Government, as it would for any private con-
8 sultant or contractor.

9 (c) REPORT TO CONGRESS.—Each agency shall sub-
10 mit a biennial report on its consultation activities to Con-
11 gress, including outcomes.

12 **TITLE IV—IMPLEMENTATION** 13 **AND TRAINING**

14 **SEC. 401. DESIGNATED AGENCY OFFICIAL.**

15 No later than 90 days after the date of the enactment
16 of this Act—

17 (1) the head of each agency shall designate an
18 official with principal responsibility for the agency’s
19 implementation of this Act; and

20 (2) each bureau or office within the agency
21 shall designate one or more officials with the respon-
22 sibility to work with the principal agency official on
23 implementation of this Act.

1 **SEC. 402. CONSULTATION POLICY.**

2 No later than 180 days after enactment of this Act,
3 the designated agency official shall submit to the Office
4 of Management and Budget a description of the agency's
5 consultation policy, including all designated agency offi-
6 cials, in conformity with this Act.

7 **SEC. 403. TRAINING.**

8 Each agency shall design training for staff aimed at
9 improving the agency's capacity for interacting with Trib-
10 al Governments and executing the consultation process.
11 The training shall—

12 (1) promote consultation, communication, col-
13 laboration, and other interactions with Tribal Gov-
14 ernments;

15 (2) outline and reinforce the agency duties con-
16 cerning Tribal interests; and

17 (3) strengthen the understanding of the United
18 States government-to-government relationship with
19 Tribal Governments.

20 **TITLE V—TRIBAL SOVEREIGNTY**

21 **SEC. 501. TRIBAL SOVEREIGNTY.**

22 (a) IN GENERAL.—Agencies shall recognize and re-
23 spect Tribal self-government and sovereignty, honor Tribal
24 treaty and other rights, and strive to meet the responsibil-
25 ities that arise from the unique legal relationship between
26 the Federal Government and Tribal Governments.

1 (b) MAXIMUM TRIBAL ADMINISTRATIVE DISCRE-
2 TION.—With respect to Federal statutes and regulations
3 administered by Tribal Governments, the Federal Govern-
4 ment shall grant Tribal Governments the maximum ad-
5 ministrative discretion possible.

6 (c) ALTERNATIVES TO FEDERAL REGULATION.—
7 With respect to the formulation and implementation of
8 policies that have an impact on Tribal matters, agencies
9 shall—

10 (1) encourage Tribal Governments to develop
11 their own policies to achieve program objectives;

12 (2) when possible, defer to Tribal Governments
13 to establish standards; and

14 (3) in determining whether to establish Federal
15 standards, consult with Tribal Governments as to
16 the need for Federal standards and any alternatives
17 that would limit the scope of Federal standards or
18 otherwise preserve the prerogatives and authority of
19 Tribal Governments.

20 **SEC. 502. SENSITIVE TRIBAL INFORMATION.**

21 Notwithstanding chapter 7 of title 5, United States
22 Code (commonly known as the Administrative Procedure
23 Act), consultation meetings shall be closed to the public
24 at the request of the Tribal Government. Notwithstanding
25 section 552 of title 5, United States Code (commonly

1 known as the Freedom of Information Act), all informa-
2 tion designated by the Tribal Government as sensitive,
3 such as the location of sacred sites or other details of cul-
4 tural or religious practices, shall be deleted from any pub-
5 lic publication made as part of the consultation process
6 or in the process of carrying out the activity. Once infor-
7 mation has been designated as sensitive, the agency will
8 determine in consultation with the Tribal Government who
9 may have access to the information for the purposes of
10 carrying out the activity.

11 **TITLE VI—JUDICIAL REVIEW**

12 **SEC. 601. JUDICIAL REVIEW.**

13 A Tribal Government may seek judicial review of a
14 determination of an agency under this Act in accordance
15 with subchapter II of chapter 5 of title 5, United States
16 Code, and chapter 7 of title 5, United States Code (com-
17 monly known as the Administrative Procedure Act), if the
18 Tribal Government has exhausted all other administrative
19 remedies available to the Tribal Government.

○