

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3587  
OFFERED BY MR. GRIJALVA OF ARIZONA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “RESPECT Act”.

**3 SEC. 2. TABLE OF CONTENTS.**

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

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings and purposes.
- Sec. 4. Sense of Congress.
- Sec. 5. Definitions.

TITLE I—TRIBAL SOVEREIGNTY

Sec. 101. Tribal sovereignty.

TITLE II—STANDARDS FOR CONSULTATION

- Sec. 201. Standards for consultation.
- Sec. 202. Designation of lead agency.
- Sec. 203. Sensitive information.

TITLE III—TRIBAL IMPACT STATEMENT

Sec. 301. Assessing Tribal impacts.

TITLE IV—CONSULTATION PROCEDURES FOR A COVERED  
ACTIVITY WITH TRIBAL IMPACTS

- Sec. 401. Consultation outreach for a covered activity.
- Sec. 402. Conclusion of consultation for a covered activity.
- Sec. 403. Consultation outcome for a covered activity.

TITLE V—CONSULTATION PROCEDURES FOR A PROPOSED  
REGULATORY ACTION WITH TRIBAL IMPACTS

Sec. 501. Proposed regulatory action with Tribal impacts.

Sec. 502. Consultation procedures for a proposed regulatory action with Tribal impacts that are regional or national in scope.

Sec. 503. Consultation outcome for proposed regulatory action with Tribal impacts.

TITLE VI—DOCUMENTATION AND REPORTING

Sec. 601. Documentation and reporting.

TITLE VII—IMPLEMENTATION AND TRAINING

Sec. 701. Designated agency and bureau officials.

Sec. 702. Agency consultation policy.

Sec. 703. Agency consultation policy during emergency periods.

Sec. 704. Training.

TITLE VIII—JUDICIAL REVIEW

Sec. 801. Judicial review.

1 **SEC. 3. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

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

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

11 (3) the United States, through treaties, stat-  
12 utes, and historical relations, has defined a unique  
13 trust relationship and responsibility to protect and  
14 support Tribal Governments and Alaska Native Cor-  
15 porations;

16 (4) owing to this trust relationship, the United  
17 States has a responsibility to consult with Tribal

1 Governments on a government-to-government basis  
2 and Alaska Native Corporations when formulating  
3 policies and undertaking activities that may have im-  
4 pacts on Tribal members and interests or Alaska  
5 Native shareholders;

6 (5) procedures for such consultation should be  
7 designed and structured to give Tribal Governments  
8 and Alaska Native Corporations the opportunity to  
9 provide meaningful, informed input throughout the  
10 development and decision-making processes;

11 (6) increasing Federal, Tribal, and Alaska Na-  
12 tive Corporation capacities for effective consultation  
13 while building institutional knowledge fosters greater  
14 efficiency and will benefit future actions;

15 (7) the consultation process should be formal-  
16 ized according to best practices that are designed  
17 and administered by the agency and that fulfill the  
18 legal requirements mandated by this Act;

19 (8) consulting with Tribal Governments and  
20 Alaska Native Corporations during the formulation  
21 of long-term management plans reduces the likeli-  
22 hood of project delays and increases the efficiency of  
23 project implementations; and

24 (9) effective consultation demands ongoing, re-  
25 spectful communication between Federal agencies,

1 Tribal Governments, and Alaska Native Corpora-  
2 tions.

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

4 (1) to establish and support a process of reg-  
5 ular, meaningful consultation and collaboration with  
6 Tribal Governments and Alaska Native Corporations  
7 in the initiation of Federal activities and the devel-  
8 opment of Federal policies and regulations that im-  
9 pact Tribal members and interests and Alaska Na-  
10 tive shareholders;

11 (2) to strengthen the United States govern-  
12 ment-to-government relationship with Tribal Govern-  
13 ments; and

14 (3) to establish minimum standard procedures  
15 to ensure the above goals are achieved.

16 **SEC. 4. SENSE OF CONGRESS.**

17 It is the sense of Congress that—

18 (1) consultation constitutes more than simply  
19 notifying a Tribal Government or Alaska Native  
20 Corporation about a planned undertaking;

21 (2) effective, meaningful consultation requires a  
22 two-way exchange of information, a willingness to  
23 listen, an attempt to understand and to genuinely  
24 consider each other's opinions, beliefs, and desired

1 outcomes, and a seeking of agreement on how to  
2 proceed concerning the issues at hand; and

3 (3) consultation can be considered effective and  
4 meaningful when each party demonstrates a genuine  
5 commitment to learn, acknowledge, and respect the  
6 positions, perspectives, and concerns of the other  
7 parties and when Federal agencies address Tribal  
8 concerns to the extent practicable and permitted by  
9 law.

10 **SEC. 5. DEFINITIONS.**

11 For the purposes of this Act:

12 (1) **ALASKA NATIVE CORPORATION.**—The term  
13 “Alaska Native Corporation” means a Regional Cor-  
14 poration, Village Corporation, Urban Corporation, or  
15 Group Corporation organized under the laws of the  
16 State of Alaska in accordance with the Alaska Na-  
17 tive Claims Settlement Act (43 U.S.C. 1601 et seq.).

18 (2) **AGENCY; FEDERAL AGENCY.**—The terms  
19 “agency” and “Federal agency” have the meaning  
20 given the term “agency” in section 551 of title 5,  
21 United States Code.

22 (3) **CONSULTATION MEETING.**—The term “con-  
23 sultation meeting” means a meeting held under sec-  
24 tion 201 between a Federal agency and a Tribal  
25 Government or Alaska Native Corporation.

1           (4) COVERED ACTIVITY.—The term “covered  
2 activity” means a project that—

3           (A) is carried out by or on behalf of a Fed-  
4 eral agency;

5           (B) requires a Federal permit, license, or  
6 approval;

7           (C) is subject to State or local regulation  
8 administered pursuant to a delegation of Fed-  
9 eral authority; and

10           (D) receives funding from a Federal agen-  
11 cy.

12           (5) LEAD AGENCY.—The term “lead agency”  
13 means—

14           (A) with respect to a covered activity or  
15 proposed regulatory action carried out by a sin-  
16 gle Federal agency, the Federal agency carrying  
17 out such covered activity;

18           (B) with respect to a covered activity or  
19 proposed regulatory action carried out by more  
20 than one Federal agency—

21           (i) the Federal agency designated as  
22 lead agency under section 202; or

23           (ii) each Federal agency carrying out  
24 such covered activity individually.

1           (6) PROPOSED REGULATORY ACTION.—The  
2 term “proposed regulatory action” means any regu-  
3 lation, policy, guidance, or grant funding formula  
4 change that is proposed by a Federal agency.

5           (7) SACRED SITE.—The term “sacred site”  
6 means any geophysical or geographical area or fea-  
7 ture that is identified by a Tribal Government or an  
8 Alaska Native Corporation—

9                   (A) as sacred by virtue of its established  
10 religious significance to, or ceremonial use in, a  
11 Tribal religion; or

12                   (B) to be of established cultural signifi-  
13 cance.

14           (8) STANDARD METHOD OF WRITTEN COMMU-  
15 NICATION.—The term “standard method of written  
16 communication” means the mode of written commu-  
17 nication that the agency uses in the typical course  
18 of communicating with persons outside the Federal  
19 Government.

20           (9) TRADITIONAL CULTURAL PROPERTY.—The  
21 term “Traditional Cultural Property” means a loca-  
22 tion eligible for listing under section 60.4 of title 36,  
23 Code of Federal Regulations, and that is associated  
24 with the traditional beliefs of a Tribal Government  
25 related to its origins, cultural history, or is used by

1 religious practitioners, for ceremonial activities, or  
2 for other cultural practices important to maintaining  
3 Tribal historic identity.

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

13 (11) TRIBAL IMPACT.—The term “Tribal im-  
14 pact” means an impact on any of the following of  
15 a Tribal Government or Alaska Native Corporation:

16 (A) Tribal cultural practices, lands, re-  
17 sources, or access to traditional areas of cul-  
18 tural or religious importance.

19 (B) The protected rights of a Tribe or  
20 Alaska Native Corporation, whether or not such  
21 rights are enumerated in a treaty, including  
22 water, hunting, gathering, and fishing rights.

23 (C) The ability of a Tribal Government to  
24 govern or provide services to its members.



1 (D) The ability of an Alaska Native Cor-  
2 poration to provide services to its members.

3 (E) A Tribal Government's formal rela-  
4 tionship with the Federal Government.

5 (F) The Federal Government's trust re-  
6 sponsibility to Tribal Governments.

7 (12) TRIBAL IMPACT STATEMENT.—The term  
8 “Tribal impact statement” means a Tribal impact  
9 statement produced under section 301.

10 (13) TRIBAL LAND.—The term “Tribal land”  
11 means any—

12 (A) land located within the boundaries of  
13 an Indian reservation, pueblo, or rancharia;

14 (B) land not located within the boundaries  
15 of an Indian reservation, pueblo, or rancharia,  
16 the title to which is held—

17 (i) in trust by the United States for  
18 the benefit of an Indian Tribe or an indi-  
19 vidual Indian;

20 (ii) by an Indian Tribe or an indi-  
21 vidual Indian, subject to restriction against  
22 alienation under laws of the United States;  
23 or

24 (iii) by a dependent Indian commu-  
25 nity;

1 (C) land that is owned by a Tribal Govern-  
2 ment and was conveyed by the United States to  
3 an Alaska Native Corporation pursuant to the  
4 Alaska Native Claims Settlement Act (43  
5 U.S.C. 1601 et seq.), or that was conveyed by  
6 the United States to an Alaska Native Corpora-  
7 tion in exchange for such land;

8 (D) land located in a census tract, as of  
9 the most recent decennial census, in which the  
10 majority of residents are Natives (as defined in  
11 section 3(b) of the Alaska Native Claims Settle-  
12 ment Act (43 U.S.C. 1602(b))); and

13 (E) land located in a census tract, as of  
14 the most recent decennial census, in which the  
15 majority of residents are persons who are en-  
16 rolled members of any Indian or Alaska Native  
17 Tribe, band, nation, pueblo, village, community,  
18 component band or component reservation, indi-  
19 vidualy identified (including parenthetically) in  
20 the list published most recently as of the date  
21 of enactment of this Act pursuant to section  
22 104 of the Federally Recognized Indian Tribe  
23 List Act of 1994 (25 U.S.C. 5131).

24 (14) TRIBAL ORGANIZATION.—The term “Trib-  
25 al organization” has the meaning given the term in

1 section 4 of the Indian Self-Determination and Edu-  
2 cation Assistance Act (25 U.S.C. 5304).

## 3 **TITLE I—TRIBAL SOVEREIGNTY**

### 4 **SEC. 101. TRIBAL SOVEREIGNTY.**

5 (a) IN GENERAL.—Federal agencies shall recognize  
6 and respect Tribal self-government and sovereignty, honor  
7 Tribal treaty and other rights, and strive to meet the re-  
8 sponsibilities that arise from the unique legal relationship  
9 between the Federal Government and Tribal Governments.

10 (b) RESPECTING TRIBAL SELF-DETERMINATION.—  
11 With respect to the formulation and implementation of  
12 policies that have a Tribal impact, agencies shall—

13 (1) encourage Tribal Governments to develop  
14 their own policies to achieve program objectives; and

15 (2) when possible, defer to Tribal Governments  
16 to establish Federal standards.

## 17 **TITLE II—STANDARDS FOR** 18 **CONSULTATION**

### 19 **SEC. 201. STANDARDS FOR CONSULTATION.**

20 (a) REQUIRED CONSULTATION.—Each Federal agen-  
21 cy shall consult with affected Tribal Governments or Alas-  
22 ka Native Corporations before expending funds on a cov-  
23 ered activity or proposed regulatory action that may have  
24 a Tribal impact.

1 (b) STRUCTURE OF CONSULTATION MEETINGS.—

2 Each consultation meeting shall—

3 (1) be structured to allow for meaningful and  
4 respectful interaction among all participants, includ-  
5 ing allowing adequate time for introductions and any  
6 ceremonial proceedings; and

7 (2) conclude with planning for any subsequent  
8 consultation meetings, if necessary.

9 (c) CONSULTATION MEETING OBJECTIVES.—The  
10 lead agency shall make a good faith effort through sus-  
11 tained interaction and collaboration during consultation  
12 meetings to reach a consensus resulting in the execution  
13 of a memorandum of agreement between the lead agency  
14 and the affected Tribal Government or Alaska Native Cor-  
15 poration regarding the covered activity or proposed regu-  
16 latory action.

17 (d) DESIGNATION OF A TRIBAL ORGANIZATION.—At  
18 the written request of an affected Tribal Government or  
19 Alaska Native Corporation, a Tribal Organization des-  
20 ignated by the affected Tribal Government or Alaska Na-  
21 tive Corporation may represent the affected Tribal Gov-  
22 ernment or Alaska Native Corporation for the purposes  
23 of this Act with respect to a covered activity or proposed  
24 regulatory activity. The lead agency shall transmit any  
25 document required to be transmitted to such Tribal Gov-

1 ernment or Alaska Native Corporation under this Act to  
2 such Tribal Organization and such Tribal Organization  
3 may participate in consultation meetings on behalf of such  
4 Tribal Government or Alaska Native Corporation.

5 (e) PAYMENT FOR TRIBAL DOCUMENTATION  
6 WORK.—If the lead agency asks a Tribal Government or  
7 Alaska Native Corporation for specific information or doc-  
8 umentation reasonably necessary for meaningful consulta-  
9 tion under this Act which fulfills the duties of a Federal  
10 agency in a role similar to that of a consultant or con-  
11 tractor, then at the request of the Tribal Government or  
12 Alaska Native Corporation the lead agency shall pay for  
13 such services.

14 (f) TRIBAL WITHDRAWAL FROM CONSULTATION.—  
15 A Tribal Government or Alaska Native Corporation may  
16 withdraw from the consultation process under this section  
17 by notifying the lead agency of their intent to withdraw.  
18 In such case, the lead agency shall provide the affected  
19 Tribal Government or Alaska Native Corporation with the  
20 opportunity to submit a written statement, explanation,  
21 or comment on the consultation proceedings which shall  
22 be made part of the consultation record pursuant to sec-  
23 tion 601.

24 (g) SAVINGS CLAUSE.—Nothing in this Act shall—

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

6           (2) preclude a Federal agency from additional  
7           consultation that complies with agency regulations  
8           for consultation, advances agency consultation prac-  
9           tices, or supports agency efforts to build or strength-  
10          en government-to-government relationships with  
11          Tribal Governments.

12 **SEC. 202. DESIGNATION OF LEAD AGENCY.**

13          When more than one Federal agency is carrying out  
14          a covered activity or proposed regulatory action, those  
15          agencies shall designate one such agency as the lead agen-  
16          cy for that covered activity or proposed regulatory action  
17          for the purposes of this Act.

18 **SEC. 203. SENSITIVE INFORMATION.**

19          (a) DESIGNATION OF SENSITIVE INFORMATION.—  
20          For the purposes of this Act, a Tribal Government or  
21          Alaska Native Corporation may designate information re-  
22          lating to the location of culturally or religiously significant  
23          sites or the practice or details of cultural or religious prac-  
24          tices as sensitive information.

25          (b) PROTECTION OF SENSITIVE INFORMATION.—

1           (1) ACCESS TO INFORMATION.—A Federal  
2 agency carrying out a covered activity or proposed  
3 regulatory action shall consult with the appropriate  
4 Tribal Government or Alaska Native Corporation to  
5 determine who may have access to information des-  
6 ignated as sensitive under subsection (a).

7           (2) PROHIBITION OF PUBLICATION.—A Federal  
8 agency may not publish any information designated  
9 as sensitive under subsection (a) made available to  
10 such agency under this Act.

11          (c) CLOSED MEETINGS.—At the request of a partici-  
12 pating Tribal Government or Alaska Native Corporation,  
13 a consultation meeting shall be closed to the public.

## 14           **TITLE III—TRIBAL IMPACT** 15           **STATEMENT**

### 16   **SEC. 301. ASSESSING TRIBAL IMPACTS.**

17          (a) ASSESSING TRIBAL IMPACTS.—As early as pos-  
18 sible in the planning stage of a covered activity or pro-  
19 posed regulatory action, the lead agency shall—

20           (1) prepare a Tribal impact statement that, at  
21 a minimum—

22           (A) identifies any potential Tribal impacts  
23 of the covered activity or regulatory action;

24           (B) includes the scope of the covered activ-  
25 ity or proposed regulatory action being consid-

1           ered, including any sacred sites or Traditional  
2           Cultural Properties that might be affected; and

3           (C) includes a list of affected Tribal Gov-  
4           ernments and Alaska Native Corporations; and

5           (2) in the case of a covered activity near Tribal  
6           lands, make a good faith effort to identify areas that  
7           contain sacred sites, including areas that may not be  
8           currently identified as such by a Federal agency.

9           (b) DETERMINATION OF SCOPE FOR PROPOSED REG-  
10          ULATORY ACTIONS.—A Tribal impact statement prepared  
11          with respect to a proposed regulatory action shall identify  
12          whether the proposed regulatory action primarily—

13           (1) has Tribal impacts on individual Tribal  
14           Governments or Alaska Native Corporations; or

15           (2) is regional or national in scope.

16          (c) CONSULTATION NOT REQUIRED.—

17           (1) FINDING OF NO TRIBAL IMPACT.—If the  
18           lead agency determines in a Tribal impact statement  
19           that the covered activity will not have a Tribal im-  
20           pact, Tribal consultation is not required, and a  
21           Finding of No Tribal Impact shall be made part of  
22           the consultation record pursuant to section 601.

23           (2) REQUIRED INCLUSION IN FEDERAL REG-  
24           ISTER.—In the case of a finalized regulatory action,  
25           the Finding of No Tribal Impact shall be listed as



1 a separately identified portion of the preamble to the  
2 regulation published in the Federal Register.

3 **TITLE IV—CONSULTATION PRO-**  
4 **CEDURES FOR A COVERED**  
5 **ACTIVITY WITH TRIBAL IM-**  
6 **PACTS**

7 **SEC. 401. CONSULTATION OUTREACH FOR A COVERED AC-**  
8 **TIVITY.**

9 (a) CONSULTATION REQUEST.—With respect to any  
10 covered activity that the lead agency determines in the  
11 Tribal impact statement may have a Tribal impact, the  
12 lead agency shall—

13 (1) transmit, via the agency’s standard method  
14 of written communication, a formal request for a  
15 consultation meeting, a description or copy of the  
16 covered activity, and a copy of the Tribal impact  
17 statement, to each affected Tribal Government and  
18 Alaska Native Corporation identified in the Tribal  
19 impact statement;

20 (2) follow up not later than 10 business days  
21 after transmitting such request to ensure receipt of  
22 the documents by each affected Tribal Government  
23 and Alaska Native Corporation; and

24 (3) if the documents were not received by an af-  
25 fected Tribal Government or Alaska Native Corpora-

1           tion, retransmit all materials to that affected Tribal  
2           Government or Alaska Native Corporation via a  
3           form of written communication that is suitable to  
4           the recipient.

5           (b) TRIBAL CONSENT TO CONSULTATION.—If an af-  
6           fected Tribal Government or Alaska Native Corporation—

7                   (1) accepts the lead agency’s request for con-  
8                   sultation, then the consultation process shall com-  
9                   mence pursuant to section 201; or

10                   (2) declines lead agency’s request for consulta-  
11                   tion, then consultation is not required and the Tribal  
12                   impact statement shall be amended to reflect the  
13                   declination of the affected Tribal Government or  
14                   Alaska Native Corporation and shall be made part  
15                   of the record pursuant to section 601.

16           (c) DATE AND FORMAT FOR CONSULTATION MEET-  
17           INGS.—The lead agency shall negotiate with each affected  
18           Tribal Government and Alaska Native Corporation that  
19           accepts a request for consultation under subsection (b)(1)  
20           to determine the date and format for the consultation  
21           meetings under section 201 relating to the covered activ-  
22           ity.

23           (d) NON-RESPONSE TO CONSULTATION REQUEST.—  
24           If, after a good faith effort, the lead agency does not re-  
25           ceive a written response to the request for consultation

1 under subsection (a), the lead agency may proceed with  
2 the covered activity and provide the affected Tribal Gov-  
3 ernment or Alaska Native Corporation with a written noti-  
4 fication and explanation for its decision to proceed without  
5 consultation, which shall be made part of the consultation  
6 record pursuant to section 601.

7 **SEC. 402. CONCLUSION OF CONSULTATION FOR A COVERED**  
8 **ACTIVITY.**

9 (a) CONCLUSION OF CONSULTATION WITH A MEMO-  
10 RANDUM OF AGREEMENT.—

11 (1) IN GENERAL.—Consultation under section  
12 201 regarding a covered activity may conclude upon  
13 the execution of a memorandum of agreement be-  
14 tween the lead agency and the affected Tribal Gov-  
15 ernment or Alaska Native Corporation. The memo-  
16 randum of agreement—

17 (A) may address multiple covered activities  
18 if the activities are similar in nature, are re-  
19 gional or national in scope, or where routine  
20 management activities are undertaken at Fed-  
21 eral facilities or land management units;

22 (B) may establish standard processes for  
23 certain categories of activities defined in the  
24 memorandum of agreement; and

25 (C) shall—

1 (i) include a provision for monitoring  
2 and reporting on the implementation of the  
3 covered activity;

4 (ii) include provisions for reconsider-  
5 ation if the activity has not been completed  
6 within a specified time; and

7 (iii) include provisions to address new  
8 discoveries, which may include halting the  
9 activity and returning to the consultation  
10 stage.

11 (2) AMENDMENT.—The executed memorandum  
12 of agreement may only be amended with the consent  
13 of each signatory.

14 (b) CONCLUSION OF CONSULTATION WITHOUT A  
15 MEMORANDUM OF AGREEMENT.—If, after a good faith ef-  
16 fort, the lead agency determines that further consultation  
17 under section 201 regarding a covered activity will not be  
18 productive, it may conclude consultation without a memo-  
19 randum of agreement. The lead agency shall provide the  
20 affected Tribal Government or Alaska Native Corporation  
21 with a written notification and explanation for its decision,  
22 including identification of any legal, policy, or factual bar-  
23 riers that prevented the lead agency from reaching agree-  
24 ment with the affected Tribal Government or Alaska Na-

1 tive Corporation, which shall be made part of the consulta-  
2 tion record pursuant to section 601.

3 **SEC. 403. CONSULTATION OUTCOME FOR A COVERED AC-**  
4 **TIVITY.**

5 (a) PRELIMINARY CONSULTATION OUTCOME.—

6 (1) TRANSMISSION OF DOCUMENT.—Upon the  
7 conclusion of consultation pursuant to section 402,  
8 the lead agency shall transmit a preliminary out-  
9 come document via such agency’s standard method  
10 of written communication to each affected Tribal  
11 Government and Alaska Native Corporation that  
12 shall—

13 (A) state the decision to proceed or not  
14 proceed with the covered activity;

15 (B) state the rationale for the decision;  
16 and

17 (C) specifically address any points where  
18 the decision conflicts with the request of an af-  
19 fected Tribal Government or Alaska Native  
20 Corporation, including a detailed explanation of  
21 why the request was not accepted.

22 (2) REQUIRED FOLLOWUP.—

23 (A) FOLLOW UP.—The lead agency shall,  
24 not later than 10 business days after the date  
25 on which a preliminary outcome document is

1 transmitted under paragraph (1), follow up  
2 with each affected Tribal Government or Alaska  
3 Native Corporation that has not acknowledged  
4 receipt to confirm receipt of such document.

5 (B) RETRANSMISSION.—The lead agency  
6 shall retransmit the preliminary outcome docu-  
7 ment transmitted under paragraph (1) to any  
8 affected Tribal Government or Alaska Native  
9 Corporation in such form of written commu-  
10 nication as the recipient requests.

11 (b) TRIBAL RESPONSE PERIOD.—The lead agency  
12 shall provide a period of not less than 45 days after  
13 issuance of the preliminary outcome document under sub-  
14 section (a)(1) for a response by an affected Tribal Govern-  
15 ment or Alaska Native Corporation.

16 (c) FINAL OUTCOME DOCUMENT.—

17 (1) TRANSMISSION OF DOCUMENT.—After expi-  
18 ration of period described in subsection (b), the lead  
19 agency shall transmit a final outcome document via  
20 such agency's standard method of written commu-  
21 nication to each affected Tribal Government and  
22 Alaska Native Corporation that shall—

23 (A) state the decision to proceed or not  
24 proceed with the activity;

25 (B) state the rationale for the decision;

1 (C) list any changes to the preliminary de-  
2 cision in response to comments received from  
3 an affected Tribal Government or Alaska Na-  
4 tive Corporation during the Tribal Response  
5 Period; and

6 (D) specifically address any points where  
7 the decision conflicts with the request of an af-  
8 fected Tribal Government or Alaska Native  
9 Corporation, including a detailed explanation of  
10 why the request was not accepted.

11 (2) REQUIRED FOLLOWUP.—

12 (A) FOLLOW UP.—The lead agency shall,  
13 not later than 10 business days after the date  
14 on which a final outcome document is trans-  
15 mitted under paragraph (1), follow up with  
16 each affected Tribal Government or Alaska Na-  
17 tive Corporation that has not acknowledged re-  
18 ceipt to confirm receipt of such document.

19 (B) RETRANSMISSION.—The lead agency  
20 shall retransmit the final outcome document  
21 transmitted under paragraph (1) to any af-  
22 fected Tribal Government or Alaska Native  
23 Corporation in such form of written commu-  
24 nication as the recipient requests.

1 (d) SUMMARY OF CONSULTATION PROCESS.—Upon  
2 confirmation of receipt of the final outcome document by  
3 the affected Tribal Governments and Alaska Native Cor-  
4 porations, the lead agency shall publish a summary of the  
5 consultation process. The summary shall consist of—

6 (1) a description of the extent of the lead agen-  
7 cy’s consultation efforts with affected Tribal Govern-  
8 ments and Alaska Native Corporations;

9 (2) a summary of the nature of any concerns of  
10 affected Tribal Governments and Alaska Native Cor-  
11 porations;

12 (3) a statement of the extent to which the con-  
13 cerns of affected Tribal Governments and Alaska  
14 Native Corporations have been met; and

15 (4) the lead agency’s position supporting the  
16 need to proceed with the activity.

17 **TITLE V—CONSULTATION PRO-**  
18 **CEDURES FOR A PROPOSED**  
19 **REGULATORY ACTION WITH**  
20 **TRIBAL IMPACTS**

21 **SEC. 501. PROPOSED REGULATORY ACTION WITH TRIBAL**  
22 **IMPACTS.**

23 (a) ADVANCE NOTICE OF PROPOSED RULEMAKING  
24 THAT HAS TRIBAL IMPACTS.—In the preliminary stages  
25 of a proposed regulatory action that the lead agency has



1 determined in a Tribal impact statement may have a Trib-  
2 al impact, the lead agency shall publish an Advance Notice  
3 of Proposed Rulemaking in the Federal Register.

4 (b) CONSULTATION REQUEST.—Upon publication of  
5 the Advance Notice of Proposed Rulemaking under sub-  
6 section (a), the lead agency shall transmit, via the agen-  
7 cy’s standard method of written communication—

8 (1) in the case of a proposed regulatory action  
9 with Tribal impacts described by section 301(b)(1),  
10 a formal request for a consultation meeting, a copy  
11 of the Advance Notice of Proposed Rulemaking, and  
12 a copy of the Tribal impact statement to each af-  
13 fected Tribal Government and Alaska Native Cor-  
14 poration identified in the Tribal Impact Statement;  
15 or

16 (2) in the case of a proposed regulatory action  
17 with Tribal impacts described by section 301(b)(2),  
18 a formal notice that regional or national consultation  
19 meetings will occur on the proposed regulatory ac-  
20 tion, a copy of the Advance Notice of Proposed  
21 Rulemaking, and a copy of the Tribal impact state-  
22 ment to each affected Tribal Government and Alas-  
23 ka Native Corporation identified in the Tribal im-  
24 pact statement.

25 (c) REQUIRED FOLLOW UP.—

1           (1) IN GENERAL.—In the case of a consultation  
2 request transmitted under subsection (b)(1), the lead  
3 agency shall follow up not later than 5 business days  
4 after the date of such request to ensure receipt of  
5 the documents by each affected Tribal Government  
6 and Alaska Native Corporation.

7           (2) RETRANSMISSION.—At the request of an af-  
8 fected Tribal Government or Alaska Native Corpora-  
9 tion, the lead agency shall retransmit all materials  
10 required to be transmitted under subsection (b) to  
11 such Tribal Government or Alaska Native Corpora-  
12 tion via a form of written communication that is  
13 suitable to the recipient.

14       (d) TRIBAL CONSENT TO CONSULTATION.—If an af-  
15 fected Tribal Government or Alaska Native Corporation—

16           (1) accepts the lead agency’s request for con-  
17 sultation under subsection (b)(1), then the consulta-  
18 tion process shall commence pursuant to section  
19 201; or

20           (2) declines such request, then consultation is  
21 not required and the Tribal impact statement shall  
22 be amended to reflect the declination of the affected  
23 Tribal Government and shall be made part of the  
24 consultation record pursuant to section 601.

1 (e) NON-RESPONSE TO CONSULTATION REQUEST.—  
2 If, after a good faith effort, the lead agency does not re-  
3 ceive a written response to the request for consultation  
4 under subsection (b), the lead agency may proceed with  
5 the covered activity and provide the affected Tribal Gov-  
6 ernment or Alaska Native Corporation with a written noti-  
7 fication and explanation for its decision to proceed without  
8 consultation, which shall be made part of the consultation  
9 record pursuant to section 601.

10 **SEC. 502. CONSULTATION PROCEDURES FOR A PROPOSED**  
11 **REGULATORY ACTION WITH TRIBAL IMPACTS**  
12 **THAT ARE REGIONAL OR NATIONAL IN**  
13 **SCOPE.**

14 (a) CONSULTATION MEETINGS.—The lead agency  
15 shall hold not less than 4 separate regional or national  
16 consultation meetings before proceeding with a proposed  
17 regulatory action described by section 301(b)(2).

18 (b) REQUIREMENTS.—The lead agency shall, with re-  
19 spect to a consultation meeting required by subsection  
20 (a)—

21 (1) make a good faith effort to determine the  
22 date, location, and time for each meeting that af-  
23 fords the maximum opportunity for participation by  
24 affected Tribal Governments and Alaska Native Cor-  
25 porations; and

1           (2) conduct such meetings in geographic areas  
2           that are representative of and accessible to affected  
3           Tribal Governments and Alaska Native Corpora-  
4           tions.

5   **SEC. 503. CONSULTATION OUTCOME FOR PROPOSED REGU-**  
6                           **LATORY ACTION WITH TRIBAL IMPACTS.**

7           (a) **FINAL OUTCOME DOCUMENT.**—

8                   (1) **PREPARATION.**—Upon completion of the  
9                   consultation process pursuant to section 201 relating  
10                  to a proposed regulatory action, the lead agency  
11                  shall prepare a final outcome document that shall—

12                           (A) state the decision to proceed or not  
13                           proceed with the proposed regulatory action;

14                           (B) state the rationale for the decision;

15                           (C) list any changes to the proposed regu-  
16                           latory action made at the request of an affected  
17                           Tribal Government or Alaska Native Corpora-  
18                           tion; and

19                           (D) specifically address any points where  
20                           the decision conflicts with the request of an af-  
21                           fected Tribal Government or Alaska Native  
22                           Corporation, along with a detailed explanation  
23                           of why the request was not accepted.

24                   (2) **TRANSMISSION.**—The lead agency shall  
25                  transmit, via the agency’s standard method of writ-

1       ten communication, a copy of the final outcome docu-  
2       ment prepared under paragraph (1) to—

3               (A) with respect to a final outcome docu-  
4               ment relating to a proposed regulatory action  
5               described by section 301(b)(1), each affected  
6               Tribal Government and Alaska Native Corpora-  
7               tion; or

8               (B) with respect to a final outcome docu-  
9               ment relating to a proposed regulatory action  
10              described by section 301(b)(2), each affected  
11              Tribal Government or Alaska Native Corpora-  
12              tion that participated in a consultation meeting  
13              relating to such proposed regulatory action;

14              (3) REQUIRED FOLLOW UP.—The lead agency  
15              shall follow up not later than 5 business days after  
16              the transmission required under paragraph (2) with  
17              each intended recipient and shall, at the request of  
18              any affected Tribal Government or Alaska Native  
19              corporation, retransmit the final outcome document  
20              prepared under paragraph (1) to such Tribal Gov-  
21              ernment or Alaska Native Corporation.

22              (b) SUMMARY OF CONSULTATION PROCESS.—Upon  
23              finalization of a proposed regulatory action with a Tribal  
24              impact, the lead agency shall publish a summary of the  
25              consultation process undertaken by the lead agency under

1 this Act as a separately identified portion of the preamble  
2 to the regulation. The summary shall consist of—

3 (1) a description of the extent of the lead agen-  
4 cy's consultation efforts with affected Tribal Govern-  
5 ments and Alaska Native Corporations;

6 (2) a summary of the nature of any concerns of  
7 affected Tribal Governments and Alaska Native Cor-  
8 porations;

9 (3) a statement of the extent to which the con-  
10 cerns of affected Tribal Governments and Alaska  
11 Native Corporations have been met; and

12 (4) the lead agency's position supporting the  
13 need to issue the regulation as that position relates  
14 to any concerns of affected Tribal Governments and  
15 Alaska Native Corporations.

## 16 **TITLE VI—DOCUMENTATION** 17 **AND REPORTING**

### 18 **SEC. 601. DOCUMENTATION AND REPORTING.**

19 (a) **OFFICIAL CONSULTATION RECORD.**—With re-  
20 spect to each covered activity or proposed regulatory ac-  
21 tion with a Tribal impact, the lead agency shall—

22 (1) keep an official consultation record in ac-  
23 cordance with chapter 31 of title 44, United States  
24 Code, that allows accurate tracking of the process so  
25 that the lead agency and the affected Tribal Govern-

1       ment or Alaska Native Corporation that participated  
2       in any consultation meetings can correct any errors  
3       or omissions, and provides an official record of the  
4       process that can be referred to in any litigation that  
5       may arise;

6           (2) document all efforts to initiate consultation  
7       as well as documenting the process once it has  
8       begun, such as correspondence, telephone logs, and  
9       emails;

10          (3) keep notes so that the consultation record  
11       documents the content of consultation meetings, site  
12       visits, and phone calls in addition to information  
13       about dates and who participated;

14          (4) include all final documentation in the offi-  
15       cial consultation record; and

16          (5) ensure that all information designated as  
17       sensitive by a Tribal Government pursuant to sec-  
18       tion 203 is kept confidential.

19       (b) REPORT TO CONGRESS.—Each Federal agency  
20       shall submit a biennial report on its consultation activities  
21       under this Act to Congress, including each final outcome  
22       document produced under this Act by such agency.

1       **TITLE VII—IMPLEMENTATION**  
2                               **AND TRAINING**

3       **SEC. 701. DESIGNATED AGENCY AND BUREAU OFFICIALS.**

4           (a) DESIGNATED AGENCY OFFICIAL.—Not later than  
5 180 days after the date of enactment of this Act, the head  
6 of each Federal agency shall designate an official with  
7 principal responsibility for the agency’s implementation of  
8 this Act.

9           (b) BUREAU OR OFFICE OFFICIAL.—Each bureau or  
10 office within a Federal agency that participates in the  
11 agency’s implementation of this Act shall designate one  
12 or more officials to work with the official designated under  
13 subsection (a).

14       **SEC. 702. AGENCY CONSULTATION POLICY.**

15           Not later than 180 days after the date of enactment  
16 of this Act, each official designated under section 701(a)  
17 shall submit to the Office of Management and Budget—

18                   (1) a description of the agency’s consultation  
19                   policy; and

20                   (2) a list of officials designated under section  
21                   701(b).

22       **SEC. 703. AGENCY CONSULTATION POLICY DURING EMER-**  
23                               **GENCY PERIODS.**

24           Not later than one year after the date of enactment  
25 of this Act, each Federal agency shall, after consulting



1 with Tribal Governments and Alaska Native Corporations,  
2 establish a formal policy for consultation during an emer-  
3 gency period. This policy shall prioritize the health and  
4 safety of Tribal members, as well as the protection of  
5 Tribal lands, rights, resources, and sacred sites during the  
6 emergency period.

7 **SEC. 704. TRAINING.**

8 Each Federal agency shall design and implement  
9 training for all staff who participate in the agency's imple-  
10 mentation of this Act that is aimed at improving the agen-  
11 cy's capacity for interacting with Tribal Governments and  
12 Alaska Native Corporations in executing the consultation  
13 process. The training shall—

14 (1) promote consultation, communication, col-  
15 laboration, and other interactions with Tribal Gov-  
16 ernments and Alaska Native Corporations;

17 (2) outline and reinforce the agency duties con-  
18 cerning Tribal interests; and

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

22 **TITLE VIII—JUDICIAL REVIEW**

23 **SEC. 801. JUDICIAL REVIEW.**

24 A Tribal Government or Alaska Native Corporation  
25 may seek judicial review of a determination by a Federal

1 agency under this Act in accordance with chapter 7 and  
2 subchapter II of chapter 5 of title 5, United States Code  
3 (commonly known as the Administrative Procedure Act),  
4 if the Tribal Government or Alaska Native Corporation  
5 has exhausted all other administrative remedies available.

Amend the title so as to read: “A bill to prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments and Alaska Native Corporations 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.”.

