

110TH CONGRESS
2D SESSION

H. R. 5608

To establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2008

Mr. RAHALL (for himself and Mr. KILDEE) introduced the following bill;
which was referred to the Committee on Natural Resources

A BILL

To establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consultation and Co-
5 ordination With Indian Tribal Governments Act”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) ACCOUNTABLE CONSULTATION PROCESS.—

4 The term “accountable consultation process” means
5 a process of government-to-government dialogue be-
6 tween the agency and Indian tribes to ensure mean-
7 ingful and timely input by tribal officials in the for-
8 mulating, amending, implementing, or recinding one
9 or more policies that have tribal implications. The
10 process shall ensure, at a minimum, the following:

11 (A) That tribal officials have ample oppor-
12 tunity to provide input and recommendations to
13 the agencies regarding formulating, amending,
14 implementing, or recinding policies that have
15 tribal implications.

16 (B) That tribal input and recommenda-
17 tions are fully considered by the agency before
18 policies that have tribal implications are formu-
19 lated, amended, implemented, or recinded.

20 (C) That, upon the formulation, amend-
21 ment, implementation, or recision of policies
22 that have tribal implications, tribal officials
23 shall be provided with written notification of the
24 formulation, amendment, implementation, or re-
25 cision of such policies and given a copy of those
26 policies.

1 (D) That any policies that have tribal im-
2 plications shall not become effective until at
3 least 60 days after written notification to tribal
4 officials pursuant to subparagraph (D).

5 (2) AGENCY.—The term “agency” means the
6 Department of the Interior, the Indian Health Serv-
7 ice, and the National Indian Gaming Commission.

8 (3) INDIAN TRIBE.—The term “Indian tribe”
9 means an Indian or Alaska Native tribe, band, na-
10 tion, pueblo, village, or community that the Sec-
11 retary of the Interior acknowledges to exist as an In-
12 dian tribe pursuant to the Federally Recognized In-
13 dian Tribe List Act of 1994 (25 U.S.C. 479a).

14 (4) POLICIES THAT HAVE TRIBAL IMPLICA-
15 TIONS.—The term “policies that have tribal implica-
16 tions” means any measure by the agency that has
17 or is likely to have a direct effect on one or more
18 Indian tribes, on the relationship between the Fed-
19 eral Government and Indian tribes, or on the dis-
20 tribution of power and responsibilities between the
21 Federal Government and Indian tribes, such as reg-
22 ulations, legislative comments or proposed legisla-
23 tion, and other policy statements or actions, guid-
24 ance, clarification, standards, or sets of principles.

1 (5) TRIBAL OFFICIALS.—The term “tribal offi-
2 cials” means elected or duly appointed officials of
3 Indian tribal governments, or their designees.

4 **SEC. 3. FUNDAMENTAL PRINCIPLES.**

5 When formulating, amending, implementing, or
6 recinding one or more policies that have tribal implica-
7 tions, an agency shall be guided by the following funda-
8 mental principles:

9 (1) The United States has a unique legal and
10 political relationship with Indian tribal governments
11 as set forth in the Constitution of the United States,
12 treaties, statutes, Executive orders, and court deci-
13 sions. The Federal Government has enacted numer-
14 ous statutes and promulgated numerous regulations
15 that establish and define a trust relationship with
16 Indian tribes.

17 (2) Our Nation, under the law of the United
18 States, in accordance with treaties, statutes, Execu-
19 tive orders, and judicial decisions, has recognized the
20 right of Indian tribes to self-government. Indian
21 tribes exercise inherent sovereign powers over their
22 members and territory. The United States continues
23 to work with Indian tribes on a government-to-gov-
24 ernment basis to address issues concerning Indian

1 tribal self-government, tribal trust resources, and In-
2 dian tribal treaty and other rights.

3 (3) The United States recognizes the right of
4 Indian tribes to self-government and supports tribal
5 sovereignty and self-determination.

6 **SEC. 4. POLICYMAKING CRITERIA.**

7 In addition to adhering to the fundamental principles
8 set forth in section 3, when formulating, amending, imple-
9 menting, or recinding one or more policies that have tribal
10 implications each agency shall adhere to the following cri-
11 teria:

12 (1) Each agency shall respect Indian tribal self-
13 government and sovereignty, honor tribal treaty and
14 other rights, and strive to meet the responsibilities
15 that arise from the unique legal and political rela-
16 tionship between the Federal Government and In-
17 dian tribal governments.

18 (2) With respect to Federal statutes and regu-
19 lations administered by Indian tribal governments,
20 each agency shall ensure Indian tribal governments
21 the maximum administrative discretion possible.

22 (3) Each agency shall—

23 (A) encourage Indian tribes to develop
24 their own policies to achieve program objectives;

1 (B) to the extent they do not violate other
2 applicable laws, defer to Indian tribes to estab-
3 lish standards; and

4 (C) in determining whether to establish
5 Federal standards, consult with tribal officials
6 as to the need for Federal standards and any
7 alternatives that would limit the scope of Fed-
8 eral standards or otherwise preserve the prerog-
9 atives and authority of Indian tribes.

10 **SEC. 5. CONSULTATION.**

11 Each agency shall have an accountable consultation
12 process. Not later than 30 days after the date of the enact-
13 ment of this Act, the head of each agency shall designate
14 an official with principal responsibility for the agency's im-
15 plementation of this Act. Not later than 60 days after the
16 date of the enactment of this Act, the designated official
17 shall submit a description of the agency's accountable con-
18 sultation process to the Committee on Natural Resources
19 of the House of Representative and the Committee on In-
20 dian Affairs of the Senate.

21 **SEC. 6. UNFUNDED MANDATES.**

22 To the extent practicable and permitted by law, no
23 agency shall formulate, amend, or implement any policy
24 that has tribal implications that imposes substantial direct

1 compliance costs on Indian tribal governments and is not
2 required by Federal law unless—

3 (1) funds necessary to pay the substantial di-
4 rect costs incurred by the Indian tribal government
5 or the Indian tribe in complying with the policy are
6 provided by the Federal Government; or

7 (2) the agency, before the implementation of
8 the policy—

9 (A) consulted through the accountable con-
10 sultation process with tribal officials early in
11 the process of developing the proposed policy;
12 and

13 (B) in a separately identified portion of the
14 preamble to the policy, provided to the Com-
15 mittee on Natural Resources of the House of
16 Representative, the Committee on Indian Af-
17 fairs of the Senate, and affected Indian tribes
18 a tribal summary impact statement con-
19 taining—

20 (i) a description of the extent of the
21 agency's prior consultation with tribal offi-
22 cials;

23 (ii) a summary of the nature of the
24 concerns of the tribal officials and the

1 agency’s position supporting the need to
2 issue the regulation; and
3 (iii) a statement of the extent to
4 which the concerns of tribal officials have
5 been met.

6 **SEC. 7. TRIBAL SELF-GOVERNMENT, TRIBAL TRUST RE-**
7 **SOURCES, OR INDIAN TRIBAL TREATY AND**
8 **OTHER RIGHTS.**

9 On issues relating to tribal self-government, tribal
10 trust resources, or Indian tribal treaty and other rights,
11 each agency shall explore and, where appropriate, use con-
12 sensual mechanisms for developing policies, including con-
13 sideration of negotiated rulemaking.

14 **SEC. 8. PREEMPTION OF TRIBAL LAW.**

15 To the extent practicable and permitted by law, no
16 agency shall establish or implement any policy that has
17 tribal implications and that preempts tribal law unless the
18 agency, before the implementation of the policy—

19 (1) consulted through the accountable consulta-
20 tion process with tribal officials in development of
21 the proposed policy; and

22 (2) in a separately identified portion of the pre-
23 amble to the policy, provided to the Committee on
24 Natural Resources of the House of Representative,
25 the Committee on Indian Affairs of the Senate, and

1 affected Indian tribes a tribal summary impact
2 statement containing—

3 (A) a description of the extent of the agen-
4 cy's prior consultation with tribal officials;

5 (B) a summary of the nature of the con-
6 cerns of the tribal officials and the agency's po-
7 sition supporting the need to issue the regula-
8 tion; and

9 (C) a statement of the extent to which the
10 concerns of tribal officials have been met.

11 **SEC. 9. INCREASING FLEXIBILITY FOR INDIAN TRIBAL**
12 **WAIVERS.**

13 (a) REVIEW; STREAMLINING OF WAIVER PROCESS.—
14 Each agency shall review the processes under which In-
15 dian tribes apply for waivers of statutory and regulatory
16 requirements and take appropriate steps to streamline
17 those processes.

18 (b) FLEXIBLE POLICY APPROACHES.—Each agency
19 shall, to the extent practicable and not in violation with
20 other Federal laws, consider any application by an Indian
21 tribe for a waiver of statutory or regulatory requirements
22 in connection with any program administered by the agen-
23 cy with a general view toward increasing opportunities for
24 using flexible policy approaches at the Indian tribal level
25 in cases in which the proposed waiver is consistent with

1 the applicable Federal policy objectives and is otherwise
2 appropriate.

3 (c) DECISION ON APPLICATION FOR WAIVER.—Each
4 agency shall, to the extent practicable and not in violation
5 with other Federal laws, render a decision upon a complete
6 application for a waiver not later than 120 days of receipt
7 of such application by the agency, or as otherwise provided
8 by Federal law or regulation. If the application for waiver
9 is not granted, the agency shall provide the applicant with
10 timely written notice of the decision and the reasons there-
11 for.

12 (d) APPLICABILITY OF SECTION.—This section ap-
13 plies only to statutory or regulatory requirements that are
14 discretionary and subject to waiver by the agency.

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