What S. 5653 Means for the Alaska Native Community

Alaska Native Peoples have cared for our lands, waters, and airspace since time immemorial. Our village sites, burial grounds, sacred places, and harvest areas lie across a patchwork of federal, state, Native corporation, municipal, private, and limited reservation and trust land. Section 106 of the National Historic Preservation Act requires an agency to consider the effects of federal undertakings on the historic properties across those lands, in consultation with the Tribal Nations and Alaska Native Corporations who know them, before a project is approved. Title III (Historic Preservation) of S. 5653 would weaken that duty in ways that fall hardest here.

A NARROW NEW DEFINITION WOULD FALL HARDEST ON ALASKA NATIVE NATIONS

The bill narrowly defines a "property of traditional religious or cultural importance" to a Tribal Nation as "an identifiable geographic location or feature at which an event of continuing religious or cultural significance to a living community occurred."[1] Alaska Tribal Nations had no say in crafting this new definition, yet it could be used to exclude places that matter for ongoing ceremony, gathering, or belief. Harvest areas, places known through oral history, and places of ongoing ceremony are central to our way of life, and none of them is defined by a single event. Elsewhere, a Tribal Nation whose reservation is affected by a project holds a role in Section 106 that does not depend on this definition, because the project is on tribal land. With only one reservation left in Alaska, Tribes here almost never have that footing. Their seat at the table depends on showing that a place holds traditional religious and cultural importance, so narrowing that definition narrows their participation in nearly every review in the state.

AGENCIES WOULD REVIEW ONLY A SLICE OF A SACRED LANDSCAPE

The bill confines review to the part of a project under federal control and to "only the portion of the property within the area of potential effects." In Alaska, a single cultural landscape often crosses federal, state, Native corporation, and private land. When that landscape runs beyond the slice an agency reviews, an agency such as the National Park Service, the U.S. Forest Service, or the Bureau of Land Management could look only at its slice, find no adverse effect, and close out its Section 106 obligations, even if the project would sever the relationships among features, setting, and ceremony that give the place its meaning.

FEDERAL DOLLARS WOULD NO LONGER TRIGGER REVIEW

Projects whose only federal involvement is a grant or loan would drop out of Section 106 entirely.[2] That matters more in Alaska than almost anywhere, because federal funds make up nearly half of the State's revenue. Seaports, ferry terminals, harbors, airports, roads, housing, and sanitation projects across Alaska often have no federal involvement other than funding. Under Title III, that funding would no longer trigger

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[1] *See* Mark K. DeSantis & Benjamin M. Barczewski, Cong. Rsch. Serv., R49498, *Bipartisan American Affordability and Jobs Act (BAAJA) of 2026: Analysis of National Historic Preservation Act Provisions* 3 (Oct. 30, 2026), https://www.congress.gov/crs-product/R49498 (noting that it is "unclear whether or to what degree this definition would limit or expand the consideration of certain properties that are currently considered to be of religious and cultural significance to Tribes").

[2] *See id.* at 13 & n.64 (explaining that the exclusion "appears to remove" projects "carried out with Federal financial assistance" from review, unless no other federal approval or involvement is required).

review, and where a federal permit does trigger review, the review would reach only what the permit controls.

THIRTY DAYS IS INADEQUATE FOR TRIBAL GOVERNANCE IN ALASKA

Tribal Nations would have only 30 days to respond to agency findings before the agency "shall proceed" to a determination without their input. Many Alaska Tribal entities work with one or two cultural staff, and critical decisions concerning sacred places must go to councils, elders, and clan leaders. When that clock runs during fishing, hunting, or gathering season, while councils and elders are out on the land and water, a Tribe can lose its voice on a project before its leadership has even met. A Tribal Historic Preservation Office that falls behind on consultation timelines would have its federal agreements and grants suspended, and if it has not caught up within two years, the Secretary of the Interior must assume all or part of its functions.[3]

MORE CARVE-OUTS WOULD HIT ALASKA HARDEST

Renewals of special-use permits without substantive changes, any transfer of a special-use permit, as well as actions taken under an agreement once it is signed, would no longer count as undertakings.[4] The bill also limits the conditions federal land managers may place on hydropower licenses (S. 5653, 119th Cong. § 2232 (2026)), expands Clean Water Act nationwide permits, lengthens permit terms, and treats fills under two acres as minimal (*id.* § 1204), and ends Section 106 consultation when the Army Corps reissues nationwide permits. In a region that relies heavily on hydropower and is defined by wetlands and tidelands, these changes matter. A carve-out limited to trust land, which some have proposed for hydropower, would protect almost nothing in Alaska, where there is almost no trust land to protect.

THE TRUST RESPONSIBILITY DOES NOT END WHERE RESERVATIONS DO

When Congress passed the Alaska Native Claims Settlement Act in 1971, it revoked every reservation in Alaska but one and conveyed land to Native corporations in fee rather than holding it in trust. The Supreme Court later held that those lands are not Indian country. As a result, many of the protections that attach to tribal land under federal law, including in Section 106 itself, reach almost none of Alaska.

Congress understood this when it wrote the National Historic Preservation Act. It defined "Indian tribe" to include Alaska Native villages and Regional and Village Corporations so that Section 106 would work in Alaska without reservations. For Alaska Native Peoples, consultation on places of religious and cultural importance is one of the few federal protections for sacred places that does not turn on who holds title to the land.

The federal trust responsibility runs to Alaska Native Peoples wherever they live and whoever holds title to their homelands. Title III would take a protection Congress deliberately extended to Alaska and cut it back, leaving Alaska Native Nations with less than Tribal Nations anywhere else in the country. That result is inconsistent with the trust obligations of the United States, and Congress should not enact it without first consulting the Tribal Nations and Alaska Native Corporations it would affect.

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[3] *See id.* at 5 (describing suspension of agreements and grants, and Secretarial assumption of functions, for programs that fall out of compliance, and explaining that new 54 U.S.C. § 302707 would apply comparable requirements to tribal programs).
[4] *See id.* at 12–13 (listing the bill's exclusions from "undertaking," including renewal and transfer of ownership of special use permits and actions under executed agreements).

The Overall Impacts of Title III

Title III rewrites Section 106 of the National Historic Preservation Act for every federal project in the country. Tribal Nations have led the opposition, but the damage reaches states, local governments, property owners, and every community with a downtown, cemetery, battlefield, or landmark worth protecting.

IT RUNS OVER THE STATES

State Historic Preservation Offices get new federal deadlines and duties with no guaranteed money attached. If consultation runs past its deadline, the State Historic Preservation Officer must spend at least half of every workweek fixing that one project. The bill's $200 million a year for the Historic Preservation Fund is only an authorization, so states see none of it unless Congress appropriates it.[5] Until then, the new duties are an unfunded federal mandate on every state.

IT TAKES HUGE NUMBERS OF PROJECTS OUT OF REVIEW

Under the new definition of "undertaking," a project whose only federal tie is a grant, loan, or loan guarantee falls outside Section 106 unless the money is for the primary purpose of historic preservation. That could reach federal highway grants, HUD and Community Development Block Grant projects, and much of the infrastructure rural communities build with federal dollars.[6] It also reaches the grants that build water and sewer systems in Alaska. When the City of Dillingham used Denali Commission funds to plan its wastewater lagoon relocation, the funding alone brought the project into Section 106 review. The archaeologists then recommended surveys before construction along Kanakanak Road, where unmarked graves could be present. Under Title III, that grant would trigger nothing. Every remaining project must both require a federal permit, license, or approval and be subject to "substantial Federal control and responsibility," a phrase the bill never defines,[7] and renewals and transfers of special use permits drop out of review entirely.

IT SHUTS THE PUBLIC OUT

Property owners, local preservation groups, and neighbors lose their place as consulting parties.[8] People learn about a decision only after it is final, and the bill then limits lawsuits to people who suffer direct harm. Where an agency does hold a comment period, which the bill never requires, a person can sue only on issues raised in a detailed comment filed by the deadline.

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[5] *See id.* at 28 (explaining that deposits into the Historic Preservation Fund "would no longer be mandatory appropriations" because the bill does not identify a dedicated funding source).
[6] *See id.* at 13 (identifying projects funded through federal highway funds and HUD Community Development Block Grants as examples of projects that could be excluded).
[7] *See id.* at 12 (noting that the bill does not specify how far "substantial" would limit covered undertakings, leaving the term to "administrative and judicial interpretation").
[8] *See id.* at 16 (explaining that the bill does not specify how consulting parties would be identified and "would not provide for any required public involvement during the review process").

IT GIVES FEDERAL OFFICIALS CARTE BLANCHE AUTHORITY

A single federal official can set preservation aside "in the sole discretion" of that official whenever undefined "other considerations" outweigh it, even after acknowledging that a project will damage or destroy a historic place.[9]

MOST HARM STOPS COUNTING

Agencies do not have to reopen or supplement review for historic places identified after it begins.[10] Only effects that directly alter a historic property count, so indirect and cumulative effects drop out.[11] Visual, audible, and atmospheric effects are excluded unless they directly and significantly damage the property, and "temporary" changes are excluded for as long as it takes to complete the project, which could be read to cover the life of a 50-year federal license.

COURTS CANNOT STOP IT

Agencies receive substantial deference, lawsuits must be filed within 150 days, and the only remedy for a Section 106 violation is sending the decision back to the agency, with no injunction and no vacatur.[12] A historic downtown, battlefield, or cemetery can be destroyed while the agency fixes its paperwork. At the same time, developers gain a new right to sue to enforce review timelines.

IT WILL CAUSE THE DELAYS IT PROMISES TO END

Burial grounds and historic sites missed during planning do not disappear. They are found during construction, which is the most expensive time for redesigns, lawsuits, and community conflict.

As Chairman of the Senate Committee on Indian Affairs, Senator Murkowski is in a unique position to protect the Section 106 rights of Tribal Nations and Alaska Native Corporations.

We respectfully ask that you:

1. Lead a bipartisan amendment to strike Title III (Historic Preservation) from S. 5653 before the bill reaches the floor.
2. Insist that any change to Tribal consultation under the National Historic Preservation Act come before the Committee on Indian Affairs, with a hearing at which Tribal Nations can testify.
3. Vote no on cloture on the motion to proceed, now scheduled for November 9, if Title III remains in the bill.
4. Consult with Alaska Tribal leaders, Alaska Native Corporation leaders, and Tribal leaders from across the country to hear directly how these changes, or any proposed amendments, would affect our communities.

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[9] *See id.* at 18–19 (describing the authority to determine that "other considerations outweigh the consideration of historic preservation").
[10] *See id.* at 27 (discussing the provision that later identification or listing of a property does not require an agency to "delay, reopen, supplement, or otherwise modify" its review).
[11] *See id.* at 7 (noting that the bill would remove reference to indirect effects from the definition of adverse effect).
[12] *See id.* at 24–26 (explaining that remand without vacatur would be the only remedy, that construction "could continue" in the meantime, that suits must be filed within 150 days, and that courts would give "substantial deference" to the agency).