

MEDIA BACKGROUNDER

TO: Press

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DATE: September 30, 2026

RE: Senate Permitting Deal Would Eviscerate Tribal Consultation, Public Participation, and Historic Preservation

The Senate permitting deal would make a farce of federal historic preservation law, rewriting and fundamentally weakening Section 106 of the National Historic Preservation Act, the law that gives Tribal Nations and communities a voice before federal projects damage sacred places, historic neighborhoods, and public landmarks. The draft bill would exempt all federally funded projects from review, unless those projects meet an undefined new standard of being under “substantial Federal control and responsibility.” The bill also hollows out consultation—essentially negating the need for an informed process to identify historic resources a project could impact. The bill also excludes a broad swath of harms from consideration, and restricts judicial remedies when agencies violate the law.

These changes reach beyond energy development. They would weaken safeguards relevant to nationally visible disputes over Washington landmarks, including the Eisenhower Executive Office Building and the proposed triumphal arch. A coalition of more than 800 Tribal Nations and organizations is mobilizing to oppose the provisions and demand public hearings before a vote.

The central question is why Congress would dismantle a process that generally moves quickly, rarely produces litigation, and helps resolve conflicts before construction begins. The permitting deal adds a statutory front to the Administration’s efforts to bypass historic preservation review on individual projects and rewrite the regulations implementing Section 106.

Why this story will move quickly

Senators Martin Heinrich (D-NM), Sheldon Whitehouse (D-RI), Mike Lee (R-UT), and Shelley Moore Capito (R-WV) have been negotiating a permitting agreement for 13 months without releasing legislative text or inviting affected Tribal Nations and preservation organizations into the negotiations. Coalition participants contacted Senate offices to oppose weakening Section 106 and demand time for public scrutiny. On September 25, Senators Heinrich and Whitehouse issued a joint statement insisting that senators have an opportunity to read and engage with the legislation before voting. We understand negotiators intend to seek a vote during the lame-duck session following the midterm elections.

A law about public participation negotiated without the public

Negotiators have discussed fundamental changes to Tribal consultation, public participation, and judicial remedies without giving affected Tribal Nations, communities, and preservation organizations an opportunity to review legislative text and shape the proposal. Senators Heinrich and Whitehouse have acknowledged that senators need time to read and engage with legislation making major changes to how America builds. The American people deserve the same opportunity before any vote occurs.

Who is behind the push for permitting reform

While lawmakers have not yet engaged Tribal Nations or preservation organizations in negotiations over the bill, the [National Energy Dominance Council](#), established within the Trump Administration's Department of Energy by Executive Order, and various think tanks supporting rapid buildout of energy projects, including the [Data Center Coalition](#), the [American Petroleum Institute](#), the [National Mining Association](#), and others have publicly pushed for these changes. Data centers' power needs are the number one driver of demand for these energy projects, not average residents powering their homes. Data centers, in fact, have become widely maligned in communities across America, mobilizing bipartisan coalitions to push back against these projects. Yet, lawmakers are seeking to do their bidding by cutting those exact communities out of having a say in what projects show up in their backyards.

How Section 106 became a permitting fault line

Section 106 of the National Historic Preservation Act applies to federal undertakings, including projects a federal agency carries out, funds, permits, or licenses, that have the potential to affect historic properties listed in or eligible for the National Register of Historic Places. The process requires agencies to identify affected historic properties, assess effects, consult relevant Tribal Nations and other parties, invite public participation, and explore ways to avoid, minimize, or mitigate harm. It does not give consulting parties a veto; the federal agency retains decision-making authority.

The bill would alter the trigger for historic preservation review, consultation duties, review timelines, and access to judicial remedies. Those changes should be judged against evidence about how Section 106 actually works and whether targeted investments and existing efficiency tools would address delays without eliminating safeguards.

The draft bill, as released, would:

- Gut consultation requirements, making consultation with affected communities and Tribal Nations entirely optional before greenlighting projects that damage sacred and historic places without consideration of their views or incorporation of their knowledge in decisions about how to avoid, minimize, or mitigate project impacts;
- Allow a wide range of federally funded and assisted projects to escape Section 106 review entirely, as review would only apply to those projects determined subject to “substantial Federal control and responsibility”—a term that the bill never defines;
- Impose, for the first time, a statutory definition of properties of traditional religious and cultural importance, conditioning protection on a “living community” and an “event” that “occurred” there, with Congress writing the language that governs Native sacred places without input from Tribal Nations or Native Hawaiian organizations;
- Bar federal agencies from considering visual, atmospheric, and auditory harms that desecrate sacred landscapes, destroy historic settings, or disrupt the solemn character of a battlefield, cemetery, or

Tribal cultural site unless they would “significantly” diminish the property, a new and undefined threshold, while eliminating consideration of indirect and cumulative harms altogether;

- Impose rigid new deadlines, including as little as sixty days to define the affected area and identify historic properties, cutting Tribal Historic Preservation Officers and State Historic Preservation Officers out of the process if they cannot respond within 30 days and forcing personnel, with no qualification or expertise requirement, to rush or abandon the work required to learn about sacred, archaeological, and historic places before they are damaged;
- Threaten to suspend funding and seize the functions of essential State and Tribal Historic Preservation Offices when new deadlines are missed, even if delay results from an agency’s incomplete submission, late consultation, or chronic underfunding;
- Bar Tribal Nations, communities, and the public from challenging the programmatic agreements that would govern entire categories of projects, stripping courts of jurisdiction to hear objections from anyone who is not a signatory;
- Slash the time to challenge unlawful agency action to as little as 150 days and force challenges directly into federal appeals courts, making it easier for agencies and developers to run out the clock before Tribal Nations and communities discover the violation, secure counsel, and get into court; and
- Strip federal courts of effective remedies, including vacatur or the power to set aside an unlawful approval, except that it allows developers to go to court to enforce timelines on projects.

The evidence does not justify dismantling Section 106

Most reviews move quickly

A nationwide survey completed by 40 State Historic Preservation Offices found that only about three out of every one hundred projects reviewed required intensive consultation. The National Conference of State Historic Preservation Officers reported an average review response time of 16 days, shorter than the applicable 30-day SHPO response periods under the Section 106 regulations. That measure concerns SHPO review responses, rather than the duration of the entire federal review process.

These findings do not justify stripping away public, Tribal, state, and local participation in the name of speed. They support targeted improvements to the reviews that need additional attention, while preserving a process that generally moves quickly.

Litigation is rare

Section 106 provides a process for agencies, Tribal Nations, communities, and developers to identify and resolve conflicts before construction. A recent Cultural Heritage Partners review of the more than 13 million federal lawsuits of every type filed over 35 years identified only 266 reported cases raising National Historic Preservation Act claims, about eight per year. That record does not support portraying historic preservation litigation as a pervasive barrier to construction.

When reviews do encounter delays, they are likely due to incomplete submissions, late agency engagement, insufficient staffing, or inadequate technology. Congress should address these capacity and management problems through complete submissions, earlier coordination, adequate staffing, and modern records systems.

Historic preservation supports economic development

Historic preservation's economic contribution demonstrates what is at stake. Heritage tourism in the US generated more than \$132.5 billion in 2026. Separately, federal historic tax credits have helped rehabilitate more than 50,000 buildings, generated more than \$235 billion in private investment, and supported approximately 3.2 million jobs. Thirty-eight states have adopted their own historic tax credits. Congress should consider the economic value of historic places alongside the demand for faster infrastructure approvals.

Why this deal has consequences beyond energy permitting

Disputes over the White House East Wing, the Kennedy Center, the Eisenhower Executive Office Building, and the proposed triumphal arch have brought federal stewardship of historic places to national attention. Weakening Section 106 would reduce public participation and accountability in federal decisions about historic places across the country, with consequences extending well beyond the energy projects driving these negotiations.

For Democratic negotiators, the issue carries a visible contradiction: weakening safeguards against unilateral federal action would give this Administration and future administrations greater latitude to alter historic places with less public participation and fewer effective remedies.

The contradiction negotiators must explain

- Senators Heinrich and Whitehouse have opposed administration actions threatening historic places and preservation safeguards. They should explain why their permitting agreement would weaken those protections nationwide. What principle makes these safeguards essential when the Administration bypasses them, but expendable when Congress rewrites them?
- Senator Heinrich has circulated a bipartisan letter opposing the ACHP regulatory rewrite and criticized the Administration's removal of protections for Chaco Canyon. How does he reconcile those positions with statutory changes that would weaken historic preservation safeguards nationwide?
- Senator Whitehouse has publicly criticized the President's proposed triumphal arch. How does he reconcile that criticism with legislation that would exclude consideration of harms to historic settings and visual impacts and restrict remedies for unlawful approvals?
- What binding commitments would the Administration make in exchange for permanent changes to the preservation statute, and how would those commitments be enforced?

The Coalition response

106 Strong includes more than 800 Tribal Nations and preservation, civil-rights, environmental, professional, neighborhood, religious, business, tourism, and community organizations representing millions of Americans. In an open letter, Coalition participants have urged Congress to strengthen rather than weaken Section 106, with concrete recommendations for doing so.

The Coalition urges senators to remove every provision weakening the NHPA; hold public hearings before any vote; engage in government-to-government consultation with Tribal Nations and direct consultation with State and Tribal Historic Preservation Officers, local governments, affected communities, and practitioners; and invest in staffing, technology, early coordination, and proven programmatic tools. Strengthening Section 106 would help agencies identify risks earlier and resolve conflicts before projects reach crisis.

Questions reporters might ask

- Which federally funded projects would lose Section 106 review, and how many undertakings would be affected each year?
- What enforceable rights would Tribal Nations and communities retain to receive notice, participate early, and have their views meaningfully considered?
- Which harms would agencies be barred from considering, and what would that mean for sacred landscapes, historic settings, battlefields, and cemeteries?
- Who controls the review clock, and could State or Tribal Historic Preservation Offices lose funding for delays they did not cause?
- If an agency violates Section 106, could a court set aside the unlawful approval or prevent irreversible damage before a place is destroyed? What effective remedies would remain?

Key sources and prior coverage

- [Senators Heinrich and Whitehouse statement on permitting deliberation and timing](#)
- [Rachel Maddow on emergence of our coalition](#)
- [The Washington Post on the emergence of the coalition](#)
- [Advisory Council introduction to Section 106](#)
- [106 Strong campaign website](#) — (launching tomorrow) overview, sign-on materials, research, and updates
- [Coalition Letter to Congress](#) — public sign-on and campaign materials
- [Politico on threats to consultation with tribes in proposed rulemaking](#)
- [E&E Daily on debate over NHPA](#)
- [Axios on the proposed Section 106 overhaul and Trump projects](#)
- [The Atlantic on the rush to build the proposed triumphal arch](#)
- [The Washington Post on the Eisenhower building dispute](#)