Nebraska Intertribal Coalition

The Honorable Deb Fischer
The Honorable Pete Ricketts
United States Senate
Washington, DC 20510

November 6, 2026

Re: Joint Tribal Request to Eliminate Division B, Title III of S. 5653

Dear Senators Fischer and Ricketts:

On behalf of the **Omaha Tribe of Nebraska, Winnebago Tribe of Nebraska, Santee Sioux Nation, and Ponca Tribe of Nebraska**, we urge you to **amend S. 5653, the Bipartisan American Affordability and Jobs Act of 2026, by eliminating Division B, Title III—Historic Preservation—in its entirety.** If Title III remains, we ask you to oppose passage of the bill.

Our Tribes are not opposed to permitting reform. We oppose permitting reform that puts Tribal sovereignty at risk. We support responsible infrastructure, energy, and economic development that upholds Tribal authority, meaningful government-to-government consultation, and federal trust and treaty responsibilities.

Our responsibility to protect our ancestors, sacred places, burial grounds, and cultural landscapes extends beyond reservation boundaries throughout our ancestral homelands. Title III would undermine that responsibility by:

- **Threatening Tribal preservation authority.** Section 2301 would tie program evaluations to consultation deadlines and performance metrics, authorize suspension of agreements and preservation grants, and provide for federal assumption of Tribal Historic Preservation Officer functions. Underfunded Tribal programs need resources and support, rather than measures that threaten their authority.
- **Weakening meaningful consultation.** Agencies could proceed after a Tribe misses a 30-dayresponse deadline, decline to reconsider earlier findings when the Tribe reenters consultation, and substitute consultation with the Advisory Council on Historic Preservation in specified circumstances. These provisions fail to account for the time needed to engage elders, cultural leaders, and knowledge keepers.
- **Narrowing protections for cultural places.** The bill would exclude certain federally funded projects from review and restrict consideration of some visual, atmospheric,

audible, and temporary effects. These changes could leave sacred places and cultural landscapes vulnerable even without direct physical disturbance.

- **Restricting effective judicial relief.** Title III would generally prevent courts from stopping projects or setting aside agency actions based solely on violations of the historic preservation requirements addressed by the bill. It would also bar nonsignatories from challenging implementation of programmatic agreements. Irreversible destruction cannot be remedied by correcting paperwork afterward.
- **Consultation must begin early enough to influence project decisions.** Existing Section 106 regulations call for agencies to identify and invite affected Tribes early in planning, including Tribes with cultural connections to properties outside reservation boundaries. Consultation informs identification of historic properties, assessment of effects, and consideration of alternatives. Section 106 review must be completed before the applicable federal permit, license, or funding approval. Effective permitting reform should strengthen early engagement while meaningful alternatives remain available.
- **Federal historic property databases already exist, but they cannot replace consultation.** The National Park Service maintains the National Register of Historic Places and searchable records. These records are not a complete inventory of Tribal sacred places, burial grounds, or cultural landscapes. Section 106 covers properties listed **or eligible for listing**, including properties identified during project review. Absence from a database does not establish that a place lacks significance or falls outside Section 106.
- Section 2302's proposed database grants also raise concerns about Tribal control over sensitive cultural information. Although the bill includes certain public-disclosure protections, Tribes must retain authority over how sacred knowledge is recorded, accessed, and shared. Prior registration or disclosure must not become a condition of consultation or consideration under Section 106.
- Nebraska's historical landscape includes our villages, ceremonial grounds, burial places, and waterways. Their protection sustains our living cultures while supporting accurate public education, responsible tourism, and preservation of the state's history.
- We respectfully ask you to **eliminate Division B, Title III from S. 5653**, support preservation funding without weakening Tribal protections, and meet jointly with our four Tribal Nations before advancing changes to federal historic preservation law. Permitting reform must respect Tribal sovereignty and protect the places that sustain our peoples.

Sincerely,

Candace Schmidt

Nebraska Intertribal Chair

Supporting Documents

S. 5653—Bill Text

S. 5653—Status and Actions

Section 106 Regulations—36 CFR Part 800

National Register Database and Research