



To: House Committee on Natural Resources Republican Members
From: House Committee on Natural Resources Republican Staff
Date: March 14, 2022
Subject: Markup of three bills: H.R. 1638, H.R. 3587, and H.R. 5093

The Natural Resources Committee will hold a hybrid markup on **Wednesday, March 16, 2022, at 10 a.m. EDT** in person and online via Cisco WebEx. The bills include H.R. 1638 (Johnson, SD), H.R. 3587 (Grijalva), H.R. 5093 (Herrera Beutler).

Member offices are requested to notify Will Layden (Will.Layden@mail.house.gov) and Baylee Seeman (Baylee.Seeman@mail.house.gov) by **4:30 p.m. EDT on Tuesday, March 15, 2022**, if their Member intends to participate in person or remotely. Members may vote either by electronic device in the hearing room or by voice (while visible) if participating remotely.

Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- H.R. 3587, *Requirements, Expectation, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act* (Grijalva), is expected to move by regular order:
 - H.R. 3587 would prescribe detailed procedures for tribal consultation between federal agencies and federally recognized Indian tribes and Alaska Natives for nearly any action undertaken by, permitted, approved, funded in whole or in part, or delegated to states or local governments by a federal agency. These procedures are broad reaching, onerous and duplicative review process layered on top of existing consultation processes.
 - The bill would inject new opportunities for litigation on virtually any federal, state or local activity or project and is a giveaway to trial lawyers and activist groups who would exploit these procedures to advance their agendas.
 - Under the *RESPECT Act*, tribes may indefinitely freeze or delay virtually any federal activity until lengthy, prescriptive consultation is completed by the agency undertaking the activity.

- Bills expected to move by unanimous consent are H.R. 1638, *Gilt Edge Mine Conveyance Act* (Johnson, SD) and H.R. 5093, *Wind River Administrative Site Conveyance Act* (Herrera Beutler).

II. EXPECTED LEGISLATION

H.R. 1638 (Johnson, SD), Gilt Edge Mine Conveyance Act

H.R. 1638 would authorize the state of South Dakota to purchase approximately 266 acres of U.S. Forest Service (USFS) land in Lawrence County, South Dakota, to help facilitate remediation of the mine site. The State of South Dakota owns a portion of the land base of the mine site and has an interest in consolidating adjoining Federal and private land within the Superfund site to mitigate acidic rock drainage and pursue additional water reclamation efforts. The land transfer authorized by this legislation would allow the state to conduct clean-up efforts within the boundary of the Gilt Edge Mine superfund site once the Environmental Protection Agency (EPA) completes its portion of the cleanup.

Any proceeds received by USFS from the conveyance would be deposited in a special fund created by the Sisk Act and available to the USFS for the maintenance and improvement of land or administrative facilities in the Black Hills National Forest in South Dakota. The hearing memo for H.R. 1638 may be viewed [here](#). *The Ranking Member supports this bill and it is expected to move by unanimous consent.*

Staff contacts: Aniela Butler (Aniela.Butler@mail.house.gov) and Brandon Miller (Brandon.Miller@mail.house.gov)

H.R. 3587 (Grijalva), Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act

H.R. 3587 would create a new Tribal consultation requirement for projects carried out by a federal agency, requiring a federal permit or license, subject to state or local regulations administered pursuant to federal authority, or that receive federal funding.

Instead of improving existing Tribal consultation processes, this bill would add red tape to the government's already stagnant project review process. The bill includes ill-defined terms and ambiguous requirements that will create endless opportunities for activist litigation. For example, the bill would require a "good faith effort" to engage affected Tribal governments without defining what this means and allowing Tribes to sue based on the government's failure to make a "good faith effort". The bill would give Tribes several legal avenues to block projects that a Tribe disagrees with, without considering the beneficial effects of the project or harms to project proponents and beneficiaries.

The bill would further restrict agencies from engaging in consultation with any other stakeholder (including local governments) until consultation with Tribes is complete, and it would allow Tribes to unilaterally restrict public access to government meetings and

documents, in contravention of sunshine laws like the Freedom of Information Act. The bill would provide tribes the ability to unilaterally identify sacred sites, without consultation with other relevant experts such as State Historic Preservation Office (SHPO), even if the sacred site had not been previously identified. Designation of a sacred site would significantly slow or block any project in its vicinity.

The Obama administration testified in opposition to this bill in the [111th](#), [113th](#), and [114th](#) Congresses, stating that the bill is “vague and overbroad” with the “potential to bring much of the Federal government to a standstill.” Instead of addressing concerns with this bill, the Majority chose not to invite the Biden administration to testify at the most recent hearing on the bill in the 116th Congress.

H.R. 3587 has also been referred to the House Committee on the Judiciary. The bill has 18 Democrat cosponsors. Hearing information, including testimony may be viewed [here](#) and the hearing memo can be viewed [here](#). ***The Ranking Member is opposed and the bill is expected to move through regular order.***

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[H.R. 5093 \(Herrera Beutler\), Wind River Administrative Site Conveyance Act](#)

H.R. 5093 seeks to provide opportunity for historic, recreational, and economic activity by transferring ownership of approximately 23 acres of the former Wind River Nursery Administrative Site from the U.S. Forest Service (USFS) to Skamania County, Washington. The USFS first established the Wind River Nursery Administrative Site in 1906. The site is 65 acres and contains representative structures from three distinct USFS administrative units. Most of the buildings at the site are presently leased to Skamania County, while others are available to be rented for lodging for travelers exploring the Gifford Pinchot National Forest. Skamania County owns 187 acres adjacent to Wind River Nursery and intends to develop the site conveyed by this bill for additional lodging facilities to support recreation and other business opportunities that will generate much needed economic activity and revenue for the county. The bill would allow USFS to consolidate its resources so it can focus on addressing the \$10 million deferred maintenance backlog at the Gifford Pinchot National Forest.

Skamania County and USFS both support this conveyance, as it will fulfil a 2016 agreement made between USFS and the County that will also allow USFS to proceed with a land purchase to benefit the Pacific Crest Trail. Representative Herrera Beutler worked with Skamania County and USFS to negotiate an agreement for support of the land purchase in exchange for USFS’s commitment and support for conveying the Wind River Nursery to the County. The hearing memo for H.R. 5093 may be viewed [here](#). ***The Ranking Member supports this bill and it is expected to move by unanimous consent.***

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