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REPORT
109–641

NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS OF 2006

SEPTEMBER 6, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources, submitted the following

R E P O R T

[To accompany H.R. 5861]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 5861) to amend the National Historic Preservation Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Historic Preservation Act Amendments of 2006".

SEC. 2. STATE HISTORIC PRESERVATION OFFICER RESPONSIBILITIES.

Section 101(b) of the National Historic Preservation Act (16 U.S.C. 470a(b)) is amended by adding at the end the following:

"(7) The State Historic Preservation Officer shall have no authority to require an applicant for Federal assistance, permit, or license to identify historic properties outside the undertaking's area of potential effects as determined by the Federal agency in accordance with regulations implementing section 106.

"(8) If the State Historic Preservation Officer or Tribal Historic Preservation Officer fails to respond within 30 days after an adequately documented finding of 'no historic properties affected' or 'no adverse effect' as provided in the regulations implementing section 106, the Federal agency may assume that the State Historic Preservation Officer or Tribal Historic Preservation Officer has no objection to the finding.".

SEC. 3. ADDITIONAL CRITERIA FOR CERTIFICATION OF LOCAL GOVERNMENTS TO CARRY OUT NATIONAL HISTORIC PRESERVATION ACT.

Section 101(c)(1) of the National Historic Preservation Act (16 U.S.C. 470a(c)(1)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by redesignating subparagraph (E) as subparagraph (F);

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) agrees that it shall not use any eligibility determination regarding the inclusion of any property or District on the National Register to initiate local regulatory requirements unless the entity provides full due process protection to the owner or owners of the property or District through a hearing process; and"; and

(4) in the matter below the subparagraphs, by striking "through (E)" and inserting "through (F)".

SEC. 4. HISTORIC PRESERVATION FUND.

Section 108 of the National Historic Preservation Act (16 U.S.C. 470h) is amended by striking "2005" and inserting "2015".

SEC. 5. ADVISORY COUNCIL ON HISTORIC PRESERVATION.

(a) MEMBERSHIP.—Section 201 of the National Historic Preservation Act (16 U.S.C. 470i) is amended—

(1) in subsection (a)(4), by striking "four" and inserting "seven";

(2) in subsection (b), by striking "(5) and (6)" and inserting "paragraph (6)"; and

(3) in subsection (f), by striking "Nine" and inserting "Eleven".

(b) FINANCIAL AND ADMINISTRATIVE SERVICES.—Section 205(f) of such Act (16 U.S.C. 470m(f)) is amended to read as follows:

"(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior or, at the discretion of the Council, such other agency or private entity that reaches an agreement with the Council, for which payments shall be made from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the head of the agency or, in the case of a private entity, the authorized representative of the private entity that will provide the services. When a Federal agency affords such services, the regulations of that agency for the collection of indebtedness of personnel resulting from erroneous payments, prescribed under section 5514(b) of title 5, United States Code, shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of that agency for the administrative control of funds under sections 1513(d) and 1514 of title 31, United States Code, shall apply to appropriations of the Council. The Council shall not be required to prescribe such regulations.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 212(a) of the Act (16 U.S.C. 470t(a)) is amended by striking "for purposes of this title not to exceed $4,000,000 in each fiscal year 1997 through 2005" and inserting "such amounts as may be necessary to carry out this title".

SEC. 6. EFFECTIVENESS OF FEDERAL GRANT AND ASSISTANCE PROGRAMS IN MEETING PURPOSES AND POLICIES OF THE NATIONAL HISTORIC PRESERVATION ACT.

The National Historic Preservation Act is amended by inserting after section 215 (16 U.S.C. 470v–1) the following new section:

"SEC. 216. EFFECTIVENESS OF FEDERAL GRANT AND ASSISTANCE PROGRAMS.

"(a) COOPERATIVE AGREEMENTS.—The Council may enter into a cooperative agreement with any Federal agency that administers a grant or assistance program for the purpose of improving the effectiveness of the administration of such program in meeting the purposes and policies of this Act. Such cooperative agreements may include provisions that modify the selection criteria for a grant or assistance program to further the purposes of this Act or that allow the Council to participate in the selection of recipients, if such provisions are not inconsistent with the statutory authorization and purpose of the grant or assistance program.

"(b) REVIEW OF GRANT AND ASSISTANCE PROGRAMS.—The council may—

"(1) review the operation of any Federal grant or assistance program to evaluate the effectiveness of such program in meeting the purposes and policies of this Act;

"(2) make recommendations to the head of the Federal agency that administers such program to further the consistency of the program with the purposes and policies of this Act and to improve its effectiveness in carrying out those purposes and policies; and

"(3) make recommendations to the President and the Congress regarding the effectiveness of Federal grant and assistance programs in meeting the purposes and policies of this Act, including recommendations with regard to appropriate funding levels.".

PURPOSE OF THE BILL

The purpose of H.R. 5861 is to amend the National Historic Preservation Act.

BACKGROUND AND NEED FOR LEGISLATION

In April 2004, the Subcommittee on National Parks conducted a hearing on a draft bill that would have, among other things, limited the definition of "historic" under Section 106 of the National Historic Preservation Act (NHPA) to those sites and buildings listed on the National Register or those determined eligible by the Secretary of the Interior. Under the NHPA, an historic property is defined as sites, buildings, and other objects on the National Register of Historic Places or those "eligible for inclusion on the National Register." The draft also would have required a certified local government under the NHPA that utilizes a determination of eligibility for inclusion on the National Register to initiate local regulatory requirements to provide full due process to persons who object to a determination of eligibility on property they own.

Following the April 2004 hearing, Subcommittee staff continued to work with John Nau, Chairman of the Advisory Council on Historic Preservation, as well as the National Conference of State Historic Preservation Officers, the tribal community, the business community, the archeologists, and other preservation organizations to develop language to address issues raised in and since the 2004 hearing. One of the goals for the Committee has been to reduce the burden (both time and money) that has been unnecessarily placed on an applicant under the Section 106 process.

Discussions concluded with the introduction of H.R. 5861, which makes the following changes to the NHPA: (1) extends expenditures from the Historic Preservation Fund from 2005 to 2015 for state and tribal preservation activities; (2) reauthorizes and improves the administration of the Advisory Council on Historic Preservation; (3) requires a certified local government under the NHPA that utilizes a determination of eligibility to initiate local regulatory requirements to also provide full due process to property owners who object to a determination of eligibility on their property; and (4) amends Section 106 of the NHPA to require that a State Historic Preservation Officer/Tribal Historic Preservation Officer respond to a Section 106 application within 30 days of a "no adverse effects" finding and prohibits a State Historic Preservation Officer from requiring a federal agency and/or applicant to identify properties outside the identified area of potential effects as determined by the agency. The bill is designed to protect applicants from being required to fund surveys and other studies to identify historic properties beyond the area in which the undertaking may reasonably be expected to affect those historic properties. Section 106 of the NHPA requires that a federal agency take into account if a federal undertaking (i.e., a proposed activity involving federal dollars, a federal permit or license) will have an effect on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Place.

The Committee recognizes the importance of tribal historic preservation in the national historic preservation framework articulated in the NHPA. Under NHPA, tribes are increasingly choosing

to establish Tribal Historic Preservation Officer programs through agreements with the National Park Service. However, despite the increased tribal interest in participating actively in the national historic preservation framework by establishing Tribal Historic Preservation Offices, funding to support these important programs in Indian Country has remained stagnant and is being shared by a steadily increasing number of tribes. The Committee understands that at current funding levels, Tribal Historic Preservation Officers simply lack the resources and capacity to respond to all requests for comments in the Section 106 process in a timely fashion. The Committee urges the National Park Service to request funding for Tribal Historic Preservation Officers through the Historic Preservation Fund at a level sufficient to ensure that all Tribal Historic Preservation Officers have the resources necessary to build capacity to efficiently consider and process Section 106 clearance requests so that tribes have a fair opportunity to participate in the national historic preservation framework in a meaningful way.

In terms of Section 2 of the bill, the Committee does not believe, nor is it its intention to (1) preempt existing programmatic or national programmatic agreements for an area of potential effects developed under Section 106 of the Act, or interfere in the development of future agreements; or (2) limit the obligations of a federal agency under the Section 106 regulations to take into account effects on historic properties if historic properties are discovered or unanticipated effects on historic properties are found after completion of the Section 106 process. Finally, the Committee expects the National Park Service will certify that all current and future certified local governments under the NHPA comply with the due process requirement in Section 3 of this bill.

COMMITTEE ACTION

H.R. 5861 was introduced on July 20, 2006, by Congressman Stevan Pearce (R–NM). The bill was referred to the Committee on Resources. On July 26, 2006, the Full Resources Committee met to consider the bill. Congressman Pearce offered an amendment in the nature of a substitute that changed the section to be amend in the National Historic Preservation Act to better reflect the changes for the State Historic Preservation Officers in the Section 106 process, and modified the authorization for appropriations for the Advisory Council on Historic Preservation to improve long-term planning in Council programs. The amendment was adopted by unanimous consent. The bill as amended was then ordered favorably reported to the House of Representatives by unanimous consent.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, clause 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has in-

cluded in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the National Historic Preservation Act, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 5861—National Historic Preservation Act Amendments of 2006

Summary: H.R. 5861 would extend the authority to make annual deposits of $150 million to the Historic Preservation Fund (HPF) through fiscal year 2015. Authority to make those deposits of receipts earned from oil and gas development on the Outer Continental Shelf into the HPF expired at the end of fiscal year 2005. The National Park Service (NPS) uses amounts appropriated from the HPF for grants to state, local, and tribal governments, nonprofit organizations, and other entities.

The bill also would authorize the appropriation of necessary amounts for each year to the Advisory Council on Historic Preservation (ACHP). Authority for this funding—at a specific annual level of $4 million—also expired at the end of 2005. Appropriations to ACHP are derived from the general fund of the U.S. Treasury.

Assuming appropriation of the amounts deposited into the HPF each year, and assuming appropriation of the amounts estimated to be necessary for ACHP, CBO estimates that implementing H.R. 5861 would cost about $500 million over the 2007–2011 period. Enacting this legislation would not affect direct spending or revenues.

H.R. 5861 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Local governments might incur some costs as a result of new requirements included in this bill, but those costs would result from their participation in a voluntary federal program.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5861 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2006	2007	2008	2009	2010	2011
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law for Historic Preservation:						
Budget Authority[1]	77	0	0	0	0	0
Estimated Outlays	79	52	26	14	7	3

	By fiscal year, in millions of dollars—					
	2006	2007	2008	2009	2010	2011
Proposed Changes:						
Spending of Deposits to HPF:						
Estimated Authorization Level	0	150	150	150	150	150
Estimated Outlays	0	37	70	95	120	150
Advisory Council on Historic Preservation:						
Estimated Authorization Level	0	5	5	5	6	6
Estimated Outlays	0	5	5	5	6	6
Spending Under H.R. 5861 for Historic Preservation:						
Estimated Authorization Level	77	155	155	155	156	156
Estimated Outlays	79	94	101	114	133	159

[1] The 2006 level is the amount appropriated for that year, including $72 million to the NPS from the HPF and nearly $5 million to ACHP.

Basis of estimate: For this estimate, CBO assumes that H.R. 5861 will be enacted by the start of fiscal year 2007 and that the entire $150 million that would be transferred to the HPF each year under the bill will be appropriated in full beginning in that year. Annual deposits to the HPF have been at the $150 million level since 1980, but the amounts typically appropriated from the fund have been substantially lower. CBO expects that more than doubling the size of the historic preservation program (from the recent appropriation level of a little over $70 million a year) would initially lead to delays in processing grants and in raising funds for nonfederal matching shares. As a result, outlays would likely lag behind appropriations significantly over the next few years.

The estimated authorization levels for ACHP operations are based on the current appropriation of nearly $5 million for 2006, adjusted annually for anticipated inflation. Outlay estimates are based on historical spending patterns for these activities.

Other provisions of H.R. 5861, which would amend the National Historic Preservation Act, would have no significant impact on the federal budget.

Intergovernmental and private-sector impact: H.R. 5861 contains no intergovernmental or private-sector mandates as defined in UMRA. Local governments might incur some costs as a result of new requirements included in this bill, but those costs would result from their participation in a voluntary federal program. State, local, and tribal governments would benefit from federal funds authorized by the bill.

Previous CBO estimate: On March 16, 2006, CBO transmitted a cost estimate for S. 1378, the National Historic Preservation Act Amendments Act of 2006, as ordered reported by the Senate Committee on Energy and Natural Resources on March 8, 2006. The two versions of the legislation are very similar, and their estimated costs are identical.

Estimate prepared by: Federal costs: Deborah Reis; Impact on state, local, and tribal governments: Marjorie Miller; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL HISTORIC PRESERVATION ACT

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TITLE I

SEC. 101. (a) * * *
(b)(1) * * *

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(7) The State Historic Preservation Officer shall have no authority to require an applicant for Federal assistance, permit, or license to identify historic properties outside the undertaking's area of potential effects as determined by the Federal agency in accordance with regulations implementing section 106.

(8) If the State Historic Preservation Officer or Tribal Historic Preservation Officer fails to respond within 30 days after an adequately documented finding of "no historic properties affected" or "no adverse effect" as provided in the regulations implementing section 106, the Federal agency may assume that the State Historic Preservation Officer or Tribal Historic Preservation Officer has no objection to the finding.

(c)(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer in accordance with section 103(c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government—

(A) * * *

* * * * * * *

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; [and]

(E) agrees that it shall not use any eligibility determination regarding the inclusion of any property or District on the National Register to initiate local regulatory requirements unless the entity provides full due process protection to the owner or owners of the property or District through a hearing process; and

[(E)] *(F)* satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through [(E)] *(F)*; and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

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SEC. 108. To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund $24,400,000 for fiscal year 1977, $100,000,000 for fiscal year 1978, $100,000,000 for fiscal year 1979, $150,000,000 for fiscal year 1980, and $150,000,000 for fiscal year 1981 and $150,000,000 for each of fiscal years 1982 through [2005] *2015*, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 1338), and/or under the Act of June 4, 1920 (41 Stat. 813), as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

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TITLE II

SEC. 201. (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:

(1) * * *

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(4) the Secretary of Agriculture and the heads of [four] *seven* other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, designated by the President;

* * * * * * *

(b) Each member of the Council specified in paragraphs (2) through (8) (other than [(5) and (6)] *paragraph (6)*) of subsection (a) may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

* * * * * * *

(f) [Nine] *Eleven* members of the Council shall constitute a quorum.

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SEC. 205. (a) * * *

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[(f) Financial and administrative (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided,* That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Council: *And provided further,* That the Council shall not be required to prescribe such regulations.]

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior or, at the discretion of the Council, such other agency or private entity that reaches an agreement with the Council, for which payments shall be made from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the head of the agency or, in the case of a private entity, the authorized representative of the private entity that will provide the services. When a Federal agency affords such services, the regulations of that agency for the collection of indebtedness of personnel resulting from erroneous payments, prescribed under section 5514(b) of title 5, United States Code, shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of that agency for the administrative control of funds under sections 1513(d) and 1514 of title 31, United States Code, shall apply to appropriations of the Council. The Council shall not be required to prescribe such regulations.

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SEC. 212. (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated [for the purposes of this title not to exceed $4,000,000 in each fiscal year 1997 through 2005] *such amounts as may be necessary to carry out this title.*

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SEC. 216. EFFECTIVENESS OF FEDERAL GRANT AND ASSISTANCE PROGRAMS

(a) COOPERATIVE AGREEMENTS.—The Council may enter into a cooperative agreement with any Federal agency that administers a grant or assistance program for the purpose of improving the effectiveness of the administration of such program in meeting the purposes and policies of this Act. Such cooperative agreements may include provisions that modify the selection criteria for a grant or assistance program to further the purposes of this Act or that allow the Council to participate in the selection of recipients, if such provisions are not inconsistent with the statutory authorization and purpose of the grant or assistance program.

(b) REVIEW OF GRANT AND ASSISTANCE PROGRAMS.—The council may—

(1) review the operation of any Federal grant or assistance program to evaluate the effectiveness of such program in meeting the purposes and policies of this Act;

(2) make recommendations to the head of the Federal agency that administers such program to further the consistency of the program with the purposes and policies of this Act and to improve its effectiveness in carrying out those purposes and policies; and

(3) make recommendations to the President and the Congress regarding the effectiveness of Federal grant and assistance programs in meeting the purposes and policies of this Act, including recommendations with regard to appropriate funding levels.

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