

**Calendar No. 1088**

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-525 }

PRESIDENTIAL HISTORICAL RECORDS  
PRESERVATION ACT OF 2008

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R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 3477

TO AMEND TITLE 44, UNITED STATES CODE, TO AUTHORIZE  
GRANTS FOR PRESIDENTIAL CENTERS OF HISTORICAL EXCEL-  
LENCE



NOVEMBER 19, 2008.—Ordered to be printed

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### PRESIDENTIAL HISTORICAL RECORDS PRESERVATION ACT OF 2008

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Mr. LIEBERMAN, from the Committee on Homeland Security and  
Governmental Affairs, submitted the following

### R E P O R T

[To accompany S. 3477]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3477) to amend title 44, United States Code, to authorize grants for Presidential Centers of Historical Excellence, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

#### I. PURPOSE AND SUMMARY

S. 3477, the “Presidential Historical Records Preservation Act of 2008” seeks to promote funding to preserve, digitize, and provide online access to documents of historical significance that may not have received funding in the past. The bill would modify an existing grant program administered by the National Historical Publications and Records Commission (“the Commission”) to specify that grants can support public-private partnerships to preserve presidential documents that are not included in the existing Presidential library system. The bill also seeks to make other key improvements to the system for archiving Presidential documents.

As reported, the bill establishes a process for providing grants to institutions honoring former presidents that are not federally maintained under the Presidential Libraries Act of 1955. Institutions applying for funds under this process must be either not-for-profit or owned by a state or local government. In addition, applicants must be able to prove, among other qualifications, that: Facilities are appropriate to preserve the historical documents; free public access can be provided; and matching funds have been raised from non-federal sources. Activities conducted under the

raised from non-federal sources. Activities conducted under the grant process will be included in the National Archives budget filings.

The bill also makes improvements in the overall presidential library program. It would require the Archivist to develop a prioritized capital improvement plan for federally maintained presidential libraries for all investments over \$1 million. The capital improvement plan would be provided to Congress annually with a prioritized list of necessary repairs and the current cost estimate for the investment.

S. 3477 also would increase the amount of money that must be raised before a private entity constructing a presidential library transfers the property to federal government ownership. Private entities currently raise an endowment to cover future costs associated with repairs and maintenance. However it has come to the Committee's attention that the existing amount required for this endowment is insufficient for many libraries, forcing Congress to approve additional spending on emergency repairs for older institutions.

The bill requires the Archives to report 270 days after the enactment of this bill on new methods to preserve presidential materials that could reduce the financial burden on the federal government, improve preservation of records, and reduce the delay in public access to the records held by the library.

The bill also makes structural changes to the Commission by placing eight-year term limits on members and requires members to recuse themselves from votes that could lead to a conflict of interest.

Furthermore the bill establishes an independent advisory committee to review the progress of grants that collects, transcribes, and annotates the materials written and received by key statesmen such as Thomas Jefferson and Benjamin Franklin. These "Founding Fathers" projects have been funded by the Commission since 1964. However, despite their importance, many of these projects are not expected to be finished for decades. In light of this, the bill requires that that these documents be published online through a single Web portal that can be updated with future publications as they are completed.<sup>1</sup>

## II. BACKGROUND AND NEED FOR LEGISLATION

Through the Presidential Libraries Act of 1955, the National Archives and Records Administration currently manages and maintains 12 Presidential libraries (from President Hoover to President Clinton). These libraries are privately constructed, deeded to the federal government, and store the official records and papers of the former presidents. The federal government pays to maintain these institutions.

However, there are many historically significant documents associated with presidents that preceded President Hoover which are not maintained by federally owned archival depositories. The Committee believes that it is important to preserve and enhance public

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<sup>1</sup>*The Founding Fathers' Papers: Ensuring Public Access to our National Treasures Before the United States Senate Judiciary Committee*, 110th Cong. (2008) (statement of the Honorable Allen Weinstein, Archivist, National Archives and Records Administration).

access to these records. One way to achieve this goal is through a public-private partnership that would preserve the documents without financially burdening the federal government. The Committee recognizes that there are non-profit organizations in America that could undertake the preservation of presidential records and achieve this goal.

Therefore, under this legislation grants could be awarded by the National Historical Records and Publications Commission on a competitive basis to enhance preservation and public access to historical presidential records that are owned by private libraries. Entities competing for grants under this bill would be required to receive matching grants from non-federal sources; ensure a plan is in place to preserve and provide public access to the historical documents; provide a facility that is capable of appropriately preserving the documents; and provide free public access to the documents.

As it carries out the legislation, the Commission must provide the Senate Committee on Homeland Security and Governmental Affairs a report identifying current entities that fit these requirements and would be able to apply for grants.

In addition, the Committee recognizes that some of the prior grant awards by the Commission have gone to universities and other nonprofits to transcribe original documents from key statesmen such as Thomas Jefferson and John Adams. Many of these projects have taken years to complete and still require a significant amount of time and money. For example, the project to publish John Adam's papers has been ongoing for 52 years and is not expected to be completed until 2049, or 181 years after his death.<sup>2</sup>

In response such delays, in 2008 Congress passed a law which directed the Archivist to develop a plan that will accelerate this process and leverage digitization technologies to provide online access to anyone, anywhere to view these historically valuable documents.<sup>3</sup> S. 3477 builds on that requirement and allows the Archivist to enter into an agreement to provide online access to the published volumes of our founding fathers and other prominent historical figures. It is the intent of the Committee that all current and future publications of the founding fathers be freely accessible, easily searchable, and include the analyses provided by the documentary editors. In addition, the bill will allow the Archivist to establish an advisory committee to review the current editorial projects being funded and, in consultation with the officials overseeing these editorial projects, recommend completion goals that will not sacrifice quality. The advisory committee should operate independently of the Commission and report directly to the Archivist.

Also, an investigation by the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security into the Commission found potential structural issues with the Commission that may hinder the organization. For instance members on the Commission who select, review, and fund many of the grants have served for decades and represent some of the entities receiving the grants. Therefore, S. 3477 creates

<sup>2</sup> Only Alexander Hamilton's papers have been completed. According to the National Historic Publication and Records Commission, the papers of Thomas Jefferson will not be completed until 2025, the Washington papers in 2023, the papers of Benjamin Franklin and James Madison in 2030, and the Adams papers by 2049.

<sup>3</sup> Division D—Financial Services and General Government and Appropriations Acts, 2008 Title V, Pub. L. No. 110–161.

term limits of eight years for all members except for permanent ex officio members and establishes a recusal process that will prevent members from voting on issues that may benefit them or an entity they represent. These requirements will be retroactive and effective for current and future members of the Commission.

Further, Congress has increasingly been forced to designate spending for required maintenance and repairs needed for specific presidential libraries, some of which have been emergency in nature. Some of these library facilities have unexpectedly required millions of dollars in additional funding in order to prevent the destruction of priceless artifacts from weakened and leaking roofs, substandard infrastructure, and improper temperature controls.<sup>4</sup> Unfortunately there has not been an overall approach for addressing these problems, leaving some libraries needing critical repairs. S. 3477 requires the Archivist to provide Congress with an annual capital improvement plan for all presidential libraries currently owned and operated by the federal government. This capital improvement plan will prioritize all capital improvements estimated to cost more than \$1 million and provide justifications for these cost estimates. Congress would then be able to better direct funding to the most urgent repairs.

In addition, S. 3477 will increase the endowment that a private foundation associated with a future president must provide for future maintenance and repair of that presidential library. The Subcommittee on Federal Financial Management's investigation found that many of the endowments provided for previous libraries insufficiently covered the costs of both expected and unexpected repairs on the facilities.

Lastly, the Subcommittee on Federal Financial Management held a hearing in May 2008 that revealed that, not only is there a huge financial burden on the federal government to maintain presidential libraries, but also that much of the artifacts are inappropriately stored or unavailable for public dissemination.<sup>5</sup> Sometimes, records as far back as a decade or more are still unavailable to be accessed due to the current archival process. S. 3477 requires the Archives to submit to Congressional oversight committees a report to reduce the financial burden on the federal government, improve the preservation of presidential records, and reduce the delay in public access to all presidential libraries.

The Committee recognizes that the Commission has an overwhelming mission to preserve historically significant state, local, and national records. However, in each of the past four fiscal years, the Commission has received appropriations below its authorized levels. The Committee believes appropriations should be provided at authorized levels in order to empower the Commission to fulfill its responsibilities. Further, the Committee does not intend to supersede existing categories of grants administered by the Commission. Instead, discretion shall be left to the Commission as to what eligible programs shall take priority out of existing funds.

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<sup>4</sup>John F. Kennedy Library and Lyndon B. Johnson Library: S. 3260 Financial Services and General Government Appropriations Bill, p. 82–83.

<sup>5</sup>National Archives Oversight: Protecting Our Nation's History for Future Generations Before the Senate Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, 110th Cong. (2008) (testimony of Thomas Blanton, Director, National Security Archives).

### III. LEGISLATIVE HISTORY

S. 3477 was introduced by Senator Warner and Senator Webb on September 11, 2008, and referred to the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security. S. 3477 was polled out of Subcommittee on September 12 and the full Committee considered S. 3477 on September 18, 2008. The Committee ordered the bill reported favorably, as amended by a Carper-Warner substitute amendment. Members present for the vote were Lieberman, Levin, Akaka, Carper, Pryor, McCaskill, Collins, Stevens, Domenici, Warner, and Sununu.

The bill was signed by the President on October 13, 2008 and became Public Law No. 110-404.

### IV. SECTION-BY-SECTION ANALYSIS

#### *Section 1. Short title*

The Act is entitled the “Presidential Historical Records Preservation Act of 2008.”

#### *Section 2. Grants for Presidential centers of historical excellence*

This section modifies the National Historical Publications and Records Commission grant program to provide grants to preserve, and provide public access to, historical documents of Presidents not currently covered under the Presidential Libraries Act of 1955.

The section stipulates that amounts received under the grants provided in this section shall be used only to promote the preservation of, and public access to, historical records or documents relating to any former President covered under this Act and may not be used for the maintenance, operating costs, or construction of any facility to house these historical records.

In addition, the section establishes the following criteria an entity must meet in order for the National Historical Publications and Records Commission to award a grant. An entity must:

- (i) Possess historical presidential records that the Commission considers appropriate to preserve;
- (ii) Have appropriate facilities and space to preserve and provide public access to the records;
- (iii) Preserve and provide public access to the records at no expense to the general public;
- (iv) Develop educational programs to educate the public and promote the presidential records;
- (v) Raise matching funds from non-federal sources in support of preserving and providing public access to the presidential records;
- (vi) Coordinate with federal programs or activities to enhance access to the presidential records;
- (vii) Coordinate with non-federal programs or activities to enhance access to the presidential records; and
- (viii) Develop a plan to preserve and provide public access to the presidential records.

#### *Section 3. Term limits and recusal for Commission members*

Subsection (a) establishes term limits of eight years for all members except for the Archivist and the Librarian of Congress who are

permanent ex officio members. These term limits apply to current and future members after the bill's enactment.

Subsection (b) requires that members of the Commission recuse themselves if the matter being voted on poses or could pose a conflict of interest for the members or an entity they represent.

*Section 4. Online access to the founding fathers' papers*

Subsection (a) directs the Archivist to enter into a cooperative agreement to provide online access to the current and future published volumes of the founding fathers' papers and other prominent historical figures.

Subsection (b) allows the Archivist, as head of the National Historical Publications and Records Commission, to use funds from the Commission to support online access to the current and future published volumes of the founding fathers' papers. The Archivist must submit an annual report to Congress, no later than December 31st of each year, on the cooperative agreement provisions used to support subsection (a).

*Section 5. Accelerated completion of the founding fathers' papers*

Subsection (a) establishes an independent advisory committee outside of the Commission to review the progress of the founding fathers' editorial projects funded by the Commission and report to the Archivist on whether these projects are achieving their performance goals, reasons why projects may not be achieving their performance goals, and recommended funding levels for these projects.

Subsection (b) directs entities receiving funding by the Commission for editorial projects to annually provide the advisory committee established under subsection (a) information regarding their total funding level from both public and private sources, activities undertaken by this funding, and performance metrics associated with the funding.

Subsection (c) describes the details of the advisory committee established under subsection (a). This subsection directs the Archivist to appoint three nationally recognized historians for no more than two consecutive 4-year terms and requires that the committee meet at least once a year and provide a report to Congress on the information analyzed under subsection (b). This report must recommend legislative or executive actions that will accelerate the completion of the founding fathers' papers.

*Section 6. Capital improvement plan for Presidential archival depositories and report*

Section 6 requires the Archivist to submit to the Committees on Appropriations in the Senate and the House of Representatives a capital improvement plan for all Presidential archival depositories. This capital improvement plan should prioritize all capital projects needed at the facilities that are estimated to cost more than \$1 million. The plan should include the current cost estimate of each capital project, the basis for the estimate, any previous estimates for the capital project, and a completion date. If the capital project has not been started, then the plan should include an expected start date. The Archivist shall update the capital improvement plan annually and submit it along with the President's budget request and

provide an explanation for any changes in the cost estimates of the capital projects.

Subsection (b) increases the percent for calculating the archival endowment used for future maintenance and repairs of the facility, land, and equipment from 40 percent to 60 percent.

Subsection (c) requires that the Archivist submit to Congressional oversight committees a report that provides alternative models for presidential archival depositories that would reduce the financial burden on the federal government, improve the preservation of Presidential records, and reduce the delay in public access to all Presidential records. This report shall be submitted no later than 270 days after the enactment of this act.

#### V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Committee believes that the bill strengthens government management practices and will result in reduced costs for regulated entities. The legislation will not result in additional regulation, increased economic impact, adverse impact on personal privacy, or additional paperwork on any individuals or businesses.

#### VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Committee 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):

### UNITED STATES CODE

\* \* \* \* \*

#### TITLE 44—PUBLIC PRINTING AND DOCUMENTS

\* \* \* \* \*

#### CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

\* \* \* \* \*

#### § 2112. Presidential archival depository

(a) \* \* \*

\* \* \* \* \*

(g) For purposes of subparagraphs (A)(ii), (B)(i)(II), and (B)(ii)(II) of paragraph (3) the percentage of **[40]** 60 percent shall apply instead of 20 percent.

\* \* \* \* \*

**§2120. Online access of founding fathers documents**

(a) *The Archivist may enter into a cooperative agreement to provide online access to the published volumes of the papers of—*

- (1) *George Washington;*
- (2) *Alexander Hamilton;*
- (3) *Thomas Jefferson;*
- (4) *Benjamin Franklin;*
- (5) *John Adams;*
- (6) *James Madison; and*
- (7) *Other prominent historical figures, as determined appropriate by the Archivist of the United States.*

(b) **TRANSFER OF FUNDS.—**

(1) **IN GENERAL.—***The Archivist of the United States, in the role as chairman of the National Historical Publications and Records Commission may enter into cooperative agreements pursuant to section 6305 of title 31, United States Code, that involve the transfer of funds from the National Historical Publications and Records Commission to State and local governments, tribal governments, other public entities, educational institutions, or private nonprofit organizations for the public purpose of carrying out section 2120 of title 44, United States Codes.*

(2) **REPORT.—***Not later than December 31st of each year, the Archivist of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the provisions, amount, and duration of each cooperative agreement entered into as authorized by paragraph (1) during the preceding fiscal year.*

\* \* \* \* \*

**CHAPTER 25—NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION**

\* \* \* \* \*

**§2501. Creation; composition; appointment and tenure; meetings**

(a) \* \* \*

(b) \* \* \*

(1) *The members appointed under subsection (a) shall be appointed for not more than 2 terms of 4 years, except that—*

*(A) a member appointed under subsection (a)(1)(D) shall be appointed for [a term] not more than 4 terms of 2 years; and*

*(B) The Archivist and the Librarian of Congress are permanent ex officio members.*

\* \* \* \* \*

(c) \* \* \*

(d) **RECUSAL.—***Members of the Commission shall recuse themselves from voting on any matter that poses, or could potentially pose, a conflict of interest, including a matter that could benefit them or an entity they represent.*

\* \* \* \* \*

**§ 2504. Duties; authorization of grants for historical publications and records programs; authorization for appropriations**

(a) \* \* \*

\* \* \* \* \*

(f) *GRANTS FOR PRESIDENTIAL CENTERS OF HISTORICAL EXCELLENCE.*—

(1) *IN GENERAL.*—*The Archivist, with the recommendation of the Commission, may make grants on a competitive basis and in accordance with this subsection, to eligible entities to promote the historical preservation of, and public access to, historical records and documents relating to any former President who does not have a Presidential archival depository currently managed and maintained by the Federal Government pursuant to section 2112 (commonly known as the “Presidential Libraries Act of 1955”).*

(2) *ELIGIBLE ENTITY.*—*For purposes of this subsection, an eligible entity is—*

(A) *an organization described under section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code; or*

(B) *a State or local government of the United States.*

(3) *USE OF FUNDS.*—*Amounts received by an eligible entity under paragraph (1) shall be used to promote the historical preservation of, and public access to, historical records or historical documents relating to any former President covered under paragraph (1).*

(4) *PROHIBITION ON USE OF FUNDS.*—*Amounts received by an eligible entity under paragraph (1) may not be used for the maintenance, operating costs, or construction of any facility to house historical records or historical documents relating to any former President covered under paragraph (1).*

(5) *APPLICATION.*—

(A) *IN GENERAL.*—*An eligible entity seeking a grant under this subsection shall submit to the Commission an application at such time, in such manner, and containing or accompanied by such information as the Commission may require, including a description of the activities for which a grant under this subsection is sought.*

(B) *APPROVAL OF APPLICATION.*—*The Commission shall not consider or recommend a grant application submitted under subparagraph (A) unless an eligible entity establishes that such entity—*

(i) *possesses, with respect to any President covered under paragraph (1), historical works and collections of historical sources that the Commission considers appropriate for preserving, publishing, or otherwise recording at the public expense;*

(ii) *has appropriate facilities and space for preservation of, and public access to, the historical works and collections of historical sources;*

(iii) *shall ensure preservation of, and public access to, such historical works and collections of historical sources at no charge to the public;*

*(iv) has educational programs that make the use of such documents part of the mission of such entity;*

*(v) has raised funds from non-Federal sources in support of the efforts of the entity to promote the historical preservation of, and public access to, such historical works and collections of historical sources in an amount equal to the amount of the grant the entity seeks under this subsection;*

*(vi) shall coordinate with any relevant Federal program or activity, including programs and activities relating to Presidential archival depositories;*

*(vii) shall coordinate with any relevant non-Federal program or activity, including programs and activities conducted by State and local governments and private educational historical entities; and*

*(viii) has a workable plan for preserving and providing public access to such historical works and collections of historical sources.*

\* \* \* \* \*  
**[(f)(1)] (g)(1)** For the purposes specified in this section, there is hereby authorized to be appropriated to the National Historical Publications and Records Commission—

\* \* \* \* \*

