

TO EXTEND THE AUTHORIZATION FOR THE NATIONAL
HISTORIC PRESERVATION FUND

—————
JULY 20, 1999.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.R. 834]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 834) to extend the authorization for the National Historic Preservation Fund, 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 out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AMENDMENT OF NATIONAL HISTORIC PRESERVATION ACT.

The National Historic Preservation Act (16 U.S.C. 470 and following; Public Law 89-665) is amended as follows:

(1) Section 101(e)(2) (16 U.S.C. 470a(e)(2)) is amended to read as follows:

“(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by an Act of Congress approved October 26, 1949 (63 Stat. 947), consistent with the purposes of its charter and this Act.”.

(2) Section 102 (16 U.S.C. 470b) is amended by redesignating subsection (e) as subsection (f) and by redesignating subsection (d), as added by section 4009(3) of Public Law 102-575, as subsection (e).

(3) Section 107 (16 U.S.C. 470g) is amended to read as follows:

“SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds. For the purposes of this Act, the exemption for the United States Capitol and its related buildings and grounds shall apply to those areas depicted within the properly shaded areas on the map titled ‘Map Showing Properties Under the Jurisdiction of the Architect of the Capitol,’ and dated November 6, 1996, which shall be on file in the office of the Secretary of the Interior.”.

(4) Section 108 (16 U.S.C. 470h) is amended by striking “1997” and inserting “2005”.

- (5) Section 110(a) (16 U.S.C. 470h–2(a)) is amended as follows:
- (A) In paragraph (1) by deleting the second sentence.
 - (B) In paragraph (2)(D) by deleting “and” at the end thereof.
 - (C) In paragraph (2)(E) by striking the period at the end thereof and inserting “; and”.
 - (D) By adding at the end of paragraph (2) the following new subparagraph:
 - (F)(i) When operationally appropriate and economically prudent, when locating Federal facilities, Federal agencies shall give first consideration to—
 - “(I) historic properties within historic districts in central business areas; if no such property is suitable; then
 - “(II) other developed or undeveloped sites within historic districts in central business areas; then
 - “(III) historic properties outside of historic districts in central business areas, if no suitable site within a historic district exists;
 - “(IV) if no suitable historic properties exist in central business areas, Federal agencies shall next consider other suitable property in central business areas;
 - “(V) if no such property is suitable, Federal agencies shall next consider the following properties outside central business areas;
 - “(VI) historic properties within historic districts; if no such property is suitable; then
 - “(VII) other developed or undeveloped sites within historic districts; then
 - “(VIII) historic properties outside of historic districts, if no suitable site within a historic district exists.
 - (ii) Any rehabilitation or construction that is undertaken affecting historic properties must be architecturally compatible with the character of the surrounding historic district or properties.
 - (iii) As used in this subparagraph:
 - “(I) The term ‘central business area’ means centralized community business areas and adjacent areas of similar character, including other specific areas which may be recommended by local officials.
 - “(II) The term ‘Federal facility’ means a building, or part thereof, or other real property or interests therein, owned or leased by the Federal Government.
 - “(III) The term ‘first consideration’ means a preference. When acquiring property, first consideration means a price or technical evaluation preference.”.
- (6) The first sentence of section 110(l) (16 U.S.C. 470h–2(l)) is amended by striking “with the Council” and inserting “pursuant to regulations issued by the Council”.
- (7) The last sentence of section 212(a) (16 U.S.C. 470t(a)) is amended by striking “2000” and inserting “2005”.

PURPOSE OF THE BILL

The purpose of H.R. 834 is to extend the authorization for the National Historic Preservation Fund.

BACKGROUND AND NEED FOR LEGISLATION

The National Historic Preservation Act of 1966 (NHPA, Public Law 89–665, codified at 16 U.S.C. 470 et seq.) established a general policy of federal support and funding for the preservation of the prehistoric and historic resources of the nation. For example, the NHPA authorizes the Secretary of the Interior to expand and maintain the National Register of Historic Places, an inventory of districts, sites, buildings, and structures significant on a national, State, or local level in American history, architecture, archeology, engineering, and culture. The Secretary has promulgated regulations to determine the eligibility of properties for listing utilizing specific criteria and procedures.

The NHPA also encourages State and local historic preservation, through State Historic Preservation Officers (SHPO) coordinating

with the Secretary. The program consists of identification and inventory of historic properties within a State; nomination of eligible properties to the National Register; and preparation and implementation of a Statewide historic preservation plan, including coordination with federal agencies and the public. Moreover, the NHPA authorizes a grant program, through the Historic Preservation Fund, to provide States monies for historic preservation projects and to individuals for the preservation of properties listed on the National Register. The grant program provides for two types of grants: one for survey and planning purposes, which essentially supports the administrative functions of the SHPO; the other supports “bricks and mortar” preservation or rehabilitation of historic properties. These funds are derived from the Land and Water Conservation Fund (LWCF). The LWCF has an authorization of appropriations of \$150 million per fiscal year.

The NHPA also established the Advisory Council on Historic Preservation, which is now an independent agency, composed of 20 members representing a broad range of federal, State, and local public and private sector experience in historic preservation matters. The Advisory Council advises the President and Congress on historic preservation, reviews the policies of federal agencies in implementing the NHPA, conducts training and educational programs, and encourages public participation in historic preservation. The most important, and sometimes most controversial, role of the Advisory Council is administering Section 106 of NHPA (16 U.S.C. 470f). Section 106 requires the head of any federal agency directly or indirectly undertaking or licensing any project to take into account the effect on any district, site, structure or object that is listed or eligible for listing on the National Register. The Advisory Council must also be given a reasonable opportunity to comment on the project.

H.R. 834 amends the NHPA by reauthorizing appropriations for the Act, along with the Advisory Council on Historic Preservation, until 2005. The bill also exempts the Architect of the Capitol from the Act and modifies the way federal agencies consider historic properties when using these properties to carry out their responsibilities.

During Full Resources Committee consideration of the bill, Commissioner Carlos Romero-Barcelo (D-PR) offered, but subsequently withdrew, an amendment that would have provided for a study by the Secretary of the Interior of the preservation and restoration needs of historic buildings and structures located on the campuses of Hispanic-serving institutions of higher learning. While the Committee is supportive of such a study, there was a general concern with the addition of any amendments unrelated to the primary purpose of the bill. The Committee notes that the Secretary currently has the general authority to undertake a study of historic Hispanic-serving institutions of higher learning and strongly encourages him to do so. The Department of the Interior has experience in doing such studies and the Committee believes a study would provide useful information in which to assess the historic preservation needs of these educational institutions.

COMMITTEE ACTION

H.R. 834 was introduced on February 24, 1999, by Congressman Joel Hefley (R-CO). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks and Public Lands. On April 15, 1999 the Subcommittee held a hearing on the bill, where the Administration testified in support, strongly endorsing the reauthorization of the Historic Preservation Fund and the Advisory Council on Historic Preservation through 2005. On April 29, 1999, the Subcommittee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the Full Committee by voice vote. On June 30, 1999, the Full Resources Committee met to consider the bill. Congressman Hefley offered an amendment which detailed the process to be used by federal agencies when locating federal facilities in accordance with the NHPA. It was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 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 included 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. *Government Reform Oversight Findings.* Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

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:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, July 16, 1999.

Hon. DON YOUNG,
 Chairman, Committee on Resources,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 834, a bill to extend the authorization for the National Historic Preservation Fund, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for federal costs), and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
 (For Dan L. Crippen, Director).

Enclosure.

H.R. 834—A bill to extend the authorization for the National Historic Preservation Fund, and for other purposes

Summary: H.R. 834 would extend through fiscal year 2005 annual deposits of \$150 million to the Historic Preservation Fund (HPF). Authority for such deposits, which consist of receipts earned from oil and gas development on the Outer Continental Shelf, expired at the end of fiscal year 1997. The National Park Service uses amounts appropriated from the HPF for grants to the National Trust for Historic Preservation, to state, local, and tribal governments, and to nonprofit and other organizations. The bill also would extend through 2005 the authorization of \$4 million a year for the Advisory Council on Historic Preservation. This sum is currently authorized to be appropriated (from the general fund of the U.S. Treasury) through fiscal year 2000.

Assuming appropriation of the amounts deposited into the HPF each year, and assuming appropriation of the authorized amounts for the Advisory Council on Historic Preservation, CBO estimates that implementing H.R. 834 would result in additional discretionary spending of \$590 million over the 2000–2004 period. (About \$330 million would be spent in subsequent years.) The legislation would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 834 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local governments would probably incur some costs to match the funds authorized by the bill, but these costs would be voluntary.

Estimated cost to the Federal Government: The \$150 million to be deposited into the HPF under H.R. 834 is the same amount that was deposited to the fund annually from 1980 through 1997, but is significantly greater than the \$30 million to \$50 million historically appropriated (from the HPF) for each year. It is also higher than the 1999 appropriation of \$72 million. In recent years, annual appropriations for the advisory council have been about \$3 million. The estimated budgetary impact of H.R. 834 is shown in the fol-

lowing table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal years, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority/Authorization Level ¹	75	4	0	0	0	0
Estimated Outlays	53	36	20	5	0	0
Proposed Changes:						
Authorization Level	0	150	154	154	154	154
Estimated Outlays	0	45	90	147	154	154
Spending Under H.R. 834:						
Budget Authority/Authorization Level	75	154	154	154	154	154
Estimated Outlays	53	81	110	152	154	154

¹The 1999 level includes \$72 million appropriated from the HTF and \$3 million appropriated for the Advisory Council on Historic Preservation. The 2000 level is the amount authorized under current law for appropriation to the council for that year.

Basis of estimate: For purposes of this estimate, CBO assumes that the entire amounts deposited into the HTF or authorized for the advisory council under H.R. 834 will be appropriated for each fiscal year. Outlay estimates are based on historical spending patterns for council activities and HTF programs. We adjusted the observed outlay rates for the purposes of projecting future HTF outlays because the higher appropriations assumed in this estimate—relative to recent or historical appropriation levels—would likely cause some delays in finding matching shares for certain grants. The table does not include any potential spending from amounts deposited to the HTF in the past that have not yet been appropriated. Such funds—about \$2.1 billion—will remain available for appropriation under existing law even in the absence of legislation.

Other provisions of H.R. 834, which would amend the National Historic Preservation Act, would have no impact on the federal budget.

Pay-as-you-go considerations: None.

Estimated Impact on State, local, and tribal governments: H.R. 834 contains no intergovernmental mandates as defined in UMRA. Under current law, historic preservation grants to states must be matched by nonfederal funds equal to at least 40 percent of total spending. Any spending by state and local governments to match the funds authorized by this bill would be voluntary.

Estimated Impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Deborah Reis. Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Paul N. Van de Water, 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 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

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

[(2) The Secretary shall administer a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927), for the purposes of carrying out the responsibilities of the National Trust.]

(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by an Act of Congress approved October 26, 1949 (63 Stat. 947), consistent with the purposes of its charter and this Act.

* * * * *
 SEC. 102. (a) * * *
 * * * * *

[(d)] (e) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

[(e)] (f) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6).

* * * * *
 [SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.]

SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds. For the purposes of this Act, the exemption for the United States Capitol and its related buildings and grounds shall apply to those areas depicted within the properly shaded areas on the map titled 'Map Showing Properties Under the Jurisdiction of the Architect of the Capitol,' and dated November 6, 1996, which shall be on file in the office of the Secretary of the Interior.

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 **1997** 2005, 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. 338), 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: *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

* * * * *

SEC. 110. (a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. **1** Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. **2** Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure—

(A) * * *

* * * * *

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; **and**

(E) that the agency's procedures for compliance with section 106—

(i) * * *

* * * * *

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c))**1**; and

(F)(i) When operationally appropriate and economically prudent, when locating Federal facilities, Federal agencies shall give first consideration to—

(I) historic properties within historic districts in central business areas; if no such property is suitable; then

(II) other developed or undeveloped sites within historic districts in central business areas; then

(III) historic properties outside of historic districts in central business areas, if no suitable site within a historic district exists;

(IV) if no suitable historic properties exist in central business areas, Federal agencies shall next consider other suitable property in central business areas;

(V) if no such property is suitable, Federal agencies shall next consider the following properties outside central business areas;

(VI) historic properties within historic districts; if no such property is suitable; then

(VII) other developed or undeveloped sites within historic districts; then

(VIII) historic properties outside of historic districts, if no suitable site within a historic district exists.

(ii) Any rehabilitation or construction that is undertaken affecting historic properties must be architecturally compatible with the character of the surrounding historic district or properties.

(iii) As used in this subparagraph:

(I) The term "central business area" means centralized community business areas and adjacent areas of similar character, including other specific areas which may be recommended by local officials.

(II) The term "Federal facility" means a building, or part thereof, or other real property or interests therein, owned or leased by the Federal Government.

(III) The term "first consideration" means a preference. When acquiring property, first consideration means a price or technical evaluation preference.

* * * * *

(1) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement [with the Council] pursuant to regulations issued by the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

* * * * *

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 [2000] 2005.

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