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NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS ACT OF 2006

APRIL 20, 2006.—Ordered to be printed

Filed, under authority of the order of the Senate of April 7, 2006

Mr. DOMENICI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1378]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1378) to amend the National Historic Preservation Act to provide appropriation authorization and improve the operations of the Advisory Council on Historic Preservation, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 1, line 7, strike “2005” and insert “2006”.
2. On page 2, line 3, insert “(16 U.S.C. 470 et seq.)” after “Act”.
3. On page 2, line 6, strike “2011” and insert “2015”.
4. On page 2, line 17, strike “eleven” and insert “12”.
5. On page 3, strike lines 17 through 23.
6. On page 3, line 24, strike “(g)” and insert “(f)”.
7. On page 4, line 6, strike “(h)” and insert “(g)”.

PURPOSE OF THE MEASURE

The purpose of S. 1378, as ordered reported, is to amend the National Historic Preservation Act to reauthorize the Historic Preservation Fund and to reauthorize and improve the operations of the Advisory Council on Historic Preservation.

BACKGROUND AND NEED

The National Historic Preservation Act of 1966 and later amendments constitute our Nation's primary historic preservation legislative authority. To help preserve historic resources, the Act authorized the Historic Preservation Fund and the Advisory Council on Historic Preservation.

The Historic Preservation Fund provides support to the State Historic Preservation Offices and provides matching grants to States to catalog and preserve historic properties and resources. The fund has always had strong support and has been reauthorized three times since its creation. S. 1378 would extend authorization of the Historic Preservation Fund, which expired in 2005, to 2015.

The Advisory Council on Historic Preservation is an independent Federal agency that works with the Secretary of the Interior to administer the National Historic Preservation Act. The Council helps to administer the Historic Preservation Fund and the National Register of Historic Places. One of the Council's most visible duties is to oversee section 106 of the National Historic Preservation Act. Section 106 requires Federal agencies to consider the impacts of their actions on historic resources. The Council is comprised of 20 members, including heads of Federal agencies, elected State and local officials, private citizens, and experts in the field of historic preservation.

S. 1378 would change the membership, procedures, and authorities of the Advisory Council on Historic Preservation. The bill would add the heads of three Federal agencies to the Council, bringing total membership to 23. To reflect this change in membership, the bill would raise the number of members required for a quorum from nine to twelve. Finally, the bill would allow the State Governor sitting on the Council to appoint a designee with full voting privileges, a right currently given to Cabinet Secretaries serving on the Council.

S. 1378 would give the Council several new authorities. The bill would give the Council the authority to seek administrative services from any Federal agency or private entity, amending existing law, which requires the Council to seek such services solely from the Department of the Interior.

S. 1378 would also allow the Council to review any Federal grant or assistance programs affecting historic resources and subject to provisions of the National Historic Preservation Act. The Council would have the authority to enter into a cooperative agreement with any agency that administers such a program and participate in the development of grant criteria and the selection of grant recipients.

LEGISLATIVE HISTORY

S. 1378 was introduced by Senators Talent and Wyden on July 11, 2005. Senators Allen and Chaffee are also cosponsors on the bill. The Subcommittee on National Parks held a hearing on S. 1378 on September 22, 2005. At the business meeting on March 8, 2006, the Committee on Energy and Natural Resources ordered S. 1378 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on March 8, 2006, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 1378, if amended as described herein.

COMMITTEE AMENDMENT

During consideration of S. 1288, the Committee adopted an amendment to S. 1378. In addition to technical corrections, the amendment would extend authorization of the Historic Preservation Fund to 2015 instead of 2011. The amendment would also increase the number of Council members necessary for a quorum to 12. Finally, the amendment would delete language in the bill that would have given the Council the authority to solicit donations.

SECTION-BY-SECTION ANALYSIS

Section 1(a) entitles the bill, “National Historic Preservation Act Amendments Act of 2006.”

Subsection (b) states that any reference to “the Act” in the bill is a reference to the National Historic Preservation Act.

Subsection (c) amends section 108 of the Act to extend the authorization of the Historic Preservation Fund from 2005 to 2015.

Subsection (d) revises the membership and procedural criteria for the Advisory Council on Historic Preservation. This subsection requires that three additional heads of agencies be added to the Council. The quorum is raised from nine to twelve members. The State Governor who sits on the Council is allowed to designate, in their absence, a delegate with full voting privileges.

Subsection (e) authorizes the Council to engage any Federal agency or private entity to provide financial and administrative services.

Subsection (f) eliminates the \$4,000,000 ceiling on annual appropriations for the Advisory Council on Historic Preservation and makes the appropriations authorization permanent.

Subsection (g) adds section 216 to the Act. This new section would grant the Council the authority to review any Federal grant or assistance program that is subject to provisions of the Act. It would also grant the Council the authority to enter into cooperative agreements with agencies administering such grants or assistance programs for the purpose of furthering the goals of the Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

S. 1378—National Historic Preservation Act Amendments Act of 2006

Summary: S. 1378 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 whatever amounts are necessary for each year to the Advisory Council on Historic Preservation (ACHP). Authority for this funding—at a specified 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 S. 1378 would cost about \$500 million over the 2007–2011 period. Enacting this legislation would not affect direct spending or revenues.

S. 1378 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1378 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 ^a	77	0	0	0	0	0
Estimated Outlays	79	52	26	14	7	3
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 S. 1378 for Historic Preservation:						
Estimated Authorization Level	77	155	155	155	156	156
Estimated Outlays	79	94	101	114	133	159

^aThe 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 S. 1378 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 are 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 S. 1378, would amend the National Historic Preservation Act, would have no significant impact on the federal budget.

Intergovernmental and private-sector impact: S. 1378 contains no intergovernmental or private-sector mandates as defined in UMR and would impose no costs on state, local, or tribal governments.

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: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1378. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1378, as ordered reported.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 1378 were included in testimony received by the Committee at a hearing on the bill on September 22, 2005. This testimony follows:

STATEMENT OF JANET SNYDER MATTHEWS, ASSOCIATE DIRECTOR FOR CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman, thank you for the opportunity to appear before you today to discuss the views of the Department of the Interior on S. 1378, a bill to amend the National Historic Preservation Act to provide appropriation authorization and improve the operations of the Advisory Council on Historic Preservation.

The Department supports S. 1378 with an amendment to extend the authorization of the Historic Preservation Fund for ten years until 2015.

S. 1378 would extend the authorization of the Historic Preservation Fund for an additional six years. The bill would also make a number of changes to the authority for the Advisory Council on Historic Preservation (ACHP) by increasing the membership of the ACHP, authorizing the governor appointed to the ACHP to have a designee serve in his place, revising the number of members that constitute a quorum, revising various financial and administrative authorities of the ACHP, authorizing the ACHP to solicit donations, and authorizing the ACHP to enter into cooperative agreements with other federal agencies to improve the effectiveness of the administration of grant or

assistance programs to help meet the purposes of the National Historic Preservation Act.

In addition, the bill also changes the authorization level for the ACHP from \$4 million per fiscal year to such sums as may be necessary. It also makes the ACHP permanent instead of reauthorizing the ACHP for the standard five-year period.

The Historic Preservation Fund grew out of the recommendations of the 1966 Special Committee on Historic Preservation of the U.S. Conference of Mayors. The Special Committee recommended the establishment of a grant program to State and local governments to carry out inventory and survey programs in coordination with the National Park Service. In 1970, a historic preservation grant program was established and administered by the National Park Service in partnership with State governments on a cost-sharing basis. In 1976, the Historic Preservation Fund was created with revenues from Outer Continental Shelf oil and gas production.

Over the years, the Historic Preservation Fund has provided essential support to the State Historic Preservation Offices that operate the national program at the State level. Through the work of our partners in the States, we can cite significant achievements over the past year:

- The National Park Service approved 1,537 new listings, which include 46,619 properties, in the National Register of Historic Places. This brings the total number of National Register properties to 79,617 listings that include over 1.4 million properties.
- Jointly administered by the National Park Service and the Internal Revenue Service, and in partnership with the State Historic Preservation Officers, the Historic Preservation Tax Incentives resulted in the rehabilitation of over 1,200 historic properties listed in the National Register, creating over 15,000 new housing units and generating \$3.8 billion in leveraged private investment—all during 2004. Since its inception in 1976, this tax incentives program has generated over \$33 billion in historic preservation activity.
- In FY 2005, the Save America's Treasures (SAT) grant program awarded a total of 145 matching grants in 43 states and the District of Columbia totaling \$29.5 million. 337 applications were received that totaled \$134 million. The SAT program is administered by the National Park Service, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services.

Over the years, the Historic Preservation Fund authority has been a highly flexible authority for developing targeted grant programs that address the broad purposes of the National Historic Preservation Act. They include the grants to Indian Tribes to support Tribal Historic Preservation Offices and project grants to preserve America's native cultures; grants to Historically Black Colleges and Universities to preserve significant campus buildings; the Save

America's Treasures Grant Program for threatened nationally significant properties; and more recently, the Preserve America grant program for heritage tourism, including education, and economic revitalization. These grant programs not only preserve historic resources, they attract new economic investment.

Reauthorization of the ACHP also is an important objective as we work with this critical governmental agency to help protect historic resources while facilitating government-sponsored development. We are working closely with the ACHP on a number of important initiatives, including the Preserve America program and compliance tools.

We understand that the ACHP will discuss the specific provisions of S. 1378 that affect the ACHP. We believe these changes will increase the ACHP's effectiveness and strengthen the important role the ACHP has played in preserving the historic resources of our country.

As recommended at the beginning of this testimony, the Department believes that the authorization of the Historic Preservation Fund should be extended for ten years instead of six. The fund is now almost 40 years old. It has been highly successful in meeting the objectives established by Congress in preserving the historic resources of this country. We believe this success calls for a longer authorization than previously has been provided, while allowing Congress the traditional oversight role it has always maintained. The proposed amendment is attached to the testimony.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you or members of the committee may have.

Proposed amendment to S. 1378, National Historic Preservation Act Amendments Act of 2005. On page 2, line 6 strike "2011" and insert "2015".

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 bill S. 1378, as ordered reported, as 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):

A. NATIONAL HISTORIC PRESERVATION ACT

(Public Law 89-665; Approved October 15, 1966; 16 U.S.C. 470 through 470x-6)

AN ACT To establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

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: Provided, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

* * * * *

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) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(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;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;

(10) three at-large members from the general public, appointed by the President; and

(11) one member of an Indian Tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

(b) Each member of the Council specified in paragraphs (2) through (8) (other than **[(5) and]** (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]** 12 members of the Council shall constitute a quorum.

* * * * *

SEC. 205. (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

* * * * *

[(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 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 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 (5 U.S.C. 5514(b)) 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 (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council. The Council shall not be required to prescribe such regulations.

* * * * *

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.*

* * * * *

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 in-*

clude 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 grant or assistance program's statutory authorization and purpose.

(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 any Federal agency that administers such program to further the consistency of the program with the purposes and policies of the Act and to improve its effectiveness in carrying out those purposes and policies; and

(3) make recommendations to the President and 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.

