

Hon. Sara C. Bronin  
Chair

Jordan E. Tannenbaum  
Vice Chairman

Reid J. Nelson  
Executive Director



August 28, 2023

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate  
Russell Senate Office Building, SR-228  
Washington, DC 20510

The Honorable Roger F. Wicker  
Ranking Member  
Committee on Armed Services  
United States Senate  
Russell Senate Office Building, SR-228  
Washington, DC 20510

The Honorable Mike Rogers  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Rayburn House Office Building, 2216  
Washington, DC 20515

The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
U.S. House of Representatives  
Rayburn House Office Building, 2216  
Washington, DC 20515

Dear Chairman Reed, Ranking Member Wicker, Chairman Rogers, and Ranking Member Smith:

The Advisory Council on Historic Preservation (ACHP) would like to take this opportunity to advise the Congress on the National Defense Authorization Act of FY 2024 (H.R. 2670), specifically upon inclusion by the Senate of Section 1090G of Subtitle G in its amendment to the bill. Section 1090G would exempt various federally funded projects for the development and manufacturing of semiconductors from review under Section 106 of the National Historic Preservation Act (54 U.S.C. §306108) (Section 106). The ACHP is the independent federal agency that is charged with advising the President and Congress on historic preservation matters and oversees the Section 106 review process. In that capacity, the ACHP urges removal of references to exemption from Section 106, since administrative options already are available to permit streamlining of Section 106 review.

Section 106 requires federal agencies to consider the effects of projects, carried out by them or subject to their assistance or approval, on historic properties and to provide the ACHP an opportunity to comment on these projects prior to a final decision on them. Because of Section 106, federal agencies must assume responsibility for the consequences of such projects on historic properties and be publicly accountable for their decisions. In the almost six decades since the passage of the National Historic Preservation Act, Congress has usually avoided crafting legislative exemptions to Section 106, since they can cause confusion in the administration of the government-wide Section 106 process and are typically unnecessary. Exemptions to Section 106 review are often problematic, since they may result in project effects on historic properties not being reviewed and considered adequately, if at all, thus depriving the public of a sufficient opportunity to influence federal decision making on such impacts.

The ACHP appreciates the importance of boosting American semiconductor research, development, and production as called for by last year's CHIPS and Science Act and stands ready to work with the Department of Commerce to use regulatory avenues already available to make that a reality. The

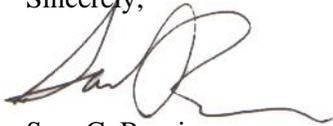
ADVISORY COUNCIL ON HISTORIC PRESERVATION

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regulations that implement Section 106 (36 C.F.R. Part 800) provide a variety of tools—known as program alternatives—to adapt and streamline the review process to the needs of agency programs. Because of this, the ACHP has consistently advised against the use of legislative exemptions, and Congress typically has agreed with such advice. Having these tools available simply negates the need for legislative exemptions from Section 106 review.

In lieu of a legislative exemption, the ACHP would be happy to explore options with the Department of Commerce regarding how use of program alternatives could streamline Section 106 review for semiconductor development projects addressed by Section 1090G of the Senate amendment. Please feel free to contact me to discuss this as consideration of the NDAA proceeds. In addition, your staff may wish to follow up with Executive Director Reid Nelson at [rnelson@achp.gov](mailto:rnelson@achp.gov). Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara C. Bronin', with a long horizontal flourish extending to the right.

Sara C. Bronin  
Chair