

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



December 13, 2023

The Honorable Joe Manchin, Chair
Energy & Natural Resources Committee
U.S. Senate
Dirksen Senate Office Building, SD-304
Washington, DC 20510

The Honorable John A. Barrasso, Ranking Member
Energy & Natural Resources Committee
U.S. Senate
Dirksen Senate Office Building, SD-304
Washington, DC 20510

Dear Chair Manchin and Ranking Member Barrasso:

As consideration of the CLOSE THE GAP Act (S. 2855) proceeds, the Advisory Council on Historic Preservation (ACHP) would like to provide comments on Section 6 of the bill, which would exempt granting communications use authorizations on previously disturbed federal land 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 with overseeing the Section 106 review process.

In that capacity, the ACHP urges removal of the Section 6 provision that would exempt projects from Section 106 review, since the ACHP has already streamlined review of certain broadband projects on federal land and is in the process of streamlining further on an accelerated timetable.

The ACHP appreciates the importance of improving broadband Internet access, particularly in rural areas, and is already working with relevant federal agencies and private industry to use our administrative powers to facilitate congressional investment in Internet access. 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. 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 through consultation with key stakeholders and consideration of the views of the public. 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 exemptions can cause confusion, may result in damage to significant and beloved historic properties, and deprive the public of the opportunity to influence federal decision making on such impacts.

Indeed, legislative exemptions to Section 106 are often unnecessary. That is because the ACHP's regulations implementing 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. The ACHP is already using these tools and has the largest number of program alternatives under development in its history. Relevant to the CLOSE THE GAP Act, the ACHP issued a Program Comment in 2017 to accelerate Section 106 review of communications projects, particularly broadband projects, on federal lands and property. At the request of the National Telecommunications and Information Administration, the ACHP currently is consulting with stakeholders on the idea of expanding the scope of this Program

ADVISORY COUNCIL ON HISTORIC PRESERVATION

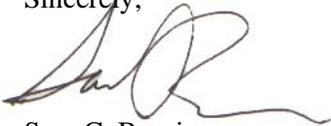
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Comment to also apply to projects off of federal lands.

Because of its successful track record in using its existing administrative authorities to fast-track critical agency reviews, the ACHP has consistently advised against the use of legislative exemptions, and Congress typically has agreed with such advice. The powerful tool of program alternatives simply negates the need for legislative exemptions from Section 106 review. Hence the ACHP urges removal of the provision of Section 6 of S. 2855 that would exempt projects from Section 106 review.

Please feel free to contact me to discuss this matter as consideration of the bill proceeds. In addition, your staff may wish to follow up with Executive Director Reid Nelson at rmelson@achp.gov. Thank you.

Sincerely,

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

Sara C. Bronin
Chair