

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



May 31, 2024

The Honorable Joe Manchin, Chairman
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 Chairman Manchin and Ranking Member Barrasso:

The Advisory Council on Historic Preservation (ACHP) would like to take this opportunity to provide comments on the Federal Land Freedom Act (S. 20/H.R. 98), which would empower states with relevant leasing, permitting, and regulatory programs to control the development and production of all forms of energy on certain federal lands. Resulting projects would be exempt from certain federal environmental reviews, including 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 Section 106 in S. 20/H.R. 98, since the ACHP has already streamlined review of many energy projects and is already working with federal agencies to explore further streamlining.

The ACHP appreciates the importance of assisting in meeting America's energy needs and is collaborating with federal agencies to use our administrative powers to facilitate congressional investment in energy development. 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. As a requirement of Section 106, federal agencies must assume responsibility for the consequences of such projects on historic properties and be publicly accountable for their decisions. The ACHP's 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.

The ACHP already has such a nationwide program alternative in place to assist the Bureau of Land Management in efficiently and effectively meeting its Section 106 responsibilities for its management actions, including management of energy resources on public 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 provisions of S. 20/H.R. 98 that would exempt projects from Section 106 review.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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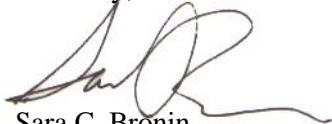
In lieu of a legislative exemption, the ACHP can explore options with relevant federal agencies regarding how use of program alternatives could further streamline Section 106 review for energy development projects. Likewise, the ACHP can assist agencies in integrating review of projects under Section 106 and the National Environmental Policy Act (as recommended in joint guidance published by the ACHP and the Council on Environmental Quality), thus further expediting environmental review of the projects addressed by S. 20/H.R. 98.

The Inflation Reduction Act provided significant multi-year funding for a number of federal agencies—including the Department of the Interior (DOI)—to improve environmental review of infrastructure projects. The fruits of that investment should facilitate the permitting process for the energy development projects addressed by S. 20/H.R. 98, further suggesting that exemption of such projects from Section 106 review is not needed. More efficiencies could be achieved through additional funding for State Historic Preservation Officers (SHPOs) and federally recognized Indian Tribes, key partners whom agencies must consult in making decisions and reaching conclusions during Section 106 review.

I wish to underscore that the efficiency of federal permitting processes depends not just on federal agencies, but on the capacity of SHPOs and Indian Tribes to provide meaningful input and engage in meaningful consultation. As we have previously communicated to Congress, Congress has a critical role to play through the level of funding provided to SHPOs and Tribes through the Historic Preservation Fund in the FY 2025 budget. The ACHP has also encouraged the Permitting Council, DOI, and other federal agencies to consider ways in which they might help enhance SHPO and Tribal capacity.

Please feel free to contact me to discuss this matter; I would be happy to have the opportunity to meet with you or your staff. In addition, your staff may wish to follow up with Executive Director Reid Nelson at rnelson@achp.gov. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara C. Bronin', with a stylized flourish at the end.

Sara C. Bronin
Chair