

This afternoon the House Resources Committee approved a bill (H.R. 5861) to reauthorize the Historic Preservation Fund. Included in the measure is language designed to streamline the process for assessing the effects of federal undertakings on National Register-eligible historic properties under the National Historic Preservation Act (NHPA). The Committee agreed to the measure by unanimous consent.

The past several years have seen increasing concern in certain quarters over the NHPA and its effect on federal or federally-supported development undertakings. Specifically, some in Congress believe that the NHPA is being used to stymie the progress of undertakings by requiring overly-broad evaluations and considerations of the possible effects of projects on historic sites. Last year a hearing was held on a draft bill that would have made substantial changes to Section 106 of the NHPA. That bill was never introduced because of fierce opposition by numerous historic preservation groups, including SAA.

The provisions in H.R. 5861 that amend the NHPA are the result of extensive talks between legislators, agency personnel and the historic preservation community. The language in question amends Section 101 of the NHPA to prevent State Historic Preservation Officers (SHPO) from requiring project applicants to identify historic properties outside the undertaking's area of potential effect as determined by the project's lead federal agency. It also includes a provision clarifying that a lead federal agency may assume that a SHPO has no objection to a finding of "no historic properties affected" or "no adverse effect" if the SHPO does not respond to such a finding within 30 days. Finally, H.R. 5861 amends the NHPA to dissuade local jurisdictions from altering regulations (such as zoning) on a property based on findings of National Register eligibility unless the owner of the property receives "full due process protection," including hearings.

The next step for H.R. 5861 is consideration by the full House. The Senate version of the legislation, S. 1378, does not contain any of the above provisions. That bill is pending before the full Senate.

Both bills reauthorize the HPF through 2015, expand the membership of the Advisory Council on Historic Preservation (ACHP), and provide permanent funding for the ACHP.