

FG 71

February 4, 1977

Mr. Clement M. ^XSilvestro
Chairman, Advisory Council
On Historic Preservation
1522 K Street N.W.
Washington, D.C. 20005

Dear Mr. Silvestro:

The Vice President has asked me to respond
to your recent letter.

I appreciate your sending our office a copy
of the proposed amendments to the National Historic
Preservation Act. Please keep us informed of the
status your recommendations and of any other matters
of concern for historic preservation.

With best wishes,

Sincerely,

Gail Harrison
Special Assistant for
Issues Development

Advisory Council on
Historic Preservation
1522 K Street N.W.
Washington, D.C. 20005

January 26, 1977

Honorable Walter F. Mondale
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

On September 28, 1976, the President approved P.L. 94-422 amending the National Historic Preservation Act which, among other provisions, established the Advisory Council on Historic Preservation as an independent agency of the government. During and subsequent to the Council's transition to independent agency status, several matters arose that evidence the need for minor technical amendments to the legislative provisions concerning the Council. A proposed bill to effect the necessary changes is attached.

Initially, section 201(a) provides that the Council shall be an independent agency of the United States and section 209 provides that the Council shall operate in accordance with the provisions of the Administrative Procedures Act rather than the Federal Advisory Committee Act. These provisions were enacted in recognition of the Council's programmatic responsibilities, such as protecting historic properties under the National Historic Preservation Act, in addition to its "advisory" responsibilities to the President and the Congress. In order to clarify the status of the Council and to be consistent with P.L. 94-422, the term "Advisory" would be deleted from the Council's title.

With respect to the Council's membership, initially there was a deliberate balance established between Federal and non-Federal members. During conference committee consideration of P.L. 94-422 the Architect of the Capitol was added as a member, however, a corresponding non-Federal member was not included. Our experience is that having an equal balance between Federal and non-Federal representation is of utmost importance to the performance of the Council and in assuring the non-Federal members that they have an equal voice with Federal members. The non-Federal members have continually been concerned that their role not be merely "window dressing" and that they are expected to do more than "rubber stamp" Federal agency positions. In order to maintain the historic balance of the Council's membership an additional non-Federal membership to be filled by Presidential appointment would be established. This would bring the Council's membership up to 30, equally divided between Federal and non-Federal members. Moreover, because the individual non-Federal members are appointed for five-year terms, and there would be 13 such members, a related technical change would delete the requirement that not more than two non-Federal memberships expire in any year.

Section 205(b) of P.L. 94-422 provides for the appointment of a General Counsel and section 205(c) provides for the appointment of no more than five employees at rates not to exceed those for Grade 17. During the transition and establishment of the Council as an independent agency, it has become clear that due to certain technical aspects of the language of these sections the intent of Congress--that the Council have only five high level positions including the General Counsel's position--cannot be met. Rather than request an additional high level position within the Civil Service Commission's quota, sections 205(b) and (c) would be amended to achieve the original intent of the Congress regarding the General Counsel's position and its relationship to the Council's other high level positions.

In republishing subsection 205(g) a printing error changes "member" to "members" thus requiring approval by the full membership of agreements between the Chairman and any ex officio member on the provision of services, personnel or funds to the Council. This provision was included in the Council's original authorizing legislation in such manner as to permit the Chairman and such member to reach agreement without full Council review. Subsection 205(g) would be amended by deleting the plural, thus conforming to the language of this section in prior law.

During the time that the Council was organizationally part of the National Park Service, and funded through their appropriations, the Council's monetary donations were accepted on behalf of the Council by the Department of the Interior under the authority of 16 U.S.C. 6. While section 205(g) provides the Council with donations authority, it does not specifically provide for private monetary donations. The Office of Management and Budget, therefore, was precluded from establishing a donation's account or transferring donated funds held on behalf of the Council by the Park Service. Because the Council has received monetary donations in the past, especially from its non-Federal members, this subsection would be amended to authorize the Council to accept such donations.

Finally, subsequent to the enactment of P.L. 94-422 two other laws (P.L. 94-429 and P.L. 94-451) were enacted which mandated new program and operating responsibilities for the Council. Specifically, P.L. 94-429 requires the Council to respond to requests from the Secretary of the Interior when natural and historic landmarks are threatened by surface mining activities. In order to provide these recommendations the Council must inspect the landmark and assess the potential or actual threat. Taking into account, among other factors, the nature of the threat, economic and legal considerations, the Council must develop recommendations for Federal action to protect the specific landmark. In addition, the Council is required to submit a report to the Congress in September 1978 recommending measures to protect all natural and historic landmarks.

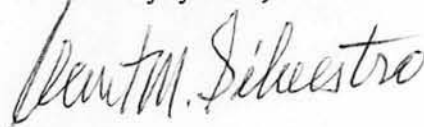
P.L. 94-541, the Public Buildings Cooperative Use Act, requires the Council to identify historic buildings suitable, whether or not in need of repair, to meet the General Services Administration's (GSA) identified public building's space needs. The Council and GSA have begun work on the establishment of the necessary guidelines and procedures to coordinate this program. In each case, while existing inventories of historic buildings will be checked (e.g., the National Register of Historic Places and State inventories), it is also necessary to conduct on-site identification and suitability evaluations in order to provide GSA with us usable information.

These responsibilities were not considered by either the Council or the Congress in establishing the Council's specific dollar budget authority as provided in section 212(a) which only provides funding for activities under the National Historic Preservation Act of 1966, as amended. As we enter the fiscal year 1978 budget process, the Council has new statutory responsibilities to carry out while its budget authority is insufficient to enable the Council to request properly the funding necessary to discharge its obligations. In recognition of the Council's status as an independent agency, of the need for different budget authority to fulfill new responsibilities mandated by statutes, and of the potential for future Congressional mandates, section 212(a) would be amended to provide the Council with a general budget authorization rather than a specific dollar authorization. This amendment would permit the Council, the Office of Management and Budget, and the Congress to review the Council's budget needs in any fiscal year with respect to the Council's responsibilities.

In this regard, the Council believes that the Public Buildings Cooperative Use Act is one of the most significant pieces of legislation to be enacted affecting the national historic preservation program. Unless the Council's budget authority is revised immediately, it is our understanding that the Congress will be unable to consider the Council's budget request for the funds to implement this Act in fiscal year 1978. The Council, therefore, considers it of the highest priority to have the recommended budget amendment enacted in time to permit inclusion of the Council's budget requests to carry out its new duties in the Congressional appropriations process for fiscal year 1978.

In accordance with section 210, the Council is simultaneously transmitting a copy of these legislative recommendations to the President.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Clement M. Silvestro", written in a cursive style.

Clement M. Silvestro
Chairman

Enclosure

A Bill to amend the Act of October 15, 1966, (80 Stat 915) as amended, establishing 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, that the Act of October 15, 1966 (80 Stat 915), as amended (16 U.S.C. 470), is further amended in the following respects:

(a) Section 201(a) is amended by-

- (1) deleting the word "Advisory.";
- (2) striking the number "twelve" in paragraph (18) and inserting in lieu thereof, "thirteen."

(b) Section 201(c) is amended by deleting the term "two" in the last clause and inserting in lieu thereof the term "five."

(c) Section 205(b) is amended by inserting after the phrase "who shall be appointed by the Executive Director" in the first sentence, the phrase "to an excepted position at a salary not to exceed that now or hereafter prescribed for the highest rate of Grade 17 of the General Schedule under section 5332 of Title 5, U.S.C. and without regard to the provisions of the Classification Act of 1949, as amended."

(d) Section 205(c) is amended by deleting the number "five" in the second clause and inserting in lieu thereof the number "four."

(e) Section 205(g) is amended by-

- (1) deleting the letter "s" on the term "members" after the phrase "as may be agreed upon by the Chairman and the" in the first sentence;
- (2) inserting after the word "facilities," in the second sentence the work "monies,"; and
- (3) adding the following new sentence "The Executive Director in his administration of the Council is authorized, in his discretion, to accept on behalf of the Council donations of money, property or personal services."

- (f) Section 212(a) is amended by deleting the entire second sentence and inserting in lieu thereof the sentence "There are authorized to be appropriated such sums as may be necessary to carry out such activities of the Council as may be authorized by the Congress."





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