October 20, 2026

The Honorable Mike Lee
Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
Chairman
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sheldon Whitehouse
Ranking Member
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the undersigned national historic preservation organizations, we write to express profound objections to numerous provisions impacting historic preservation in the Bipartisan American Affordability and Jobs Act of 2026 (S. 5653). Our organizations represent Tribal Historic Preservation Officers; State Historic Preservation Officers; cultural resource professionals; and national, state, and local preservation organizations, as well as millions of Americans who care for the nation's historic places.

We share the goal of efficient and more predictable federal review processes as part of federal permitting. However, achieving that goal requires substantial revisions or removal of the bill's historic preservation provisions to ensure it addresses existing challenges without undermining historic preservation or creating new inefficiencies, uncertainty, and delays. As drafted, this bill does far more than streamline Section 106 of the National Historic Preservation Act (NHPA). It narrows what historic resources the law protects; weakens the voices of Tribal Nations, states, and communities; and inaccurately shifts accountability for project delays away from federal agencies that control most of the review process.

We Support Real Efficiency

Section 106 works because it brings federal agencies together with Tribal Nations, states, local governments, and communities before decisions are made. That consultation identifies historic and cultural resources; clarifies impacts; and produces practical ways to avoid, minimize, or mitigate harm. Consultation is often how projects avoid costly and protracted surprises later.

The overwhelming majority of Section 106 reviews are completed quickly and without controversy. Thanks to early Section 106 consultation, out of 120,000 federal undertakings reviewed annually, only about two percent result in adverse effects; and the average Section 106 review is completed within just 16 days.

We agree that clearer timelines, early coordination between stakeholders, a designated lead agency for multi-agency projects, and wider use of programmatic agreements can all make reviews more predictable. However, the legislation fails to acknowledge or address the inefficiencies and delays at federal agencies, including agency indecision, lengthy timelines, staffing shortages, and unclear direction on how to navigate the process. The bill largely ignores these problems and instead narrows the scope of review, imposes rigid deadlines on stakeholders, and penalizes the state and Tribal partners who carry out much of the work. In doing so, the historic preservation provisions in this bill will likely have the opposite effect of what is intended: more delay, more confusion, and less efficiency.

Our Principal Concerns

The bill removes many federal projects from review. The bill would redefine an "undertaking" to require a federal permit or approval plus substantial federal control and responsibility. Projects funded by federal grants or loans would mostly fall outside the Section 106 process unless the funding is for historic preservation itself. In effect, federal dollars could pay for the destruction of historic places with no public consultation. The bill also creates broad statutory exclusions, including transmission and pipeline work in existing corridors and reissued nationwide permits, rather than relying on negotiated programmatic approaches that have proven more durable.

It narrows what counts as harm. A new statutory definition of "adverse effect" would exclude most visual, atmospheric, and audible effects, temporary effects, and effects on parts of a property beyond its character-defining features. Effects tied to related past or future projects would also be excluded, and the area of potential effects would be capped in statute. For battlefields, sacred landscapes, historic districts, and multi-phase infrastructure, these limits would leave real impacts to historic resources unexamined.

It lets agencies opt out of preservation. The bill gives a federal official sole discretion to decide that other considerations outweigh historic preservation, decline prudent and feasible mitigation, and declare Section 106 satisfied. This turns consultation from a search for solutions into a procedural box to check. Mitigation outside the area of potential effects could be considered only at the applicant's written request.

It replaces consultation with rigid clocks. Consulting parties would generally have 30 days to provide information or object, after which the agency may proceed without them. Where a SHPO, THPO, Tribe, or local government misses a deadline, the agency could reach agreement with the Advisory Council on Historic Preservation (ACHP) instead, losing local knowledge the ACHP does not have. Properties identified or listed on the National Register after review begins would not reopen the process.

It punishes partners for federal delay. SHPOs and THPOs would face evaluations every two years, audits, suspension of Historic Preservation Fund grants, and possible federal takeover of their functions if they miss timelines. Many of those timelines depend on federal reports and decisions, yet the bill sets no comparable staffing standard for federal agencies and fails to address federal agency delays that all but ensure stakeholders will not be able to comply with the new timelines. Its requirement that SHPOs, THPOs, and senior federal officials spend at least half of each workweek on any overdue review is unworkable and unsustainable.

It sharply limits judicial review. Claims would have to be filed within 150 days, courts would owe agencies substantial deference, and the usual remedy would be remand without vacatur or injunction. Projects could continue while violations are corrected, so harm may be done before the law is followed. Meanwhile, applicants would gain a right to sue over missed deadlines and obtain injunctive relief.

It undermines Tribal sovereignty and sacred places. The bill's effect on Tribal Nations is especially troubling. It would undermine the government-to-government relationship and the federal trust and treaty responsibilities that Section 106 consultation helps fulfill.

- **Unrealistic deadlines.** Information about sacred sites, cultural landscapes, and traditional practices often requires consultation with elders and cultural leaders. A 30-day window rarely allows for that.

- **A narrow definition of cultural places.** Requiring a property of traditional religious or cultural importance to be an "identifiable geographic location or feature" may exclude places whose significance lies in an interconnected landscape.

- **Federal control of Tribal programs.** For the first time, the Secretary of the Interior could assume a THPO's functions and suspend its funding. It would be a fundamental violation of the government-to-government relationship for a federal agency to seize control of a Tribal Nation's historic preservation office.

A Pathway Forward for Permitting Reform

The expedited legislative process for the bill eliminates the opportunity for a committee process that would allow Members of Congress to address problematic historic preservation provisions and the significant risks to preserving our nation's historic and cultural resources. To avoid a rushed process and provide ample time for considering the magnitude of these proposed changes, Congress has an opportunity to revisit this issue in the next session and ensure the legislation avoids negatively impacting historic preservation and the Section 106 process.

With additional time to consider permitting reform legislation, we would welcome the opportunity to work with Congress to ensure it includes critical components for efficiencies, maintains core principles of historic preservation, and excludes harmful provisions. In particular, we believe such a bill should:

1. **Keep consultation meaningful.** Set clear timelines that can flex with project complexity, and require agencies to seek, consider, and respond to input from Tribal Nations, SHPOs, local governments, and the public.

2. **Keep the scope of Section 106 intact.** Do not redefine "undertaking" or "adverse effect" in ways that exclude federally funded projects or visual, atmospheric, audible, and cumulative effects. Address recurring activities through negotiated programmatic agreements rather than categorical statutory exclusions.

3. **Remove the unilateral opt-out.** Require transparency and accountability whenever an agency finds that other considerations outweigh historic preservation.

4. **Respect Tribal sovereignty.** Drop federal assumption of THPO functions and federal THPO qualification standards, allow time for culturally appropriate consultation, and revisit the definition of properties of traditional religious and cultural importance with Tribal Nations.

5. **Match accountability with capacity.** Replace penalties on SHPOs and THPOs with requirements that federal agencies keep qualified preservation staff, and fund SHPOs, THPOs, agencies, and the ACHP to meet faster timelines, including technology investment for SHPOs as well as THPOs.

6. **Preserve meaningful judicial review.** Keep an effective path for courts to ensure agencies follow the law before irreversible harm occurs.

Congress can make permitting more efficient and predictable without making historic places invisible. As we celebrate the 60th anniversary of the National Historic Preservation Act and its positive impact, we urge you to work with the preservation community, Tribal Nations, states, and local governments to achieve permitting reform legislation that avoids undermining our nation's historic and cultural resources, and we stand ready to assist.

Sincerely,

American Cultural Resources Association

Asian & Pacific Islander Americans in Historic Preservation

Latinos in Heritage Conservation

National Alliance of Preservation Commissions

National Association of Tribal Historic Preservation Officers

National Conference of State Historic Preservation Officers

National Preservation Partners Network

National Trust for Historic Preservation

Preservation Action

Society for American Archaeology

Society for Industrial Archeology

The Archaeological Conservancy

The Association for Preservation Technology International