



*[16 U.S.C. 470h-3(b) — Use of proceeds]*

- (b) The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

*[16 U.S.C. 470h-3(c) — Management contracts]*

- (c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

### **Section 112**

*[16 U.S.C. 470h-4(a) — Each Federal agency is to protect historic resources through professionalism of employees and contractors]*

- (a) Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following —
- (1) (A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.
  - (B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after October 30, 1992, [the date of enactment of the 1992 Amendments to this Act] for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

*[Maintaining permanent databases]*

- (2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.



*[16 U.S.C. 470h-4(b) — Secretary to promulgate guidelines to owners about protecting and preserving historic resources]*

(b) In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to —

- (1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;
- (2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

*[Encourage protection of Native American cultural items and properties]*

- (3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9))) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

*[Conduct archeological excavations to meet Federal standards, allow access to artifacts for research, consult with Indian tribe or Native Hawaiian organization if related items likely]*

- (4) encourage owners who are undertaking archaeological excavations to —
  - (A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;
  - (B) donate or lend artifacts of research significance to an appropriate research institution;
  - (C) allow access to artifacts for research purposes; and
  - (D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

### **Section 113**

*[16 U.S.C. 470h-5(a) — Study to report ways to control illegal trafficking in]*

(a) In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

*[16 U.S.C. 470h-5(b) — Consultation]*

(b) In conducting the study described in subsection (a) of this section the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation



Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

*[16 U.S.C. 470h-5(c) — Report]*

- (c) Not later than 18 months after October 30, 1992 [the date of enactment of this section], the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a) of this section.

*[16 U.S.C. 470h-5(d) — Funding authorization]*

- (d) There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a) of this section, such sums to remain available until expended.

## **TITLE II**

### **Section 201**

*[16 U.S.C. 470i(a) — Advisory Council on Historic Preservation; membership]*

- (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:
- (1) a Chairman appointed by the President selected from the general public;
  - (2) the Secretary of the Interior;
  - (3) the Architect of the Capitol;
  - (4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President;
  - (5) one Governor appointed by the President;
  - (6) one mayor appointed by the President;
  - (7) the President of the National Conference of State Historic Preservation Officers;
  - (8) the Chairman of the National Trust for Historic Preservation;
  - (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;
  - (10) three at-large members from the general public, appointed by the President; and
  - (11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.



*[16 U.S.C. 470i(b) — Designees]*

- (b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

*[16 U.S.C. 470i(c) — Term of office]*

- (c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) through (11) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

*[16 U.S.C. 470i(d) — Vacancies]*

- (d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980], shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980].

*[16 U.S.C. 470i(e) — Vice Chairman]*

- (e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

*[16 U.S.C. 470i(f) — Quorum]*

- (f) Nine members of the Council shall constitute a quorum.

## **Section 202**

*[16 U.S.C. 470j(a) — Duties of Council]*

- (a) The Council shall —

- (1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;



- (2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;
- (3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;
- (4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;
- (5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;
- (6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and
- (7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

*[16 U.S.C. 470j(b) — Annual and special reports]*

- (b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

### **Section 203**

*[16 U.S.C. 470k — Information from agencies]*

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title of the Act; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

### **Section 204**

*[16 U.S.C. 470l — Compensation of members]*

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All



members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

### Section 205

[16 U.S.C. 470m(a) — Executive Director]

- (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

[16 U.S.C. 470m(b) — General Counsel and other attorneys]

- (b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

[16 U.S.C. 470m(c) — Appointment and compensation of staff]

- (c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5 [United States Code]: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates 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 [United States Code].

[16 U.S.C. 470m(d) — Appointment and compensation of additional personnel]

- (d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949 [chapter 51 and subchapter III of chapter 53 of Title 5, U.S. Code].

[16 U.S.C. 470m(e) — Expert and consultant services]

- (e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5 [United States Code].

[16 U.S.C. 470m(f) — Financial and administrative services]

- (f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided,* That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b))



shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to appropriations of the Council: *And provided further*, That the Council shall not be required to prescribe such regulations.

[16 U.S.C. 470m(g) — *Use of funds, personnel, facilities, and services*]

- (g) Any Federal agency may provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the agency, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection must be expended by the end of the fiscal year following the fiscal year in which the funds are received by the Council. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

### Section 206

[16 U.S.C. 470n(a) — *International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization*]

- (a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

[16 U.S.C. 470n(b) — *Members of official delegation*]

- (b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

[16 U.S.C. 470n(c) — *Authorization for membership payment*]

- (c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

### Section 207

[16 U.S.C. 470o — *Transfer of personnel, funds, etc. to the Council*]

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be



transferred from the Department to the Council within 60 days of the effective date of this Act [Pub. L. 94-422, September 28, 1976].

### **Section 208**

*[16 U.S.C. 470p — Rights of Council employees]*

Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

### **Section 209**

*[16 U.S.C. 470q — Exemption from Federal Advisory Committee Act]*

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5 and chapter 7, of Title 5 [U.S. Code] [the Administrative Procedure Act (80 Stat. 381)] shall govern the operations of the Council.

### **Section 210**

*[16 U.S.C. 470r — Direct Submission to the Congress]*

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

### **Section 211**

*[16 U.S.C. 470s — Regulations for Section 106; local government participation]*

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 of this Act which affect such local governments.

### **Section 212**

*[16 U.S.C. 470t(a) — Council appropriation authorization]*

- (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated for purposes of this title not to exceed \$4,000,000 for each fiscal year 1997 through 2005.

*[16 U.S.C. 470t(b) — Concurrent submission of budget to Congress]*

- (b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the



House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources.

### **Section 213**

*[16 U.S.C. 470u — Reports from Secretary at request of Council]*

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

### **Section 214**

*[16 U.S.C. 470v — Exemptions for Federal activities from provisions of the Act]*

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal pro-grams or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

### **Section 215**

*[16 U.S.C. 470v-1 — Reimbursement from State and local agencies, etc.]*

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of the purposes of this Act.

## **TITLE III**

### **Section 301**

*[16 U.S.C. 470w — Definitions]*

As used in this Act, the term —

- (1) “**Agency**” means agency as such term is defined in section 551 of title 5 [United States Code].
- (2) “**State**” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.
- (3) “**Local government**” means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.
- (4) “**Indian tribe**” or “**tribe**” means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.



- (5) “**Historic property**” or “**historic resource**” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.
- (6) “**National Register**” or “**Register**” means the National Register of Historic Places established under section 101 of this Act.
- (7) “**Undertaking**” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including —
- (A) those carried out by or on behalf of the agency;
  - (B) those carried out with Federal financial assistance;
  - (C) those requiring a Federal permit license, or approval; and
  - (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.
- (8) “**Preservation**” or “**historic preservation**” includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.
- (9) “**Cultural park**” means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.
- (10) “**Historic conservation district**” means an area which contains
- (A) historic properties,
  - (B) buildings having similar or related architectural characteristics,
  - (C) cultural cohesiveness, or
  - (D) any combination of the foregoing.
- (11) “**Secretary**” means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.
- (12) “**State Historic Preservation Review Board**” means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B) of this Act —
- (A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),
  - (B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture, and
  - (C) which has the authority to —
    - (i) review National Register nominations and appeals from nominations;



- (ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
  - (iii) provide general advice and guidance to the State Historic Preservation Officer; and
  - (iv) perform such other duties as may be appropriate.
- (13) **“Historic preservation review commission”** means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B) of this Act, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among —
- (A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent such professionals are available in the community concerned, and
  - (B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.
- (14) **“Tribal lands”** means —
- (A) all lands within the exterior boundaries of any Indian reservation; and
  - (B) all dependent Indian communities.
- (15) **“Certified local government”** means a local government whose local historic preservation program has been certified pursuant to section 101(c) of this Act.
- (16) **“Council”** means the Advisory Council on Historic Preservation established by section 201 of this Act.
- (17) **“Native Hawaiian”** means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.
- (18) **“Native Hawaiian organization”** means any organization which —
- (A) serves and represents the interests of Native Hawaiians;
  - (B) has as a primary and stated purpose the provision of services to Native Hawaiians; and
  - (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

### **Section 302**

*[16 U.S.C. 470w-1 — Authority to expend funds for purposes of this Act]*

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.