

Hon. Sara C. Bronin
Chair

Jordan E. Tannenbaum
Vice Chairman

Reid J. Nelson
Executive Director



April 1, 2024

The Honorable Matt Ritter
Speaker of the House of Representatives
Connecticut General Assembly
Legislative Office Building, Room 4105
Hartford, CT 06106

The Honorable Jason Rojas
Majority Leader, House of Representatives
Connecticut General Assembly
Legislative Office Building, Room 4106
Hartford, CT 06106

The Honorable Vincent Candelora
Republican Leader, House of Representatives
Connecticut General Assembly
State Capitol Building, Room 4200
Hartford, CT 06106

Dear Speaker Ritter, Majority Leader Rojas, and Republican Leader Candelora:

I'm writing on behalf of the Advisory Council on Historic Preservation (ACHP), the federal historic preservation agency charged under the National Historic Preservation Act (54 U.S.C. §304102(a)) to advise on state and local legislation. The ACHP respectfully offers the following comments on H.B. 5433, "An Act Establishing a Procedure for the State Historic Preservation Officer to Make Determinations Concerning Certain Environmental Effects," which recently was reported favorably out of the Commerce Committee.

Since the bill focuses specifically on the role of the Connecticut State Historic Preservation Officer (SHPO) in the review of state projects, it is important to note the context within which the SHPO functions. Every state and U.S. territory has a SHPO, in accordance with provisions of the National Historic Preservation Act of 1966. In Connecticut, as elsewhere, the SHPO and their staff have a variety of duties under federal and state laws. Among their responsibilities under the federal preservation program, the SHPO plays a foundationally important role in reviewing federal and federally funded or approved projects in accordance with requirements of the National Historic Preservation Act and private projects seeking the federal historic preservation tax credit.

If H.B. 5433 passes, Connecticut would become *the only state in the nation to intentionally misalign itself with the federal historic preservation program*, creating process conflicts with the National Historic Preservation Act—and, in turn, creating significant legal and practical liabilities for property owners, project proponents, and the state itself. The bill's proposed revisions to the Connecticut Environmental Policy Act (CEPA) would also facilitate harm to Connecticut's historic places, curtail meaningful public involvement, and hinder the state in meeting its obligations to Tribal nations.

Conflicts with Federal Historic Preservation Review. By way of background, the conflicts between this bill and the goals and requirements of the federal historic preservation program are among the most serious the ACHP has ever seen. If made law, H.B. 5433 would change the review process for projects sponsored by the state, but many of those projects also receive federal funding, licensing, or approval.

That means they will also have to be reviewed under Section 106 of the National Historic Preservation Act (54 U.S.C. §306108). Unfortunately, H.B. 5433 would throw projects undergoing both processes into a legal and procedural morass.

The ACHP oversees the Section 106 review process, which 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 develop appropriate mitigation if necessary. It is important to underscore that Section 106 reviews must occur for projects where state and local governments and private parties receive funding, a permit, a license, or other assistance from the agencies. Thus, many state projects (like highway construction funded by the Federal Highway Administration), local government projects (under Community Development Block Grants, which cover an array of local projects), and private projects (like housing developers receiving certain subsidies from the Department of Housing and Urban Development) also undergo Section 106 reviews.

The Section 106 process requires federal agencies to initiate consultation with key stakeholders and consider the views of the public to explore alternatives that will avoid adverse effects to historic properties. H.B. 5433 would create an approval process that is likely to constrain the consideration of alternatives, mitigation, and public involvement, and cause federal agencies difficulties in meeting their obligations under Section 106 reviews—creating uncertainty for important public projects (like highways and housing). The disconnect would be particularly significant for projects where recipients of state funding elect to pay mitigation costs in lieu of full CEPA review of adverse effects to historic properties, as would be allowed under the bill. Attempting to reconcile these inconsistencies could, at the very least, cause project delays. But they could also subject private property owners and project proponents to significant legal and practical liabilities for violations of the National Historic Preservation Act.

Likely Adverse Effects to Historic Properties. H.B. 5433 would allow proposed mitigation by the Connecticut SHPO for a project's adverse effects on historic properties to be appealed to the Commissioner of Economic and Community Development. Any recommendations from the Commissioner to change the proposed mitigation would be binding on the SHPO. The ACHP is not aware of any other state or territory that has a similar process in place to appeal, overturn, or bypass a SHPO's findings. The proposed appeals process in H.B. 5433 for overruling SHPO mitigation proposals would create a variable and subjective review process in lieu of professional determinations developed by the state agency with 60 years of experience balancing preservation of historic properties and other important societal needs. As a result, historic resources would be put at risk throughout the state.

The bill also would allow recipients of state funding to end SHPO review of a project by electing to pay mitigation costs (15 percent of the state funding being received or \$750,000, whichever is less). Under this scenario, effects to historic properties could be deemed to be mitigated even when the SHPO had not yet weighed in on the nature of the effects or provided their expert opinion on how adverse effects might be reduced. The potential for unnecessary loss of or damage to historic properties that could result from such preemption of project-specific review is alarming. Further compounding this concern is the bill's silence on where the proposed mitigation funding would go or how it would be used.

The ACHP recognizes that past government actions have had disproportionate harms on disadvantaged and underserved communities, and communities with environmental justice concerns—and that the histories of these communities have been undervalued in decision-making processes. This is particularly true for those sites that have not yet been formally designated historic (but may be identified during the Section 106 process), and for those sites involving burial sites, human remains, and funerary objects. We are gravely concerned that H.B. 5433 will result in the destruction of historic resources associated with disadvantaged and underserved communities—and Tribal cultural heritage.

Lack of Public Involvement and Tribal Consultation. It is our understanding that currently, if a state project will have an adverse effect on historic properties, it must go through CEPA public scoping. However, H.B. 5433 is unclear about how its provisions relate to the usual public scoping process. It appears that the intent is to address mitigation of effects to historic properties with the SHPO—or alternatively allow recipients of state funding to pay mitigation costs in lieu of review—outside of or parallel to any public scoping. The bill indicates that if neither of the above referenced actions take place, the agency “may” then conduct public scoping. It thus appears the bill would allow state projects with adverse effects on historic properties to avoid public examination under CEPA.

This would restrict meaningful public input, undermine transparency, and discourage inclusive consideration of public views. It also raises serious questions regarding obtaining the views and addressing the concerns of Connecticut’s recognized Indian Tribes regarding project effects to historic properties of interest to them. How effective could consideration of Tribal issues be if a mitigation plan—or payment in lieu of such a plan – is already in place?

In conclusion, based on the issues discussed above, the ACHP strongly urges that the House of Representatives fully consider the potential negative impacts that H.B. 5433 would have on the preservation of Connecticut’s historic places, including places associated with historically marginalized communities and Tribal nations; the role of the public and Tribes in shaping government decision making; and effective coordination of state and federal review of project impacts.

The ACHP would be happy to meet to discuss these issues further or provide other additional feedback. Please feel free to contact me if the ACHP can be of any assistance during further consideration of H.B. 5433. In addition, your staffs may wish to follow up with ACHP 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 long horizontal flourish extending to the right.

Sara C. Bronin
Chair