

NCSHPO Newsletter: December 15th, 2017 | Number 128

Tax Reform and the Historic Tax Credit:

Republican lawmakers announced that they had reached a deal on a plan to overhaul the tax code. At this point, it is unclear if that agreement includes the Senate language, which would change but preserve the historic tax credit. The House version of the bill would simply have eliminated the historic tax credit. The agreement, formally known as a conference report, is expected to be released later today and the House and Senate are expected to vote on it early next week.

With this week's announcement, it appears that President Trump and congressional leaders will follow through on their promise to complete a tax bill before Christmas 2017.

As noted above, the Senate version of the tax overhaul bill includes a provision that would preserve the historic tax credit. Although the Senate version would preserve the historic tax credit at 20 percent, it would require that the 20 percent credit be claimed "ratably over a five-year period beginning in the taxable year in which a qualified rehabilitated structure is placed in service." This would mean that those who qualify for the tax credit would receive 4 percent per year for five years rather than 20 percent for one year. The amendment eliminated the 10 percent tax credit for rehabilitation of buildings that were built before 1936 but are not listed in the National Register of Historic Places. Senator Bill Cassidy (R-LA) led the effort to preserve the historic tax credit.

NCSHPO has worked with other organizations in the historic preservation community to preserve the historic tax credit. We are highlighting the important role it plays in preserving the character of communities throughout the country while also strengthening local economies. With the historic tax credit in jeopardy, there have been great stories in newspapers throughout the country on the importance of the historic tax credit in their communities.

There has been a concern that even if the final bill includes the Senate provision, there could still be a problem for the historic tax credit and other tax credits, including the Low-Income Housing Tax Credit, which are sold or syndicated to banks. Yesterday, Senator John Thune (R-SD) told reporters a compromise had been reached that would allow those businesses to get most, but not all, of the value of those tax credits. The provision, called the base erosion minimum tax, is intended to stop multinational companies from shifting profits overseas would make it difficult for some banks with overseas subsidiaries to buy the historic tax credits. This provision would limit the ability of developers who do not have large enough tax liabilities to take full advantage of the historic tax credit to sell the credits to banks and other investors who can take advantage of them to lower their own tax burdens. Novogradac has done an analysis and determined that this provision would affect about 10% to 15% of HTC investors. Efforts are being made to fix this problem. This provision is expected to affect two-thirds of wind projects and three-fourths of solar projects. Please click [here](#) to read more about this provision. When I have a clearer sense of the compromise that Sen. Thune alluded to, I will share the details of that compromise with you.

Although it appears that a tax bill will be completed, I will repeat something which a Politico reporter said early in this process: "**This tax plan will live and die 1 million times.**" We all received a reminder of this when Senator Marco Rubio (R-FL) announced late yesterday that he would vote against the bill unless the refundable portion of the child tax credit is increased.

Because of the way the bill has been drafted and passed by the House and Senate, there are concerns about errors and unintended consequences. There were similar problems with the Affordable Care Act, which took longer to draft and pass. As with the Affordable Care Act, because the tax overhaul is a partisan bill, if it becomes law, it may be very difficult to make changes to it in the future.

Many SHPOs, who are able to, have worked very hard to make sure their congressional delegations and reporters understand the role that the historic tax credit plays in preserving the character of communities while also strengthening local economies. Your efforts are greatly appreciated. Please continue these efforts while the tax overhaul bill is being debated and beyond. It is incumbent on us to educate lawmakers and the general public about the value of the historic tax credit for the communities they represent. We have the luxury of being able to show lawmakers tangible examples of what that tax credit has done to help their constituents. For those of you who are able to contact lawmakers, do not hesitate to ask for my assistance.

If the historic tax credit survives, SHPOs should do what they can to make sure that the types of stories about the historic tax credit that have been appearing in newspapers continue to appear.

Assuming that the tax bill includes the Senate historic tax credit language, it would also include language for transitioning from the current historic tax credit to the version in the bill. As with many other transitions in the bill, the historic tax credit transition would be abrupt. Tax lawyers who have looked at the transition language say that in order to use the current version of the historic tax credit a developer would need to hold the building as a proper "taxpayer" meaning an LLC taxed as a partnership by December 31st, 2017. The transition language would also require the project owners to commence the 24-month measuring period for Qualified Restoration Expenditures within 180 days of when the law passes. If you are interested in more specific details of the transition language, please send me an email directly at monoson@ncshpo.org

Funding the Federal Government:

The continuing resolution that funds the federal government at Fiscal Year 2017 levels expires next Friday, December 22nd. Spending bills have been stalled for months because of limits on discretionary spending imposed under the Budget Control Act of 2011 that both Democrats and Republicans find too onerous. The effort to find an agreement is complicated by the political imperative to get a tax overhaul bill done. Republican leaders are reluctant to make any compromises on the spending bill that could harm prospects for the tax overhaul. Also, this week, lawmakers from Florida and Texas were threatening to oppose the overall funding bill if they did not receive funding for hurricane recovery. See the below section for more details on disaster aid.

On Wednesday, House Republicans introduced a continuing resolution that would extend current funding through Jan. 19, but they tied the measure to a full year's worth of funding for the military. It is widely accepted that such a bill would be rejected by the Senate, where at least eight Democrats would need to support it to avoid a filibuster. "It's the usual tactical tantrums and navel-gazing that we engage in from time to time," Congressman Charlie Dent (R-PA), a senior House appropriator, told reporters. "It is delusional for anyone to think that we will pass this bill with the defense piece in it and think that the Senate will just swallow it. It is not going to happen."

Just to remind everyone, Fiscal Year 2017 ended on September 30th, 2017. Because of the CR that runs through midnight tonight, the Historic Preservation Fund is currently funded at the Fiscal Year 2017 level of \$47.93 million.

The House has already passed a Fiscal Year 2018 Interior Department spending bill which would fund the overall HPF at \$80.91 million and SHPO apportionments at \$47.93 million. This is the same level that HPF overall and SHPO apportionments specifically are currently funded at for Fiscal Year 2017. To become law, the Senate would have to pass a Fiscal Year 2018 spending bill that also funds the HPF and SHPO apportionments at these levels. Last month, the Senate Committee on Appropriations released a Fiscal Year 2018 funding bill for the Department of the Interior that would fund the HPF at \$77.91 million and SHPO apportionments at \$47.93 million. Because the Senate matched the House level for SHPO apportionments, it is highly likely that if there is a Fiscal Year 2018 spending bill, SHPO apportionments will be funded at this level. Although an increase in SHPO apportionments would be great, in this fiscal and political environment, level funding is good. Many other programs, such as the Land and Water Conservation Fund, are facing cuts.

Disaster Aid:

This week, Republican leaders said that supplemental spending legislation to help communities that have experienced natural disasters would not pass before the end of the year. There has been significant blowback from lawmakers from Florida and Texas who have threatened to oppose legislation preventing a government shutdown if a disaster aid bill is not passed.

Congressman Tom Rooney (R-FL) told his Republican leaders at a meeting Wednesday that a majority of Texas and Florida lawmakers would oppose an overall spending bill if they do not have help for their states by Christmas.

If the disaster bill becomes law, it would be the third disaster supplemental package of 2017. Neither of the two previous disaster aid laws, which totaled \$52 billion, included funding for identifying, repairing and rehabilitating of historic properties. We are working with partners in the historic preservation community to include money for historic preservation in this coming disaster package.

Before Thanksgiving, the Trump Administration formally requested an additional \$44 billion for communities that have experienced natural disasters. There are three controversial aspects of this request.

- First of all, the amount requested is significantly less than state officials and lawmakers from affected states have requested;
- Second, unlike the previous requests in the last few months, the Administration requested that the disaster aid be offset by cuts in funding for other programs;
- Third, the request does not include funding for communities in Northern California that were damaged by wildfires.
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Lawmakers from Texas and Florida have been critical of the Trump Administration's request for \$44 billion for disaster aid. They have said both that it is too little and that it is not appropriate to ask for the funds to be offset, which the Administration has.

Thirty-eight House members from Florida and Texas sent a letter to congressional leaders calling the request "utterly inadequate" and threatening to oppose the next disaster relief package unless it is "significantly improved." Lawmakers have yet to release a bill. The letter was signed by 19 Democrats and 17 Republicans.

Lawmakers from California have criticized the lack of funding in the Administration's request to address wildfire damage there. The state's House delegation sent a letter to top appropriators calling for the next package to include \$4.4 billion in wildfire recovery funds.

While some conservative lawmakers have called for the next package to include spending cuts to offset at least some of its cost, other Republicans have rejected the Administration's request.

The Administration's request did include \$17.5 million in Historic Preservation Fund (HPF) grants to State and Tribal Historic Preservation Offices to accelerate permitting to rebuild historic properties damaged from Hurricanes Harvey, Irma, and Maria. We are very pleased by the inclusion of money for HPF grants in the request. Although we have thanked the Administration for including the HPF money in the request, we have raised some concerns. First of all, we have noted that unlike HPF disaster funding for recovery from Hurricanes Katrina and Sandy, this request would require the states and territories to match 40 percent of HPF disaster funding. Although the 40 percent match is an essential part of the regular HPF money that states and territories receive for performing federally delegated historic preservation work, requiring the state and territories to match the HPF disaster money would place an unfair burden on them. We have also noted that the request fails to provide the flexibility that the SHPOs would need to, in the words of Texas SHPO Mark Wolfe, help "citizens return to communities that they recognize."

NCSHPO Annual Meeting and 2018 Preservation Advocacy Week:

The 2018 NCSHPO annual meeting and Preservation Advocacy Week, which is held in conjunction with Preservation Action, will take place on from March 12th to the 14th.

Although Registration will not open until early January, you can book your hotel room, if you are planning to attend. The annual conference will be held at The Hamilton Hotel, which is located at 1001 14th Street NW, in Washington, D.C. We have secured a rate of \$279 per night. The cut-off date for this rate is February 9, 2018. To make your reservations call 1-877-424-2449 and use the event code "NCS."

The historic Hamilton Hotel was designed by French born architect Jules-Henri de Sibour and completed in 1922. Blending elements of the Beaux Arts and Art Deco styles, the impressive façade and beautiful lines stand as an impressive testament to industrial age ingenuity. The Hamilton Hotel is listed on the National Register of Historic Places.

Preliminary Schedule of Events

Monday, March 12, 2018

SHPO/FPO Forum Invitation

Preservation Action Annual Meeting

NAPC Board Meeting

Advocacy Lunch w/Keynote Speaker (TBD) Ticketed

Policy & Issues Updates and Trainings

NCSHPO Reception & Banquet Ticketed

Tuesday, March 13, 2018

Hill Visits

Hill Reception Ticketed

Wednesday, March 14, 2018

NCSHPO Annual Meeting

Infrastructure:

Trump administration officials said this week that they are preparing to roll out a long-delayed infrastructure rebuilding plan in January. Administration officials told reporters that they are putting “finishing touches” on a plan to spend \$200 billion or more on an infrastructure program. They said that the money would be offset with cuts elsewhere in the federal budget. The federal funding is intended to leverage hundreds of billions more from local governments and private investors to pay for road, rail, water and utility upgrades.

It is unclear if members of Congress share the Trump administration’s enthusiasm for taking up a major infrastructure bill early in 2018. They are particularly concerned about the cuts needed to pay for the plan and the involvement of private investors in the infrastructure projects.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) met with the President and Transportation Secretary Elaine Chao this week.

After the meeting, staff with the White House press office released this statement:

“The President had a productive meeting with Rep. Shuster, during which they discussed the President’s bold plan for rebuilding America’s infrastructure, which has fallen into an

unacceptable condition due to decades of misguided policies. He looks forward to working with Rep. Shuster and his colleagues in Congress to turn this vision into legislation next year.”

If lawmakers and the administration can find common ground on how to fund a large infrastructure investment program, it would present two possible challenges for SHPOs.

- An influx of Section 106 reviews that could overwhelm SHPOs.
- “Streamlining of regulations” may circumvent or erode the Section 106 process.

We are working with our historic preservation partners to make sure SHPOs receive adequate funding to deal with an increase in Section 106 reviews. We will also push back on efforts to weaken Section 106 reviews.

We are also working to include a provision in an infrastructure bill that funds SHPO survey and digitization efforts.

Interior Department and ACHP:

As we approach the anniversary of President Trump’s 2017 inauguration, he has not yet nominated candidates for either Director of the National Park Service or Chairman of the Advisory Council on Historic Preservation. Although there are rumors about potential candidates and timelines, there are no facts about who will be nominated or when.

The delay in nominating a National Park Service (NPS) Director and other positions has created a potential problem. Under the 1998 Federal Vacancies Reform Act, a position vacated by a presidential transition generally cannot be filled by acting officials for more than 300 days unless a permanent nominee has been named and is awaiting Senate confirmation. That deadline for most positions passed in mid-November. The law is intended to prevent a President from avoiding the Senate confirmation process. Michael Reynolds at the NPS is one of the officials who may have exceeded the 300 day limit. A Bloomberg news story noted that Reynolds for most of this year was acting director of the National Park Service, but the MPS website now identifies him as its deputy director for operations, “exercising the authority of Director for the National Park Service.” But the story also noted that the web page is still illustrated with a photo of him captioned “National Park Service Acting Director.”

The 300 day rule does not apply to ACHP Chairman Wayne Donaldson because he is still Chairman and not “Acting Chairman.” He has said he will stay on until a successor is confirmed.

According to an October report from the Congressional Research Service, the Vacancies Act does not provide a mechanism for ousting officials who have stayed past the deadline but offers grounds for actions they take to be voided in court.

Florida SHPO Spotlight- Debris from Hurricane Irma:

This week, a front page story in The Wall Street Journal highlighted the variety of debris that washed ashore on Florida’s beaches after Hurricane Irma. Among the objects was something that resembled a dugout canoe. The Florida Division of Historical Resources, the state’s State Historic Preservation Office, retrieved the vessel and placed it in a water bath for preservation. Their initial assessment was that the canoe “is at maximum several hundred years old and

minimum probably several decades old.” Then carbon-dating tests came back, putting its construction in the 1600s. The next step is dendrochronology—testing the wood’s tree rings to determine age—for a more definitive date. “This canoe is unique in that the radiocarbon dating indicates the wood is very old, but it has features that indicate it is more modern,” Florida DHR spokeswoman Sarah Revell told the Wall Street Journal. “So it is a bit of a mystery.” The attached photograph was taken by Randy Lathrop, a photographer who found the dugout canoe.

Upcoming Events

Jan. 10-12, 2018— **Real Places 2018 Conference Preserving Historic Texas**, Austin, TX.
<http://www.thcfriends.org/real-places-2018>

Jan. 31- Feb. 3, 2018— **Colorado Saving Places Conference: "The Power of Place,"** Denver, CO. <http://coloradopreservation.org/>

Mar. 12-14, 2018 — **NCSHPO Annual Conference**, Washington, DC.
<http://files.constantcontact.com/1971f4e9201/9215174c-f2a9-4361-b587-a874f3f383a9.pdf>

Mar. 15-16, 2018 — **Missouri Conference on History**, Jefferson City, MO.
<http://shsmo.org/mch/>

Mar. 26-28, 2018 — **Main Street Now Conference**, Kansas City, MO.
<https://www.mainstreet.org/mainstreetamerica/howwecanhelp/educationandtraining/mainstreetnow>

Apr. 10-12, 2018 — **Are We There Yet? Preservation of Roadside Architecture & Attractions Symposium**, Tulsa, OK. <https://www.ncptt.nps.gov/events/are-we-there-yet/>

Apr. 11-13, 2018— **Oregon Heritage Conference**, Bend, OR.
<http://www.oregon.gov/OPRD/HCD/OHC/pages/conference.aspx>

Apr. 18-20, 2018— **Indiana-Preserving Historic Places 2018 Conference**, Columbus, IN.

Apr. 18-21, 2018— **National Council on Public History**, Las Vegas, NV.
<http://ncph.org/conference/2018-annual-meeting-2/>

Apr. 26-28, 2018— **2018 NY Statewide Preservation Conference**, Albany, NY.

May. 2-5, 2018— **Vernacular Architecture Forum 2018 Annual Meeting**, Alexandria, VA. <http://www.vernaculararchitectureforum.org/event-2580611>

June 6-8, 2018— **2018 Arizona Historic Preservation Conference**, Scottsdale, AZ.
[Conference Facebook Page](#)