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# **The Need for Legislative Reform in the Area of Federal Programs for Historic Preservation**

**NELLIE L. LONGSWORTH\***

## **AUTHOR'S NOTE:**

The following statement reflects the views of the author in September 1978. Since that date, there have been considerable changes in historic preservation law and program, a result of the thinking, to some degree, that was taking place in 1978, but more so because of the changing political climate of the nation, reflected in the election of Ronald Reagan as President in 1980 and the shift to Republican control of the U.S. Senate.

Therefore, it is recommended that the following be read in the context of 1978; changes that have taken place since then will be highlighted in an addendum.

Legislative reform, the most dynamic and exciting method for preservation of our historical amenities, is something in which all of us can and must become involved. Although the framework is set by existing laws, reform will lead to change and improvement. The reform has to be done on a full-time basis in Washington, D.C., in state houses, and in city halls.

Legislative reform will help us find sources of funds. We need to be able to assure that the rehabilitation of commercial property will be economically viable to the private investor. We must have other tools to assure that residential property owners, regardless of income level, may secure reasonable financing for rehabilitation and restoration. We need to provide financial assistance for low and moderate income property owners or tenants, with ongoing subsidies when necessary to avoid displacement.

A brief review of existing programs will clarify the need for different programs and for legislative reform. The Department of the Interior program under the Heritage Conservation and Recreation Service,<sup>1</sup> a federal historic preservation program, has developed rapidly since 1966. The funding for fiscal year 1979

was sixty million dollars, including five million for maritime preservation.

Funding is available through Housing and Urban Development—billions of dollars for all kinds of major housing activities in rehabilitation. Most preservationists who go to HUD for money find a bias within HUD to the effect that historic preservation is a frill; HUD's major concern is low- and moderate-income housing for people who are barely able to survive. Some clever people have incorporated major preservation ideas into packages that are qualifying for HUD's UDAG grants<sup>2</sup> or for community block grants,<sup>3</sup> but those dollars, as many as there are, have been difficult for preservationists to obtain on a nationwide level.

Other dollars are becoming available for commercial rehabilitation through the Economic Development Administration<sup>4</sup> in the Department of Commerce. The Emergency Public Works Program<sup>5</sup> reports that five percent of the dollars that they appropriated last year went into preservation projects in historic districts or buildings on the National Register<sup>6</sup>. Five percent of those funds is two hundred million dollars. But the Economic Development Administration does not have an historic preservation program as such. For a preservation project to receive EDA funding, it must qualify as a labor intensive project, must be ready to be started, and must meet other guidelines as well.

It is clear, therefore, that it takes a sophisticated person to figure out how to fund broad historic preservation projects: the funding programs are spread all over the federal government, and there are many different congressional committees involved in making the decisions which affect preservation activity. I would like to offer three legislative goals that we should pursue in order to simplify the procedure and to make funds more available.

First, we need a method of coordinating our funding devices and financial needs. The grants programs are important, but we cannot count on them to subsidize the entire need of preservation. Within the Department of the Interior, for instance, there are sixty million dollars available but the proven need this year for the preservation program is over five hundred million.

We need a coordinator with broad availability and with direct access to the local community and to the local preservation

organization. Often, local preservation groups are frustrated by the layers of the government which they must go through to receive grants from HUD, EDA, or other programs. In many cases, groups do not realize that they are eligible for funds or do not even try to qualify for funds. Because of this, Preservation Action has been advocating the concept of a National Bank for Historic Preservation. Local preservation organizations would be eligible for the bank's funds. The bank could have long-term lending and guarantee authority for states, local governments and non-profit organizations. It could incorporate a national revolving fund or could help to seed existing revolving funds at state and local levels. It could float long-term, low-interest loans and could guarantee loans, leases, and bonding. Also, interest subsidies could be used to permit low and moderate income people to remain in their neighborhoods and to rehabilitate and improve their properties. This idea is being worked on by a Preservation Action task force.

Second, legislative reform is needed with respect to tax policy. The Tax Reform Act of 1976<sup>7</sup> had an appreciable effect on historic preservation. We are spending a great deal of time trying to work out the difficulties that resulted from the Act. In a sense, it was a legislative fluke. Introduced in 1970, it was passed by an unsuspecting Congress. It gave preservationists a foot in the door. For the first time, we were able to talk to the Treasury Department about major issues in reference to a statute, not merely to a dream of proposal.

Another area in tax policy that has to be addressed is the concept of investment tax credits.<sup>8</sup> There is a possibility of an investment tax credit for historic properties rather than, as proposed at the moment, a choice between taking historic incentives under the Tax Act<sup>9</sup> or the investment credit.

There also has to be improved tax treatment for the contribution of property for preservation and conservation purposes. There should be some provision for contributions of less than the full amount of interest in the property and for a shorter duration than perpetuity. Those in the estate and inheritance tax field realize that there are some potential problems for historic preservation regarding the transfer of property upon death, which could adversely affect large historic holdings in particular.

Third, the idea of having a national department for historic

preservation within the federal government should be addressed. This would mean taking the preservation program out of the Department of the Interior and putting it with the Advisory Council in a separate agency. This proposal has not met with success; instead, there has been talk of having an historic preservation officer<sup>10</sup> in every agency of the government that has historic preservation programs. Such a coordinating agency or department would provide one-stop shopping for local organizations and individuals who are attempting to procure financial incentives and technical assistance.

The idea of a department or agency for historic preservation is many, many years off. It may not even be a good idea. We have something like that in its budding form in the Heritage Conservation and Recreation Service. This new program takes what we have had as a part of the old National Register program in the National Park Service<sup>11</sup> and places it with natural resource functions and the recreation program. Under this new program, the policy planning process is being used to look at what the preservation community, both inside and outside the public sector, needs in a federal program and what the priorities of the federal program in the Department of the Interior should be. To aid this planning process is a congressional oversight committee that is doing an investigative report of the historic preservations inside and outside the federal government. They have been reviewing the Department of the Interior, the Advisory Council, the National Trust, the state programs, and the local programs to find out how to design a more effective program and what suggestions should be made by the United States Congress as to how the preservation program should go.

Legislative reform rests with the United States Congress. In dealing with the United States Congress, there is tremendous competition among issues. Preservationists need more data; we are lacking data when we make our case for what is needed for future goals. We need legal expertise to help us design these programs to meet these goals and to fit the programs within the framework of the existing law. We need a large, strong, vocal, and well-informed constituency in congressional districts throughout the nation.

Lawyers can be a special help to us by helping their own organizations understand existing laws and programs, by encour-

aging their organizations to lobby, and by making their feelings known to their representatives at all levels of government. Preservation Action will publish a lobbying manual with information on everything from writing a letter to doing something to get attention from your congressman, state senator, or city councilman. Preservation Action will continue to work for legislative reform, and I invite all of you to join our effort.

#### **ADDENDUM:**

On December 12, 1980, the National Historic Preservation Act Amendments of 1980 were signed into law - PL 96-515 - by President Carter. Without full review of the changes, the law amended the following:

- Expansion of the National Register of Historic Places, including respect for the objection of an owner to listing
- Codification of the State Historic Preservation Program and the responsibilities of the State Historic Preservation Officer
- Certification of qualified local governments, allowing them to participate in the designation project, review of Federal project impact on buildings and sites within their jurisdiction, and eligibility for funding through the States
- Federal funding authority at \$150 million per year through F/Y 1987
- Clarification of Federal agency responsibility for historic and archaeological resources, with the requirement that each agency whose mission impacts those resources designate an historic preservation officer to coordinate agency responsibility toward those resources.
- Reconstitution of the Advisory Council on Historic Preservation, including a reduction in Council membership and definition of Council's responsibilities.

Upon election of President Reagan and his subsequent appointment of James Watt as Secretary of Interior, the following administrative and policy changes have been implemented:

The Heritage Conservation and Recreation Service has been dissolved and the National Historic Preservation program has been returned to the jurisdiction of the National Park Service. Secretary Watt and the Office of Management and Budget have been consistent in their desire to abolish Federal funding to the States for grants purposes, believing that tax policy is sufficient to protect historic resources during the current budget

constraints.

Secretary Watt and OMB have supported Federal funding for the National Trust for Historic Preservation at the same level as recommended by the former Administration.

President Reagan's tax policy and tax cut law has had further dramatic effect on preservation, with the following changes:

#### CHANGES IN EXISTING LAW:

Repeals 5-year amortization provision

Repeals accelerated depreciation provision

Repeals 10% investment tax credit and replaces it with tiered investment tax credit

Repeals straightline disincentive, making a new structure on the site of a demolished historic building eligible for accelerated depreciation

#### PROVISIONS OF NEW LAW:

Provides a new accelerated cost recovery system with electable fixed depreciation lives of 15, 35, and 45 years. Accelerated depreciation of 200% for low income housing and 175% for all commercial buildings (old or new) may be elected. (This provision is effective retroactive to *Jan. 1, 1981*.)

Allows investment tax credit (ITC) for rehabilitation:

15% for buildings at least 30 years old

20% for buildings at least 40 years old

25% for certified rehabilitation of certified historic structures

Only 25% historic category includes ITC for residential rental rehabilitation.

Only 25% historic category may depreciate *full* rehab cost at straight line over a 15-year accelerated cost recovery period because this category is exempt from the adjustment to basis rule.

*Example:* \$100,000 certified rehab of certified historic structure. The 25% ITC of \$25,000 can be deducted from taxes owed *and* the entire \$100,000 can be depreciated over a 15 year period.

*Example:* \$100,000 rehab of a 40-year old building. The 20% ITC of \$20,000 can be deducted from taxes owed *but* only the remainder - \$80,000 - can be depreciated over a 15 year period.

Requires project to meet "substantial rehabilitation" text to qualify for ITC. Rehab costs must exceed \$5,000 or the adjusted basis of the building, *whichever is greater*.

Lessees with at least a 15-year lease qualify for ITC.

Structures leased to tax-exempt organizations and governmental entities now qualify for ITC (this provision is effective retroactive to July 30, 1980).

Owner-occupant may take credit for that portion of the building that is income-producing.

Retains disincentives preventing write-off of losses and costs associated with demolition of an historic building.

**EFFECTIVE DATE: JANUARY 1, 1982**

**TRANSITION RULES:** All *projects begun on or after 1/1/82* must meet the requirements of the new law to utilize the new investment tax credit. *Projects in process* become subject to the new law on 1/1/82. This means that expenses incurred before that date will be subject to the provisions in the old law, and expenses incurred on or after that date will be subject to the provisions in the new law.

**EXCEPTION:** If the expenses incurred after 1/1/82 on a project in process are not sufficient to meet the substantial rehabilitation test, the project may continue under the old law until completion of the project.

Early calculations indicate that the new ITC combined with 15-year straight-line depreciation is a better incentive for preservation than any other tax treatment currently available, including that for new construction.

Since 1978, preservationists have become politically active at the Federal level of government, and have been extremely effective in making the new laws reflect improvements for historic preservation. In the light of the Reagan Administration Budget request of zero funding to the States in 1982, intensive grass-roots lobbying involving a national network has been successful in obtaining Congressional support for \$26.5 million in the full House of Representatives and the Senate Appropriations Committee. Unfortunately, this figure is subject to further change as a result of new pressures to cut the Federal Budget for 1982 even further.

Legislative reform has not been dramatic in the past three

years, but it will continue to be an arena of concern at all levels of government to protect the gains that have been made. The battle will be a difficult one, as current political thinking is against the very funding and regulatory policies that have been effective tools for preservation interests in towns and cities of all sizes throughout our nation.

# The Need for Legislative Reform in the Area of Federal Programs for Historic Preservation

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1. 36 C.F.R. §§ 1201-28 (1980) (repealed 1981). The Heritage Conservation and Recreation Service was dissolved in 1981.

2. Urban Development Action Grants, 42 U.S.C. § 5318 (Supp. III 1979); 24 C.F.R. §§ 570.450-466 (1980). (UDAG is part of the Community Development Block Grant. See *infra* note 3).

3. 42 U.S.C. §§ 5301-19 (1976 & Supp. III 1979).

4. 13 C.F.R. §§ 301.1-318.25 (1981).

5. *Id.* § 305.

6. See 16 U.S.C. § 470 (1976 & Supp. III 1979), *amended by* 16 U.S.C.A. § 470 (West Pam. 1981).

7. Tax Reform Act, Pub. L. No. 94-455, 90 Stat. 1520 (codified as amended in scattered sections of 26 U.S.C.).

8. The purpose of investment tax credits is to encourage business to invest in capital goods and equipment by allowing a percentage of the purchase price as a credit against corporation taxes due and not merely as a deduction from taxable income. See, e.g., 26 U.S.C. §§ 46, 50 (1976 & Supp. III 1979).

9. See *supra* notes 7 & 8.

10. 36 C.F.R. § 1201.2 (1980) (repealed 1981).

11. 36 C.F.R. §§ 1.1-57.1 (1981). See 36 C.F.R. §§ 65, 67-69 (1981) for recent Historic Preservation regulations.