Arts and Humanities: Reauthorization (1975): Report 06

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There is set forth below an analysis of each section of the National Foundation on the Arts and the Humanities Act of 1965, as amended, which would be further amended by the proposed legislation. At the end of each section analysis the section itself is quoted with omitted material indicated by brackets and the new material indicated by underscoring.

SEC. 1 The language proposed for insertion in the "Declaration of Purpose" as a new paragraph (6) (and in Sec. 5(c) below) is being suggested because it is felt that the Declaration should more expressly state the Congress' recognition of the importance of the folk and craft arts to the traditional cultural heritage of this Nation. The language of the section follows:

"SEC. 2 (20 U.S.C. 951) The Congress hereby finds and declares -

"(1) that the encouragement and support of national progress and scholarship in the humanities and the arts, while primarily a matter for private and local initiative, is also an appropriate matter of concern to the Federal Government;

"(2) that a high civilization must not limit its efforts to science and technology alone but must give full value and support to the other great branches of man's scholarly and cultural activity in order to achieve a better
understanding of the past, a better analysis of the present, and a better view of the future;

"(3) that democracy demands wisdom and vision in its citizens and that it must therefore foster and support a form of education designed to make men masters of their technology and not its unthinking servant;

"(4) that it is necessary and appropriate for the Federal Government to complement, assist, and add to programs for the advancement of the humanities and the arts by local, State, regional, and private agencies and their organizations;

"(5) that the practice of art and the study of the humanities requires constant dedication and devotion and that, while no government can call a great artist or scholar into existence, it is necessary and appropriate for the Federal Government to help create and sustain not only a climate encouraging freedom of thought, imagination, and inquiry but also the material conditions facilitating the release of this creative talent;

"(6) that the cultivation of the folk arts and the encouragement of native craftsmanship is integral to a vigorous Federal
program that recognizes the significance of American
creativity and the importance of the Nation's traditional
cultural heritage."

"(7) that the world leadership which has come to the
United States cannot rest solely upon superior power,
wealth, and technology, but must be solidly founded
upon worldwide respect and admiration for the Nation's
high qualities as a leader in the realm of ideas and of
the spirit; and

"(8) that, in order to implement these findings, it is
desirable to establish a National Foundation on the Arts
and the Humanities."

SEC. 2 There are several changes proposed for Sec. 5, subsection (c) and
(g), relating to the National Endowment for the Arts.

First, the new language proposed to be inserted in Sec. 5,
subsection (c), as a new clause (2), has the purpose, as
indicated above, of strengthening the legislation with respect
to the recognition of native American arts activities.
Second, the bill would delete the language contained in Sec. 5(g) paragraph (2)(A) in the "except" clause since that language is now obsolete. The District of Columbia now has a duly established Arts Commission and the government of the District of Columbia has been reorganized and no longer has a Commissioner.

Third, the language proposed as new Sec. 5(g)(4)(B), relates to grants to State and regional groups made under subsection (g)(3)(A) with funds available to the Chairman after the basic minimum State allotments have been made, and is recommended for purposes of flexibility and consistency. It would, consistent with matching exemption provisions contained in other subsections (subsections (e) and (g)(4)), provide for a 20 per centum matching requirement exemption, to be applied at the discretion of the Chairman, on the (g)(3)(A) State and regional group grants.

Subsection (e) provides such an exemption with respect to 5(c) national program grants. Also, the 1973 amendments, which provided a new formula for the distribution of 5(g) funds, provided for the matching requirement exemption for the bloc grants, but did not contain a similar provision with respect to the discretionary State and regional group grants under subsection (g)(3)(A). It is particularly desirable to have flexibility with respect to
these grants, since they are often for purposes of an administrative, technical, or evaluative nature (such as regional coordinator or State internship programs) where matching sources are not always readily available. The language of the subsections follows:

"(c) The Chairman, with the advice of the National Council on the Arts, is authorized to establish and carry out a program of contracts with, or grants-in-aid to groups, or, in appropriate cases, individuals of exceptional talent engaged in or concerned with the arts, for the purpose of enabling them to provide or support in the United States --

"(1) projects and productions which have substantial artistic and cultural significance, giving emphasis to American creativity, and the maintenance and encouragement of professional excellence;

"(2) projects and productions that will foster and encourage the development of American folk and craft arts;

"(3) projects and productions, meeting professional standards of authenticity, irrespective of origin, which are of significant merit and which, without
such assistance, would otherwise be unavailable to our citizens for geographic or economic reasons.

"(4) projects and productions that will encourage and assist artists and enable them to achieve wider distribution of their works, to work in residence at an educational or cultural institution, or to achieve standards of professional excellence;

"(5) workshops that will encourage and develop the appreciation and enjoyment of the arts by our citizens;

"(6) other relevant projects including surveys, research, planning, and publications relating to the purposes of this subsection.

"In the case of publications under clause (5) or (6) of this subsection such publications may be supported without regard for the provisions of section 501 of title 44, United States Code, only if the Chairman consults with the Joint Committee on Printing of the Congress and the Chairman submits to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives
a report justifying any exemption from such section 501."

"(g) (1) The Chairman, with the advice of the National Council on the Arts, is authorized to establish and carry out a program of grants-in-aid to assist the several States in supporting existing projects and productions which meet the standards enumerated in section 5(c) of this Act, and in developing projects and productions in the arts in such manner as will furnish adequate programs, facilities, and services in the arts to all the people and communities in each of the several States.

"(2) In order to receive assistance under this subsection in any fiscal year, a State shall submit an application for such grants at such time as shall be specified by the Chairman and accompany such applications with a plan which the Chairman finds --

"(A) designates or provides for the establishment of a State agency (hereinafter in this section referred to as the 'State agency') as the sole agency for the administration of the State plan except that in the
case of the District of Columbia, the Recreation Board, or any successor designated for the purpose of this Act by the Commissioner of the District of Columbia shall be the 'State agency.'

"(B) provides that funds paid to the State under this subsection will be expended solely on projects and productions approved by the State agency which carry out one or more of the objectives of subsection (c) and

"(C) provides that the State agency will make such reports, in such form and containing such information, as the Chairman may from time to time require.

"(3) Of the sums available to carry out this subsection for any fiscal year, each State which has a plan approved by the Chairman shall be allotted at least $200,000. If the sums appropriated are insufficient to make the allotments under the preceding sentence in full, such sums shall be allotted among such States in equal amounts. In any case where the sums available to carry out this subsection for any fiscal year are in excess of the amount required to make the allotments under the first sentence of this paragraph --

"(A) the amount of such excess which is no greater than 25 per centum of the sums available to carry out this
subsection for any fiscal year shall be available only to the Chairman for making grants under this subsection to States and regional groups, and "(B) the amount of such excess, if any, which remains after reserving in full for the Chairman the amount required under clause (A) shall be allotted among the States which have plans approved by the Chairman in equal amounts but in no event shall any State be allotted less than $200,000.

"(4) (A) The amount of any allotment made under paragraph (B) for any fiscal year which exceeds $125,000 shall be available at the discretion of the Chairman, to pay up to 100 per centum of such cost of projects and productions if such project and productions would otherwise be unavailable to the residents of that State: PROVIDED, That the total amount of any such allotment for any fiscal year which is exempted from such 50 per centum limitation shall not exceed 20 per centum of the total of such allotment for such fiscal year.

"(B) The amount of any grant to any State or regional groups under subsection (g)(3)(A) of this section shall not exceed
50 per centum of the total cost of the project or production funded, except that no more than 20 per centum of the funds allotted for such purposes may be available for grants and contracts in that fiscal year without regard to that limitation.

"(C) Any amount allotted to a State under the first sentence of paragraph (3) for any fiscal year which is not obligated by the State prior to 60 days prior to the end of the fiscal year for which such sums are appropriated shall be made available for making grants to regional groups.

"(D) Funds made available under this subsection shall not be used to supplant non-Federal funds.

"(E) For the purpose of paragraph (3) and (4) of this section the term "regional group" means any multi-state group, whether or not representative of contiguous States.

"(5) All amounts allotted or made available under paragraph (3) for a fiscal year which are not granted to a State during such year shall be available at the end of such year to the National Endowment for the Arts for the purpose of carrying out section 5(c)."
SEC.3 The modification recommended for Sec. 6(f) relates to the functions of the National Council on the Arts. It is proposed that Sec. 6(f) be revised to increase the per centum limitation figure on funds which may be used by the Chairman in approving or disapproving, under a delegation of authority from the Council, grant applications in amounts up to $17,500 without a prior Council recommendation, but subject to subsequent review, i.e., the so-called "Chairman's action." Current statistics relating to actual Endowment grants up to $17,500 indicate that, utilized fully, this authority would enable the Chairman expeditiously to move approximately 24% of funds appropriated for program purposes, or put another way, 73% of the total number of the grants made by the Endowment. Presently, the Endowment is moving only approximately ____% of the total number of grants and ____% of total monies available for program purposes by means of the "Chairman's action.

Inspired by a recommendation from the National Council on the Arts, this proposed change is to insure that the Council will be able to continue to devote the major portion of its time to examination and discussion of important programmatic and administrative policy issues, despite the recent large increase in applications to the Endowment. Noting the fact that these grants all involve projects coming within standard program guidelines (which are reviewed and receive prior approval by the Council), and the fact that all such applications
have undergone prior comprehensive expert panel review, the Council would prefer to have as many as possible of these applications moved on the basis of "Chairman's actions," without it having to examine in detail the financial and other aspects of these applications involving $17,500, or less. This proposal is intended to increase the administrative efficiency of the Endowment by giving the Chairman the authority and flexibility she needs for fast and effective decisions, and to cut down on red tape. It would result in faster moving grant awards and eliminate a considerable amount of paperwork.

In sum, with this kind of flexibility, the Council would be able better to fulfill its responsibilities under the statute with respect to policy recommendations on Endowment programs, while also continuing its prior review on the use of over 75% of Endowment program funds. This is particularly important in view of the changing and growing cultural needs and priorities of the nation. Subsequent Council review and the fact that the delegation of authority can be revoked at any time by the Council insure that such authority will be properly exercised.

(It should be noted that the Chairman's authority to make grants without a prior Council recommendation under the delegation of authority as described above is modest, indeed. The Director,
National Science Foundation is authorized under the Foundation's enabling legislation ((42 U.S.C. Sec. 1864(e))) to make grants and contracts under a similar delegation of authority in amounts up to $500,000 in any one fiscal year or up to $2,000,000 in the case of multi-year commitments.) The language of the subsection follows:

"(f) The Council shall (1) advise the Chairman with respect to policies, programs, and procedures for carrying out his functions, duties, or responsibilities under this Act, and (2) review applications for financial assistance under this Act and make recommendations thereon to the Chairman. The Chairman shall not approve or disapprove any such application until he has received the recommendations of the Council on such application, unless the Council fails to make a recommendation thereon within a reasonable time. In the case of an application involving $17,500, or less, the Chairman may approve or disapprove such request if such action is taken pursuant to the terms of a delegation of authority from the Council to the Chairman, and provided that each such action by the Chairman shall be reviewed by the Council; PROVIDED, that the terms of any such
delegation of authority shall not permit obligations for expenditure of funds under such delegation for any fiscal year which exceed an amount equal to \( \frac{1}{10} \times 30 \) per centum of the sum appropriated for that fiscal year pursuant to subparagraph (A) of paragraph (1) of section 11(a)."
The changes proposed with respect to Sec. 10, subsections (a), (b), and (c) relate to the transfer of surplus Federal personal property to Foundation grantees and to the date on which the annual reports by the Endowments and National Councils to the President for transmittal to the Congress are due.

Regarding the transfer of excess and surplus Federal personal property, the National Endowment for the Arts' potential to serve the arts will be greatly enhanced by participation in the General Services Administration's program of the transfer of excess government personal property. Often the National Endowment for the Arts' projects involve individual artists who can utilize unwanted surplus and obsolete machinery, equipment, materials, etc. at a considerable savings to the Endowment over the cost of new supplies. These savings are particularly important at a time of recession and strained government budgets, when the arts must be urged to maximize the use of our country's existing resources. It does not make sense for the Endowment to make grants of taxpayer monies for the purchase of equipment when adequate surplus government property, already paid for by the taxpayer, is available to fulfill grantees' needs.
With respect to the annual reports, an amendment would be necessary due to the adoption of the new Federal fiscal year, in any event. However, rather than merely changing the date contained in the provisions to reflect the current six and one half month period of time in which the reports can be prepared for transmittal to the Congress, it is proposed that the Endowments and the Councils have a period of eight and one half months in which to prepare these documents. The current six and one half month period imposes a severe administrative burden on both Endowments, in view of the substantially increasing number of grant applications, awards, and private gifts. The change relating to subsection (c) reports of the National Councils is appropriate for reasons of consistency in the statute, even though the Councils would not ordinarily require a similar amount of time in which to prepare their reports. The language of the subsection follows:

"Sec.10 (20 U.S.C.959) (a) In addition to any authorities vested in them by other provisions of this Act, the Chairman of the National Endowment for the Arts and the Chairman of the National Endowment for the Humanities, in carrying out their respective functions, shall each have authority --"
"(1) to prescribe such regulations as he deems necessary governing the manner in which his functions shall be carried out;

"(2) in the discretion of the Chairman of an Endowment, after receiving the recommendation of the National Council of that Endowment, to receive money and other property donated, bequeathed, or devised to that Endowment with or without a condition or restriction, including a condition that the Chairman use other funds of that Endowment for the purposes of the gift, except that a Chairman may receive a gift without a recommendation from the Council to provide support for any application or project which can be approved without Council recommendation under the provisions of sections 6(f) and 8(f), and may receive a gift of $15,000, or less without Council recommendation in the event the Council fails to provide such recommendation within a reasonable period of time, and to use, sell, or otherwise dispose of such property for the purpose of carrying out sections 5(c) and 7(c);
"(3) to receive and dispose of by grant or loan excess and surplus Federal personal property of all kinds (40 U.S.C. 471 et seq.) for the purpose of carrying out sections 5(c) and 7(c);"

"(4) to appoint employees, subject to the civil service laws, as necessary to carry out his functions, define their duties, and supervise and direct their activities;

"(5) to utilize from time to time, as appropriate, experts and consultants, including panels of experts, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a): PROVIDED, HOWEVER, That any advisory panel appointed to review or make recommendations with respect to the approval of applications or projects for funding shall have broad geographic representation;

"(6) to accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed without compensation;"
"(7) to make advance, progress, and other payments without regard to the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529);

"(8) to rent office space in the District of Columbia; and

"(9) to make other necessary expenditures.

"In any case in which any money or other property is donated, bequeathed, or devised to the Foundation (A) without designation of the Endowment for the benefit of which such property is intended, and (B) without condition or restriction other than it be used for purposes of the Foundation, such property shall be deemed to have been donated, bequeathed, or devised in equal shares to each Endowment and each Chairman of an Endowment shall have authority to receive such property. In any case in which any money or other property is donated, bequeathed, or devised to the Foundation with a condition or restriction, such property shall be deemed to have been donated, bequeathed, or devised to that Endowment whose function it is to carry out the purpose or purposes described or referred to by the terms of such condition or restriction, and each Chairman of an Endowment shall have authority to receive such property. For the purposes of the
preceding sentence, if one or more of the purposes of such a condition or restriction is covered by the functions of both Endowments, or if some of the purposes of such a condition or restriction are covered by the functions of one Endowment and other of the purposes of such a condition or restriction are covered by the functions of the other Endowment, the Federal Council on the Arts and the Humanities shall determine an equitable manner for distribution between each of the Endowments of the property so donated, bequeathed, or devised.

For the purpose of income tax, gift tax, and estate tax laws of the United States, any money or other property donated, bequeathed, or devised to the Foundation or one of its Endowments and received by the Chairman of an Endowment pursuant to authority derived under this subsection shall be deemed to have been donated, bequeathed, or devised to or for the use of the United States.

"(b) The Chairman of the National Endowment for the Arts and the Chairman of the National Endowment for the Humanities shall each submit an annual report to the President for transmittal to the Congress on or before the 15th day of January/June of each year. The report shall summarize the activities of the Endowment for the preceding year, and may include such recommendations as the Chairman deems appropriate."
"(c) The National Council on the Arts and the National Council on the Humanities, respectively, may each submit an annual report to the President for transmittal to the Congress on or before the 15th day of January/June of each year setting forth a summary of its activities during the preceding year or its recommendations for any measures which it considers necessary or desirable."

SEC. 7 The changes proposed for Sec. 11 relate to the authorization of future Foundation appropriations, the utilization of private gift monies for purposes of matching the indefinite "Treasury Fund" appropriation; and the availability for obligation and expenditure of sums appropriated for the fiscal year transition period.

First, these amendments would delete from the current Act authorizations of past appropriations which are now of historic interest only and would authorize a specific dollar amount appropriation for the fiscal year transition period and a "such sums" authority for each of the following three fiscal years (1977 through 1979).

The Foundation believes strongly that unusual circumstances justify a "such sums" authorization rather than specific dollar
amount authorizations for the fiscal years 1977 through 1979.

After discussing the alternatives, the National Council on the Arts at its 38th meeting, February 7-9, 1975, passed the following resolution:

"In view of the fact that it feels this is an important time to take a long-range overview of Endowment policy and funding needs, the National Council on the Arts recommends to the President that when presented to the Congress reauthorization legislation currently proposed indicate "such sums as may be necessary" rather than specific dollar figures for the National Endowment for the Arts."

Further, with the exception of the year of the Foundation's creation (1965), when specific sums were included in the Administration's proposals, it has been the general procedure of ensuing Administrations to utilize a "such sums as may be necessary" approach with respect to the subsequent reauthorization of the Foundation's programs.

The reauthorization period will begin October 1, 1976. Considering that the current economic uncertainties are likely to continue for a considerable time, flexibility in the Administration's approach would seem especially important. The letter of February 3, 1975, to
the Endowments from the Office of Management and Budget pointed to the "uncertainties surrounding...forward estimates" -- uncertainties which underlie the difficulties of projections for a three-year period (the time span traditional for Endowment reauthorizations) beginning more than a year and a half from now. Authorization figures should not be based on such uncertainties.

In addition, it should be pointed out that the authorized level of Federal funding for each Endowment for Fiscal Year 1976 is 126 million. It would be incongruous to limit recommended future funding to levels below those already approved by the Congress.

This provision would provide that groups receiving private gift monies as part of Foundation "Treasury Fund" grants would not be accountable to the United States for the accrual of interest payments thereon.

Such a provision would assist substantially non-profit organizations such as performing arts groups (including "national treasures" such as the Metropolitan Opera) who experience, especially in times of recession or inflation, extremely difficult cash flow problems. It would be making the fullest possible use of existing Federal
support, while stimulating increased private support. In this connection, it would be an important factor in maintaining a healthy balance in the amount of Federal support for the Arts and the Humanities vis-a-vis private philanthropic giving to these areas, since the Fund can be used directly to stimulate private giving to these vitally important areas. (Such was the case last year when the Arts Endowment provided emergency "challenge grant" funds to the Metropolitan Opera in the amount of $1,000,000. This amount was quickly matched by an enthusiastic public which responded with an additional $1,000,000, thereby providing the Opera Company with a severely needed $2,000,000.) Such an amendment obviously would be of immense benefit to performing arts organizations such as the Metropolitan which have already increased their administrative fees to the maximum level while experiencing constantly increasing and exorbitant costs of production.

Moreover, such flexibility in the use of the Fund could help stem increased unemployment among the large body of Americans associated with the performing arts and educational institutions throughout
the country, thereby benefiting the nation by helping the President's anti-recession program.

Finally by assisting these groups, both artistic and humanistic, in this way results in an incalculable benefit to our Nation by enriching and insuring the growth of the cultural and intellectual awareness of our people.

The insertion proposed for Sec. 11, subsection (b)(1) would provide, for purposes of consistency in the statute, that sums appropriated for the fiscal year transition period shall be available for obligation and expenditure until expended.
The language of subsections (a) and (b)(1) follow:

"(a) (1) (A) For the purpose of carrying out section 5(c), there are authorized to be appropriated to the National Endowment for the Arts, $54,000,000 for the fiscal year ending June 30, 1974, $90,000,000 for the fiscal year ending June 30, 1975, and $113,500,000 for the fiscal year ending June 30, 1976. For the purpose of carrying out section 5(g), there are authorized to be appropriated to the National Endowment for the Arts $11,000,000 for the fiscal year ending June 30, 1974. Not less than 20 per centum of the funds appropriated under the first sentence of this paragraph for the fiscal years ending June 30, 1975, and June 30, 1976, may be used only for the purpose of carrying out section 5(g).

(B) For the purpose of carrying out section 7(c), there are authorized to be appropriated to the National Endowment for the Humanities $65,000,000 for the fiscal year ending June 30, 1974, $90,000,000 for the fiscal year ending June 30, 1975, and $113,500,000 for the fiscal year ending June 30, 1976.
(2) There are authorized to be appropriated for each fiscal year ending prior to July 1, 1976, to the National Endowment for the Arts and the National Endowment for the Humanities, an amount equal to the total amounts received by each Endowment under section 10(a)(2), except that the amount so appropriated for any fiscal year shall not exceed the following limitations:

" (A) For the fiscal year ending June 30, 1974, $15,000,000.

" (B) For the fiscal year ending June 30, 1975, $20,000,000.

" (C) For the fiscal year ending June 30, 1976, $25,000,000.

"(a)(1) (A) For the purpose of carrying out section 5 subsections 5(c) and 5(g), there are authorized to be appropriated to the National Endowment for the Arts $33,750,000 for the period commencing July 1, 1976, and ending on September 30, 1976, and such sums as may be necessary for the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979.
Not less than 20 per centum of the funds appropriated under the first sentence of this paragraph for the period ending September 30, 1976 and the fiscal years ending September 30, 1977, September 30, 1978 and September 30, 1979, may be used only for the purpose of carrying out section 5(g).

" (B) for the purpose of carrying out section 7(c), there are authorized to be appropriated to the National Endowment for the Humanities $21,375,000, for the period commencing July 1, 1976, and ending September 30, 1976, and such sums as may be necessary for the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979.

" (2) There are authorized to be appropriated for the period commencing July 1, 1976 and ending September 30, 1976, and for each fiscal year ending prior to September 30, 1979, to the National Endowment for the Arts and the National Endowment for the Humanities, an amount equal to the total amounts received by each Endowment under section 10(a)(2), except that the
amount so appropriated for any fiscal year shall not exceed the following limitations:

" (A) For the period commencing July 1, 1976 and ending September 30, 1976, $1,000,000.

" (B) For the fiscal year ending September 30, 1977, $25,000,000.

" (C) For the fiscal year ending September 30, 1978, $25,000,000.

" (D) For the fiscal year ending September 30, 1979, $25,000,000.

" (3) Notwithstanding any other provision of law relating to the accrual of interest monies on Federal grant funds, private donation of money or other property received by the National Foundation on the Arts and the Humanities for purposes of this section shall not be considered as public monies or Federal property, and groups shall not be accountable to the United States for any accruals of interest monies thereon."
"(b) (1) Sums appropriated pursuant to subsection (a) for any period or fiscal year shall remain available for obligation and expenditure until expended."

SEC. 8 This section sets forth the effective date of the new legislation.