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6-2-1975

## Arts and Humanities: Pell Amendments (1975): Memorandum 01

Robert Wade

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UNITED STATES GOVERNMENT

# Memorandum

TO : Nancy Hanks

DATE: June 2, 1975

FROM : Robert Wade

SUBJECT: Arts and Artifacts Indemnity Act - S. 1800, Title II, Part B

Attached is a general memo containing a) information and views on OMB's attitude (as of 5/31/75) toward the bill, b) a brief description of some analogous Federal insurance programs, and c) questions and answers on the bill (hopefully worthy of N. Hanks).

Also find a copy of package materials sent to OMB with your testimony, to assist their legislative analysts in analyzing this bill.

Finally, I am attaching copies of statements by J. Carter Brown and State received this a.m. from OMB.

We shall probably not get final word from OMB until Tuesday a.m. (I warned George Gilbert not to act too fast on this since I had heard a rumor that the Vice President was interested in this bill and that OMB might hear from him on Monday.)

cc: ~~M. Straight~~  
Liv Biddle  
J. Spencer  
D. Contée  
A. Steele  
L. Reger  
J. Clark  
A. Murphy



5010-110

*Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan*

UNITED STATES GOVERNMENT

# Memorandum

TO : Nancy Hanks

DATE: June 2, 1975

FROM : Robert Wade 

SUBJECT: Exhibition Indemnity Legislation - Hearings -  
Supplemental and General Back-up Information

I. Final Witness List (as of 5/30/75)

Douglas Dillon  
George Seybolt  
Sherman Lee  
Mitch Wilder  
Ronald Berman  
(Ripley out of town - Mrs. Rockefeller (MOMA)  
may attend hearings)

II. OMB

OMB indicates that they will not argue with us on supporting the principle or concept, but they will not want us to say "This legislation is the answer," as they have problems with Federal Council approach. They'll want to submit a report to bill later. Of course, they recognize that you may be asked questions on the point, and will encourage you to take a "we wish to consider this further" approach. There is not much they can do, however, with you giving your personal views, and OMB is definitely aware that you are in between them and your friends on the Hill who have introduced this legislation. Also, for what it is worth, you will not have to play out any cards on this to gain OMB support, even if you were so inclined. It has been arranged, through Dan Herrick, for Douglas Dillon to speak with Mr. Rockefeller on this at their CIA meeting on Monday. (The objective, of course, is to have Mr. Rockefeller indicate to OMB that he favors this thing, thereby vitiating, hopefully, any unreconstructed negativism on the middle review levels at OMB.- Also, did you know that Paul O'Neil is now the Deputy Director?)



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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

III. Questions and Proposed Answers

Q. Do you support this bill?

A. Most persons I have talked with consider this a "forward looking piece of legislation" and are gratified to see it introduced. I support the principle contained in this legislation for the following reasons: 1) it will personally benefit hundreds of thousands and ultimately millions of American citizens by encouraging special museum exhibition programs in this country; 2) it requires no Federal appropriations at this time, and, based on British and Australian experience may never require any appropriations, other than a very small amount for administrative purposes; 3) it will preclude the need for Endowment grant monies to be used for the purchase of insurance for these exhibitions, and thereby save Federal tax dollars; and 4) there is precedent for such a program in already existing Federal legislation relating to such programs as the Federal Deposit Insurance Corp., the Overseas Private Investment Corp., the Housing Insurance Act, and others.

While these programs involve fee payments by the beneficiaries of the program, and have accumulated reserve funds, such funds are small in comparison with the total possible liability of the Federal Government under them. (A political upheaval in one country, for example, might wipe out the total fee reserve of the O.P.I.C., not to mention economic crises which could effect F.D.I.C.) And the FDIC, it should be noted, returns a substantial percentage of the fees it receives to member banks for use by the banks in paying future year's fees. FDIC - reserve 6.3 billion - largest bank alone has 50 billion in deposits and other assets. OPIC - reserve roughly 200 million - liabilities 1-2 billion. And, in their early years, the risk to the Government was far greater than the possible risk under this legislation. Point is Govt. in these programs assumes great risk.

(Brief descriptions of these analogous Federal Insurance programs follow.)

ADDENDUM - FEDERAL INSURANCE PROGRAMS

a) Federal Deposit Insurance Act, 12 U.S.C. 1811

Creates a Federal Deposit Insurance Corporation to insure the deposits of banks.

Purpose of Congress in creating FDIC was to help provide a sound United States banking structure and to aid the Government in the discharge of its fiscal transactions.

b) Overseas Private Investment Corporation, 22 U.S.C. 2191

Creates the Overseas Private Investment Corporation as an agency of the United States under the policy guidelines of the Secretary of State for the purpose of mobilizing and facilitating the participation of United States private capital and skills in the economic and social development of less developed friendly countries and areas, thereby complementing the development assistance objectives of the United States.

For carrying out this purpose, the Corporation is authorized to conduct financing, insurance, and reinsurance operations on a self-sustaining basis, taking into account in its financing operations the economic and financial soundness of projects.

More specifically, the Corporation is authorized to issue insurance upon such terms and conditions as the Corporation may determine, to eligible investors assuring protection in whole or in part against certain enumerated risks with respect to projects which the Corporation has insured.

The maximum contingent liability outstanding at any one time pursuant to insurance issued under the above quoted section shall not exceed \$7,500,000,000.

c) National Housing Act (12 U.S.C. 1701)  
Subchapter II - Mortgage Insurance (F.H.A.)

The purpose of this Act is to insure loans made by private lenders and to stimulate the financing and erection of housing.

The act creates a Mutual Mortgage Insurance Fund to be used by the Secretary (of H.U.D.) as a revolving fund for carrying out the provisions of this title with respect to mortgages insured under it.

It authorizes the Secretary, upon application by the mortgagee, to insure any mortgage offered to him which is eligible for insurance, and upon such terms as the Secretary may prescribe, to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon.

There are other Federal insurance programs - V.A. mortgage insurance, Federal Crop Insurance, Federal Flood Insurance, etc.

MEMO TO:  
Nancy Hanks

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From: R. Wade  
June 2, 1975

Q. You say you support the "principle". What about this bill?  
Do you have specific problems with it?

A. First, the bill is general, and I believe that considerable details have yet to be worked out with respect to implementation. I am thinking of technical details relating to eligibility for coverage, length of coverage periods, evaluation procedures, definitions of terms for indemnity purposes, etc. I am advised by legal counsel and others that agency regulations can do that job.

More fundamentally, I am not sure the Federal Council is the appropriate place to put this authority, since it is not an operating agency in the usual sense of the word.

On the other hand, it is difficult to conceive appropriate alternatives. It may be that the Council could delegate implementing authority to one or several of its member agencies through agency heads serving on the Council. In that case, the Council would rely on the Endowment staff and panels to perform the necessary administrative tasks, such as promulgating regulations, reviewing applications, and preparing requests for appropriations in the event of a loss for which coverage has been provided. Of course, the whole system would require the cooperation of Endowment legal and program staff, with representatives of the museum and commercial insurance fields.

MEMO TO:  
Nancy Hanks

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From: R. Wade  
June 2, 1975

A. No. It is, in our terms, very informal. There is no authorizing legislation. With reference to Great Britain and Australia, officials of those Governments, with the approval of the Treasury, simply sign the indemnity agreement (we have samples to provide you with) pledging to indemnify for loss or damage and loss of market value. (The recent Museum of Modern Art/Australia indemnity agreement was signed for Australia by the Prime Minister himself, with the legal approval of Australia's Attorney General.) Presumably, in the event of a loss, the Parliaments of those countries would have to approve an expenditure to honor a claim, but it is felt that such approval would be forthcoming, since their Governments are committed under the agreements.

Q. Do any other countries have indemnity programs that you know of?

A. To the best of our knowledge other countries which have programs in this area include France, which guarantees a preferential insurance rate, allowing for lower insurance costs for participating museums, and Germany, some states of which have provided for indemnities in the past.

Q. What Federal interest justifies legislation in this connection?

A. The same interest that justified the creation of the National Foundation on the Arts and the Humanities. The encouragement and development of cultural values and programs affects, changes, and enhances the life of every

MEMO TO:  
Nancy Hanks

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From: R. Wade  
June 2, 1975

citizen of our nation, and thus is an important and determining factor with respect to the future quality of American life. If one of the concerns of Government is to help provide a better cultural life for its citizens by encouraging and supporting national progress in the arts and the humanities, as indicated in the Declaration of Purpose to the National Foundation on the Arts and the Humanities Act, then this legislation is appropriate, and affords the Government an opportunity to practice what it preaches! (You may wish to delete all that follows "appropriate".)

UNITED STATES GOVERNMENT

# Memorandum

TO : Ralph Malvik, OMB  
George Gilbert, OMB

DATE: May 29, 1975

FROM : Robert Wade 

SUBJECT: Arts and Artifacts Indemnity Act - Analysis - Comment -  
Implementation

## I. ANALYSIS -

This legislation would authorize the Federal Council on the Arts and the Humanities to receive applications, in a manner prescribed by regulations, for indemnity protection on objects in any exhibition in the United States, if such exhibition is "certified" by the Secretary of the State to be in the national interest. When approved, the application would constitute a contract between the Council and the applicant pledging the full faith and credit of the United States to pay any amount for which the Council becomes liable under the approved application (Sec. 224(a)(b)(c)).

The Council is to approve applications only after it agrees with the estimated value of the items for which coverage is sought (Sec. 225(a)). After an agreed value is determined, a so-called "certificate" evidencing the indemnity protection is issued to the applicant (Sec. 225(a)).

There is provided a \$25,000 deductible (Sec. 225(b)).

Regulations shall be issued providing for the adjustment of claims, including provisions for an arbitration procedure to resolve dollar value damage questions where there is less than total loss or destruction of an object (Sec. 226(a)).

Once a claim for loss is made, the Council certifies the validity of the claim to the Congress (Sec. 226(b)). (This would probably be done on an annual basis.) Congress would then appropriate to the Council sufficient funds to pay certified claims (Sec. 227).

An annual report to the Congress would be required from the Council describing (a) all claims paid during preceding fiscal



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George Gilbert, Ralph Malvik  
From  
R/Wade

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May 29, 1975

year; (b) pending claims as of close of fiscal year; and  
(c) aggregate value of outstanding indemnity contracts at  
close of that fiscal year.

## II. COMMENT -

### A. "In the United States"

As drafted, the indemnity authority covers only exhibitions in the United States. The museums will ask that it cover both exhibitions in the U.S. and abroad for flexibility. Also, some Government agencies send exhibitions abroad, and they could save Federal money under an indemnity bill. (See testimony.) Therefore, I think we should support the concept, making it clear, however, that under no circumstances will both sides of an exchange be covered simultaneously.

## III. IMPLEMENTATION -

This legislation as written would have to work in one of two alternative ways:

(1) The Council could hire sufficient staff, which would, in consultation with the Endowments and/or its own hired consultants, process applications, approve them, and issue the indemnity certificates. Regulations describing the eligibility standards and arbitration procedures would in all probability be worked up by the Endowments' general counsel offices. Once the system is set up, and assuming the almost non-existent loss ratio continues, administrative handling requirements should not be substantial. In the event of a loss, the Foundation's finance office, after receiving proper documentation as to value, simply sends the bill to the Treasury Department for issuance of a check, once an appropriation has been made by the Congress.

(2) The second alternative, and the one I favor, would involve a Council delegation of authority to either both or one of the Endowments (through the Council member agency heads) to implement the above described program. In this event, Endowment consultants would review the applications and make recommendations on them. Once Endowment staff and consultants had favorably acted upon the application, a certificate of indemnity could be issued under the Council's letterhead.

MEMO TO  
George Gilbert, Ralph Malvik  
From  
R/Wade

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May 29, 1975

The legal hallmark of our administrative approach to this is simplicity. No legal hassling or complicated litigation is contemplated or should be necessary under this legislation. Arbitration would determine the dollar value of less than total losses or destruction. The arbitration determination would be final and binding on all parties under the terms of the Certificate of Indemnity and the applicable regulations. There would be no recourse to the courts. (One incident per year would constitute losses of epidemic proportions, based on past experience.) Of course, issuance of indemnities would be discretionary, not mandatory, so that the program could pace itself as required, or even self-destruct in the event of a single large loss.

In sum, this legislation should be supported because (1) it strengthens international understanding and good will through cultural exchange; (2) in a most important way it personally benefits every citizen who can view these exhibitions; (3) it requires no Federal appropriations at this time and, based on the experience of the British and Australians, may never require an appropriation, other than a very small amount for administration; (4) it would not seem to fall within the category of "new programs" in the ordinary sense of those words; and (5) there is precedent for such a program in already existing Federal legislation relating to programs such as the Federal Deposit Insurance Corporation, Overseas Private Investment Corporation, The Housing Insurance Act, Check Forgery Insurance Fund, and others.

Statement of

Nancy Hanks

Chairman, National Endowment for the Arts

Joint Hearings before the

Special Subcommittee on Arts and Humanities on the

Committee of Labor and Public Welfare of the

U.S. Senate and the Select Subcommittee on Education of the

Committee on Education and Labor of the

U.S. House of Representatives on

Part B of Title II of S. 1800 and H.R. 7216

June 4, 1975

I am very pleased to have the opportunity to testify on the proposed Arts and Artifacts Indemnity Act contained in Part B of Title II in S. 1800, a bill to amend and extend the National Foundation on the Arts and the Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

Placing the Federal Government in the role of a "guarantor" or "indemnitor" with respect to possible loss or damage to works of art and other objects in exhibitions certified by the Secretary of State to be in the national interest would reflect and follow policies already established and practiced by Great Britain and Australia, the Soviet Union and other nations. These countries have adopted this policy in the interests of easing the financial burden of their nationally important cultural institutions. And, as others will testify here, the experience of financial loss to those governments under this program has been practically nonexistent. The International Council on Museums, an advisory body to the United Nations Educational, Scientific and Cultural Organization on international museum matters, has recommended strongly that all nations adopt such a policy.

It has long been generally accepted that international exhibitions and exchanges between countries benefit the individual citizen in terms of the spiritual and cultural awareness and enlightenment that results from exposure to the artistic and cultural products and artifacts of other civilizations, both contemporary and ancient. By increasing man's knowledge of mankind, through the exhibition of these objects, we enhance man's knowledge of himself and, hopefully, stimulate future artistic and cultural activity to the ultimate benefit of the nation and its people.

While international exhibitions, usually part of exchange agreements, are generally held in high favor, the public is not fully aware of the exorbitantly high insurance costs in connection with these programs. Because of such costs, some major exhibitions in the past have been impossible to mount or sharply curtailed. In other instances the high costs of insurance have been covered in part through grants made by the National Endowment for the Arts or the National Endowment for the Humanities. This was the case last winter regarding the "Masterpieces of Tapestry from the 14th to the 16th Century" exhibition at the Metropolitan, in which a major collection of tapestries from Europe and the United States were put on special exhibition and were viewed by approximately 400,000 persons. Insurance costs for that exhibition alone totaled almost \$100,000 and were paid for in part by a grant from the National Endowment for the Arts.

Similarly, an exhibition of recent works by Jean Dubuffet held at the Guggenheim Museum in New York carried an evaluation of several million dollars and an insurance premium in excess of \$80,000. I wish to note that the need for an indemnification policy is not restricted to New York City or to the major institutions only. ~~I have appended for your information a list of typical exhibitions supported by the Endowment with Fiscal 1975 and 1976 funds and which involve foreign loans. You will note that they include institutions in Hawaii, Texas and Connecticut (among others) and from large, medium and small museums. Insurance premiums for the~~

borrowing institutions during this period total approximately \$127,000. Although the amounts may not seem large in the aggregate, the individual amounts represent a significant percentage of the cost of mounting an exhibition.

There is already well established precedent for the enactment of ~~this~~ such legislation. Recently, two major exhibitions in the United States were made possible because of special ad hoc indemnity legislation enacted to cover these specific exhibitions. On May 21, 1974, the President signed into law P.L. 93-287 (S. 3304) which made possible the Exhibition of Archeological materials from the People's Republic of China, now on view in Kansas City following a very successful showing at the National Gallery here in Washington. More recently, P.L. 93-476 (S.J. Res. 236) was passed by the Congress and signed by the President October 26, 1974. This bill made possible the historically unprecedented current exchange agreement between the Metropolitan Museum of New York and the Soviet Union, resulting in the nationally acclaimed exhibition of ancient Scythian gold and silver objects from the Hermitage in Leningrad and the Lavra State Museum in Kiev. It is my understanding that these exchanges could not have taken place without the Federal indemnity legislation.

It is almost embarrassing for me to describe the situation that exists with a major exhibition organized by the Museum of Modern Art in New York City. As I understand it, the museum wished to present an exhibition entitled "From Manet to Matisse" that would draw heavily on foreign collections. Since the insurance premium on such an exhibition was estimated in the neighborhood of \$200,000, the Museum was prepared to abandon the project when the Australian government expressed interest. As I mentioned, the Australians have an indemnification policy. The exhibition has opened in Sydney with Australian indemnification and will ultimately be seen in the United States, thanks to Australia.

American museums are among our most vital and active cultural institutions. They are normally engaged in exchange of all sorts of objects and works of art with their counterparts outside the United States.

~~The~~ <sup>Indemnity</sup> legislation will afford our museums the kind of protection they require to continue these programs by eliminating the costs of prohibiting expensive insurance, while not requiring any additional immediate Federal appropriations. If the British experience to date is a valid criterion, the Federal government may never have to appropriate any significant amounts to cover losses under this authorizing legislation. <sup>vely</sup>

Of course, we have to recognize that there could, despite all protections, be a catastrophic loss. Museums, both domestic and international, take every sound precaution to protect valuable objects. These precautions, taken by very responsible people, range from adequate security protection, to superb transportation and packaging technology. The experience of non-loss in exchange of objects speaks well for the care of treasures. But, a plane carrying invaluable objects could go down. It has not happened but it could. This possible event, totally unsubstantiated by experience, must be in my view accepted by this government -- without fear.

I believe the museum professionals of this country and the nations of the world assume with greatest responsibility the objects entrusted to their care. The question before us today is to enable -- indeed, to encourage -- these professionals to step up an exchange of objects to the benefit of people of all nations. I believe action by this government will encourage all other nations to take similar action.

Cultural exhibitions and exchanges of high quality should be encouraged by the laws and policies of the United States Government. They are in the national interest because of the personal esthetic, intellectual, and cultural benefits accruing to every man, woman and child of this nation who has the opportunity to experience these beautiful and enlightening presentations. We believe that this country should do as much as any nation in the world to insure that these vitally important programs are strengthened.

We shall elaborate subsequently by letter to the Subcommittee, if it desires, technical comments.

In the meantime, I should like to take the opportunity to express my gratitude to ~~Senator Pell, Congressman Brademas,~~ and members of the <sup>Sub</sup>committees and to the staff, and to all of those in the Senate and the House, who with imagination and dedication have worked with the museum profession in developing legislation that could immeasurably benefit the people of this country.

This material is from a study done by a Professor of Insurance at V.P.I.

Table 4 shows the three year experience for special exhibitions reported by fine arts museums in the survey. One major loss of \$23,000 distorted the figures somewhat but in general the results were very favorable. Most of the losses which were reported tended to be very small in size and arose from sources of frequency such as transit, moving, packing or shipping breakages, or markings rather than from art thefts of consequence. In a number of instances losses occurred by theft which were later returned with inconsequential damage.

Table 4. Insurance Experience of Art Museums:  
Special Exhibitions U.S.A.: 1970-72

	1970	1971	1972	Cumulative
Losses Paid	\$ 35,281	\$ 2,393	\$ 55,675	\$ 93,349
Premiums Paid	\$ 271,900	\$ 184,690	\$ 147,330	\$ 603,920
Loss Ratio	12.98%	1.30%	37.79%	15.5%

Source: 1973 Survey Data

## 12. Aggregate Experience

Table 5 shows the experience for all lines of coverage and for all of the reporting museums for the period under study. These results are impressive because they show abnormally low insurance loss ratios for the art museums. It is these ratios which suggest the need for rate revisions in the museum insurance classification.

When the experience is broken out for the Special Exhibitions, the results are comparable. Table 7 provides an analysis of the frequency and severity of losses for the special exhibition data.

Table 7. Insurance Claims Frequency and Severity for Special Exhibitions by Art Museums, U.S.A.: 1970-72

<u>Size of Loss</u>	<u>Number</u>	<u>Percent</u>	<u>Cum.%</u>	<u>Dollar Amount</u>	<u>Percent</u>	<u>Cum.%</u>
Less than \$1,000	146	93.6	93.6	\$ 3,782	4.1	4.1
\$1,000 to \$2,000	1	0.6	94.2	\$ 1,083	1.2	5.3
\$2,000 to \$3,000	-	0.0	94.2	-	0.0	5.3
\$3,000 to \$4,000	1	0.6	94.8	\$ 3,824	4.1	9.4
\$4,000 to \$5,000	3	1.9	96.7	\$14,018	15.0	24.4
\$5,000 to \$10,000	3	1.9	98.6	\$26,696	28.6	53.0
More than \$10,000	2	1.4	100.0	\$43,946	47.0	100.0

Source: 1973 Survey Data

Inasmuch as more than 90% of losses are under \$1,000 it would appear that museums might do better by making their own adjustments of such claims rather than incurring the overhead expense of insurance carriers for this purpose.

### 13. Insurance Purchasing Practices

There is considerable variation in the insurance buying practices of art museums with respect to the use of agents and brokers or consultants is concerned. In the 1973 survey, 81.6% of the respondents reported that they use a single brokerage firm for placing their insurance. In many cases it appears that local insurance agents' associations jointly handle