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Reauthorization: Williams/Coleman Compromise (October 27, 1990): Report 04

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AMENDMENT NO. _____ Calendar No. _____

Purpose: To require that the National Endowment for the Arts establish review panel procedures and sanctions for persons who produce obscene projects or productions.


H.R. 5769

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1991, and for other purposes.

Referred to the Committee on ________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HATCH (for himself)

Mr. Kennedy, Mr. Bell, Mr. Kassebaum, Mr. Hatzenbaum, Mr. Sessions, Mr. Chafee, Mr. Simon, Mr. Durenberger, Mr. Adams, Mr. Simpson, Mr. Dodd, Ms. Mikulski, Mr. Bingaman, Mr. Leahy, Mr. Wirth, Mr. Meynihan

Viz:

1. On page 101, line 23, strike 
2. "That ________" and all that follows through page
3. 102, line 7 and insert the following: "That section 10 of
4. the National Foundation on the Arts and the Humanities
5. Act of 1965 (20 U.S.C. 959) is amended—
6. "(1) in subsection (a)(6), by striking '529' and
7. inserting '3324';
8. "(2) by striking subsections (e) and (f);
“(3) by redesignating subsections (b), (c), and (d) as subsections (e), (f), and (g), respectively;

“(4) by designating the second through the fifth sentences of the existing subsection (a) as subsection (b);

“(5) by designating the sixth through the eighth sentences of the existing subsection (a) as subsection (c);

“(6) by designating the ninth through the eleventh sentences of the existing subsection (a) as subsection (d);

“(7) in subsection (b) (as redesignated in paragraph (4)) by inserting ‘including local arts representatives’ after ‘represent cultural diversity’;

“(8) in subsection (c) (as designated by paragraph (5)), by striking ‘clause (4)’ and inserting ‘subsection (a)(4)’;

“(9) by striking the second sentence of subsection (c) (as redesignated in paragraph (5));

“(10) in subsection (g)(3) (as redesignated by paragraph (3)), by striking ‘the last sentence of subsection (a)’ and inserting ‘subsection (d)’; and

“(11) by adding at the end thereof the following new subsections:
"(h)(1) The Chairperson of the National Endowment for the Arts shall develop procedures that—

"(A) ensure that each panel of experts established pursuant to subsection (a)(4) has a wide geographic, aesthetic, ethnic, minority representation by—

"(i) creating an agency-wide panelist bank, containing names of both qualified arts professionals and knowledgeable lay persons that have been approved by the Chairperson of the National Endowment for the Arts, or the designee of such Chairperson; and

"(ii) ensuring that such panels, where feasible, have knowledgeable lay persons serving on such panels at all times;

"(B) establish, where feasible, standardized panel procedures;

"(C) require, where necessary and feasible, the increased use of site visitations to view, and issue a written report on, a work of an applicant in order to assist the panel of experts in making recommendations;

"(D) require a written record summarizing all deliberations and recommendations of each panel of experts;
"(E) require that the membership of each panel of experts change substantially from year to year, with no appointment to a panel of experts to exceed 3 consecutive years; and

"(F) require all meetings of the National Council on the Arts be open to the public in accordance with the provisions of section 552b of title 5, United States Code.

"(2) In making appointments to panels established pursuant to subsection (a)(4), the Chairperson shall ensure that an individual who has a pending application for financial assistance under this Act, or who is an employee or agent of an organization with a pending application, does not serve as a member of any panel before which such application is pending. The prohibition described in the preceding sentence shall commence with respect to such individual beginning on the date such application is submitted and shall continue for so long as such application is pending.

"(3) The Inspector General of the National Endowment for the Arts shall conduct the appropriate reviews to ensure grantee compliance with all regulations that relate to the administration of all programs and operations of the National Endowment for the Arts. This review includes,
but is not limited to, grantee compliance with all accounting and financial criteria.

"(4) The procedures described in paragraph (1) shall be developed not later than 90 days after the date of the enactment of this subsection.

"(i)(1) The Chairperson of the National Endowment for the Arts shall establish sanctions for groups or individuals who receive funds pursuant to the provisions of section 5 and use such funds to create, produce, or support a project or production that is found to be obscene under State criminal laws or is found to be a criminal violation of State child pornography laws in the State or States in which the group or individual produced such project or production or in the State or States described in the grant award as the site or sites of the project or production, as determined by a court decision, after final appeals.

"(2) Except as provided in paragraphs (3) and (4), the sanctions described in paragraph (1) shall include—

"(A) repayment by the individual or organization that created or produced the project or production found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1) to the Chairperson of the portion of the funds received under section 5 that were used to
create or produce such project or production in accordance with the provisions of paragraph (3); and

" '(B) ineligibility of the individual or organization that—

" '(i) used funds received under section 5 to create or produce the project or production found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1); and

" '(ii) was a defendant convicted in the criminal action described in paragraph (1);

to receive funds under this Act for a period to be determined by the Chairperson of the National Endowment for the Arts, that shall be not less than 3 years after the date such project or production is found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1) or until repayment of the funds pursuant to the provisions of subparagraph (A), whichever is longer.

" '(3)(A) Except as provided in paragraph (4), funds required to be repaid pursuant to the provisions of this subsection shall be repaid not later than 90 days after the date such project or production is found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1).
"(B) If a State, local, or regional agency or arts group received funds directly from the Chairperson under section 5 and awarded all or a portion of such funds to an individual or organization that used such funds to create, produce or support a project or production found to be obscene or to violate child pornography laws pursuant to the provisions of paragraph (1), and the Chairperson determines that such individual or organization has not or is not able to repay such funds in accordance with the provisions of paragraph (2) and this paragraph, then such agency or group shall repay such funds to the Chairperson not later than 30 days after the expiration of—

(i) the 90-day period described in paragraph (3); or

(ii) the waiver period described in paragraph (4).

(C) Each individual or organization required to repay funds pursuant to the provisions of subparagraph (A) of paragraph (2) shall be ineligible to receive further funds under this Act until such funds are repaid.

(D) If a State, local, or regional agency or arts group is required to repay funds pursuant to the provisions of subparagraph (A) of paragraph (2) or subparagraph (B) of this paragraph and fails to make such repayment in accordance with the provisions of this subsection, then such
agency or group shall be ineligible to receive funds under 
this Act until such funds are repaid.

"(4) The Chairperson of the National Endowment 
for the Arts may waive the provisions of paragraph (3)(A) 
for a period not to exceed 2 years.

"(5) The Chairperson of the National Endowment 
for the Arts shall develop procedures to ensure compliance 
with the sanctions described in paragraph (1).

"(6) The general information and guidance form 
provided to recipients of funds under section 5 shall in­
clude on such form the following:

"REPAYMENT OF FUNDS AND DEBARMENT.—In accord­
ance with a Congressional directive, recipients of funds 
under section 5 of the National Foundation on the Arts and 
the Humanities Act of 1965 are requested to note the pro­
visions of section 10(i) of such Act regarding repayment of 
funds and debarment."'

"(7) The Chairperson shall develop regulations to 
implement the sanctions described in this subsection.'"