National Foundation on the Arts and Humanities Act and Museum Services Act: Extensions (1979): Report 08

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SECTIONAL ANALYSIS OF DRAFT BILL

TO AMEND THE NATIONAL FOUNDATION ON THE ARTS AND THE
HUMANITIES ACT OF 1965, AS AMENDED (20 U.S.C. 951, et. seq.)

Set forth below is a section-by-section analysis of "The Arts and the Humanities Act of 1979," a draft bill that would amend the National Foundation on the Arts and the Humanities Act of 1965, as amended.

Section 2 of the draft bill would repeal from the Act the authority of the National Endowment for the Arts to support construction projects. This authority has had only limited use since the creation of the Endowment in 1965. Both Endowments would be able to continue their support of projects involving renovation of facilities.

Section 3 would add the Northern Mariana Islands to the list of special jurisdictions contained in that section of the Act defining "States." This is deemed appropriate in light of Public Law 94-241 which requires that the Northern Mariana Islands be eligible for Federal financial assistance in the same manner as the other territories.
Section 4 of the draft bill would amend Section 5 of the Act by modifying the wording of paragraph (l) of subsection (c) so as to emphasize that projects and productions supported by the National Endowment for the Arts should reflect the broad aesthetic diversity of American society.

Section 5 would make two technical corrections to the last sentence of Section 5(c) of the Act. The first corrects the reference to "clause (5)" to read "paragraph (5)". The second amendment would recognize the new name of the Senate Committee on Labor and Human Resources.

Section 6 would make several changes to Section 5(g) of the Act. The first would delete obsolete language with respect to the Commissioner of the District of Columbia.

The second amendment would make two changes to the operation of the program of grants to State arts agencies in order to give the Chairmen more flexibility to encourage State appropriations for the arts.

(1) Under present law, of the total amount appropriated each year to the Arts Endowment for its program activities (authorized under Section 5(c) of the Act), 20 per cent is set aside for distribution to the States.
Presently, at least 75 per cent of this amount is distributed in equal amounts to the States and special jurisdictions via block grant, and no more than 25 per cent is distributed via discretionary grants. Section 6(b) of the draft bill would change the ratio of block grants to discretionary grants from 75:25 to 50:50. This change would be implemented in five per cent increments over the five year period covered by the bill.

(2) The second part of Section 6(b) of the draft bill would allow the Chairman, in awarding discretionary grants to States and regional groups as authorized by Section 5(g)(3)(A) of the Act, to consider such factors as (1) standards of artistic excellence; (2) level of effort based upon State appropriations for the arts; and (3) State population.

The third proposed change would make the word "project" in paragraph (4)(A) plural.

The final amendment in Section 6 of the draft bill would result in those special jurisdictions with less than 200,000 population (i.e., the Virgin Islands, Guam, American Samoa and the Marianas) receiving an amount equivalent to the $200,000 block grant portion of the State allotment. The Arts Endowment has found that these jurisdictions cannot effectively utilize the larger amount
of money they currently receive via block grant when treated in the same manner as the fifty States and the larger special jurisdictions of the District of Columbia and Puerto Rico. The less populous jurisdictions would still be eligible for additional discretionary grants above the $200,000 award.

Section 7 of the draft bill would provide specific authority to the Chairman of the National Endowment for the Arts to enter into inter-agency agreements in pursuit of his responsibilities under Section 5(k) of the Act that requires that he coordinate the programs of the Endowment with those of other Federal agencies. Under this authority, for example, the Arts Endowment establishes panels for the International Communications Agency (ICA) to recommend selections for the "Art in the Embassies" program, and for the General Services Administration (GSA) for the selection of artworks to be placed in Federal buildings. Currently, the Arts Endowment has been providing the services enumerated in this section of the draft bill from very limited administrative funds.
Section 8 of the draft bill would make an amendment to Section 5(l) of the Act that authorizes the Endowment's Challenge Grant program. The purpose of this amendment would be to emphasize that the basic purpose of those grants is to strengthen artistic quality.

Section 9 of the draft bill would repeal Section 5(m) of the Act that established a special program entitled the "Bicentennial Film Project." This program has never been funded since it was first authorized in 1976.

Section 10 of the draft bill would amend Section 6 of the Act to provide that the terms of office of all members of the National Council on the Arts would expire on September 3rd of the year in which their respective six year terms expire. Presently two of the 26 members have terms that expire in January. The remaining members' terms expire in September.

Section 11. The authority of the National Endowment for the Humanities to make loans has never been used; repeal is recommended.

Section 12, like Section 6 of the draft bill, would make two technical corrections to the Act. The first
corrects the reference to "clause (6)" in the last sentence of Section 7(c) to read "paragraph (6)". The second amendment would recognize the new name of the Senate Committee on Labor and Human Resources.

Sections 13 and 14. The purpose of these amendments affecting the State Programs of the Humanities Endowment is to remove the $200,000 per State floor which now governs grants to four U.S. overseas jurisdictions with small populations:

**Virgin Islands:**

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970 Census</td>
<td>62,000</td>
</tr>
<tr>
<td>1978 Estimate</td>
<td>98,390</td>
</tr>
</tbody>
</table>

**Guam:**

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970 Census</td>
<td>85,000</td>
</tr>
<tr>
<td>1973 Estimate</td>
<td>102,000</td>
</tr>
<tr>
<td>1976 Estimate</td>
<td>96,000</td>
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</tbody>
</table>

**American Samoa:**

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970 Census</td>
<td>27,000</td>
</tr>
</tbody>
</table>

**Northern Marianas:**

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973 Census</td>
<td>14,000</td>
</tr>
</tbody>
</table>

**Trust Territory of the Pacific Islands**

(This is not defined as a "State" in Section 3(g). It may, however, achieve that status in the future.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973 Census</td>
<td>115,000</td>
</tr>
</tbody>
</table>
The smallest State of the Union, Alaska, has a population of 302,173 according to the 1970 Census.

All of these jurisdictions remain eligible for grants in the Humanities State Program in amounts to be determined by the Chairman after receiving the advice of the National Council on the Humanities.

An additional change is included in Section 13 in order to give the Chairman more flexibility to encourage State appropriations to grant recipients. At present at least 75 percent of the funds appropriated for the State Humanities Program is distributed in equal amounts to the States and special jurisdictions via block grant, and no more than 25 per cent is distributed via discretionary grants. Section 13 of the draft bill would change the ratio of block grants to discretionary grants from 75:25 to 50:50 in five per cent increments over the five year period covered by the bill.

In addition the amendments in Section 13 would allow the Chairman, in awarding discretionary grants to grant recipients and regional groups as authorized by Section 7(f)(4)(A) of the Act, to consider such factors as levels of State appropriations to a grant recipient and the size of population of a State.

Section 15. The purpose of this amendment is to authorize the Humanities Endowment to support renovation on the same basis as the Arts Endowment.
Currently the Humanities Endowment is supporting renovation and construction projects in the Challenge Grant program established under Section 7(h) of the Act. The use of the word "project" in Section 7(h) (2) (A) to describe activity supported by a Challenge Grant has required interpretation by the General Counsel of the Humanities Endowment because that word is presently described as follows in Section 3(d) of the Act:

"The term 'project' means existing programs which further the purposes of this Act, and programs newly organized to further such purposes, including programs to foster American artistic creativity, to commission works of art, to create opportunities for individuals to develop artistic talents when carried on as a part of a program otherwise included in this definition, and to develop and enhance public knowledge and understanding of the arts, and includes, where appropriate, rental, or purchase of facilities, purchase or rental of land, and acquisition of equipment. Such term also includes --

(1) the renovation of facilities if (A) the amount of the expenditure of Federal funds for such purpose in the case of any project does not exceed $250,000, or (B) two-thirds of the members of the National Council on the Arts (who are present and voting) approve of the grant or contract involving an expenditure for such purposes; and

(2) the construction of facilities if (A) such construction is for demonstration purposes or under unusual circumstances where there is no other manner in which to accomplish an artistic purpose, and (B) two-thirds of the members of the National Council on the Arts (who are present and voting) approve of the grant or contract involving an expenditure for such purpose."

The Humanities General Counsel has ruled that, in the case of Challenge Grants awarded by the Humanities
Endowment, approval of a grant or contract involving renovation or construction must be given by the National Council on the Humanities instead of the National Council on the Arts.

Section 16 of the draft bill would provide specific authority to the Chairman of the National Endowment for the Humanities to enter into inter-agency agreements in pursuit of his responsibilities under Section 7(d) of the Act that requires that he coordinate the programs of the Endowment with those of other Federal agencies. Under this authority, for example, the Humanities Endowment has cooperated with the National Science Foundation in making grants in the increasingly important field of science, ethics and human values. Currently, the Humanities Endowment has been providing the services enumerated in this section of the draft bill from very limited administrative funds.

Section 17. The purpose of this amendment is to raise from $17,500 to $30,000 the ceiling on grants that the Chairman can make without a recommendation from the National Council on the Humanities. Such grants can be made only pursuant to a delegation from the Council and must be reported to the Council for its review. Although the statute allows a maximum of 10 per cent of program funds
to be obligated by such grants, the Humanities Endowment has obligated only about 1 per cent of such funds in this manner.

The figure of $17,500 has been affected by inflation since it was adopted in 1973. It appears that $30,000 would now be a figure which would give the Chairman greater flexibility in emergency situations.

Section 18 proposes two technical changes to the Act. The first amendment would give statutory recognition to both Endowment's practice of selecting for membership on the Endowment's peer review panels persons with a broad range of aesthetic and humanistic perceptions.

The second technical change would provide additional time for the submission of Annual Reports by the Chairmen of the two Endowments and the two Councils to the President for transmittal to the Congress. The present requirement of January 15 contained in Section 10 of the Act is unrealistic given the recent change in the start of the Federal fiscal year from July 1 to October 1. The change would require that such Reports be submitted by April 15 of each year.
Section 19 of the draft bill would propose several changes to Section 11 of the Act, containing the authorization of appropriations for the activities of the two Endowments. The first amendment would provide "such sums" appropriations authorization for the basic program of the two Endowments for the five fiscal years ending September 30, 1985.

The second amendment would provide "such sums" appropriation authorizations for the "Treasury Fund" for the same five fiscal years. In addition it would permit the release of indefinite appropriations to match gifts received by grantees for the purposes of Section 5(c) and 7(c) of the NFAH Act. Presently all such gifts, in order to release matching funds from the Treasury, must be accepted by the Chairman as Federal funds. The new procedure would have three advantages:

1. It will simplify accounting, particularly in the Challenge Grant program.
2. It will permit the Endowments' gift funds to be retained by grantees and never become Federal funds. Presently gift funds are considered to be Federal funds, but are exempt from Treasury control. It is not feasible for the Endowments to duplicate the controls that Treasury applies to funds under its jurisdiction.
(3) In the case of Challenge Grants, the present provisions cause difficulty in accepting private gifts which are in the form of "deferred giving". Deferred giving is increasingly important in attempts by arts organizations, colleges, universities and museums, which are trying to build up their endowment funds, one of the chief purposes of the Challenge Grant program under Sections 5(1) and 7(h) of the Act.

This change would not result in any alteration of present requirements regarding the ratio of Federal funds, private gifts and funds used by grantees to match.

The third change would provide "such sums" appropriation authorizations to both Endowments for their Challenge Grant program, and proposes the same change as that described above regarding private donations.

The last amendment would repeal the appropriations authorization for the Bicentennial Film program, the authorization for which is also proposed for repeal.

Section 20 would make the amendments effective upon the date of enactment.