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*Admin. bill
became S. 2724*

ARTS, HUMANITIES AND MUSEUMS AMENDMENTS OF 1990

SECTION-BY-SECTION ANALYSIS

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

Set forth below is a section-by-section analysis of the "Arts, Humanities and Museums amendments of 1990," a bill that would amend the National Foundation on the Arts and the Humanities Act of 1965, as amended, the Museum Services Act, and the Arts and Artifacts Indemnity Act, as amended .

Section 2 of the bill amends the definition of "the arts" in the National Foundation on the Arts and the Humanities Act of 1965, referred to as "Act" through section 31 of this section-by-section analysis, to recognize explicitly the inclusion of the traditional arts as practiced throughout the country within that term.

Section 3 of the bill amends the definition of the term "project" to underscore that programs which enhance public knowledge and understanding of the arts should be available to all peoples throughout the nation.

Section 4 of the bill changes the internal section references to the Code section numbers and amends the definition of a "project" so that a National Endowment for the Humanities' (NEH) preservation project could use grant funds for renovation and construction purposes. Currently, NEH may fund renovation and construction activities only with challenge grant funds.

Section 5 of the bill makes several changes to section 5(c) of the Act. Paragraph (2) is amended to recognize that excellence is embodied in the artistic standards applicable to the traditional arts. Paragraph (5) is amended to reference education explicitly among the types of arts projects which may be supported. New paragraphs (8) and (9) are added: the former describing authority to provide organizational and managerial assistance to arts organizations; the latter recognizing the authority of the National Endowment for the Arts (NEA) to support international arts activities. Paragraph (9) conforms the NEA's basic grant-making authority to that of the NEH, which was amended for this purpose in 1985.

Section 6 of the bill revises certain reporting requirements for state arts agencies. Currently, state arts agencies are required by the Act to provide information annually on their activities over the preceding two years. The bill requires this information to be reported annually only for the most recent preceding year for which information is available. The bill changes the requirement of reporting this information from the preceding two years to only the preceding year because elsewhere, the state has already agreed to provide annual reports. This method was decided upon after a costly and intense study undertaken with the state arts agencies to create an annual information collection system. The change would also prevent the undesirable affect of receiving duplicative information. The bill also increases the scope of the reporting

requirement to include all projects funded by state arts agencies. This change also makes the requirement more compatible with existing state information systems.

Section 7 of the bill amends the NEA Challenge grant program authority to include a new emphasis for the use of Challenge grants: stimulating artistic activity and awareness with respect to the varied cultural traditions throughout the nation.

Section 8 of the bill strikes out the requirement in section 5(m) of the Act that a "national information and data collection" system be developed by NEA and inserts a requirement that such a system be employed. This change is being made because the system has already been developed pursuant to the requirements of the 1985 reauthorization. The provision that a plan be submitted to Congress within one year of the effective date of the 1985 Act has been accomplished and, therefore, that provision is also being deleted. The provision of the last sentence which currently provides that the state of the arts report was to be submitted by October 1, 1988 and biennially thereafter. The report for 1988 was submitted and a second one will be submitted in accordance with the current law by October 1, 1990. The bill would require submission of the next report in 1992, and quadrennially thereafter. Generally, changes in the arts fields do not occur so rapidly as to warrant a full-scale report to the Congress and the President every two years.

A four-year interval would provide more perspective and thus permit a more significant report. Developments that might occur between reports could be brought to the attention of Congress through NEA planning documents, Congressional budget submissions and reports, or other appropriate formats.

Section 9 of the bill amends the current statutory language to provide that the National Endowment for the Humanities is being created. The current language states that "a" National Endowment is being created.

Section 10 of the bill amends the introductory paragraph of Section 7(c) of the Act to provide for the different means by which the NEH Chairperson may carry out the nine program areas set forth. The amendment specifically provides that "contracts, grants, loans, and other forms of assistance" may be used by the Chairperson. The understanding has always been that the Chairperson has had such authority, even though such references only appear in paragraphs 2, 3 and 7 of Section 7(c) of the Act. Congress provided NEA with express authority to enter into contracts in 1967 when Section 7(c) was amended to provide authority to carry out a program of "contracts with, or grants-in-aid to, groups or ... individuals" Because the general authority has been extended to all programs, reference to the particular methods, e.g., contracts, grants and loans, in paragraphs 2, 3 and 7 of Section 7(c) have been deleted.

Also, it amends Section 7(c) of the Act by adding paragraph (10), which pertains to fostering interchange of information in the humanities, by adding to the Chairperson's authority to foster programs and projects which provide access and preservation of certain materials. Reference to "projects" allows preservation funds to be used for renovation and construction.

Section 11 of the bill makes a technical correction in the term used to describe the Chairperson's responsibility for coordinating NEH's programs with other federal programs.

Section 12 of the bill specifies that whenever a State chooses to establish a State agency to administer the State's humanities plan, that State must designate the humanities council which is in existence on the date the State agency is established as the State agency. The current statutory language requires that only humanities councils "in existence on the date of the enactment of the Arts and Humanities Act of 1985" are eligible to be designated the sole State agency. Such groups might no longer exist.

Section 13 of the bill revises certain reporting requirements for state humanities agencies, even though there are no such agencies at this time. Currently, state humanities agencies, if any existed, would be required to provide certain data on an annual basis under section f(2)(A)(viii)(I) and (II) of the Act. This requirement in current law relates to the level of participation by scholars and scholarly organizations and the extent to which

programs are available to all people and communities in a given state. The bill changes the reporting requirement for these data from information for the preceding two years to the preceding year for which the information is available. With this change, information from only the preceding year is necessary. Annual reporting of this type of data is more compatible with existing state information systems.

Section 14 of the bill makes the same reporting changes to section (f)(3)(J)(i) and (ii) of the Act for state humanities councils or committees as was provided for in Section 13 with respect to state humanities agencies.

Section 15 of the bill is amended to delete the date by which the Secretary of Labor was to proscribe standards. The deadline has been met and the deletion does not affect the Secretary's authority to proscribe standards, regulations, and procedures.

Section 16 of the bill corrects the name of the National Endowment for the Humanities.

Section 17 of the bill strikes out the requirement in section 7(k) of the Act that a "national information and data collection" system be developed by NEH and inserts a requirement that such a system be employed. This change is being made because the system

has already been developed pursuant to the requirements of the 1985 Act. The provision that a plan be submitted to Congress within one year of the effective date of the 1985 Act has been accomplished and, therefore, that provision is being deleted. The foregoing are the same as being recommended for NEA in Section 8 of the bill. The last sentence of Section 7(k) currently provides that the state of the humanities report was to be submitted by October 1, 1988 and biennially thereafter. The report for 1988 was submitted and a second one will be submitted in accordance with the current law by October 1, 1990. The bill would require submission of the next report in 1992, and quadrennially thereafter. Generally, changes in the humanities field do not occur so rapidly as to warrant a full-scale report to the Congress and the President every two years. A four-year interval would provide more perspective and thus permit a more significant report. Developments that might occur between reports could be brought to the attention of Congress through NEH planning documents, Congressional budget submissions and reports, or other appropriate formats.

Section 18 of the bill repeals subsection 7(l) of the Act which required that a plan be submitted by NEH to the Equal Employment Opportunity Commission by January 31, 1986. Such a report was presented to EEOC by the date indicated, fulfilling the requirements of this subsection. NEH continues to be in compliance with EEOC requirements which no longer include submission of goals and timetables for agencies with less than 500 employees.

In place of the foregoing provision which has been deleted, a new provision has been inserted to require that a "group" applicant must meet certain statutory tests in order to qualify as a non-profit organization. This new provision is the same as the one found in Section 5(f) of the Act and is being added to be in conformity with NEA's provision.

A new subsection (m) has been added to Section 7 of the Act to provide express authority to the Chairperson, with the advice of the National Council on the Humanities, to make an annual \$10,000 award to the Jefferson Lecturer and up to five \$5,000 awards to persons selected to be recipients of the Charles Frankel Prize. These awards have been given in the past by NEH with the knowledge and implicit approval of Congress. The NEA has the National Medal of Arts award program which was established in 1983.

Section 19 of the bill repeals subsection 9(d) of the Act. Section 9(d) required the Federal Council on the Arts and the Humanities to undertake a study pertaining to museums and the Institute of Museum Services. A report based on this study was presented to Congress in February 1988, thereby fulfilling the requirement of this subsection.

Section 20 of the bill amends the statutory reference to reflect the renumbering by Congress of former section 529 as new section 3324. The bill further amends the unnumbered paragraph following

paragraph (8) of Section 10(a) of the Act by making it new paragraph (b). The bill further amends said unnumbered paragraph, as paragraphs (c) and (d), at the places where mention is made of the selection of panels of experts and their duties. These new subsections were created because they did not relate to the preceding paragraph (8) and dealt with separate subject matters. By virtue of adding these two new subsections, the subsequent subsections (b), (c) and (d) have been redesignated as (e), (f) and (g). Two subsections have been deleted. Subsection (e) required a joint study of arts and humanities education to be conducted by the two Endowments and the Secretary of Education. The study was completed and the report made to the various committees of Congress by the date indicated, thereby fulfilling the requirements of this subsection. Subsection (f) required the two Endowments to submit reports to Congress detailing the procedures used in selecting experts for appointment to panels and the procedures used by the panels in making recommendations for funding applications. Both studies were completed and submitted to Congress, thereby fulfilling the requirements of this subsection.

Section 21 of the bill provides for a five year authorization of definite program appropriations for NEA, for fiscal years 1991 through 1995. It authorizes \$125,800,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 22 of the bill provides for a five year authorization of definite program appropriations for NEH, for fiscal years 1991 through 1995. It authorizes \$119,900,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 23 of the bill strikes section 11(a)(1)(C) of the Act which provided for a one-time appropriation of funds for fiscal year 1977.

Section 24 of the bill extends the authorization of appropriations for NEA's Treasury funds for five years. It authorizes \$13,000,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 25 of the bill extends the authorization of appropriations for NEH's Treasury funds for five years. It authorizes \$12,000,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 26 of the bill extends the authorization of appropriations for NEA's Challenge Grant Program for five years, through fiscal year 1995. It authorizes \$15,000,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 27 of the bill extends NEH's authorization of appropriations for Challenge grants for five years, through fiscal year 1995. It authorizes \$15,150,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 28 of the bill deletes the requirement that if at the end of the ninth month of any fiscal year Challenge Grant funds cannot be used by one of the Endowments, that Endowment shall transfer the unused funds to the other Endowment. This provision has been in the law since 1976 when the Challenge program was first established for the two Endowments but has never been used. At the inception of this new program, there may have been the concern that Challenge grantees might not be able to meet the 3 to 1 matching requirements which would result in some of the appropriated funds not being used during the fiscal year. However, such a concern has not been borne out. Therefore, deletion of the transfer provision is consistent with the experience of the two Endowments and the independence they have as to all other programs.

Section 29 of the bill extends the authorization of appropriations for administrative funds for NEA by authorizing \$21,200,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 30 of the bill extends the authorization of appropriations for administrative funds for NEH by authorizing \$14,291,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years. It also restricts the \$35,000 cap on the use of funds for reception and representation expenses only to appropriated funds. Funds reserved by NEH from other sources, such as gifts and bequests would not be subject to the \$35,000 limitation. Rising costs relating to events that we propose to make statutory, such as the Jefferson Lecture and the Frankel Prize make this change advisable.

Section 31 of the bill extends the authorization of appropriations for the two Endowments for five years and authorizes \$175,000,000 for the National Endowment for the Arts and \$165,000,000 for the National Endowment for the Humanities for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 32 of the bill adds "conservation" to the types of resources that are to be represented by the membership of the National Museum Services Board. This addition emphasizes the importance of conservation concerns to IMS programs, the museum community and the general public.

Section 33 of the bill changes the annual minimum number of meetings required for the National Museum Services Board from four to three. It conforms the authorizing legislation to actual practice, as approved annually by the Congress in appropriations acts.

Section 34 of the bill removes the restriction on the salary level of the IMS Director from the enabling legislation. The Director's compensation level is to be provided for in Chapter 53 of title 5 of the U.S. Code by the amendment contained in section 43 of the bill.

Section 35 of the bill corrects a drafting error in current law, which refers to the "Chairperson" rather than the "Director."

Section 36 of the bill changes the reference to "artifacts and art objects" to "collections" to symbolize the importance of conserving all types of materials in the collections of the various types of museums supported by IMS. Museums eligible for IMS programs include, for example, zoos and botanical gardens, historic houses, and science and technology centers as well as art and other types of museums.

Section 37 of the bill eliminates two restrictions on the funding of projects to strengthen museum services. First, it removes the provisions limiting funding to professional museum organizations. This change would allow IMS to fund other types of organizations which propose worthwhile projects.

Second, it removes the one-year limit on these projects. The limit prevents extending the availability of funding in cases where a project is delayed by unexpected circumstances and prevents high

quality, beneficial projects from being funded if they cannot be completed in one year. The following provision is renumbered to reflect the deletion.

Section 38 of the bill extends, for five years, the authorization of appropriations for all IMS programs, as well as the authorization of appropriations to match contributions to IMS. The bill authorizes \$24,000,000 for fiscal year 1991, and such sums as may be necessary for the remaining fiscal years.

Section 39 of the bill amends section 5(b) of the Arts and Artifacts Indemnity Act, referred to as "Act" through section 41 of this section-by-section analysis, by increasing the aggregate level of insurance available for international exhibitions under the Act at any one time to \$3,000,000,000. The current statutory limit is \$1,200,000,000. This increase is necessary to meet the demand for coverage under the Act and to make the benefits of the Act more widely available. The increase is justified by the continuing escalation in art market values since the current limit was established. The availability of this insurance is key to staging international exhibitions. Since this program was instituted in 1975, there have been only two valid claims totalling \$104,000. Based on experience under this Act to date, it is anticipated that this amendment will have no significant budgetary impact.

Section 40 of the bill amends section 5(c) of the Act by increasing the amount of insurance available for a single exhibition to \$300,000,000. The current statutory limit is \$125,000,000. This

3 billion

500 million

increase is necessary to provide adequate coverage of international loans protected by the Act. The higher limit is a realistic accommodation for the effects of the dramatic increase in the value of art objects since the current limit was established. Availability of this insurance is key to staging international exhibitions. Since this program was instituted in 1975 only two certified claims totalling \$104,000 have been presented. Based on experience, it is anticipated that this amendment will have no significant budgetary impact.

Section 41 of the bill amends section 5(d) of the Act by amending the deductible amounts under indemnity agreements by adding layers of \$100,000 and \$200,000, based on the total value of the exhibition. The current statutory limits are \$15,000, \$25,000 or \$50,000, depending upon the value of the exhibition. The sliding scale formula used to determine the current limits should be applied to the increase in the per exhibition ceiling. The deductible layers protect the U. S. Treasury from multiple claims for minor losses or damage. This amendment would actually limit the budgetary impacts or claims against the Federal government by increasing the exposure of the exhibition organizer who would be responsible for arranging for additional insurance to cover the deductible amount.

Section 42 of the bill repeals Title IV of the Arts, Humanities and Museums Amendments of 1985 which directed the Comptroller General to conduct a study to determine the feasibility of

establishing a revolving fund comprised of payments made to the Federal government for right to use artistic and other works in the public domain with the funds to be used to supplement funding of the agencies under this Act. Work on the project was terminated after the Comptroller General's office consulted with members of Congress and determined that the study should not be pursued.

Section 43 of the bill amends 5 U.S.C. 5315 to add the Director of the Institute of Museum Services to level IV of the Executive Schedule for compensation purposes. Section 34 of the bill removes the level V provision which was included in the enabling legislation. The Director's compensation level was set at level V when the agency's budget was \$3 million and the Director reported to the Director of Health, Education and Welfare. The budget and degree of responsibility have increased substantially in the last fourteen years. The budget is now \$23 million and the Director reports to the President. The level IV more appropriately reflects the Director's responsibilities and role as advocate for the Nation's museums.

Section 44 of the bill makes these amendments effective on the date of enactment.