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## Legislative History of the Reauthorization of the National Endowment for the Arts (NEA) (1990): Report 12

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## THE ARTS, HUMANITIES, AND MUSEUMS AMENDMENTS OF 1990: MAJOR PROVISIONS

### SUMMARY

The Arts, Humanities, Museums Amendments of 1990 were enacted as part of P.L. 101-512, the FY 1991 Department of Interior and Related Agencies Appropriations Act, providing for a 3-year reauthorization for the National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH) and the Institute of Museum Services (IMS). This summary describes the major provisions of these amendments to the National Foundation on the Arts and the Humanities Act of 1965, (P.L. 89-209, as amended).

### BACKGROUND

On October 11, 1990, the House passed H.R. 4825, the Arts, Humanities, and Museums Amendments of 1990, (referred to as AHMA for purposes of this summary) by a vote of 349 to 76. On October 26, 1990, the House and Senate conferees considered the FY 1991 Department of Interior and Related Agencies Appropriations bill (H.R. 5769) and accepted the House-passed version of H.R. 5769, which had appended to it the text of H.R. 4825, allowing a 3-year extension of the National Foundation on the Arts and the Humanities Act (NFAHA). H.R.5769 was signed into law as P.L. 101-512 on November 5, 1990.

Fourteen major provisions of AHMA are delineated in the paragraphs below:

### PURPOSE

There are 12 clauses in the **Declaration of Purpose**. Among the clauses are the following: "the arts and humanities belong to all the people of the United States"; and the arts must be "sensitive to the nature of public sponsorship." In addition, "to fulfill its educational mission the Government must transmit values of civilization and make available the greatest achievements of art."

### DEFINITIONS

**Local Arts Agency.** AHMA adds a new definition of local arts agency, "a community organization or an agency of local government that primarily provides financial support, services to other programs for a variety of artists and arts organizations for the benefit of the community as a whole."

**Defined to be Obscene: Final Judgment.** AHMA included the term "determined to be obscene," meaning it has been determined in a final judgment of a court of record and of competent jurisdiction in the U.S. to be obscene. The statute then defines "final judgment" as a "judgment either not reviewed by any other court that has authority to review such judgment or is not reviewable by any other court." In addition, the term "obscene" is defined using language from the *Miller v. California* case (413 US 15 (1973)) with respect to a project, production, workshop or program that:

- the average person, applying contemporary community standards, would find that such project, when taken as a whole appeals to the prurient interest;
- depicts or describes sexual conduct in a patently offensive way; and
- when taken as a whole, lacks serious literary, artistic, political, or scientific value.

**Arts.** AHMA adds "film and video" to the definition of the arts and to the definition of production.

**Project.** AHMA adds to the definition of "project" requiring that it reflect the "widest public knowledge and understanding of the arts."

**Developing Arts Organization.** AHMA adds a new definition, "developing arts organization," to mean one that serves as an important source of local arts programming in a community and one that has the potential to develop institutionally to serve State and regional areas.

#### **NEA: PURPOSE**

Program purposes include projects that will enhance managerial skills; projects that meet professional standards of authenticity or tradition; and projects that will encourage public knowledge, education, understanding and appreciation of the arts. In addition, AHMA adds authority to fund projects with international cultural significance, and projects using film, radio, and video for broadening public access to the arts.

**Artistic Excellence and Obscene Matter.** AHMA adds that no Federal payment shall be made for any application unless submitted in accordance with regulations that ensure excellence and artistic merit, taking into account general standards of decency and respect for the diverse beliefs and values of the American public. Regulations must clearly indicate that obscenity is without artistic merit, is not protected speech, and shall not be funded. However, the disapproval or approval of an application shall not be evidence that the project is or is not obscene.

#### **NEA: GRANTS**

States are required to report who participates, who benefits and what level administers the program under State programs applications of assistance for the NEA grants program.

**Contents of the NEA Application.** AHMA requires for an individual grant, State grant or a subgrant, that the application include a detailed description of the project, a timetable for completion of the project, interim reports, and a final report describing the applicants' compliance with the statute. The application must contain assurances that the work produced will meet the standards of artistic excellence and artistic merit.

**Distribution.** The Chairperson of NEA is directed to distribute grants in installments if practicable, with not more than two-thirds of financial assistance provided upon approval. The remainder may not be provided until the Chairperson finds that the recipient is in compliance with conditions. The Inspector General's office of the NEA shall conduct reviews to ensure that recipients are in compliance.

**Repayment.** If a project is determined to be obscene, the Chairperson requires that the recipient repay assistance under terms the Chairperson deems appropriate.

**Innovative Programs to Expand Access to the Arts.** AHMA gives authority to the Chairperson to support innovative programs to make the arts accessible to the public. Grants and contracts are given to States to raise the artistic capabilities of developing arts organizations by providing programmatic development and technical assistance; improving management, stimulating artistic activity and awareness; and, under section 5(p)(2), by broadening public access to the arts in rural and inner city areas and other areas that are underserved artistically. The development grant is limited to 3 years.

#### **NATIONAL COUNCIL**

AHMA requires that members of the National Council on the Arts be appointed so as to represent equitably all geographic areas in the U.S. The statute requires that the Council's policy meetings to be open to the public and that written records be kept of all meetings and discussions of the Council and of the recommendations made by the Council to the Chairperson. The Chairperson shall have final authority to approve each application, except that the Chairperson may only provide to an applicant the amount of financial assistance recommended by the Council and may not approve an application with respect to which the Council makes a negative recommendation. The Council shall make recommendations to the Chairperson concerning whether to approve particular applications determined by the panels to have artistic excellence and artistic merit, and the amount of assistance.

#### **NEH**

AHMA authorizes the Chairperson of NEH to enter into arrangements, contracts, grants, and loans. In addition, it authorizes the Chairperson to "coordinate" programs with State Humanities agencies; authorizes NEH to foster programs that help preserve materials important to the research, education, and public understanding of the humanities; and allows for support of training and workshops in the humanities.

**State Administration.** When a State chooses to establish a State agency to administer the State's humanities plan, that State must designate the humanities agency as the State agency.

**Application For Financial Assistance.** AHMA requires a description of the level of participation during the most recent year for which information is available, and a description of the extent to which the programs are available to all people and communities in the State.

**Contents of the State Plan.** AHMA requires that the State plan give a description of the level of participation during the most recent year information is available by scholars and scholarly organizations, and provide a description of programs that address the availability of the humanities to all people and communities in the State.

**National Information and Data Collection.** AHMA requires that national humanities information and data collection continue to be developed.

**Financial Assistance to Nonprofit Groups.** AHMA refers to nonprofit groups eligible for assistance as those whereby no part of net earnings benefit any private stockholder and whereby donations are allowable as a charitable contribution under section 170 (c) of the Internal Revenue Code.

**Jefferson Lecture-Charles Frankel Prize.** AHMA gives authority for the Jefferson Lecture with an annual award to one individual not to exceed \$10,000, and for the Charles Frankel Prize to honor individuals who have made outstanding contributions to the public understanding of the humanities, with five awards not to exceed \$5,000 each.

## **REPORTS**

AHMA requires the General Accounting Office (GAO) to conduct a study of the role of NEA, State, and Local arts agencies in funding of the Arts. The study would also consider the effectiveness of NEA in maximizing assistance, and the capacity of States to receive increased allocations and the ability of States to manage their increased allocations. A second GAO study is required on staffing policies and an investigation of the use of consultants and independent contractors used by the NEA.

## **FEDERAL COUNCIL**

AHMA amends the section relating to the Federal Council on the Arts and the Humanities and strikes references to previous authority for a museum study. The statute adds to the Federal Council's duties to encourage ongoing dialogue in support of the arts and the humanities among Federal agencies.

## **ARTS EDUCATION**

AHMA adds a new section, 5A, to NFAHA entitled **Access to the Arts Through Support of Education**. The purpose is to increase accessibility to the arts through providing education to all Americans including diverse cultures and urban and rural populations, by developing quality education at all levels. Section 5A also has as its purpose to develop and stimulate research; to teach quality education in the arts; and to encourage and facilitate the work of artists, arts institutions, and Federal, State, regional, and local agencies in the area of education in the arts. The Chairperson is authorized to establish and carry out a program of contracts or grants for activities with the purpose to:

- promote availability of arts instruction for American youth and life-long learning in the arts;
- enhance the quality of arts instruction in programs of teacher education;
- develop arts faculty resources;
- support development of improved curriculum;
- improve evaluation and assessment in arts programs;
- foster cooperative programs with Department of Education;
- support apprenticeships, internships, and other career-oriented workstudy experiences for artists;
- support the use of technology in the arts; and
- foster the development of demonstration projects in arts education.

The goal of this section is to improve arts instruction and promote availability of arts education for all Americans. AHMA allows, in the event the total appropriation to NEA exceeds \$175 million, that 50 percent of the excess not to exceed \$40 million would be used for arts education.

#### NEA PANELS

AHMA requires that the Chairperson of the NEA utilize advisory panels to review applications and to make recommendations to the National Council on the Arts. When reviewing applications, panels shall recommend projects solely on the basis of artistic merit. The Chairperson shall issue regulations to:

- ensure that all panels have wide geographic, ethnic and minority representation as well as individuals reflecting cultural diversity;
- ensure that all panels include representation of lay individuals who are knowledgeable about the arts but who are not engaged in the arts as a profession and are not members of either artists' organizations or arts organizations;
- ensure when feasible that the procedures used by panels are standardized;
- require panels to create written records summarizing all meetings and recommendations and to make records available to the public still protecting the privacy of individual applicants and panel members;
- require site visits to view the work and deliver a written report on the work being reviewed;

- require that the membership of each panel change from year to year and members are ineligible to serve more than 3 consecutive years; and
- require that an individual may not serve as a member of a panel while he/she has an application pending.

## **AUTHORIZATION**

AHMA authorizes to be appropriated the following for amounts for FY 1991:

\$125,800,000 for NEA program funds,  
\$13,000,000 for NEA Treasury funds,  
\$15,000,000 for NEA Challenge grants, and  
\$21,200,000 for NEA administrative funds.

The statute authorizes to be appropriated the following amounts for FY 1991:

\$119,900,000 for NEH program funds,  
\$12,000,000 for NEH Treasury Funds,  
\$15,150,000 for NEH Challenge grants, and  
\$17,950,000 for NEH administrative funds.

Under administrative expenses, AHMA increases to \$50,000 the amount for receptions and representation expenses. The statute extends authority for NEA and NEH after FY 1991 with such sums as may be necessary to be appropriated through FY 1993.

## **STATE ALLOTMENT**

AHMA authorizes for FY 1991 and FY 1992 not less than 25 percent of program funds to be available for arts grants to States and up to 27.5 percent in FY 1993. Also, not less than 5 percent in FY 1991 and FY 1992 and up to 7.5 percent in FY 1993 shall be for the program to expand public access to the arts (section 5(p)(2) in rural and innercity areas with not less than 50 percent of funds to be used for rural areas.

## **IMS**

AHMA amends the Museum Services Act and authorizes \$24 million for IMS for FY 1991 and such sums as may be necessary through FY 1993. The statute adds "expertise in conservation" as one of the criteria for membership on the National Museum Services Board, and adds conservation of "collections" as acceptable activities to support.

**Museum Assessment.** A new section is added to the NAFHA to authorize the Director to undertake an assessment of the needs of small, emerging, minority and rural museums. The assessment would study the need for resources, personnel, training, building and construction, maintenance, operation, and repair of museums.

**ARTS INDEMNITY**

AHMA changes the aggregate level for insurance available for international exhibitions under the Arts and Artifacts Indemnity Act from \$1.2 billion to \$3 billion, with a single exhibit at \$300 million. The deductible amounts on insurance per exhibition are \$50,000 with a single exhibit for those insured from \$10 million to \$125 million, \$100,000 for those insured \$125 million to \$200 million and \$200,000 for those insured for \$200 million or more.