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Calendar No. 2222

87TH CONGRESS
2D SESSION

S. 741

[Report No. 2260]

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1961

Mr. HUMPHREY (for himself, Mr. CLARK, Mr. DOUGLAS, Mr. MORSE, Mr. WILLIAMS of New Jersey, Mr. COOPER, Mr. JAVITS, and Mr. LONG of Missouri) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

OCTOBER 2 (legislative day, OCTOBER 1), 1962

Reported by Mr. PELL, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the establishment of a Federal Advisory Council on the Arts to assist in the growth and development of the fine arts in the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That the Congress hereby finds and declares—

4 ~~(1) that the growth and flourishing of the arts~~
5 ~~depend upon freedom, imagination, and individual~~
6 ~~initiative;~~

7 ~~(2) that the encouragement of creative activity~~

1 in the performance and practice of the arts, and of a
2 widespread participation in and appreciation of the
3 arts, is essential to the general welfare and the national
4 interest;

5 ~~(3)~~ that as workdays shorten and life expectancy
6 lengthens, the arts will play an evermore important role
7 in the lives of our citizens; and

8 ~~(4)~~ that the encouragement of the arts, while pri-
9 marily a matter for private and local initiative, is an
10 appropriate matter of concern to the United States
11 Government.

12 SEC. 2 (a) There is hereby established in the Depart-
13 ment of Health, Education, and Welfare a Federal Advisory
14 Council on the Arts (hereafter in this Act referred to as the
15 "Council"). The Council shall be composed of twenty-one
16 members appointed by the President, by and with the advice
17 and consent of the Senate, from among private citizens of
18 the United States who are widely recognized for their knowl-
19 edge of or experience in, or for their profound interest in,
20 one or more of the arts and who collectively will provide an
21 appropriate balance of representation among the major art
22 fields including music, drama, dance, literature, architecture
23 and allied arts, painting, sculpture, photography, graphic
24 and craft arts, motion pictures, radio, and television. The

1 President is requested in the making of such appointments
2 to give consideration to such recommendations as may from
3 time to time be submitted to him by leading national organi-
4 zations in these fields. Each member of the Council shall
5 hold office for a term of six years, except that ~~(1)~~ any
6 member appointed to fill a vacancy occurring prior to the
7 expiration of the term for which his predecessor was ap-
8 pointed shall be appointed for the remainder of such term,
9 and ~~(2)~~ the terms of the members first taking office shall
10 expire, as designated by the President at the time of appoint-
11 ment, seven at the end of the second year, seven at the end
12 of the fourth year, and seven at the end of the sixth year
13 after the date of enactment of this Act. No member of the
14 Council shall be eligible for reappointment during the two-
15 year period following the expiration of his term. The Presi-
16 dent shall designate one member of the Council to serve as
17 its chairman. The Council shall meet at the call of the
18 Chairman or the Secretary of Health, Education, and Wel-
19 fare (hereafter in this Act referred to as the "Secretary"),
20 but not less often than twice during each calendar year.
21 Eleven members of the Council shall constitute a quorum.
22 ~~(b)~~ The Council shall have an executive secretary who
23 shall be appointed by the Secretary after consultation with
24 the Council. Within the limits of appropriations available

1 therefor, the Secretary shall provide necessary secretarial,
2 clerical, and other staff assistance for the Council, its execu-
3 tive secretary, and its special committees.

4 SEC. 3. (a) The Council shall (1) recommend ways to
5 maintain and increase the cultural resources of the United
6 States, (2) propose methods to encourage private initiative
7 in the arts, (3) cooperate with local, State, and Federal de-
8 partments and agencies to foster artistic and cultural en-
9 deavors and the use of the arts both nationally and interna-
10 tionally in the best interests of our country, and (4) strive
11 to stimulate greater appreciation of the arts by our citizens.

12 (b) To these ends the Council shall undertake studies
13 of and make recommendations relating to appropriate
14 methods, consistent with the policy set forth in the first
15 section of this Act, for encouraging creative activity in the
16 performance and practice of the arts and participation in
17 and appreciation of the arts. In selecting subjects to be
18 studied, the Council shall consider requests submitted to it
19 by the heads of the departments, agencies, and independent
20 establishments of the Federal Government. The Council
21 shall make recommendations in writing to the Secretary
22 with respect to such studies; and the Secretary shall transmit
23 such recommendations, together with his comments thereon,
24 to the President and the Congress. In the selection of
25 subjects to be studied and in the formulation of recommenda-

1 tions, the Council may obtain the advice of any interested
2 and qualified persons and organizations, and the Secretary
3 may appoint interested and qualified persons to assist the
4 Council in making its studies from among those qualified
5 persons recommended to him by the Council.

6 SEC. 4. Members of the Council, and persons appointed
7 to assist the Council in making its studies, while attending
8 meetings of the Council or while engaged in the conduct of
9 studies authorized by this Act, shall receive compensation
10 at a rate to be fixed by the Secretary, but not exceeding
11 \$50 per diem, and shall be paid travel expenses, including
12 per diem in lieu of subsistence, as authorized by law (~~5~~
13 U.S.C. 73b-2) for persons in the Government service em-
14 ployed intermittently.

15 SEC. 5. ~~(a)~~ Any member of the Council appointed un-
16 der this Act, any person appointed to assist the Council in
17 making its studies, and any other person appointed, em-
18 ployed, or utilized in an advisory or consultative capacity
19 under this Act is hereby exempted, with respect to such
20 appointment, employment, or utilization, from the opera-
21 tion of sections 281, 283, 284, and 1914 of title 18 of the
22 United States Code, except as otherwise specified in sub-
23 section ~~(b)~~ of this section.

24 ~~(b)~~ (1) The exemption granted by subsection ~~(a)~~ of
25 this section shall not extend to the following acts performed

1 as an officer or employee of the United States by any
2 person so appointed, employed, or utilized: ~~(A)~~ The nego-
3 tiation or execution of, or ~~(B)~~ the making of any recom-
4 mendation with respect to, or ~~(C)~~ the taking of any other
5 action with respect to, any individual contract or other
6 arrangement under this Act with the private employer of
7 such person or any corporation, joint stock company, asso-
8 ciation, firm, partnership, or other business entity in the
9 pecuniary profits or contracts of which such person has any
10 direct or indirect interest.

11 ~~(2)~~ The exemption granted by subsection ~~(a)~~ of this
12 section shall not, during the period of such appointment,
13 employment, or utilization and the further period of two
14 years after the termination thereof, extend to the prosecution
15 or participation in the prosecution, by any person so ap-
16 pointed, employed, or utilized, of any claim against the
17 Government involving any individual contract or other ar-
18 rangement entered into pursuant to this Act concerning
19 which the appointee had any responsibility during the period
20 of such appointment, employment, or utilization.

21 SEC. 6. There are hereby authorized to be appropriated
22 to the Department of Health, Education, and Welfare such
23 sums as may be necessary to carry out this Act, including
24 expenses of professional, clerical, and stenographic assist-
25 ance. Such appropriations shall be available for services as

1 authorized by section 15 of the Act of August 2, 1946 (5
2 U.S.C. 55a).

3 SEC. 7. This Act shall not be deemed to invalidate any
4 provision in any Act of Congress or Executive order vesting
5 authority in the Commission of Fine Arts.

6 *SHORT TITLE*

7 SECTION 1. This Act may be cited as the "United
8 States National Arts Foundation and Cultural Development
9 Act".

10 *DECLARATION OF POLICY*

11 SEC. 2. The Congress finds that Americans desire in-
12 creased opportunities to view and enjoy the visual and per-
13 forming arts; that the Nation's prestige and general welfare
14 will be promoted by recognizing the status of the visual and
15 performing arts as a cherished and valued part of the Nation's
16 cultural resources and by encouraging the development and
17 dissemination of these resources throughout the country; and
18 that it is desirable to establish an agency in the Federal
19 Government to provide such recognition and to stimulate
20 and assist the Nation's cultural progress.

21 *ESTABLISHMENT OF FOUNDATION*

22 SEC. 3. There is hereby established in the executive
23 branch of the Government an independent agency to be
24 known as the United States National Arts Foundation (here-
25 inafter referred to as the "Foundation").

TRUSTEES OF FOUNDATION

1
2 *SEC. 4. (a) The Foundation shall be subject to the*
3 *general supervision and policy direction of a Board of*
4 *Trustees which shall consist of the Director of the Foundation*
5 *(hereinafter referred to as the Director) and twelve members,*
6 *such twelve members to be appointed by the President, by and*
7 *with the advice and consent of the Senate, from among those*
8 *individuals of the American public who are widely recognized*
9 *for their knowledge of or experience in, or for their profound*
10 *interest in, one or more of the visual or performing arts and*
11 *who collectively will provide an appropriate balance of*
12 *representation among the major art fields cited in this Act.*
13 *In making such appointments, the President is requested to*
14 *give due consideration to the recommendations for nomination*
15 *submitted to him by leading national organizations in these*
16 *fields.*

17 *(b) The term of office of each trustee of the Foundation*
18 *shall be six years; except that the terms of the trustees first*
19 *taking office after the enactment of this Act shall expire, as*
20 *designated by the President at the time of appointment, four*
21 *at the end of two years, four at the end of four years, and*
22 *four at the end of six years. A vacancy shall be filled only*
23 *for the unexpired portion of the term. Any person who has*
24 *been a trustee of the Foundation for twelve consecutive years*

1 shall be ineligible for appointment during the following two-
2 year period: Provided, That the provisions of this subsection
3 shall not apply to the Director.

4 (c) The President shall call the first meeting of the
5 trustees of the Foundation, at which the first order of business
6 shall be the election of a Chairman and a Vice Chairman,
7 who shall serve until two years after the date of enactment
8 of this Act. Thereafter each Chairman and Vice Chairman
9 shall be elected for a term of two years in duration and each
10 such election shall take place at the annual meeting occurring
11 at the end of each such term. The Vice Chairman shall per-
12 form the duties of the Chairman in his absence. In case a
13 vacancy occurs in the chairmanship or vice chairmanship,
14 the Foundation shall elect an individual from among the
15 trustees to fill such vacancy.

16 (d) The trustees of the Foundation shall meet at the call
17 of the Chairman, but not less than four times each year. The
18 Chairman shall also call a meeting whenever one-third of the
19 trustees so request in writing. A majority of the trustees of
20 the Foundation shall constitute a quorum. Each trustee shall
21 be given notice, by registered mail mailed to his last known
22 address of record not less than fifteen days prior to any meet-
23 ing, of the call of such meeting.

DIRECTOR OF FOUNDATION

1
2 *SEC. 5. (a) The Director of the Foundation shall be*
3 *appointed by the President, by and with the advice and con-*
4 *sent of the Senate. In the appointment of the Director of the*
5 *Foundation, the President is requested to give due considera-*
6 *tion to any recommendations submitted to him by the Board*
7 *of Trustees. The Director shall serve as an, ex officio trustee*
8 *of the Foundation. In addition, he shall be the chief execu-*
9 *tive officer of the Foundation. The Director shall receive*
10 *compensation at the rate of \$25,000 per annum and shall*
11 *serve for a term of six years unless previously removed by*
12 *the President: Provided, That at any time a majority of the*
13 *Board of Trustees may recommend the Director's removal to*
14 *the President.*

15 *(b) The Director may appoint, with the approval of the*
16 *Board of Trustees, a Deputy Director, who shall perform*
17 *such functions as the Director, with the approval of the*
18 *trustees, may prescribe, be Acting Director during the absence*
19 *or disability of the Director or in the event of a vacancy in*
20 *the office of the Director, and receive compensation at a rate*
21 *not to exceed \$20,000 per annum.*

22 *(c) The Director shall have general authority to carry*
23 *out and execute the programs of the Foundation on a full-*
24 *time, continuous basis, to recommend programs to the Foun-*

1 dation, and to discharge such other functions as the Founda-
 2 tion may delegate to him consistent with this Act.

3 (d) The Director and the Deputy Director shall be al-
 4 lowed travel and subsistence expenses while away from their
 5 homes or regular places of business in accordance with the
 6 Travel Subsistence Act of 1949, as amended, and the Stand-
 7 ardized Government Travel Regulations.

8 GENERAL POWERS OF FOUNDATION

9 SEC. 6. The Foundation is authorized to—

10 (1) stimulate and encourage cultural development
 11 throughout the United States and to advance public in-
 12 terest therein; and

13 (2) foster and encourage professional and civic and
 14 nonprofit, private, public, educational, institutional, or
 15 governmental groups which are engaged in or directly
 16 concerned with the performing and visual arts.

17 GRANTS TO GROUPS AND STATES

18 SEC. 7. (a) The Foundation is authorized to provide,
 19 through direct grant or otherwise, financial assistance and
 20 support from the funds appropriated to the Foundation or
 21 otherwise obtained pursuant to section 8(a) (3) or (4) of
 22 this Act, to professional groups, groups meeting professional
 23 standards, and educational groups engaged in or concerned
 24 with the performing or visual arts, for the purpose of enabling

1 such groups to provide productions of the performing and
2 visual arts, (1) of both new works and existing works of these
3 arts, which have substantial artistic or historic significance,
4 giving preference to encouraging the works of residents of the
5 United States, and (2) of such types as would be unavailable
6 to audiences in many areas without such assistance. Such
7 groups shall be eligible for financial assistance only if no part
8 of net earnings inures to the benefit of any private stock-
9 holder, or stockholders, or individual or individuals, and if
10 such groups satisfy the standards of subsection (c) of sec-
11 tion 170 of the Internal Revenue Code of 1954 so as to
12 authorize deductions from gross income of donations to such
13 groups. The Foundation shall, wherever practicable, develop
14 the principle of matching funds with interested public or
15 private agencies.

16 (b) (1) The Foundation is authorized to make grants to
17 assist the several States in supporting existing projects and
18 programs which are making a significant public contribution
19 in one or more of the performing or visual arts, and in de-
20 veloping programs and projects in these arts in such a man-
21 ner as will, in conjunction with existing programs and facili-
22 ties, furnish adequate programs, facilities, and services in
23 these arts to all the people and communities in each such State.
24 In order to receive such assistance in any fiscal year, a State
25 shall submit an application for such grants prior to the first

1 day of such fiscal year and accompany such application with
2 a plan which the Foundation finds—

3 (A) designates a State agency (hereinafter in this
4 Act referred to as the "State agency") as the sole agency
5 for the administration of the State plan;

6 (B) provides that funds paid to the State under this
7 Act will be expended solely on programs and projects
8 approved by the State agency which carry out one or
9 more of the objectives of this Act;

10 (C) provides that the State agency will make such
11 reports, in such form and containing such information,
12 as the Foundation may from time to time require; and

13 (D) provides for the coordination of the projects and
14 programs carried out under the plan with the artistic and
15 cultural programs and activities of educational and other
16 public and nonprofit institutions in the State.

17 (2) Each State which has a plan approved by the
18 Foundation in effect on the first day of the fiscal year begin-
19 ning July 1, 1963, or any succeeding fiscal year, shall be
20 entitled to a maximum allotment in any such fiscal year of an
21 amount equal to half the total amount appropriated to the
22 Foundation for such fiscal year divided by the total number
23 of States. In the event that any sum is remaining out of the
24 maximum allotment available for State grants in any fiscal
25 year after all allotments are made to States with approved

1 plans in effect on the first day of such fiscal year, the Founda-
2 tion, in its discretion, may grant such remaining sum or any
3 portion thereof to any group or State agency for projects and
4 programs which the Foundation finds will encourage the
5 visual and performing arts in areas where such assistance
6 will be of value.

7 (3) The amount of any grants allotted to any State
8 under this Act for any program or project shall not exceed
9 50 per centum of the total cost of such program or project.

10 (c) Whenever the Foundation, after reasonable notice
11 and opportunity for hearing to any group or State agency,
12 finds that—

13 (1) any such group is not complying substantially
14 with the provisions of this Act;

15 (2) any such agency is not complying substantially
16 with the terms and conditions of its State plan approved
17 under this Act; or

18 (3) any funds granted to such group or agency
19 under this Act have been diverted from the purposes for
20 which they were allotted or paid.

21 the Foundation shall immediately notify the Secretary of the
22 Treasury and the group or State agency concerned that no
23 further grants will be made under this Act with respect to such
24 group or State agency until there is no longer any default or
25 failure to comply or the diversion has been corrected, or, if

1 *compliance or correction is impossible, until the group or State*
2 *repays or arranges the repayment of the Federal funds which*
3 *have been improperly diverted or expended.*

4 *ADMINISTRATIVE POWERS AND DUTIES*

5 *SEC. 8. (a) The Foundation is authorized to—*

6 *(1) prescribe such rules and adopt such bylaws as*
7 *it deems necessary governing the manner of its operation*
8 *and its organization and personnel;*

9 *(2) make expenditures, and enter into contracts or*
10 *other arrangements, as may be necessary for administer-*
11 *ing the provisions of this Act, without regard to the*
12 *provisions of section 3709 of the Revised Statutes (4*
13 *U.S.C. 5);*

14 *(3) acquire by loan or gift, and to hold and dispose*
15 *of by sale, lease, or loan, real and personal property of*
16 *all kinds necessary for, or resulting from, the exercise*
17 *of authority granted by this Act;*

18 *(4) receive and use funds or marked gifts or prop-*
19 *erty donated by others, if such funds are donated with-*
20 *out restriction other than that they be used in further-*
21 *ance of one or more of the general purposes of the*
22 *Foundation;*

23 *(5) accept and utilize the services of voluntary and*
24 *uncompensated personnel;*

25 *(6) pay fees for and enter into contracts with per-*

1 sons for the performance of services required by the
2 Foundation;

3 (7) pay to persons rendering services to the Founda-
4 tion, whether on an uncompensated basis or on a fee or
5 contract basis as provided in paragraphs (5) and (6) of
6 this subsection, travel and subsistence expenses while away
7 from their homes or regular places of business in accord-
8 ance with the Travel Expense Act of 1949, as amended,
9 and the Standardized Government Travel Regulations;
10 and

11 (8) maintain an office in the District of Columbia.

12 (b) The Foundation may appoint committees, councils,
13 or panels concerned with particular regions of the country or
14 with particular aspects of the arts, or both, and composed of
15 persons who need not be trustees of the Foundation.

16 (c) The Foundation shall not itself produce or present
17 any production.

18 (d) The Foundation shall render an annual report to
19 the President for submission on or before the 15th day of
20 January to the Congress, summarizing the activities of the
21 Foundation and making such recommendations as it may
22 deem appropriate.

23 GENERAL PROVISIONS

24 SEC. 9. (a) The Director shall, in accordance with such
25 policies as the Foundation shall from time to time prescribe,

1 *appoint and fix the compensation of such personnel as may*
2 *be necessary to carry out the provisions of this Act. Such*
3 *appointments shall be made and such compensation shall be*
4 *fixed in accordance with the provisions of the civil service*
5 *laws and regulations and the Classification Act of 1949, as*
6 *amended, except that the Director may, in accordance with*
7 *such policies as the Foundation shall from time to time pre-*
8 *scribe, employ such technical and professional personnel or*
9 *personnel with experience in or relating to any of the per-*
10 *forming or visual arts, and fix their compensation without*
11 *regard to such laws, as he may deem necessary for the dis-*
12 *charge of the responsibilities of the foundation under this*
13 *Act. The Deputy Director and the members of the councils,*
14 *committees, or panels, shall be appointed without regard to*
15 *the civil service laws or regulations; except that neither the*
16 *Director nor the Deputy Director shall engage in any other*
17 *business, vocation, or employment than that of serving as such*
18 *Director or Deputy Director; or hold any office in, or act*
19 *in any capacity for, any organization, agency, or institution*
20 *with which the Foundation makes any contract or other ar-*
21 *rangement under this Act.*

22 *(b) The trustees of the Foundation, and the members of*
23 *the councils, committees, and panels shall receive compensation*
24 *at the rate of up to \$50 for each day in which they are actually*
25 *engaged in the business of the Foundation pursuant to author-*

1 ization of the Foundation, and shall be allowed travel and
2 subsistence expenses while away from their homes or regular
3 places of business in accordance with the Travel Subsistence
4 Act of 1949, as amended, and the Standardized Government
5 Travel Regulations.

6 (c) Persons holding other offices in the executive branch
7 of the Federal Government may serve as members of the
8 councils, committees, or panels, but they shall not receive
9 remuneration for their services as such members during any
10 period for which they receive compensation for their services
11 in such other offices.

12 (d) Service of an individual as a trustee or employee
13 of the Foundation, or a council, committee, or panel, shall
14 not be considered as service bringing him within the provisions
15 of section 281 or 283 of title 18 of the United States Code
16 or section 99 of title 5 of such code, unless the act of such
17 individual, which by such section is made unlawful when per-
18 formed by an individual referred to in such sections, is with
19 respect to any particular matter which directly involves the
20 Foundation or in which the Foundation is directly interested.

21 (e) Agencies of the United States are authorized to
22 render assistance to the Foundation by the donation or loan
23 of employee services and by the donation or loan of supplies,
24 office or building space, or other property, either on a reim-
25 bursable or nonreimbursable basis.

APPROPRIATIONS

1
2 *SEC. 10. (a) For the purpose of carrying out the pro-*
3 *visions of this Act, there is hereby authorized to be appropri-*
4 *ated for the fiscal year ending June 30, 1963, such sum, not*
5 *exceeding \$5,000,000, and for each fiscal year thereafter*
6 *such sum, not exceeding \$10,000,000 annually, as the Con-*
7 *gress may determine. The moneys appropriated to the Foun-*
8 *dation shall remain available for expenditure for two years*
9 *following the expiration of the fiscal year for which appropri-*
10 *ated.*

11 *(b) Moneys received by the Foundation under section*
12 *8(a) (3) and (4) of this Act, shall not be covered into the*
13 *Treasury as miscellaneous receipts, but shall be kept in a*
14 *special account, maintained by the Treasury Department, or*
15 *kept by the Foundation in commercial banking institutions,*
16 *or invested in securities eligible for trust funds in the District*
17 *of Columbia, and shall be available to the Foundation for*
18 *the purposes of this Act.*

19 *(c) The Director shall determine any payments to be*
20 *made under this Act and certify to the Secretary of the*
21 *Treasury the amounts thereof. Upon receipt of such cer-*
22 *tification, the Secretary of the Treasury shall, prior to audit*
23 *or settlement by the General Accounting Office, pay in accord-*
24 *ance with such certification. Sums allotted to any group*
25 *or State for any fiscal year under this Act and not transferred*

1 during that fiscal year shall remain available to such group
 2 or State for the same purposes for the next fiscal year in
 3 addition to the sums allotted for such next fiscal year.

4 DEFINITIONS AND TITLE

5 SEC. 11. As used in this Act—

6 (a) The term “visual and performing arts” (1) means
 7 the arts of drawing, painting, sculpture, photographic and
 8 craft arts, and architecture and allied arts; and (2) means
 9 the arts related to performance of theatrical plays, dance,
 10 ballet and choral performances, and performances of musical
 11 works (instrumental, voice, and/or operatic), including the
 12 arts of acting, directing, staging, scenic and costume design.

13 (b) The term “productions” means plays (with or with-
 14 out music), ballets, dance and choral performances, exhibi-
 15 tions, readings, concerts, recitals, operas, and any other per-
 16 formances before members of the public involving the execution
 17 or rendition of any of the visual or performing arts and
 18 meeting such standards as may be established by the Founda-
 19 tion.

20 (c) The term “group” includes any society, institution,
 21 organization, or association, whether or not incorporated.

Amend the title so as to read: “A bill to establish a
 United States National Arts Foundation.”