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APPROVED

DEC 20 1975

Statement
revised 12/20/75

Signed
12/20/75

THE WHITE HOUSE

ACTION

WASHINGTON
December 18, 1975

Last Day: December 20

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

Enrolled Bill S. 1800 - Arts and Artifacts
Indemnity Act

To: ARCHIVES
12/22
Attached for your consideration is S. 1800, sponsored by
Senators Pell and Javits.

The enrolled bill would authorize a new Federal program to indemnify persons, non-profit agencies, institutions or governments against loss of or damage to certain works of art. Specifically, the bill would authorize the Federal Council on Arts and Artifacts to enter into indemnity agreements with exhibitors where the Secretary of State has certified the exhibition to be in the national interest. The Council would be authorized to pledge the full faith and credit of the United States, not to exceed \$250 million at any one time.

The purpose of the bill is to facilitate the exchange of art and artifacts between the United States and other countries of the world by providing indemnification against financial loss due to loss, theft or damage. This will not only afford Americans the opportunity to enjoy and study works of art from abroad, it will enable people from other lands to view objects of art produced or held in America as part of cultural exchange programs designed to advance the national interest of the United States.

The Department of Justice has recommended disapproval of the bill because its provisions violate (1) the constitutional requirement that officers of the United States be appointed by the President, with the advice and consent of the Senate, or with Congressional authorization, by the President alone, the courts of law, or heads of departments and (2) the constitutional prohibition against members of the Congress holding other offices in the United States.

Justice points out that, since the Council would be given executive, as opposed to advisory, functions under the bill, its members must be officers of the United States. Four of the current members of the Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the designee of the Chairman of the Senate Commission on Arts and Artifacts, and the designee of the Speaker of the House -- are not appointed in the manner required by the Constitution. Further, one of the members of the Council -- the designee of the Speaker of the House -- is a member of Congress and, therefore, not eligible to hold any other executive office.

OMB and the Counsel's Office have pointed out, on the other hand, that you recently signed into law S. 824, the Japan-United States Friendship Act containing the same kind of constitutional defect. In signing that bill, you stated:

"Because of the constitutional provision against members of the Congress serving in any other office in the United States, the Congressional members of the Commission will serve in an advisory capacity as non-voting members."

OMB and the Counsel's Office agree that the defect in this bill may be remedied in similar fashion.

Additional discussion of the enrolled bill is provided in OMB's enrolled bill report at Tab A. The full text of the Department of Justice comments and their proposed veto message is at Tab B.

OMB, Counsel's Office (Lazarus), NSC and I recommend approval of the enrolled bill and approval of the attached signing statement which has been cleared by Paul Theis.

DECISION

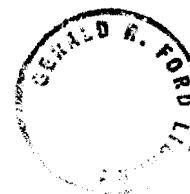
1. Sign S. 1800 at Tab C

Approve signing statement at Tab D

Approve *PC*

Disapprove _____

2. Veto S. 1800 _____





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 15 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1800 - Arts and Artifacts
Indemnity Act
Sponsors - Sen. Pell (D) Rhode Island and Sen.
Javits (R) New York

Last Day for Action

December 20, 1975 - Saturday

Purpose

Authorizes Federal indemnities for certain exhibitions of artistic and humanistic endeavors.

Agency Recommendations

Office of Management and Budget	Approval (signing statement attached)
National Endowment for the Arts	Approval
National Endowment for the Humanities	Approval
Department of State	Approval
Smithsonian Institution	Approval
National Gallery of Art	Approval
Department of Treasury	Approval (Informally)
Department of Justice	Disapproval (veto message attached)

Discussion

The enrolled bill authorizes a new Federal program to indemnify against loss or damage of certain exhibits of art and other artifacts or objects (including, among other things, paintings, sculpture, tapestries, manuscripts, rare books, other published matter, photographs, movies, and audio and video tape).

S. 1800 provides that the Federal Council on the Arts and Humanities (which, under current law, is essentially an advisory body to the National Endowment for the Arts and the National Endowment for the Humanities) shall be an agency for the purpose of the Act. The Council may



indemnify exhibitions of objects described above which are of educational, cultural, historical or scientific value and which are certified by the Secretary of State or his designee as being in the national interest. Indemnified items would be covered while on exhibit within the United States, or elsewhere in the case of an exchange of exhibits. The bill would prohibit the Council from indemnifying both exhibits involved in an exchange, however, thus ensuring reciprocal treatment from foreign countries. Any person, nonprofit agency, institution or government would be eligible to apply for an indemnity agreement.

The bill limits the aggregate amount of such agreements that may be outstanding at any one time to \$250 million and further limits the amount of an indemnity for any single exhibition to \$50 million. Coverage for each exhibit indemnified under the bill also would apply only to damage or loss in excess of \$15,000.

The apparent purpose of S. 1800 is to provide Federal support for significant international art exchanges, thereby reducing the high costs of private insurance against loss or damage to art objects involved in such exhibits. Available evidence indicates that high insurance costs have prohibited some international exhibits from taking place and have caused others to be sharply curtailed.

Recognizing that major international exchanges of art constitute an important part of the cultural interchange between nations, the Executive Branch supported two bills, enacted in the second session of the 93rd Congress, to authorize Federal indemnities for two specific international art exhibits. The first Act permitted the Secretary of State to indemnify the "Exhibition of the Archeological Finds of the People's Republic of China" while on display in the United States. In the second case, an exchange of exhibits between the Metropolitan Museum of New York and the Soviet Union, the Secretary was authorized to indemnify the Metropolitan's exhibit. The Soviet Union assumed responsibility for its own objects. Both of these Acts applied to international exhibits carried out pursuant to agreements between the governments of the United States and the foreign countries.

As a result of the need to enact special legislation on two occasions, the Executive Branch indicated, during Congressional consideration of the second bill, that general legislation would be appropriate. Several aspects of this enrolled bill, however, are objectionable.

Although S. 1800 states that indemnity agreements "shall cover eligible items while on exhibition in the United States, or elsewhere when part of an exchange of exhibitions," the indemnification authority is not explicitly limited to international exhibits. The bill's legislative history and the requirement for a "national interest" certification by the Secretary of State or his designee, however, clearly indicate that S. 1800 is intended to apply only to significant international art exhibits and exchanges.

More importantly, the enrolled bill does not incorporate the Administration's recommendation that indemnification authority be restricted to international art exhibitions and exchanges carried out pursuant to intergovernmental agreements (as was the case with the Chinese and Metropolitan Museum exhibits), or to other international exhibits and exchanges receiving Federal support. Eligibility for indemnity agreements is also not fully limited to non-profit entities by the bill's language.

The absence of such limitations could lead to an overly broad implementation of the indemnification authority. The reports of the House and Senate Committees, however, offer some useful, although not entirely consistent, interpretations of legislative intent. Citing the requirement for the Secretary of State to certify that proposed exhibits are "in the national interest," the Senate Committee report states:

"This is one of the most important features of this legislation. The requirement of such designation by the Secretary of State will insure that the indemnity program is used for the foreign policy interests of the United States and will guard against the possibility of its becoming a simple insurance relief mechanism."

The House report states:

"While there are undoubtedly foreign policy advantages resulting from international exhibitions, this legislation is not intended to result in the use of these artistic and humanistic exhibitions for political purposes. Rather, these exhibitions are viewed by the Committee as beneficial in their own right, with important cultural benefits accruing to all those who gain the opportunity to see them."

Nonetheless, the House Committee report notes that the certification requirement will insure that indemnities are not used as a simple insurance relief mechanism.

Both Committee reports state, in identical language, that "The language of the bill does not include profit-making organizations, limiting itself strictly to non-profit agencies."

In our view, the above legislative history and the requirements of the bill, including the national interest certification and the authority for the Council to issue regulations "in order to achieve the purposes of this Act, and consistent with this purpose to protect the financial interest of the United States," provide sufficient flexibility to implement this legislation in a manner consistent with the best interests of the United States.

The enrolled bill also provides for "back-door financing" by failing to require that the amount of indemnification agreements written in a given fiscal year be specified in appropriation acts. In its consideration of the bill, the House debated at length this aspect of the bill but took no corrective action. Moreover, the Congressional Budget Act exempts from its back-door spending proscription any authority to insure or guarantee the repayment of indebtedness incurred by another person or government. The indemnification authority provided in S. 1800 could be construed as falling within this exemption.

Although the annual cost of indemnities could be substantial in the event of a catastrophic loss (theoretically exceeding the bill's \$250 million aggregate limitation, since this limit applies only to indemnity agreements outstanding at any one time and is not an annual limit), such losses are unlikely. For example, the British Government, over the past several years, has indemnified works of art valued at approximately \$275 million. Yet, it has experienced only one loss in excess of \$25,000 (which amounted to about \$35,000). Other evidence suggests that the vast majority of losses can be expected to fall under the \$15,000 deductible provided for in S. 1800.

It should be noted that the National Endowments for the Arts, which anticipates that it may be delegated to perform some of the administrative responsibilities for reviewing and evaluating indemnification applications, has advised us informally that there may be a request for additional staff and funding to carry out any such responsibilities.

Finally, in its enrolled bill letter, Justice recommends disapproval of S. 1800 because it violates two provisions of the Constitution. Since the Federal Council on the Arts and Humanities would have executive, as opposed to merely advisory, functions under the bill, Justice points out that its members must be officers of the United States.

The Constitution provides (Article II, Section 2, Clause 2) that officers of the United States must be appointed by the President, with the advice and consent of the Senate, or, with Congressional authorization, by the President alone, the courts of law, or heads of Departments. Justice notes that, under existing law, the Federal Council on the Arts and Humanities includes, among its members, four persons -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, a member designated by the Chairman (Senator Mansfield) of the Senate Commission on Arts and Antiquities, and a member designated by the Speaker of the House -- who are not appointed as required under the Constitution, and thus, are not officers of the United States. Furthermore, the Constitution prohibits members of Congress from simultaneously holding any civil office (Article I, Section 6, Clause 2).

Justice's letter concludes:

"In our view, the constitutional principles which prevent Congress from appointing, or Members of Congress from serving as, Executive officers are of major consequence, and must not be impaired. Moreover, the Department believes that the authorization to pledge the full faith and credit of the United States up to the ceiling amount of \$250,000,000 at any one time is a matter of major practical import which warrants Executive rejection of a legislative scheme which would place this sovereign function in individuals who are not constitutionally appointed officers of the United States."

Recognizing the seriousness of Justice's constitutional objections to the bill, we note a mitigating circumstance. Under the law creating the Council, the President is authorized to change its membership to meet changes in Federal programs or executive branch organization. While this provision does not nullify the constitutional

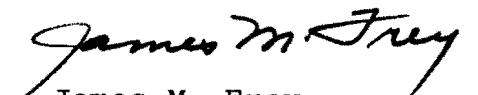


objections to the bill, we believe it would permit the President to implement the bill's provisions in a constitutional manner by directing that the four Council members who are not appointed as required by the Constitution shall not serve as members of the Council when it acts as an agency in carrying out functions under this Act.

In this connection, you recently signed into law (on October 21, 1975), S. 824, the Japan-United States Friendship Act, which Justice recommended you disapprove for the same reasons. In your signing statement on that bill, you stated:

"Because of the Congressional provision against Members of the Congress serving in any other office of the United States, the Congressional Members of the Japan-United States Friendship Commission will serve in an advisory capacity, as nonvoting members."

On balance, while S. 1800 contains a number of undesirable provisions, we recommend you sign the bill in light of the above discussion. We also recommend you issue a signing statement (proposed statement attached) to counter the Constitutional problems it presents and to direct the Secretary of State to establish criteria for making the required "national interest" determinations to assure that the legislation is implemented in the best interests of the United States. In our proposed signing statement, we do not refer to your action on the Japan-United States Friendship Act, noted above, because we do not believe it is wise to call the attention of Congress to such precedents which may encourage inclusion of similar provisions in other legislation.



James M. Frey
Assistant Director for
Legislative Reference

Enclosures

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

DECISION

December 18, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Enrolled Bill S. 1800 -- Arts and Artifacts
Indemnity Act

This enrolled bill would authorize a new Federal program to indemnify persons, nonprofit agencies, institutions or governments against loss of or damage to certain works of art. Specifically, the bill would authorize the Federal Council on Arts and Artifacts to enter into indemnity agreements with exhibitors where the Secretary of State has certified the exhibition to be in the national interest. The Council would be authorized to pledge the full faith and credit of the United States, not to exceed \$250 million at any one time.

The purpose of the bill is to facilitate the exchange of art and artifacts between the United States and other countries of the world by providing indemnification against financial loss due to loss, theft or damage. This will not only afford Americans the opportunity to enjoy and study works of art from abroad, but it will enable people from other lands to view objects of art produced or held in America as part of cultural exchange programs designed to advance the national interest of the United States.

The Department of Justice has recommended disapproval of the bill because its provisions violate (1) the constitutional requirement that officers of the United States be appointed by the President, with the advice and consent of the Senate, or with Congressional authorization, by the President alone, courts of law, or heads of departments, and (2) the constitutional prohibition against members of the Congress holding other offices in the United States.

Justice points out that, since the Council would be given executive, as opposed to advisory, functions under the bill, its members must be officers of the United States. Four of the current members of the Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the designee of the Chairman of the Senate Commission on Art and

Artifacts, and the designee of the Speaker of the House -- are not appointed in the manner required by the Constitution. Further, one of the members of the Council -- the designee of the Speaker of the House -- is a member of Congress and, therefore, not eligible to hold any other executive office.

OMB and Counsel's office have pointed out, on the other hand, that you recently signed into law a message containing the same kind of constitutional defect (S. 824, the Japan-United States Friendship Act). In signing that bill, you stated: "Because of the constitutional provision against members of the Congress serving in any other office in the United States, the Congressional members of the [Japan-United States Friendship] Commission will serve in an advisory capacity as non-voting members." OMB and Counsel agree that the defect in this bill may be remedied in similar fashion.

OMB, Counsel's office, the National Endowment for the Arts, the National Endowment for the Humanities, the Department of State, the Smithsonian Institution, the National Gallery of Art, and the Department of the Treasury have all recommended approval of the bill.

RECOMMENDATION

I recommend you approve S. 1800, with signing statement (attached).

DECISION

Sign S. 1800 _____

Veto S. 1800 _____

Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the member designated by the Chairman of the Senate Commission on Art and Antiquities, and the member designated by the Speaker of the House -- are not appointed in the manner prescribed in the Constitution for appointment of officers of the United States. Furthermore, the conversion of the Council from an advisory body into an executive agency for the purpose of the Act places the Congressional member of the Council in violation of the Constitutional prohibition against members of Congress holding civil offices of the United States.

However, I am approving S. 1800 despite these Constitutional defects. Under the authority vested in me by the National Foundation on the Arts and Humanities Act of 1965 to change the membership of the Council to meet changes in Federal programs or executive branch organization, I am today directing that, because of the Constitutional provisions noted above, the four Council members previously mentioned shall not serve as members of the Council when it acts as an agency in carrying out functions under this Act.





NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D. C. 20506

THE CHAIRMAN

December 8, 1975

Mr. James M. Frey
Assistant Director for Legislative
Reference
Room 7201 New Executive Office
Building
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request of December 5th for the views of the National Endowment for the Humanities on S.1800 the "Arts and Artifacts Indemnity Act".

This legislation is intended to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes. The National Endowment for the Humanities recommends approval by the President.

Ronald Berman
Chairman

A handwritten signature in black ink, appearing to read "Ronald Berman".





DEPARTMENT OF STATE

Washington, D.C. 20520

DEC 9 - 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

I refer to Mr. Frey's communication of December 5, 1975, which seeks the views of the Department of State on Senate Bill 1800. This legislation would authorize the Federal Council on the Arts and Humanities to make agreements which would indemnify art exchanges against loss or damage.

The Department of State recommends the approval of this legislation by the President. Major international exchanges of art constitute an increasingly important part of the cultural interchange between nations and of the cultural experience of Americans. The rising monetary value of significant works of art has made insurance of such exhibitions prohibitively expensive in many cases, and has created an obstacle to these exchanges which allow the peoples of the world to share their cultural heritage, and thus become more perceptive and understanding of each other.

The experience of museums in exchanges of exhibitions over the years has shown that actual losses have been quite limited. For example, under legislation previously approved, indemnity responsibility was assumed by the U.S. Government for the recent Chinese Archeological Exhibition and for the exhibition of paintings mounted by the Metropolitan Museum of Art and sent to the Soviet Union in exchange for the Scythian Gold sent by the Soviet Union to the United States. In these two cases the total value of the objects insured was approximately \$130 million, and they were successfully transported and exhibited without any claim whatever being made under the indemnification agreements.

Testimony received by the House Committee on Education and Labor, and cited in its report No. 94-680, indicates that during the past six years the British indemnity system has suffered losses of only 1/100th of one per cent of the value of the objects covered -- and the British system does not have the \$15,000 deductible clause contained in the subject bill.

The indemnity program established by S.1800 contains a number of important safeguards. Thus, the Council must find that the objects to be covered are of educational, cultural, historical or scientific value, and the Secretary of State or his designee must certify that the exhibition is in the national interest. In administering the program, the Council also has authority to issue regulations concerning the procedures to be followed in assuring the safety of the objects.

Sincerely,



Robert J. McCloskey
Assistant Secretary
for Congressional Relations



SMITHSONIAN INSTITUTION

*Washington, D.C. 20560
U.S.A.*

December 9, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Executive Office Building
Washington, D. C. 20503

Dear Mr. Frey:

Thank you for referring to the Smithsonian Institution for comment the enrolled bill, S. 1800, which provides indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

The bill authorizes the Federal Council on the Arts and Humanities to make indemnity agreements, and identifies the Council, for purposes of the Act, as an "agency" as defined in Title 5, U.S.C.

The bill describes items that may be included in indemnity agreements; the coverage that may be extended; and the process of application for an indemnity agreement. Aggregate loss or damage at any one time may not exceed \$250,000,000, and no single exhibition may be indemnified for more than \$50,000,000. Coverage extends to loss or damage only in excess of \$15,000 for a single exhibition.

The Council is to establish regulations for the adjustment of claims and to certify valid claims and the amount of losses to the Speaker of the House and the President pro tempore of the Senate. Appropriations are authorized for the functions

of the Council under the Act and for the payment of claims. The Council is required to report annually to the Congress all claims paid during the preceding fiscal year; claims pending; and the aggregate face value of contracts outstanding at the close of that fiscal year.

The Act becomes effective thirty days after its enactment.

The Smithsonian Institution supports the principle of government indemnification of objects in international cultural exchanges. Indemnification of national treasures is practiced in countries outside of the United States, and is an important and useful means and, I believe, may be the only feasible means of increasing these extremely valuable exchanges.

We would respectfully recommend endorsement by the President of S. 1800.

Sincerely yours,


S. Dillon Ripley
Secretary

National Gallery of Art

Washington, D.C. 20565

Office of the Director

December 9, 1975

Dear Mr. Lynn:

In response to your Enrolled Bill memorandum on S.1800, "An Act To Provide Indemnities for Exhibitions of Artistic and Humanistic Endeavors, and for Other Purposes," I wish to go on record as strongly urging that the President sign this bill into law.

This legislation advances three worthy purposes: (1) affording large numbers of Americans opportunity to enjoy and study works of art from abroad that all but the very rich lack the resources to view in their normal sites; (2) enabling people of other lands to view objects of art produced or held in America as part of cultural exchange programs designed to advance the national interest of the United States; and (3) effecting substantial savings to Federal, State and local treasuries and private trust funds by substantially eliminating current excessive costs of private insurance against loss or damage to works of art involved in such exhibitions and exchanges.

The legislation has been attacked as "back-door spending," and the suggestion has been made that it could result in substantial increases in the federal deficit. The record of private insurance in this country and governmental indemnities in effect in Great Britain since 1968 clearly indicate that the Federal Treasury's actual exposure will be minuscule. In six years with indemnity agreements in effect aggregating \$275 million, the British Government realized only a single loss in excess of \$25,000 (it was \$35,000) for a loss ratio of approximately 1/100 of one per cent. Experience of this Gallery and the Metropolitan with commercial insurance is comparable.

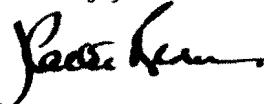
The large premiums deemed necessary by individual insurers are an indirect and unperceived drain on the Federal Treasury. They are financed by appropriations

to national museums or the National Endowments or, frequently, subvented by corporated charitable donations which diminish federal tax revenues by roughly half the amount donated. Thus this legislation, far from permitting a "back-door" raid on the Treasury, affords a salutary plugging of "blind-side" drains on its funds.

Finally, I would point out that the machinery proposed for administering the legislation provides for two hurdles to be cleared prior to any applicant's obtaining an indemnity agreement: a finding of artistic/cultural merit by a professional panel of one of the National Endowments and a finding by the Department of State that the exhibition, in the larger political-foreign policy sense, is in the national interest. Such machinery plus the ceilings in the bill give assurance that indemnity agreements will not be lightly or carelessly executed.

It is my considered view that the initial comments of your office have been adequately heeded in the amendments made since S.1800 was first introduced and that the Bill as enacted by the Congress should be approved by the President.

Sincerely,



J. Carter Brown
Director

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

NATIONAL
ENDOWMENT
FOR
THE ARTS

WASHINGTON
D.C. 20506



A Federal agency advised by the
National Council on the Arts

December 9, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your request for our views and recommendations on S. 1800, a bill to provide Federal indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

The bill would authorize the Federal Council on the Arts and the Humanities to indemnify against loss or damage of works of art, manuscripts and documents, other objects and artifacts, and film and tape recordings which are of educational, cultural, historical, or scientific value, while on exhibition in the United States, or elsewhere if part of an exchange of exhibitions, after such exhibitions have been certified by the Secretary of State to be in the national interest.

The National Endowment for the Arts strongly supports this legislation and has previously made its views thereon available to the Office of Management and Budget. Joint hearings were conducted by the Special Subcommittee on Arts and Humanities of the Senate and the Select Subcommittee on Education of the House on June 4, 1975, and extensive discussions between the Endowment and OMB on this subject occurred at that time.
(Enclosed find copy of the Chairman's testimony delivered at those hearings.)

Rather than restate our earlier position in support of this bill (see testimony), I believe it would be more helpful at this time to direct our comments to those aspects of the legislation which apparently are still of concern to the Office of Management and Budget.

First, based on the assumption that maximum use will be made of this authority and that the average exhibit would last three months, it has been stated that up to \$1 billion in indemnities could be issued during a given fiscal year, with an implication of possible Federal liabilities in that amount. While such an amount of indemnities theoretically could be issued annually, that possibility has no meaningful relationship to a realistic estimate of probable Federal outlays under this legislation. The Act would authorize the issuance of indemnities to protect items in eligible exhibitions having only a total value of \$250,000,000 at any given time, and that level therefore constitutes an absolute ceiling on any possible Federal liability. Realistically speaking, possible Federal liability is nowhere near that figure, in our view. The Congressional Budget Office has estimated a loss rate of 5¢ per \$100 of insured value, based on data provided by the Association of Art Museum Directors and Virginia Polytechnic Institute, and projected a possible outlay not to exceed \$1 million by fiscal year 1980. These estimates include administrative costs of ten percent and provide for an annual inflation rate of fifteen percent. In view of the minimal loss experience to date, even this figure seems clearly to be too high. In this connection, Douglas Dillon, President of the Metropolitan Museum of Art, stated at the hearings:

"We have obtained detailed figures showing the British record under this system for the past six years. Works of art valued at approximately \$275,000,000 were indemnified with only one loss of over \$25,000, which amounted to about \$35,000. This is a loss ratio of only slightly over 1/100 of one percent -- a minute fraction of what the cost of insurance would have been."

As the House Report states on page 10:

"This history, in conjunction with the \$15,000 deductible, indicates that the probable cost of the legislation to the Federal government would be minimal."

Also, the Congressional Budget Office apparently did not take into consideration the fact that a large part of the administration of the program will, under current plans (described below), be carried out within the existing administrative structure of the National Foundation on the Arts and the Humanities.

Of course, as has been noted, theoretically there could be a Federal liability of up to \$250 million if every item covered by outstanding indemnities at any given time were somehow simultaneously destroyed. Such a contingency hardly qualifies as being within the realm of the possible, and borders on the ludicrous. Total coverage of items representing the authorized amount of \$250 million would, because of the \$50 million limitation per exhibition, involve at least five different exhibitions occurring simultaneously in different parts of the world. Transportation of items in each exhibition would involve several aircraft or other modes of transportation. Past international exhibition experience indicates that the loss of a single aircraft or other event involving the destruction of only a part of a single exhibition would be considered as a "catastrophic" loss occurrence. At the worst, this would be a loss amounting to only a portion of the value of that particular exhibition, and an even smaller portion of total indemnities outstanding.

It is the Endowment's view that this bill will, in all probability, save the government money, since both the National Endowment for the Arts and the National Endowment for the Humanities are currently providing Federal grant funds to cover the cost of insurance premiums on international exhibitions. Given the enactment of S. 1800, such expenditures will no longer be necessary.

Regarding the advisory nature of the Federal Council on the Arts and the Humanities and the appropriateness of that body having sole responsibility for the administrative implementation of the indemnification program, it is our understanding that the Federal Council will delegate authority for administering this legislation to an operating Federal entity represented on the Federal Council, such as the National Foundation on the Arts and the Humanities. Applications for indemnification would be initially reviewed for eligibility by the Department of State and assuming a favorable certification by that Department, would then be reviewed for cultural and esthetic significance by a joint panel of arts and humanities museum experts. Subsequent to the above described review, and assuming favorable recommendation, the certificate of indemnity would be issued under the authority of the Federal Council on the Arts and the Humanities and signed by the acting Chairman of that body. Such a procedure would appear to be most appropriate in view of the advisory nature of the Council, the cost savings, and the fact that the National

December 9, 1975

Foundation on the Arts and the Humanities, with ongoing museum exhibition support programs, is well qualified to assume such a responsibility in conjunction with the Department of State, as required by the legislation.

Another concern has been the effect of the legislation on the private insurance industry. Three points should be kept in mind in this connection. First, according to informed sources such as Huntington T. Block, museum insurance broker, the Federal indemnity would not result in the loss of any substantial sums to the American insurance industry, since insurance for international exhibitions is ultimately underwritten, through re-insurance techniques, by the London insurance market. Further, the \$15,000 deductible leaves that high risk category of coverage to private underwriters. Also, any coverage for exhibition values over \$50 million would have to be the subject of private insurance. Since major exhibitions carry values well over \$50 million (sometimes totaling \$100 million), a very substantial portion is left for possible coverage by private insurance carriers, if they provide reasonable rates to the involved museums. It should further be noted that there is no substantial loss to the insurance industry as a direct result of this bill. In the event the legislation were not enacted, these exhibitions to a large extent simply could not take place due to the prohibitive cost of private insurance and the museum field's precarious financial position.

Another concern of the Office of Management and Budget is that the legislation is not limited to "officially sponsored" exhibitions. While there are various possible definitions of the term "officially sponsored," the statement does not appear to be true. The legislation requires that an exhibition may be indemnified only when certified by the Secretary of State or his designee as being in the "national interest." We feel that this requirement places indemnified exhibitions in the category of "officially sponsored." Also, the Federal indemnity itself constitutes a form of official sponsorship.

The fact that indemnity agreements could be applied for by individuals, as well as by nonprofit agencies, institutions, or governmental bodies, and therefore are not restricted to nonprofit groups, has also been questioned by OMB. While individuals may apply for indemnity coverage, the House Report makes clear the Congressional intent that in most, if not all cases, the indemnities will be applied for by the museum responsible for arranging the exhibition and the transportation of the objects. The actual owners of

the objects, if other than the museum itself, would be third-party beneficiaries of the agreement between the government and the museum. This is also the understanding of the NFAH, based on discussions with staff representatives of the agency members of the Federal Council on the Arts and the Humanities. (Wherein the Senate Report is at variance with the House Report, the latter will govern since the Senate acceded to the House on all differences in the two versions.)

Finally, it is important to remember that the museum field itself would view with great seriousness any substantial loss, even though indemnified, since the main concern of the field is the preservation of the art works or artifacts in question (which in some cases take years to acquire), not the recovery of insurance proceeds. Indeed, these items are unique and largely irreplaceable, their worth being measured in terms that go far beyond the merely financial. Notwithstanding the existence of indemnity authority, in the event of any heavy loss or losses, it is inconceivable that the exhibition program would continue to function without serious reevaluation by the museums, private owners of artworks, and the government of the desirability of continuing and participating in such a program. And, of course, in such event the Congress could, with or without an Administration recommendation, repeal the legislation.

In sum, the cost of this authorizing (no budget authority is directly provided) legislation to the government should be infinitesimal as a portion of the existing Federal budget, and it is indeed conceivable that the bill would not result in any Federal outlay for loss or damage for an indefinite period.

The administrative procedure contemplated is designed to utilize existing Federal operating agencies, and to hold down costs.

There is a substantial area of coverage left to the private insurance industry.

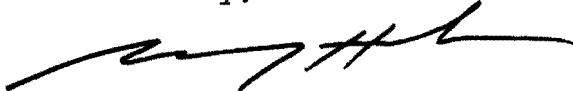
The exhibitions covered by indemnity agreements would by any traditionally accepted standards, be "officially sponsored."

December 9, 1975

Most important, this legislation will result in great benefits to the people of the nation who because of it will have the opportunity to view and experience the art and artifacts of other civilizations. The Endowment believes that the United States, consistent with its leadership position in the world, should do as much as any nation in the support of cultural activities. S. 1800, if enacted, will be a step in the right direction, by strengthening these vitally important exhibition programs.

The National Endowment for the Arts strongly supports this legislation and recommends approval of S. 1800 by the President.

Sincerely,



Nancy Hanks
Chairman

Enclosures

Statement of
Nancy Hanks
Chairman, National Endowment for the Arts

Joint Hearings before the
Special Subcommittee on Arts and Humanities of the
Committee of Labor and Public Welfare of the
U.S. Senate and the Select Subcommittee on Education of the
Committee on Education and Labor of the
U.S. House of Representatives on
Part B of Title II of S. 1800 and H.R. 7216

June 4, 1975

I am very pleased to have the opportunity to testify on the proposed Arts and Artifacts Indemnity Act contained in Part B of Title II in S. 1800 and H.R. 7216, legislation to amend and extend the National Foundation on the Arts and the Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

Placing the Federal Government in the role of a "guarantor" or "indemnitor" with respect to possible loss or damage to works of art and other objects in exhibitions certified by the Secretary of State to be in the national interest would reflect and follow policies already established and practiced by Great Britain and Australia, the Soviet Union and other nations. These countries have adopted this policy in the interests of easing the financial burden of their nationally important cultural institutions. And, as others will testify here, the experience of financial loss to those governments under this program has been practically nonexistent. The International Council on Museums, an advisory body to the United Nations Educational, Scientific and Cultural Organization on international museum matters, has recommended strongly that all nations adopt such a policy.

It has long been generally accepted that international exhibitions and exchanges between countries benefit the individual citizen in terms of the spiritual and cultural awareness and enlightenment that results from exposure to the artistic and cultural products and artifacts of other civilizations, both contemporary and ancient. By increasing man's knowledge of mankind, through the exhibition of these objects, we enhance man's knowledge of himself and, hopefully, stimulate future artistic and cultural activity to the ultimate benefit of the nation and its people.

While international exhibitions, usually part of exchange agreements, are generally held in high favor, the public is not fully aware of the exorbitantly high insurance costs in connection with these programs. Because of such costs, some major exhibitions in the past have been impossible to mount or sharply curtailed. In other instances the high costs of insurance have been covered in part through grants made by the National Endowment for the Arts or the National Endowment for the Humanities. This was the case last winter regarding the "Masterpieces of Tapestry from the 14th to the 16th Century" exhibition at the Metropolitan, in which a major collection of tapestries from Europe and the United States were put on special exhibition and were viewed by approximately 400,000 persons. Insurance costs for that exhibition alone totaled almost \$100,000 and were paid for in part by a grant from the National Endowment for the Arts.

Similarly, an exhibition of recent works by Jean Dubuffet held at the Guggenheim Museum in New York carried an evaluation of several million dollars and an insurance premium in excess of \$80,000. I wish to note that the need for an indemnification policy is not restricted to New York City or to the major institutions only.

There is already well established precedent for the enactment of such legislation. Recently, two major exhibitions in the United States were made possible because of special ad hoc indemnity legislation enacted to cover

these specific exhibitions. On May 21, 1974, the President signed into law P.L. 93-287 (S. 3304) which made possible the Exhibition of Archeological materials from the People's Republic of China, now on view in Kansas City following a very successful showing at the National Gallery here in Washington. More recently, P.L. 93-476 (S.J. Res. 236) was passed by the Congress and signed by the President October 26, 1974. This bill made possible the historically unprecedented current exchange agreement between the Metropolitan Museum of New York and the Soviet Union, resulting in the nationally acclaimed exhibition of ancient Scythian gold and silver objects from the Hermitage in Leningrad and the Lavra State Museum in Kiev. It is my understanding that these exchanges could not have taken place without the Federal indemnity legislation.

It is almost embarrassing for me to describe the situation that exists with a major exhibition organized by the Museum of Modern Art in New York City. As I understand it, the museum wished to present an exhibition entitled "From Manet to Matisse" that would draw heavily on foreign collections. Since the insurance premium on such an exhibition was estimated in the neighborhood of \$200,000, the Museum was prepared to abandon the project when the Australian government expressed interest. As I mentioned, the Australians have an indemnification policy. The exhibition has opened in Sydney with Australian indemnification and will ultimately be seen in the United States, thanks to Australia.

American museums are among our most vital and active cultural institutions. They are normally engaged in exchange of all sorts of objects and works of art with their counterparts outside the United States.

Indemnity legislation will afford our museums the kind of protection they require to continue these programs by eliminating the costs of prohibitively expensive insurance, while not requiring any additional immediate Federal appropriations. If the British experience to date is a valid criterion, the Federal government may never have to appropriate any significant amounts to cover losses under this authorizing legislation.

Of course, we have to recognize that there could, despite all protections, be a catastrophic loss. Museums, both domestic and international, take every sound precaution to protect valuable objects. These precautions, taken by very responsible people, range from adequate security protection, to superb transportation and packaging technology. The experience of non-loss in exchange of objects speaks well for the care of treasures. But, a plane carrying invaluable objects could go down. It has not happened but it could. This possible event, totally unsubstantiated by experience, must be in my view accepted by this government -- without fear.

I believe the museum professionals of this country and the nations of the world assume with greatest responsibility the objects entrusted to their care. The question before us today is to enable -- indeed, to encourage -- these professionals to step up an exchange of objects to the benefit of people of all nations. I believe action by this government will encourage all other nations to take similar action.

Cultural exhibitions and exchanges of high quality should be encouraged by the laws and policies of the United States Government. They are in the national interest because of the personal esthetic, intellectual, and cultural benefits accruing to every man, woman and child of this nation who has the opportunity to experience these beautiful and enlightening presentations. We believe that this country should do as much as any nation in the world to insure that these vitally important programs are strengthened.

The Office of Management and Budget has advised us that the Administration does not support the legislation in its present form. OMB indicates that the need for Federal involvement in this area; the extent of such involvement; and how it should be accomplished are questions requiring further study. This hearing is being held, of course, to obtain answers to questions like these and others.

In the Office of Management and Budget's view, the legislation as written appears to present a possible constitutional problem concerning separation of powers, since the Federal Council has Congressional members. Also, there is a concern that there is no upper limitation specified on the size of indemnities which could be provided. Also, OMB notes that there is no indication of a lack of availability of private insurance for these purposes. A basic question in regard to the present legislation is whether the bill adequately circumscribes the Federal role, that is, the bill as written appears to be open ended with respect to procedures and questions relating to the specific kind of exhibition intended to be covered.

In the meantime, I should like to take the opportunity to express my gratitude to the members of the subcommittees and to their staffs and to all of those in the Senate and the House, who with imagination and dedication have worked with the museum profession in developing legislation that could immeasurably benefit the people of this country.

THE WHITE HOUSE
WASHINGTON

December 17, 1975

MEMORANDUM FOR: JUDY JOHNSTON
FROM: KATHLEEN RYAN *cc:*.
SUBJECT: S.1800 Arts and Artifacts
Indemnity Act.

The Domestic Council recommends approval
and signing of OMB's statement.

MEMORANDUM

NATIONAL SECURITY COUNCIL

8277

December 17, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: Jeanne W. Davis
SUBJECT: S. 1800 - Arts and Artifacts
Indemnity Act

The NSC staff concurs in the enrolled bill S. 1800 - Arts and Artifacts Indemnity Act.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: December 16

Time: 11:15am

FOR ACTION: Kathy Ryan
Max Friedersdorf
Ken Lazaruscc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 17Time: noon

SUBJECT:

S. 1800 - Arts and Artifacts Indemnity Act

ACTION REQUESTED:

- For Necessary Action For Your Recommendations
 Prepare Agenda and Brief Draft Reply
 For Your Comments Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend approval. Note changes on page 2 of
OMB draft signing statement.

Ken Lazarus 12/16/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.P.O. Box 12345
Washington, D.C. 20506
Telephone: 555-1234

THE WHITE HOUSE

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Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



OFFICE OF MANAGEMENT AND BUDGET

Date:

TO : Robert Linder, White House

FROM: James M. Frey
Assistant Director for
Legislative Reference

Attached for the file on
enrolled bill S. 1800 is
Treasury's review letter.



THE SECRETARY OF THE TREASURY
WASHINGTON 20220

DEC 15 5 14 PM '75

OFFICE OF
MANAGEMENT & BUDGET

DEC 12 1975

Dear Jim:

You recently requested our views on the enrolled enactment of S. 1800, the proposed "Arts and Artifacts Indemnity Act."

The enrolled bill would authorize the Federal Council on the Arts and Humanities to insure arts or artifacts of educational, cultural, historical, or scientific value whenever the Secretary of State certifies that their exhibition is in the national interest.

Although the Department opposed the measure in earlier informal comments to your office, amendments to the bill by the Congress to establish lower and upper limits for Federal insurance for a single exhibition and to establish an aggregate limit of \$250 million, provide adequate fiscal safeguards in my view.

I am also convinced that Federal insurance of this kind is appropriate as the United States continues to expand its cultural relationships with other countries and to encourage exchanges of objects of art.

I therefore urge approval of the proposed legislation by the President.

With best regards,

Sincerely yours,

William E. Simon

The Honorable
James T. Lynn, Director
Office of Management and Budget
Washington, D.C. 20503



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WASHINGTON

DEC 12 1975

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I therefore urge approval of the proposed legislation by the President.

With best regards,

Sincerely yours,

(Signed) Bill

William E. Simon

The Honorable
James T. Lynn, Director
Office of Management and Budget
Washington, D.C. 20503

STATEMENT BY THE PRESIDENT

I have today signed S. 1800, "The Arts and Artifacts Indemnity Act."

S. 1800 authorizes the Federal Government, under certain circumstances, to indemnify certain art, artifacts and other objects to be exhibited internationally. One of the conditions which the bill requires to be met is that the Secretary of State or his designee certify that the proposed exchange would be "in the national interest." In approving S. 1800, I note that the legislative history links the determination of national interest specifically to exhibits and exchanges which would be in the "foreign policy interests of the United States," and "in the interests of the people of the United States" so that the indemnification program does not become simply an insurance relief mechanism. I believe that such linkage is essential to justify involvement of the Federal Government in this kind of an indemnification program, and I am therefore directing the Secretary of State to establish appropriate criteria for his certifications to assure that the intent of the legislation in this regard is properly and carefully carried out.

Another concern about S. 1800 grows out of the provisions designating the Federal Council on the Arts and Humanities as an agency for the purpose of administering the indemnification program. Under existing law, the Council is essentially an advisory body. This bill, however, would assign executive functions to the Council. Thus, its members must be officers of the United States. In this regard, four of the current statutory members of the Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the member designated by the Chairman of the Senate



Commission on Art and Antiquities, and the member designated by the Speaker of the House -- are not appointed in the manner prescribed in the Constitution for appointment of officers of the United States. Furthermore, the conversion of the Council from an advisory body into an executive agency for the purpose of the Act would place the Congressional member of the Council in violation of the Constitutional prohibition against members of Congress holding civil offices of the United States.

However, I am approving S. 1800 since these surface Constitutional defects can be cured by Executive action. Under the authority vested in me by the National Foundation on the Arts and Humanities Act of 1965 to change the membership of the Council to meet changes in Federal programs or executive branch organization, I am today directing that, because of the Constitutional provisions noted above, the four Council members previously mentioned shall not serve as members of the Council when it acts as an agency in carrying out functions under this Act.

Department of Justice
Washington, D.C. 20530

December 11, 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 1800, "To provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes."

The purpose of this legislation is to authorize the Federal Council on the Arts and Humanities, created by the National Foundation on the Arts and the Humanities Act of 1965, Pub. L. 89-209, 79 Stat. 845 (89th Cong., 1st Sess. 1965), to enter into indemnity agreements with "[a]ny person, nonprofit agency, institution, or government" (Section 4(a)), pledging the full faith and credit of the United States (U.S. Const. Art. I, Section 8, Cl. 2). This authorization furnishes additional support for the purpose of the National Foundation on the Arts and the Humanities (20 U.S.C. § 953) to "complement, assist, and add to programs for the advancement of the humanities and the arts by local, State, regional, and private agencies and their organizations." (20 U.S.C. § 951(4)). Assurance to the owners of works of art, which qualify under Section 3(a), that these objects are insured against loss or damage in excess of the first \$15,000 up to an agreed upon estimated value, not to exceed \$250,000,000 at any one time, should make access to these works more available to the public, an objective of the National Foundation on the Arts and the Humanities Act of 1965, supra.

However, this Department recommends against Executive approval of S. 1800 since the bill by fundamentally altering the character of the Federal Council on the Arts and Humanities thereby violates Article I, Section 6, Clause 2 and Article II, Section 2, Clause 2 of the Constitution. A proposed veto message based on these grounds is enclosed. No longer being solely advisory in function (20 U.S.C. § 598(c)), the Council is empowered by this bill to pledge the full faith and credit of the United States as assurance of payment for authorized contracts of indemnity. This authorization to pledge the credit of the United States is predicated on Congress' power to borrow money "on the credit of the United States" found in Article I, Section 8, Clause 2 of the Constitution. Perry v. United States, 294 U.S. 330, 335 (1935). Since the Council would have the power to exercise a sovereign function of the United States its members must be officers of the United States. The Council differs from those commissions or councils which have only advisory functions, or whose task is restricted to a single task of limited duration and whose members are thus "ad hoc officers." See The Constitution of the United States, Analysis and Interpretation, Sen. Doc. 92-82, p. 523 (1973).

As officers of the United States it follows that the members of the Federal Council on the Arts and the Humanities must be appointed as provided in Article II, Section 2, Clause 2 of the Constitution, i.e., by the President, by and with the advice and consent of the Senate, or with congressional authorization by the President alone, or the courts of law, or heads of Departments.

20 U.S.C. § 958(b), as originally written and as amended by Pub. L. 93-133, § 2(a)(8), 87 Stat. 464 (93d Cong., 1st Sess. 1973), provides that the Council shall include "the Secretary of the Smithsonian Institution, . . . the Director of the National Gallery of Art, . . . a member designated by the Chairman of the Senate Commission on Art and Antiquities, and a member designated by the Speaker of the House." Since the Federal Council under this bill would exercise a sovereign function, membership on the Council does render its constituents officers of the United States by reason of such membership.

The Secretary of the Smithsonian Institution and the Director of the National Gallery of Art are not appointed pursuant to the provisions of Article II, Section 2, Clause 2 of the Constitution and hence cannot be officers of the United States. Similarly, a member designated by a member of Congress cannot be an officer of the United States. Thus, the appointment provision constitutes an attempt by Congress to appoint officers of the United States in violation of Article II, Section 2, Clause 2 of the Constitution.

The appointment provision also brings into play Article I, Section 6, Clause 2 of the Constitution which precludes Members of Congress from holding any civil office. Insofar as this provision would permit appointment of a Member of Congress it is also unconstitutional. At the present time, Congressman Fortney Stark is the Speaker of the House's designee to the Federal Council. Conference Report No. 93-259, accompanying Pub. L. 93-133, supra, which amended the National Foundation on the Arts and the Humanities Act of 1965, stated that the 1973 amendment

"expands the membership of the Federal Council . . . to include a member designated by the Senate Committee on Arts and Antiquities and a member designated by the Speaker of the House. The conference agreement adopts the provision of the Senate bill, with the understanding that the term 'member' refers to a member of the Federal Council on the Arts and the Humanities, and not to a Member of the House or Senate (although a Member of the House or Senate may be designated a member of such Council by the appropriate authority.)"
(Emphasis supplied.) 2 U.S. Code Cong. & Admin. News p. 2310 (93d Cong., 1st Sess. 1973).

Therefore, with S. 1800's addition of nonadvisory functions to the Federal Council, any membership held by a Member of Congress, as contemplated by Congress, violates Article II, Section 2, Clause 2 of the Constitution.

In our view, the constitutional principles which prevent Congress from appointing, or Members of Congress from serving as, Executive officers are of major consequence, and must not be impaired. Moreover, the Department believes that the authorization to pledge the full faith and credit of the United States up to the ceiling amount of \$250,000,000 at any one time is a matter of major practical import which warrants Executive rejection of a legislative scheme which would place this sovereign function in individuals who are not constitutionally appointed officers of the United States.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs

Attachment

TO THE SENATE OF THE UNITED STATES:

I am returning herewith, without my approval, S. 1800, "the Arts and Artifacts Indemnity Act."

While I fully agree with the purposes of the bill, it is my painful duty to disapprove it because the method of appointing four of the fourteen members of the Federal Council on the Arts and the Humanities would be in conflict with fundamental provisions of the Constitution, mainly, Article II, Section 2, Clause 2, providing for the appointment of officers of the United States, and Article I, Section 6, Clause 2, which precludes Members of Congress from holding any civil office under the United States. The present member of the Federal Council, designated by the Speaker of the House, is a Member of the House of Representatives.

Under the proposed "Arts and Artifacts Indemnity Act," the Federal Council on the Arts and the Humanities would no longer be merely of an advisory character or perform a single function of a limited duration, but would rather administer a statute providing for the exercise of a sovereign function of the United States for an indefinite period of time (U.S. Const. Article I, Section 8, Clause 2 -- pledging the full faith and credit of the United States). The members of the Federal Council therefore would be officers of the United States who have to be appointed, as provided for in Article II, Section 2, Clause 2 of the Constitution, by the President by and with the advice and consent of the Senate, or, with statutory authorization, by the President alone, the courts of law, or the heads of departments.

The bill does not comply with that constitutional requirement. It would by legislative fiat constitute as officers of the United States four members of an advisory

council, who are not now officers of the United States. Moreover, since the designee of the Speaker of the House is presently a Member of Congress, the bill would violate Article I, Section 6, Clause 2 of the Constitution, which precludes Members of Congress from holding any office under the United States.

For those constitutional reasons I am unable to give my consent to the bill. Since I agree with its purpose, it is my sincere hope that Congress in the near future will pass substitute legislation avoiding those constitutional proscriptions.

THE WHITE HOUSE,

J. Cannon Jr.
10-
12-16-75
10 9.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 15 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1800 - Arts and Artifacts
Indemnity Act
Sponsors - Sen. Pell (D) Rhode Island and Sen.
Javits (R) New York

Last Day for Action

December 20, 1975 - Saturday

Purpose

Authorizes Federal indemnities for certain exhibitions of artistic and humanistic endeavors.

Agency Recommendations

Office of Management and Budget

Approval (signing statement attached)

National Endowment for the Arts

Approval

National Endowment for the Humanities

Approval

Department of State

Approval

Smithsonian Institution

Approval

National Gallery of Art

Approval

Department of Treasury

Approval (Informally)

Department of Justice

Disapproval (veto message attached)

Discussion

The enrolled bill authorizes a new Federal program to indemnify against loss or damage of certain exhibits of art and other artifacts or objects (including, among other things, paintings, sculpture, tapestries, manuscripts, rare books, other published matter, photographs, movies, and audio and video tape).

S. 1800 provides that the Federal Council on the Arts and Humanities (which, under current law, is essentially an advisory body to the National Endowment for the Arts and the National Endowment for the Humanities) shall be an agency for the purpose of the Act. The Council may

THE WHITE HOUSE

WASHINGTON

December 17, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.*
SUBJECT: S. 1800 - Arts and Artifacts Indemnity Act

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

To the Senate of the United States:

I am returning herewith, without my approval, S. 1800, "the Arts and Artifacts Indemnity Act."

While I fully agree with the purposes of the bill, it is my painful duty to disapprove it because the method of appointing four of the fourteen members of the Federal Council on the Arts and the Humanities would be in conflict with fundamental provisions of the Constitution, mainly, Article II, Section 2, Clause 2, providing for the appointment of officers of the United States, and Article I, Section 6, Clause 2, which precludes Members of Congress from holding any civil office under the United States. The present member of the Federal Council, designated by the Speaker of the House, is a Member of the House of Representatives.

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not now officers of the United States. Moreover, since the designee of the Speaker of the House is presently a Member of Congress, the bill would violate Article I, Section 6, Clause 2 of the Constitution, which precludes Members of Congress from holding any office under the United States.

For those constitutional reasons I am unable to give my consent to the bill. Since I agree with its purpose, it is my sincere hope that Congress in the near future will pass substitute legislation avoiding those constitutional proscriptions.

GERALD R. FORD

THE WHITE HOUSE.

TO THE SENATE OF THE UNITED STATES:

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THE WHITE HOUSE,

FOR IMMEDIATE RELEASE

Office of the White House Press Secretary

THE WHITE HOUSE

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I am returning herewith, without my approval, S. 1800, "the Arts and Artifacts Indemnity Act."

While I fully agree with the purposes of the bill, it is my painful duty to disapprove it because the method of appointing four of the fourteen members of the Federal Council on the Arts and the Humanities would be in conflict with fundamental provisions of the Constitution, mainly, Article II, Section 2, Clause 2, providing for the appointment of officers of the United States, and Article I, Section 6, Clause 2, which precludes Members of Congress from holding any civil office under the United States. The present member of the Federal Council, designated by the Speaker of the House, is a Member of the House of Representatives.

Under the proposed "Arts and Artifacts Indemnity Act," the Federal Council on the Arts and the Humanities would no longer be merely of an advisory character or perform a single function of a limited duration, but would rather administer a statute providing for the exercise of a sovereign function of the United States for an indefinite period of time (U.S. Const. Article I, Section 8, Clause 2 -- pledging the full faith and credit of the United States). The members of the Federal Council therefore would be officers of the United States who have to be appointed, as provided for in Article II, Section 2, Clause 2 of the Constitution, by the President by and with the advice and consent of the Senate, or, with statutory authorization, by the President alone, the courts of law, or the heads of departments.

The bill does not comply with that constitutional requirement. It would by legislative fiat constitute as officers of the United States four members of an advisory council, who are not now officers of the United States. Moreover, since the designee of the Speaker of the House is presently a Member of Congress, the bill would violate Article I, Section 6, Clause 2 of the Constitution, which precludes Members of Congress from holding any office under the United States.

For those constitutional reasons I am unable to give my consent to the bill. Since I agree with its purpose, it is my sincere hope that Congress in the near future will pass substitute legislation avoiding those constitutional proscriptions.

GERALD R. FORD

THE WHITE HOUSE,

#

STATEMENT BY THE PRESIDENT

I have today signed S. 1800, "The Arts and Artifacts Indemnity Act."

S. 1800 authorizes the Federal Government, under certain circumstances, to indemnify certain art, artifacts and other objects to be exhibited internationally. One of the conditions which the bill requires to be met is that the Secretary of State or his designee certify that the proposed exchange would be "in the national interest." In approving S. 1800, I note that the legislative history links the determination of national interest specifically to exhibits and exchanges which would be in the "foreign policy interests of the United States," and "in the interests of the people of the United States" so that the indemnification program does not become simply an insurance relief mechanism. I believe that such linkage is essential to justify involvement of the Federal Government in this kind of an indemnification program, and I am therefore directing the Secretary of State to establish appropriate criteria for his certifications to assure that the intent of the legislation in this regard is properly and carefully carried out.

Another concern about S. 1800 grows out of the provisions designating the Federal Council on the Arts and Humanities as an agency for the purpose of administering the indemnification program. Under existing law, the Council is essentially an advisory body. This bill, however, would assign executive functions to the Council. Thus, its members must be officers of the United States. In this regard, four of the current statutory members of the



Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the member designated by the Chairman of the Senate Commission on Art and Antiquities, and the member designated by the Speaker of the House -- are not appointed in the manner prescribed in the Constitution for appointment of officers of the United States. Furthermore, the conversion of the Council from an advisory body into an executive agency for the purpose of the Act ^{will} places the Congressional member of the Council in violation of the Constitutional prohibition against members of Congress holding civil offices of the United States.

can be cured by Executive action.

However, I am approving S. 1800 ~~despite these~~ ^{since} ~~suspects~~ Constitutional defects. Under the authority vested in me by the National Foundation on the Arts and Humanities Act of 1965 to change the membership of the Council to meet changes in Federal programs or executive branch organization, I am today directing that, because of the Constitutional provisions noted above, the four Council members previously mentioned shall ~~not~~ serve as members of the Council when it acts as an agency in carrying out ^{its} ~~its~~ ^{executive} ~~executive~~ functions under this Act.

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S. 1800 authorizes the Federal Government, under certain circumstances, to indemnify certain art, artifacts and other objects to be exhibited internationally. One of the conditions which the bill requires to be met is that the Secretary of State or his designee certify that the proposed exchange would be "in the national interest." In approving S. 1800, I note that the legislative history links the determination of national interest specifically to exhibits and exchanges which would be in the "foreign policy interests of the United States," and "in the interests of the people of the United States" so that the indemnification program does not become simply an insurance relief mechanism. I believe that such linkage is essential to justify involvement of the Federal Government in this kind of an indemnification program, and I am therefore directing the Secretary of State to establish appropriate criteria for his certifications to assure that the intent of the legislation in this regard is properly and carefully carried out.

Another concern about S. 1800 grows out of the provisions designating the Federal Council on the Arts and Humanities as an agency for the purpose of administering the indemnification program. Under existing law, the Council is essentially an advisory body. This bill, however, would assign executive functions to the Council. Thus, its members must be officers of the United States. In this regard, four of the current statutory members of the Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the member designated by the Chairman of the Senate

Commission on Art and Antiquities, and the member designated by the Speaker of the House -- are not appointed in the manner prescribed in the Constitution for appointment of officers of the United States. Furthermore, the conversion of the Council from an advisory body into an executive agency for the purpose of the Act would place the Congressional member of the Council in violation of the Constitutional prohibition against members of Congress holding civil offices of the United States.

However, I am approving S. 1800 since these surface Constitutional defects can be cured by Executive action. Under the authority vested in me by the National Foundation on the Arts and Humanities Act of 1965 to change the membership of the Council to meet changes in Federal programs or executive branch organization, I am today directing that, because of the Constitutional provisions noted above, the four Council members previously mentioned shall not serve as members of the Council when it acts as an agency in carrying out functions under this Act.

Union Calendar No. 335

94TH CONGRESS
1ST SESSION

H. R. 7782

[Report No. 94-680]

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1975

Mr. BRADEMAS (for himself, Mr. BELL, Mr. PERKINS, Mr. MEEDS, Mr. PEYSER, Ms. CHISHOLM, Mr. LEHMAN, Mr. PRESSLER, Mr. CORNELL, Mr. BEARD of Rhode Island, Ms. HECKLER of Massachusetts, Mr. ZEFERETTI, Mr. THOMPSON, Mr. HAWKINS, Mr. FORD of Michigan, Mr. BENITEZ, Mr. SIMON, Mr. DUNCAN of Tennessee, Mr. PATMAN, Mr. KOCH, Mr. GILMAN, Mr. ROSTENKOWSKI, Mr. PRITCHARD, Mr. MOORHEAD of Pennsylvania, and Mr. MELCHER) introduced the following bill; which was referred to the Committee on Education and Labor

NOVEMBER 20, 1975

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

A BILL

To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2 ~~That this Act may be cited as the "Arts, Humanities, and~~
- 3 ~~Cultural Affairs Act of 1975".~~
- 4 ~~Cultural Affairs Act of 1975".~~

1 TITLE I ARTS AND HUMANITIES

2 GRANTS TO THE AMERICAN FILM INSTITUTE

3 SEC. 101. (a) Section 5 of the National Foundation on
 4 the Arts and the Humanities Act of 1965 is amended by
 5 adding at the end thereof the following new subsection:

6 “(l) The Chairman is authorized to make grants to
 7 the American Film Institute, a nonprofit corporation in-
 8 corporated under the laws of the District of Columbia, for
 9 the purposes described in subsection (e).”.

10 (b) The amendment made by subsection (a) shall be
 11 effective with respect to fiscal year 1976 and succeeding
 12 fiscal years.

13 STATE HUMANITIES COUNCILS

14 SEC. 102. (a) (1) Section 7 of the National Founda-
 15 tion on the Arts and the Humanities Act of 1965 is amended
 16 by adding at the end thereof the following new subsection:

17 “(f) (1) The Chairman, with the advice of the National
 18 Council on the Humanities, is authorized to establish and
 19 carry out a program of grants in aid to assist the several
 20 States in supporting not more than 50 per centum of the
 21 cost of existing activities which meet the standards enu-
 22 merated in subsection (e), and in developing programs in
 23 the humanities in such a manner as will furnish adequate
 24 programs in the humanities in each of the several States.

25 “(2) In order to receive assistance under this subsec-
 26 tion in any fiscal year, a State shall submit an application

1 for such grants at such time as shall be specified by the
 2 Chairman and accompany such applications with a plan
 3 which the Chairman finds—

4 “(A) designates or provides for the establishment
 5 of a State agency (hereafter in this section referred to
 6 as the State agency) as the sole agency for the adminis-
 7 tration of the State plan;

8 “(B) provides that funds paid to the State under
 9 this subsection will be expended solely on programs ap-
 10 proved by the State agency which carry out one or
 11 more of the objectives of subsection (e); and

12 “(C) provides that the State agency will make such
 13 reports, in such form and containing such information,
 14 as the Chairman may, from time to time, require.

15 “(3) Of the sums available to carry out this subsection
 16 for any fiscal year, each State which has a plan approved
 17 by the Chairman shall be allotted at least \$100,000. If the
 18 sums appropriated are insufficient to make the allotments
 19 under the preceding sentence in full, such sums shall be
 20 allotted among such States in equal amounts. In any case
 21 where the sums available to carry out this subsection for any
 22 fiscal year are in excess of the amount required to make the
 23 allotments under the first sentence of this paragraph—

24 “(A) the amount of such excess which is no greater
 25 than 25 per centum of the sums available to carry out
 26 this subsection for any fiscal year shall be available to

1 the Chairman for making grants under this subsection to
 2 States and regional groups; and

3 "(B) the amount of such excess, if any, which re-
 4 mains after reserving in full for the Chairman the
 5 amount required under clause (A) shall be allotted
 6 among the States which have plans approved by the
 7 Chairman in equal amounts, but in no event shall any
 8 State be allotted less than \$100,000.

9 "(4) (A) That part of any allotment made under
 10 paragraph (3) for any fiscal year—

11 "(i) which exceeds \$62,500, but

12 "(ii) which does not exceed 20 per centum of such
 13 allotment,

14 shall be available, at the discretion of the Chairman, to pay
 15 up to 100 per centum of the cost of programs under this
 16 subsection if such programs would otherwise be unavailable
 17 to the residents of that State.

18 "(B) Any amount allotted to a State under the first
 19 sentence of paragraph (3) for any fiscal year which is not
 20 obligated by the State prior to sixty days prior to the end of
 21 the fiscal year for which such sums are appropriated shall
 22 be available to the Chairman for making grants to regional
 23 groups.

24 "(C) Funds made available under this subsection shall
 25 not be used to supplant non-Federal funds.

26 "(D) For the purposes of paragraph (3) and this

1 paragraph, the term 'regional group' means any multi-State
 2 group, whether or not representative of contiguous States.

3 "(5) All amounts allotted or made available under
 4 paragraph (3) for a fiscal year which are not granted to a
 5 State during such year shall be available to the National En-
 6 dowment for the Humanities for the purpose of carrying
 7 out section 5 (e).

8 "(6) Whenever the Chairman, after reasonable notice
 9 and opportunity for hearing, finds that

10 "(A) a group is not complying substantially with
 11 the provisions of this section;

12 "(B) a State agency is not complying substantially
 13 with terms and conditions of its State plan approved un-
 14 der this section; or

15 "(C) any funds granted to a group or State agency
 16 under this section have been diverted from the purposes
 17 for which they are allotted or paid,

18 the Chairman shall immediately notify the Secretary of the
 19 Treasury and the group or State agency with respect to
 20 which such finding was made that no further grants will be
 21 made under this section to such group or agency until there
 22 is no longer a default or failure to comply or the diversion
 23 has been corrected, or, if the compliance or correction is im-
 24 possible, until such group or agency repays or arranges the
 25 repayment of the Federal funds which have been improperly
 26 diverted or expended."

1 (b) The amendment made by subsection (a) shall be
 2 effective with respect to fiscal year 1976 and succeeding
 3 fiscal years.

4 **AUTHORIZATIONS OF APPROPRIATIONS**

5 SEC. 103. (a) (1) (A) Section 11(a)(1)(A) of the
 6 National Foundation on the Arts and the Humanities Act
 7 of 1965 is amended to read as follows:

8 “SEC. 11. (a) (1) (A) For the purpose of carrying out
 9 section 5, there are authorized to be appropriated \$113,
 10 500,000 each for the fiscal years 1977 and 1978; and there
 11 are so authorized such sums as may be necessary for the
 12 fiscal years 1979, and 1980. Of the sums so appropriated
 13 for any fiscal year—

14 “(i) not less than 20 per centum shall be for car-
 15 rying out section 5(g); and

16 “(ii) 4 per centum shall be for carrying out sec-
 17 tion 5(l).”.

18 (B) Section 11(a)(1)(B) of such Act is amended
 19 by striking out all that follows “Humanities” and inserting
 20 in lieu thereof the following: “\$113,500,000 each for fiscal
 21 years 1977 and 1978; and there are so authorized such sums
 22 as may be necessary for the fiscal years 1979 and 1980.
 23 Of the sums so appropriated for any fiscal year, not less than
 24 10 per centum shall be for carrying out section 7(f).”.

25 (2) Section 11(a)(2) of such Act is amended (A) by
 26 striking out “July 1, 1976” and inserting in lieu thereof

1 “October 1, 1980” and (B) by striking out all that follows
 2 “not exceed” and inserting in lieu thereof “\$25,000,000”.

3 (b) The amendments made by subsection (a) shall be
 4 effective on and after the last day of fiscal year 1976.

5 **TITLE II MUSEUM SERVICES AND EXHIBITIONS**

6 **PART A SERVICES**

7 **SHORT TITLE**

8 SEC. 201. This part may be cited as the “Museum Serv-
 9 ies Act”.

10 **PURPOSE**

11 SEC. 202. It is the purpose of this part to encourage and
 12 assist museums in their educational role, in conjunction with
 13 formal systems of elementary, secondary, and postsecondary
 14 education and with programs of nonformal education for all
 15 age groups; to assist museums in modernizing their methods
 16 and facilities so that they may better be able to conserve our
 17 cultural, historic, and scientific heritage; and to ease the
 18 financial burden borne by museums as a result of their in-
 19 creasing use by the public.

20 **INSTITUTE FOR THE IMPROVEMENT OF MUSEUM SERVICES**

21 SEC. 203. There is hereby established, within the Depart-
 22 ment of Health, Education, and Welfare, an Institute for the
 23 Improvement of Museum Services (hereinafter referred to as
 24 the “Institute”). The Institute shall consist of a National
 25 Museum Services Board (hereinafter referred to as the

1 "Board") and a Director of the Institute (hereinafter re-
 2 ferred to as the "Director").

3 NATIONAL MUSEUM SERVICES BOARD

4 SEC. 204. (a) The Board shall consist of fifteen mem-
 5 bers appointed by the President, by and with the advice and
 6 consent of the Senate, and the following ex officio members:

7 (1) the Director;

8 (2) the Librarian of Congress;

9 (3) the Archivist of the United States;

10 (4) the Commissioner of Education;

11 (5) the Secretary of the Smithsonian Institution;

12 (6) the Director of the National Gallery of Art;

13 (7) the Chairman of the National Endowment for
 14 the Arts; and

15 (8) the Chairman of the National Endowment for
 16 the Humanities.

17 The appointed members of the Board shall be broadly rep-
 18 resentative of the curatorial, education, and cultural resources
 19 of the United States and of the general public.

20 (b) The term of office of appointed members of the
 21 Board shall be five years, except that

22 (1) any such member appointed to fill a vacancy
 23 shall serve only such portion of a term as shall not have
 24 been expired at the time of such appointment; and

25 (2) in the case of initial members, three shall serve

1 for terms of four years, three shall serve terms of three
 2 years, three shall serve terms of two years, and three
 3 shall serve terms of one year.

4 Any appointed member who has been a member of the Board
 5 for more than seven consecutive years shall thereafter be
 6 ineligible for reappointment to the Board during the three-
 7 year period following the expiration of the last such consecu-
 8 tive year.

9 (c) The Chairman of the Board shall be designated by
 10 the President from among the appointed members of the
 11 Board. Eight appointed members of the Board shall consti-
 12 tute a quorum.

13 (d) The Board shall meet at the call of the Chairman,
 14 except that

15 (1) it shall meet not less than four times each year;
 16 (2) in cases where the Director determines that a
 17 meeting of the Board is necessary, it shall meet when-
 18 ever one third of the total number of members request
 19 a meeting in writing, in which event one half of the total
 20 number of members shall constitute a quorum; and

21 (3) whenever one third of the appointed members
 22 request a meeting in writing, it shall meet, in which
 23 event one third of the appointed members shall consti-
 24 tute a quorum.

1 Ex officio members of the Board shall not have a vote on the
 2 Board.

3 (e) Members of the Board who are not in the regular
 4 full time employ of the United States shall receive, while en-
 5 gaged in the business of the Board, compensation for service
 6 at a rate to be fixed by the President, except that such rate
 7 shall not exceed the rate specified at the time of such service
 8 for grade GS 18 in section 5332 of title 5, United States
 9 Code, including traveltim, and, while so serving away from
 10 their homes or regular places of business, they may be
 11 allowed travel expenses, including per diem in lieu of sub-
 12 sistence, as authorized by section 5703 of title 5, United
 13 States Code, for persons employed in Government service.

14 (f) The Board shall have the responsibility for the gen-
 15 eral policies with respect to the powers, duties, and authori-
 16 ties vested in the Institute under this title. The Director
 17 shall make available to the Board such information and
 18 assistance as may be necessary to enable the Board to carry
 19 out its functions.

DIRECTOR OF THE INSTITUTE

20 SEC. 205. (a) The Director of the Institute shall be
 21 appointed by the President, by and with the advice and con-
 22 sent of the Senate, and shall serve at the pleasure of the
 23 President. The Director shall be compensated at the rate pro-
 24 vided for level V, United States Code, and shall perform

1 such duties and exercise such powers as the Board may
 2 prescribe.

3 (b) There shall be a Deputy Director of the Institute
 4 who shall be appointed by the President and shall serve at
 5 the pleasure of the President. The Deputy Director shall be
 6 compensated at the rate provided for grade 18 of the General
 7 Schedule set forth in section 5332 of title 5, United States
 8 Code. The Deputy Director shall exercise such powers as
 9 the Director may prescribe, and the Deputy Director shall
 10 serve as Director during the absence or disability of the
 11 Director, or in the event of a vacancy in the Office of Direc-
 12 tor. The position created by this paragraph shall be in addi-
 13 tion to the number of positions placed in grade 18 of the
 14 General Schedule under section 5108 of title 5, United
 15 States Code.

ACTIVITIES OF THE INSTITUTE

16 SEC. 206. (a) The Director, subject to the manage-
 17 ment of the Board, is authorized to make grants to museums
 18 to increase and improve museum services, through such
 19 activities as

21 (1) projects to enable museums to construct or
 22 install displays, interpretations, and exhibitions in order
 23 to improve their services to the public;
 24 (2) assisting them in developing and maintaining

1 professionally-trained or otherwise experienced staff to
2 meet their needs;

3 (3) assisting them to meet their administrative
4 costs in preserving and maintaining their collections,
5 exhibiting them to the public, and providing educational
6 programs to the public through the use of their
7 collections;

8 (4) assisting museums in cooperation with each
9 other in the development of traveling exhibitions, meeting
10 transportation costs, and identifying and locating
11 collections available for loan;

12 (5) assisting them in conservation of artifacts and
13 art objects; and

14 (6) developing and carrying out specialized programs
15 for specific segments of the public such as programs
16 for urban neighborhoods, rural areas, Indian reservations,
17 penal and other State institutions.

18 (b) Grants under this section may not exceed 75 per
19 centum of the cost of the program for which the grant is
20 made.

CONTRIBUTIONS

22 SEC. 207. The Institute shall have authority to accept in
23 the name of the United States, grants, gifts, or bequests of
24 money for immediate disbursement in furtherance of the functions
25 of the Institute. Such grants, gifts, or bequests, after

1 acceptance by the Institute, shall be paid by the donor or
2 his representative to the Treasurer of the United States
3 whose receipt shall be their acquittance. The Treasurer of
4 the United States shall enter them in a special account to
5 the credit of the Institute for the purposes in each case
6 specified.

AUTHORIZATION OF APPROPRIATIONS

8 SEC. 208. (a) For the purpose of making grants under
9 section 206(a), there are hereby authorized to be appropriated
10 \$25,000,000 for the fiscal year ending June 30,
11 1975, and \$30,000,000 for each of the succeeding fiscal
12 years ending prior to October 1, 1978.

13 (b) For the purpose of enabling the Institute to carry
14 out its functions under this part, during the period beginning
15 on the date of enactment of this Act and ending October 1,
16 1978, there is authorized to be appropriated an amount equal
17 to the amount contributed during such period to the Institute
18 under section 207.

DEFINITION

20 SEC. 209. For purposes of this part, the term "museum"
21 means a public or private nonprofit agency or institution
22 organized on a permanent basis for essentially educational or
23 esthetic purposes, which, utilizing a professional staff, owns
24 and utilizes tangible objects, cares for them, and exhibits
25 them to the public on a regular basis.

1 **PART B—EXHIBITIONS**

2 **SHORT TITLE**

3 ~~SEC. 221.~~ This part may be cited as the "Arts and Arti-
4 facts Indemnity Act".

5 ~~SEC. 222.~~ (a) The Federal Council on the Arts and
6 Humanities (hereafter in this part referred to as the "Coun-
7 cil"), established under section 9 of the National Foundation
8 on the Arts and the Humanities Act of 1965, is authorized
9 to indemnify against loss or damage such items as may be
10 eligible therefor under this part (as described in section
11 223)—

12 (1) in accordance with the provisions of this part;

13 and

14 (2) on such terms and conditions as the Council
15 shall prescribe, by regulation, in order to achieve the
16 purpose of this part and, consistent with such purpose,
17 to protect the financial interest of the United States.

18 (b) For the purposes of this part, the Council shall be
19 an "agency" within the meaning of the appropriate defini-
20 tions of such term in title 5, United States Code.

21 **ELIGIBLE ITEMS**

22 ~~SEC. 223.~~ (a) The Council may provide indemnification
23 under this part with respect to—

24 (1) works of art, including tapestries, paintings,
25 sculpture, folk art, graphics, and craft arts;

1 (2) manuscripts, rare documents, books, and other
2 printed or published materials;
3 (3) other artifacts or objects; and
4 (4) motion pictures or audio and video tape,
5 which are (A) of educational, cultural, historical, or scienc-
6 e value and (B) the exhibition of which is certified by
7 the Secretary of State or his designee as being in the national
8 interest.

9 (b) Items eligible for indemnification under this part
10 shall be covered by an indemnity while on exhibition in the
11 United States. For the purposes of this subsection, the term
12 "on exhibition" includes that period of time which begins at
13 the point when the eligible items leave the premises of the
14 lender or place designated by the lender and ends when such
15 items are returned to the premises of the lender or place
16 designated by the lender.

17 ~~SEC. 224.~~ (a) Any person, nonprofit agency, institu-
18 tion, or government desiring to obtain an indemnity for
19 eligible items under this part shall make application there-
20 for in accordance with such procedures, in such form, and
21 in such manner as the Council shall, by regulation, prescribe.

22 (b) An application under subsection (a) shall

23 (1) describe each item to be covered (including
24 an estimated value thereof);

25 (2) show evidence that the items are eligible under
26 subsection 223(a); and

1 (3) set forth policies, procedures, techniques, and
2 methods with respect to preparation for, and conduct
3 of, exhibition of the items, and any transportation re-
4 lated thereto.

5 (e) Upon receipt of an application under this section,
6 the Council shall, if such application conforms with the re-
7 quirements of this part, approve the application; and when
8 so approved, the application shall constitute a contract be-
9 tween the Council and the applicant pledging the full faith
10 and credit of the United States to pay any amount for
11 which the Council becomes liable under such agreement.

12 SEC. 225. (a) Upon receipt of an application meeting
13 the requirements of subsections (a) and (b) of section 224,
14 the Council shall review the estimated value of the items for
15 which the indemnity is sought. If the Council agrees with
16 such estimated value, for the purposes of this part, the Coun-
17 cil shall, after approval of the application as provided in
18 subsection (c) of section 224, issue a certificate evidencing
19 an indemnity as provided in subsection (b).

20 (b) Coverage under this part shall only extend to loss
21 or damage in excess of the first \$25,000 of loss or damage
22 out of a single incident.

23 (e) There shall be no premium rates on any indemnity issued under this section.

25 SEC. 226. (a) The Council shall issue regulations pro-
26 viding for prompt adjustment of valid claims for losses which

1 are eligible for indemnification under this part, including
2 provision for arbitration of questions of the dollar value of
3 damages involving less than total loss or destruction of cov-
4 ered objects for which a certificate of indemnity has been
5 issued.

6 (b) In the case of a claim of loss with respect to an
7 item which is the subject of a certificate of indemnity under
8 section 225, the Council shall certify the validity of the claim
9 and the amount of the loss to the Speaker of the House of
10 Representatives and the President of the Senate.

11 SEC. 227. There are hereby authorized to be appro-
12 priated such sums as may be necessary (a) to enable the
13 Council to carry out its functions under this part, and (b)
14 to pay claims certified pursuant to subsection 226 (b).

15 SEC. 228. The Council shall report annually to the
16 Congress (a) all claims actually paid pursuant to this part
17 during the preceding fiscal year, (b) pending claims against
18 the Council under this part as of the close of that fiscal year,
19 and (c) the aggregate face value of contracts entered into
20 by the Council which are outstanding at the close of that
21 fiscal year.

~~EFFECTIVE DATE~~

23 SEC. 229. This part shall become effective — days
24 after the enactment of this Act.

SHORT TITLE

2 *SECTION 1. This Act may be cited as the "Arts and
3 Artifacts Indemnity Act".*

FEDERAL COUNCIL

5 *SEC. 2. (a) The Federal Council on the Arts and
6 Humanities (hereinafter in this Act referred to as the "Coun-
7 cil"), established under section 9 of the National Foundation
8 on the Arts and the Humanities Act of 1965, is authorized
9 to make agreements to indemnify against loss or damage such
10 items as may be eligible for such indemnity agreements under
11 section 3—*

12 *(1) in accordance with the provisions of this Act;
13 and*

14 *(2) on such terms and conditions as the Council
15 shall prescribe, by regulation, in order to achieve the
16 purposes of this Act and, consistent with such purposes,
17 to protect the financial interest of the United States.*

18 *(b) For purposes of this Act, the Council shall be
19 an "agency" within the meaning of the appropriate defini-
20 tions of such term in title 5, United States Code.*

ELIGIBLE ITEMS

22 *SEC. 3. (a) The Council may make an indemnity agree-
23 ment under this Act with respect to—*

24 *(1) works of art, including tapestries, paintings,
25 sculpture, folk art, graphics, and craft arts;*

1 *(2) manuscripts, rare documents, books, and other
2 printed or published materials;*

3 *(3) other artifacts or objects; and*

4 *(4) photographs, motion pictures, or audio and
5 video tape;*

6 *which are (A) of educational, cultural, historical, or scienc-
7 tific value, and (B) the exhibition of which is certified by
8 the Secretary of State or his designee as being in the national
9 interest.*

10 *(b)(1) An indemnity agreement made under this Act
11 shall cover eligible items while on exhibition in the United
12 States, or elsewhere when part of an exchange of exhibitions,
13 but in no case shall both parts of such an exchange be so
14 covered.*

15 *"(2) For purposes of this subsection, the term "on exhi-
16 bition" includes that period of time beginning on the date
17 the eligible items leave the premises of the lender or place
18 designated by the lender and ending on the date such items
19 are returned to the premises of the lender or place desig-
20 nated by the lender.*

APPLICATION

22 *SEC. 4. (a) Any person, nonprofit agency, institution,
23 or government desiring to make an indemnity agreement for
24 eligible items under this Act shall make application there-*

1 for in accordance with such procedures, in such form, and
 2 in such manner as the Council shall, by regulation, prescribe.

3 (b) An application under subsection (a) shall—

4 (1) describe each item to be covered by the agree-
 5 ment (including an estimated value of such item);

6 (2) show evidence that the items are eligible under
 7 section 3(a); and

8 (3) set forth policies, procedures, techniques, and
 9 methods with respect to preparation for, and conduct
 10 of, exhibition of the items, and any transportation re-
 11 lated to such items.

12 (c) Upon receipt of an application under this section,
 13 the Council shall, if such application conforms with the re-
 14 quirements of this Act, approve the application and make
 15 an indemnity agreement with the applicant. Upon such ap-
 16 proval, the agreement shall constitute a contract between
 17 the Council and the applicant pledging the full faith and
 18 credit of the United States to pay any amount for which
 19 the Council becomes liable under such agreement. The
 20 Council, for such purpose, is hereby authorized to pledge the
 21 full faith and credit of the United States.

22 INDEMNITY AGREEMENT

23 SEC. 5. (a) Upon receipt of an application meeting
 24 the requirements of subsections (a) and (b) of section 4,
 25 the Council shall review the estimated value of the items for

1 which coverage by an indemnity agreement is sought. If the
 2 Council agrees with such estimated value, for the purposes
 3 of this Act, the Council shall, after approval of the applica-
 4 tion as provided in subsection (c) of section 4, make an
 5 indemnity agreement.

6 (b) The aggregate of loss or damage covered by in-
 7 demnity agreements made under this Act shall not exceed
 8 \$250,000,000 at any one time.

9 (c) No indemnity agreement for a single exhibition shall
 10 cover loss or damage in excess of \$50,000,000.

11 (d) Coverage under this Act shall only extend to loss
 12 or damage in excess of the first \$15,000 of loss or damage
 13 resulting from a single exhibition.

14 REGULATIONS

15 SEC. 6. (a) The Council shall prescribe regulations pro-
 16 viding for prompt adjustment of valid claims for losses which
 17 are covered by an agreement made pursuant to section 5,
 18 including provision for arbitration of issues relating to the
 19 dollar value of damages involving less than total loss or
 20 destruction of such covered objects.

21 (b) In the case of a claim of loss with respect to an
 22 item which is covered by an agreement made pursuant to
 23 section 5, the Council shall certify the validity of the claim
 24 and the amount of the loss to the Speaker of the House of
 25 Representatives and the President pro tempore of the Senate.

1 **AUTHORIZATION OF APPROPRIATIONS**

2 *SEC. 7. There are hereby authorized to be appro-*
3 *priated such sums as may be necessary (1) to enable the*
4 *Council to carry out its functions under this Act, and (2)*
5 *to pay claims certified pursuant to section 6(b).*

6 **REPORT**

7 *SEC. 8. The Council shall report annually to the Con-*
8 *gress (1) all claims actually paid pursuant to this Act during*
9 *the preceding fiscal year, (2) pending claims against the*
10 *Council under this Act as of the close of that fiscal year,*
11 *and (3) the aggregate face value of contracts entered into*
12 *by the Council which are outstanding at the close of that*
13 *fiscal year.*

14 **EFFECTIVE DATE**

15 *SEC. 9. This Act shall become effective 30 days after*
16 *the date of the enactment of this Act.*

Amend the title so as to read: "A bill to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.".

Union Calendar No. 335

94TH CONGRESS
1ST SESSION

H. R. 7782

[Report No. 94-680]

A BILL

To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

By Mr. BRADEMAS, Mr. BELL, Mr. PERKINS, Mr. MEEDS, Mr. PEYSER, Ms. CHISHOLM, Mr. LEHMAN, Mr. PRESSLER, Mr. CORNELL, Mr. BEARD of Rhode Island, Ms. HECKLER of Massachusetts, Mr. ZEFERETTI, Mr. THOMPSON, Mr. HAWKINS, Mr. FORD of Michigan, Mr. BENITEZ, Mr. SIMON, Mr. DUNCAN of Tennessee, Mr. PATMAN, Mr. KOCH, Mr. GILMAN, Mr. ROSTENKOWSKI, Mr. PRITCHARD, Mr. MOORHEAD of Pennsylvania, and Mr. MELCHER

JUNE 11, 1975

Referred to the Committee on Education and Labor

NOVEMBER 20, 1975

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

Calendar No. 282

94TH CONGRESS
1ST SESSION

S. 1800

[Report No. 94-289]

IN THE SENATE OF THE UNITED STATES

MAY 21, 1975

Mr. PELL (for himself and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

JULY 21, 1975

Reported by Mr. PELL, with an amendment

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

A BILL

To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That this Act may be cited as the "Arts, Humanities, and*
4 *Cultural Affairs Act of 1975".*

5 **TITLE I—ARTS AND HUMANITIES**

6 **GRANTS TO THE AMERICAN FILM INSTITUTE**

7 SEC. 101. (a) Section 5 of the National Foundation on
8 the Arts and the Humanities Act of 1965 is amended by
9 adding at the end thereof the following new subsection:

1 " (1) The Chairman is authorized to make grants to
2 the American Film Institute, a nonprofit corporation in
3 incorporated under the laws of the District of Columbia, for
4 the purposes described in subsection (c) .".

5 (b) The amendment made by subsection (a) shall be
6 effective with respect to fiscal year 1976 and succeeding
7 fiscal years.

~~STATE HUMANITIES COUNCILS~~

9 SEC. 102. (a) (1) Section 7 of the National Founda-
10 tion on the Arts and the Humanities Act of 1965 is amended
11 by adding at the end thereof the following new subsection:

12 "(f) (1) The Chairman, with the advice of the National
13 Council on the Humanities, is authorized to establish and
14 carry out a program of grants in aid to assist the several
15 States in supporting not more than 50 per centum of the
16 cost of existing activities which meet the standards enu-
17 merated in subsection (e), and in developing programs in
18 the humanities in such a manner as will furnish adequate
19 programs in the humanities in each of the several States.

20 “(2) In order to receive assistance under this subsection
21 in any fiscal year, a State shall submit an application
22 for such grants at such time as shall be specified by the
23 Chairman and accompany such applications with a plan
24 which the Chairman finds—

25 " (A) designates or provides for the establishment

1 of a State agency (hereafter in this section referred to
2 as the State agency) as the sole agency for the adminis-
3 tration of the State plan;

4 “(B) provides that funds paid to the State under
5 this subsection will be expended solely on programs ap-
6 proved by the State agency which carry out one or
7 more of the objectives of subsection (c); and

8 “(C) provides that the State agency will make such
9 reports, in such form, and containing such information,
10 as the Chairman may, from time to time, require.

“(3) Of the sums available to carry out this subsection for any fiscal year, each State which has a plan approved by the Chairman shall be allotted at least \$100,000. If the sums appropriated are insufficient to make the allotments under the preceding sentence in full, such sums shall be allotted among such States in equal amounts. In any case where the sums available to carry out this subsection for any fiscal year are in excess of the amount required to make the allotments under the first sentence of this paragraph—

20 “(A) the amount of such excess which is no greater
21 than ~~25~~ per centum of the sums available to carry out
22 this subsection for any fiscal year shall be available to
23 the Chairman for making grants under this subsection to
24 States and regional groups; and

25 " (B) the amount of such excess, if any, which re-

1 mains after reserving in full for the Chairman the
 2 amount required under clause (A) shall be allotted
 3 among the States which have plans approved by the
 4 Chairman in equal amounts, but in no event shall any
 5 State be allotted less than \$100,000.

6 "(4) (A) That part of any allotment made under
 7 paragraph (3) for any fiscal year—

8 “(i) which exceeds \$62,500, but

9 “(ii) which does not exceed 20 per centum of such
 10 allotment,

11 shall be available, at the discretion of the Chairman, to pay
 12 up to 100 per centum of the cost of programs under this
 13 subsection if such programs would otherwise be unavailable
 14 to the residents of that State.

15 “(B) Any amount allotted to a State under the first
 16 sentence of paragraph (3) for any fiscal year which is not
 17 obligated by the State prior to sixty days prior to the end of
 18 the fiscal year for which such sums are appropriated shall
 19 be available to the Chairman for making grants to regional
 20 groups.

21 “(C) Funds made available under this subsection shall
 22 not be used to supplant non Federal funds.

23 “(D) For the purposes of paragraph (3) and this
 24 paragraph, the term ‘regional group’ means any multi State
 25 group, whether or not representative of contiguous States.

1 “(5) All amounts allotted or made available under
 2 paragraph (3) for a fiscal year which are not granted to a
 3 State during such year shall be available to the National En-
 4 dowment for the Humanities for the purpose of carrying
 5 out section 5(c).

6 “(6) Whenever the Chairman, after reasonable notice
 7 and opportunity for hearing, finds that—

8 “(A) a group is not complying substantially with
 9 the provisions of this section;

10 “(B) a State agency is not complying substantially
 11 with terms and conditions of its State plan approved un-
 12 der this section; or

13 “(C) any funds granted to a group or State agency
 14 under this section have been diverted from the purposes
 15 for which they are allotted or paid,

16 the Chairman shall immediately notify the Secretary of the
 17 Treasury and the group or State agency with respect to
 18 which such finding was made that no further grants will be
 19 made under this section to such group or agency until there
 20 is no longer a default or failure to comply or the diversion
 21 has been corrected, or, if the compliance or correction is im-
 22 possible, until such group or agency repays or arranges the
 23 repayment of the Federal funds which have been improperly
 24 diverted or expended.”.

25 (b) The amendment made by subsection (a) shall be

1 effective with respect to fiscal year 1976 and succeeding
 2 fiscal years.

3 ~~AUTHORIZATIONS OF APPROPRIATIONS~~

4 SEC. 103. (a) (1) (A) Section 11(a)(1)(A) of the
 5 National Foundation on the Arts and the Humanities Act
 6 of 1965 is amended to read as follows:

7 "SEC. 11. (a) (1) (A) For the purpose of carrying out
 8 section 5, there are authorized to be appropriated \$113,
 9 500,000 each for the fiscal years 1977 and 1978; and there
 10 are so authorized such sums as may be necessary for the
 11 fiscal years 1979, and 1980. Of the sums so appropriated
 12 for any fiscal year—

13 "(i) not less than 20 per centum shall be for car-
 14 rying out section 5(g); and

15 "(ii) 4 per centum shall be for carrying out sec-
 16 tion 5(l).".

17 (B) Section 11(a)(1)(B) of such Act is amended
 18 by striking out all that follows "Humanities" and inserting
 19 in lieu thereof the following: "\$113,500,000 each for fiscal
 20 years 1977 and 1978; and there are so authorized such sums
 21 as may be necessary for the fiscal years 1979 and 1980.
 22 Of the sums so appropriated for any fiscal year, not less than
 23 10 per centum shall be for carrying out section 7(f).".

24 (2) Section 11(a)(2) of such Act is amended (A) by
 25 striking out "July 1, 1976" and inserting in lieu thereof

1 "October 1, 1980" and (B) by striking out all that follows
 2 "not exceed" and inserting in lieu thereof "\$25,000,000".
 3 (b) The amendments made by subsection (a) shall be
 4 effective on and after the last day of fiscal year 1976.

5 ~~TITLE II—MUSEUM SERVICES AND EXHIBITIONS~~

6 ~~PART A—SERVICES~~

7 ~~SHORT TITLE~~

8 SEC. 201. This part may be cited as the "Museum Serv-
 9 ices Act".

10 ~~PURPOSE~~

11 SEC. 202. It is the purpose of this part to encourage and
 12 assist museums in their educational role, in conjunction with
 13 formal systems of elementary, secondary, and postsecondary
 14 education and with programs of nonformal education for all
 15 age groups; to assist museums in modernizing their methods
 16 and facilities so that they may better be able to conserve our
 17 cultural, historic, and scientific heritage; and to ease the
 18 financial burden borne by museums as a result of their in-
 19 creasing use by the public.

20 ~~INSTITUTE FOR THE IMPROVEMENT OF MUSEUM SERVICES~~

21 SEC. 203. There is hereby established, within the Depart-
 22 ment of Health, Education, and Welfare, an Institute for the
 23 Improvement of Museum Services (hereinafter referred to as
 24 the "Institute"). The Institute shall consist of a National
 25 Museum Services Board (hereinafter referred to as the

1 "Board") and a Director of the Institute (hereinafter re-
 2 ferred to as the "Director").

3 ~~NATIONAL MUSEUM SERVICES BOARD~~

4 SEC. 204. (a) The Board shall consist of fifteen mem-
 5 bers appointed by the President, by and with the advice and
 6 consent of the Senate, and the following ex officio members:

- 7 (1) the Director;
- 8 (2) the Librarian of Congress;
- 9 (3) the Archivist of the United States;
- 10 (4) the Commissioner of Education;
- 11 (5) the Secretary of the Smithsonian Institution;
- 12 (6) the Director of the National Gallery of Art;
- 13 (7) the Chairman of the National Endowment for
 the Arts; and
- 14 (8) the Chairman of the National Endowment for
 the Humanities.

15 The appointed members of the Board shall be broadly rep-
 16 resentative of the curatorial, education, and cultural resources
 17 of the United States and of the general public.

18 (b) The term of office of appointed members of the
 19 Board shall be five years, except that

20 (1) any such member appointed to fill a vacancy
 21 shall serve only such portion of a term as shall not have
 22 been expired at the time of such appointment; and

23 (2) in the case of initial members, three shall serve

1 for terms of four years, three shall serve terms of three
 2 years, three shall serve terms of two years, and three
 3 shall serve terms of one year.

4 Any appointed member who has been a member of the Board
 5 for more than seven consecutive years shall thereafter be
 6 ineligible for reappointment to the Board during the three-
 7 year period following the expiration of the last such conse-
 8 tive year.

9 (c) The Chairman of the Board shall be designated by
 10 the President from among the appointed members of the
 11 Board. Eight appointed members of the Board shall consti-
 12 tute a quorum.

13 (d) The Board shall meet at the call of the Chairman,
 14 except that—

15 (1) it shall meet not less than four times each year;
 16 (2) in cases where the Director determines that a
 17 meeting of the Board is necessary, it shall meet when-
 18 ever one third of the total number of members request
 19 a meeting in writing, in which event one half of the total
 20 number of members shall constitute a quorum; and

21 (3) whenever one third of the appointed members
 22 request a meeting in writing, it shall meet, in which
 23 event one third of the appointed members shall consti-
 24 tute a quorum.

1 Ex officio members of the Board shall not have a vote on the
2 Board.

3 (e) Members of the Board who are not in the regular
4 full time employ of the United States shall receive, while en-
5 gaged in the business of the Board, compensation for service
6 at a rate to be fixed by the President, except that such rate
7 shall not exceed the rate specified at the time of such service
8 for grade GS-18 in section 5332 of title 5, United States
9 Code, including traveltim, and, while so serving away from
10 their homes or regular places of business, they may be
11 allowed travel expenses, including per diem in lieu of sub-
12 sistenee, as authorized by section 5703 of title 5, United
13 States Code, for persons employed in Government service.

14 (f) The Board shall have the responsibility for the gen-
15 eral policies with respect to the powers, duties, and authori-
16 ties vested in the Institute under this title. The Director
17 shall make available to the Board such information and
18 assistance as may be necessary to enable the Board to carry
19 out its functions.

DIRECTOR OF THE INSTITUTE

21 SEC. 205. (a) The Director of the Institute shall be
22 appointed by the President, by and with the advice and con-
23 sent of the Senate, and shall serve at the pleasure of the
24 President. The Director shall be compensated at the rate pro-
25 vided for level V, United States Code, and shall perform

1 such duties and exercise such powers as the Board may
2 prescribe.

3 (b) There shall be a Deputy Director of the Institute
4 who shall be appointed by the President and shall serve at
5 the pleasure of the President. The Deputy Director shall be
6 compensated at the rate provided for grade 18 of the General
7 Schedule set forth in section 5332 of title 5, United States
8 Code. The Deputy Director shall exercise such powers as
9 the Director may prescribe, and the Deputy Director shall
10 serve as Director during the absence or disability of the
11 Director, or in the event of a vacaney in the Office of Direc-
12 tor. The position created by this paragraph shall be in addi-
13 tion to the number of positions placed in grade 18 of the
14 General Schedule under section 5108 of title 5, United
15 States Code.

ACTIVITIES OF THE INSTITUTE

17 SEC. 206. (a) The Director, subject to the manage-
18 ment of the Board, is authorized to make grants to museums
19 to increase and improve museum services, through such
20 activities as—

- 21 (1) projects to enable museums to construct or
22 install displays, interpretations, and exhibitions in order
23 to improve their services to the public;
- 24 (2) assisting them in developing and maintaining

1 professionally trained or otherwise experienced staff to
2 meet their needs;

3 (3) assisting them to meet their administrative
4 costs in preserving and maintaining their collections,
5 exhibiting them to the public, and providing educational
6 programs to the public through the use of their
7 collections;

8 (4) assisting museums in cooperation with each
9 other in the development of traveling exhibitions, meeting
10 transportation costs, and identifying and locating
11 collections available for loan;

12 (5) assisting them in conservation of artifacts and
13 art objects; and

14 (6) developing and carrying out specialized programs
15 for specific segments of the public such as programs
16 for urban neighborhoods, rural areas, Indian reservations,
17 penal and other State institutions.

18 (b) Grants under this section may not exceed 75 per
19 centum of the cost of the program for which the grant is
20 made.

CONTRIBUTIONS

22 SEC. 207. The Institute shall have authority to accept in
23 the name of the United States, grants, gifts, or bequests of
24 money for immediate disbursement in furtherance of the func-
25 tions of the Institute. Such grants, gifts, or bequests, after

1 acceptance by the Institute, shall be paid by the donor or
2 his representative to the Treasurer of the United States
3 whose receipt shall be their acquittance. The Treasurer of
4 the United States shall enter them in a special account to
5 the credit of the Institute for the purposes in each case
6 specified.

AUTHORIZATION OF APPROPRIATIONS

8 SEC. 208. (a) For the purpose of making grants under
9 section 206(a), there are hereby authorized to be appro-
10 priated \$25,000,000 for the fiscal year ending June 30,
11 1975, and \$30,000,000 for each of the succeeding fiscal
12 years ending prior to October 1, 1978.

13 (b) For the purpose of enabling the Institute to carry
14 out its functions under this part, during the period beginning
15 on the date of enactment of this Act and ending October 1,
16 1978, there is authorized to be appropriated an amount equal
17 to the amount contributed during such period to the Institute
18 under section 207.

DEFINITION

20 SEC. 209. For purposes of this part, the term "museum"
21 means a public or private nonprofit agency or institution
22 organized on a permanent basis for essentially educational or
23 esthetic purposes, which, utilizing a professional staff, owns
24 and utilizes tangible objects, cares for them, and exhibits
25 them to the public on a regular basis.

1 **PART B—EXHIBITIONS**

2 **SHORT TITLE**

3 ~~SEC. 221.~~ This part may be cited as the "Arts and Arti-
4 facts Indemnity Act".

5 ~~SEC. 222.~~ (a) The Federal Council on the Arts and
6 Humanities (hereafter in this part referred to as the "Coun-
7 cil"), established under section 9 of the National Foundation
8 on the Arts and the Humanities Act of 1965, is authorized
9 to indemnify against loss or damage such items as may be
10 eligible therefor under this part (as described in section
11 223)—

12 (1) in accordance with the provisions of this part;
13 and

14 (2) on such terms and conditions as the Council
15 shall prescribe, by regulation, in order to achieve the
16 purpose of this part and, consistent with such purpose,
17 to protect the financial interest of the United States.

18 (b) For the purposes of this part, the Council shall be
19 an "agency" within the meaning of the appropriate defini-
20 tions of such term in title 5, United States Code.

21 **ELIGIBLE ITEMS**

22 ~~SEC. 223.~~ (a) The Council may provide indemnification
23 under this part with respect to—

24 (1) works of art, including tapestries, paintings,
25 sculpture, folk art, graphics, and craft arts;

1 (2) manuscripts, rare documents, books, and other
2 printed or published materials;

3 (3) other artifacts or objects; and
4 (4) motion pictures or audio and video tape;

5 which are (A) of educational, cultural, historical, or scienc-
6 tific value and (B) the exhibition of which is certified by
7 the Secretary of State or his designee as being in the national
8 interest.

9 (b) Items eligible for indemnification under this part
10 shall be covered by an indemnity while on exhibition in the
11 United States. For the purposes of this subsection, the term
12 "on exhibition" includes that period of time which begins at
13 the point when the eligible items leave the premises of the
14 lender or place designated by the lender and ends when such
15 items are returned to the premises of the lender or place
16 designated by the lender.

17 ~~SEC. 224.~~ (a) Any person, nonprofit agency, institu-
18 tion, or government desiring to obtain an indemnity for
19 eligible items under this part shall make application there-
20 for in accordance with such procedures, in such form, and
21 in such manner as the Council shall, by regulation, prescribe.

22 (b) An application under subsection (a) shall—
23 (1) describe each item to be covered (including
24 an estimated value thereof);
25 (2) show evidence that the items are eligible under
26 subsection 223 (a); and

1 (3) set forth policies, procedures, techniques, and
2 methods with respect to preparation for, and conduct
3 of, exhibition of the items, and any transportation re-
4 lated thereto.

5 (e) Upon receipt of an application under this section,
6 the Council shall, if such application conforms with the re-
7 quirements of this part, approve the application; and when
8 so approved, the application shall constitute a contract be-
9 tween the Council and the applicant pledging the full faith
10 and credit of the United States to pay any amount for
11 which the Council becomes liable under such agreement.

12 SEC. 225. (a) Upon receipt of an application meeting
13 the requirements of subsections (a) and (b) of section 224,
14 the Council shall review the estimated value of the items for
15 which the indemnity is sought. If the Council agrees with
16 such estimated value, for the purposes of this part, the Coun-
17 cil shall, after approval of the application as provided in
18 subsection (c) of section 224, issue a certificate evidencing
19 an indemnity as provided in subsection (b).

20 (b) Coverage under this part shall only extend to loss
21 or damage in excess of the first \$25,000 of loss or damage
22 out of a single incident.

23 (e) There shall be no premium rates on any indem-
24 nity issued under this section.

25 SEC. 226. (a) The Council shall issue regulations pro-
26 viding for prompt adjustment of valid claims for losses which

1 are eligible for indemnification under this part, including
2 provision for arbitration of questions of the dollar value of
3 damages involving less than total loss or destruction of cov-
4 ered objects for which a certificate of indemnity has been
5 issued.

(b) In the case of a claim of loss with respect to an item which is the subject of a certificate of indemnity under section 225, the Council shall certify the validity of the claim and the amount of the loss to the Speaker of the House of Representatives and the President of the Senate.

11 SEC. 227. There are hereby authorized to be appro-
12 priated such sums as may be necessary (a) to enable the
13 Council to carry out its functions under this part, and (b)
14 to pay claims certified pursuant to subsection 226(b).

15 SEC. 228. The Council shall report annually to the
16 Congress (a) all claims actually paid pursuant to this part
17 during the preceding fiscal year, (b) pending claims against
18 the Council under this part as of the close of that fiscal year,
19 and (c) the aggregate face value of contracts entered into
20 by the Council which are outstanding at the close of that
21 fiscal year.

~~EFFECTIVE DATE~~

23 SEC. 229. This part shall become effective — days
24 after the enactment of this Act.

1 That this Act may be cited as the "Arts and Artifacts
2 Indemnity Act".

3 **FEDERAL COUNCIL**

4 SEC. 101. (a) The Federal Council on the Arts and
5 Humanities (hereafter in this Act referred to as the "Coun-
6 cil"), established under section 9 of the National Foundation
7 on the Arts and the Humanities Act of 1965, is authorized
8 to make agreements to indemnify against loss or damage such
9 items as may be eligible therefor under this Act (as described
10 in section 102)—

11 (1) in accordance with the provisions of this Act;
12 and

13 (2) on such terms and conditions as the Council
14 shall prescribe, by regulation, in order to achieve the
15 purpose of this Act and, consistent with such purpose,
16 to protect the financial interest of the United States.

17 (b) For the purposes of this Act, the Council shall be
18 an "agency" within the meaning of the appropriate defini-
19 tions of such term in title 5, United States Code.

20 **ELIGIBLE ITEMS**

21 SEC. 102. (a) The Council may make an indemnity
22 agreement under this Act with respect to—

23 (1) works of art, including tapestries, paintings,
24 sculpture, folk art, graphics, and craft arts;

1 (2) manuscripts, rare documents, books, and other
2 printed or published materials;
3 (3) other artifacts or objects; and
4 (4) photographs, motion pictures, or audio and
5 video tape;
6 (A) which are of educational, cultural, historical, or sci-
7 entific value and (B) the exhibition of which is certified by
8 the Secretary of State or his designee as being in the national
9 interest.

10 (b) An indemnity agreement made under this Act shall
11 cover eligible items while on exhibition in the United States.
12 For the purposes of this subsection, the term "on exhibition"
13 includes that period of time which begins at the point when
14 the eligible items leave the premises of the lender or place
15 designated by the lender and ends when such items are re-
16 turned to the premises of the lender or place designated by
17 the lender.

18 **APPLICATION**

19 SEC. 103. (a) Any person, nonprofit agency, institu-
20 tion, or government desiring to make an indemnity agree-
21 ment for eligible items under this Act shall make application
22 therefor in accordance with such procedures, in such form,
23 and in such manner as the Council shall, by regulation,
24 prescribe.

1 (b) An application under subsection (a) shall—
 2 (1) describe each item to be covered by the agree-
 3 ment (including an estimated value thereof);
 4 (2) show evidence that the items are eligible under
 5 subsection 102(a); and
 6 (3) set forth policies, procedures, techniques, and
 7 methods with respect to preparation for, and conduct
 8 of, exhibition of the items, and any transportation re-
 9 lated thereto.

10 (c) Upon receipt of an application under this section,
 11 the Council shall, if such application conforms with the re-
 12 quirements of this Act, approve the application and make
 13 an indemnity agreement with the applicant; and when so
 14 approved, the agreement shall constitute a contract between
 15 the Council and the applicant pledging the full faith and
 16 credit of the United States to pay any amount for which
 17 the Council becomes liable under such agreement; and for
 18 such purpose the Council is hereby authorized to pledge
 19 the full faith and credit of the United States.

20 INDEMNITY AGREEMENT

21 SEC. 104. (a) Upon receipt of an application meeting
 22 the requirements of subsections (a) and (b) of section
 23 103, the Council shall review the estimated value of the
 24 items for which coverage by an indemnity agreement is

1 sought. If the Council agrees with such estimated value, for
 2 the purposes of this Act, the Council shall, after approval
 3 of the application as provided in subsection (c) of section
 4 103, make an indemnity agreement.

5 (b) The aggregate of loss or damage covered by indem-
 6 nity agreements issued under this Act shall not exceed
 7 \$250,000,000 at any one time.

8 (c) No indemnity agreement for a single exhibition
 9 shall cover loss or damage in excess of \$25,000,000.

10 (d) Coverage under this Act shall only extend to
 11 loss or damage in excess of the first \$25,000 of loss or dam-
 12 age out of a single exhibition.

13 REGULATIONS

14 SEC. 105. (a) The Council shall issue regulations pro-
 15 viding for prompt adjustment of valid claims for losses which
 16 are covered by an agreement made pursuant to section 104,
 17 including provision for arbitration of questions of the dollar
 18 value of damages involving less than total loss or destruction
 19 of such covered objects.

20 (b) In the case of a claim of loss with respect to an
 21 item which is covered by an agreement made pursuant to
 22 section 104, the Council shall certify the validity of the claim
 23 and the amount of the loss to the Speaker of the House of
 24 Representatives and the President of the Senate.

1 **AUTHORIZATION OF APPROPRIATIONS**

2 *SEC. 106. There are hereby authorized to be appro-*
3 *priated such sums as may be necessary (a) to enable the*
4 *Council to carry out its functions under this Act, and (b)*
5 *to pay claims certified pursuant to subsection 105(b).*

6 **REPORT**

7 *SEC. 107. The Council shall report annually to the*
8 *Congress (a) all claims actually paid pursuant to this Act*
9 *during the preceding fiscal year, (b) pending claims against*
10 *the Council under this Act as of the close of that fiscal year,*
11 *and (c) the aggregate face value of agreements entered into*
12 *by the Council which are outstanding at the close of that*
13 *fiscal year.*

14 **EFFECTIVE DATE**

15 *SEC. 108. This Act shall become effective 30 days*
16 *after enactment.*

Calendar No. 282

**94TH CONGRESS
1ST SESSION**

S. 1800

[Report No. 94-289]

A BILL

To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.

By Mr. PELL and Mr. JAVITS

MAY 21, 1975

Read twice and referred to the Committee on Labor and Public Welfare

JULY 21, 1975

Reported with an amendment

Calendar No. 282

94TH CONGRESS }
1st Session }

SENATE

{

REPORT
No. 94-289

ARTS AND ARTIFACTS INDEMNITY ACT

JULY 21, 1975.—Ordered to be printed

Mr. PELL, from the Committee on Labor and Public Welfare,
submitted the following

REPORT

[To accompany S. 1800]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 1800) having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

BACKGROUND

It has long been recognized that international goodwill and greater understanding of foreign cultures can be effected through the exchange of cultural activities and the sharing by nations of the world of their cultural institutions and national wealth and treasure. Exhibitions of paintings, statues, and other arts and artifacts, whether unilateral in nature or in the form of international exchanges, have long been recognized as an integral part of this nation's foreign policy.

This type of international cooperation not only creates goodwill on a government-to-government basis, but also has a laudable effect of bringing to the people of the country pictures, statues, prehistoric relics, and other items which would not normally be available to citizens unless they traveled to foreign lands.

The practice of loaning and receiving artistic treasures has grown over the years through active participation by this country's museums, on their own initiative and in cooperation with the State Department. In recent years, the frequency of this type of international cooperation has been slowed by one major factor: the cost of insurance. It has been estimated that anywhere from two-thirds to three-fourths of the total cost of an international exhibition is the cost of insuring the material to be exhibited. As Sherman Lee, Director of the Cleve-

land Museum, testified before the Special Subcommittee on Arts and Humanities:

To cite only one example, the insurance premium for foreign works lent to the Cleveland Museum during the Caravaggio and his Followers exhibition of 1971-1972 was \$10,200, for a coverage value of \$3,800,000 in contrast to a premium for a forthcoming exhibition of Johann Liss, organized by the same museum, of \$25,000, for a coverage value of \$4,000,000.

As insurance premiums have risen, exhibitions which had been discussed were not planned, and ones which had been planned were canceled. More importantly, many exhibitions have been reduced in scope because of prohibitive insurance costs. Shows at the Minneapolis Institute of Art, the Detroit Institute of Arts, the Cleveland Museum of Art, the Museum of Modern Art in New York City, and the Boston Museum of Fine Arts have had to be truncated because of the insurance costs.

Museums have turned to special funds or sponsors to arrange shows which could not otherwise have been held. For example, the Museum of Modern Art presently has an exhibition on loan to Australia which was only made possible because the Australian Government provided an indemnity for the exhibit. A show of old masters from the Hermitage in Leningrad will be exhibited in Houston only because a private donor has met the insurance costs.

In the 93rd Congress, the cost of insuring international exhibitions became the subject of special legislation. In furtherance of the nation's foreign policy, two specific exhibitions were announced. To facilitate those exhibitions, special legislation pertaining to indemnification against loss was enacted. Two *ad hoc* bills provided indemnification and made possible the showing of the Chinese archeological exhibition and the exhibit of Scythian gold from the Soviet Union. As Dr. Ronald Berman, Chairman of the Federal Council on the Arts and the Humanities, testified: "Were it not for the special legislation that pledged the faith and credit of the United States Government to indemnify works in these exchanges, the insurance costs would have been prohibitive."

With the history of international exhibitions, the pressure of higher insurance costs, and the precedents set by two specific pieces of legislation, the Committee deemed it proper that a generic program of indemnification for international exhibits be established to aid the foreign policy and international relations of the United States.

PURPOSE

This bill establishes a new program administered by the existing Federal Council on the Arts and the Humanities which would indemnify against loss or damage certain art works and artifacts brought into this country.

Items to be covered by an indemnity agreement are defined as works of art, including tapestries, paintings, sculpture, folk art, graphics, and craft arts, manuscripts, rare documents, books, and other printed

and published materials, other artifacts and objects (which could include stamps and coins), and photographs, motion pictures, and audio and video tape which are of educational, cultural, historical, or scientific value.

The indemnity agreement shall constitute a contract which is, in effect, guaranteed by the full faith and credit of the United States.

PROGRAM OPERATION

Thirty days following enactment of this legislation, the Federal Council on the Arts and the Humanities would have authority to make indemnity agreements for international exhibitions which are deemed to be in the national interest by the Secretary of State or his designee. This is one of the most important features of this legislation. The requirement of such designation by the Secretary of State will insure that the indemnity program is used for the foreign policy interests of the United States and will guard against the possibility of its becoming a simple insurance relief mechanism.

The indemnity agreement made under this Act would cover the items from the period of time they leave the premises of the lender until they return; in museum terms, this is "wall-to-wall coverage."

An indemnity agreement could be applied for by any person, non-profit agency, institution, or government. This language is specifically broad due to the fact that the owner of the articles to be exhibited, be it a foreign government, a museum, or a private individual, may wish to have the technical details of dealing with the Federal Council on the Arts and the Humanities attended to by a designated representative in his country. The language does not include profit-making organizations, limiting itself strictly to nonprofit agencies.

The indemnity agreement itself, whether applied for by the owner of the articles or a designated representative, would actually be issued to the owner of record. Thus, while a local representative may represent a foreign government, museum, or person, the actual indemnity agreement will be issued to that foreign government, museum, or person.

Private insurance plays an important part in the field of international art exhibitions. Therefore, to insure continued participation by the private insurance industry of the country, there are limitations upon the size of the indemnities which may be issued. There is an aggregate limit of \$250 million of indemnity obligations which may be outstanding at any given time, and no individual indemnity may exceed \$25 million.

The Committee fully understands that many international exhibitions are worth two or three times the individual limitation. However, the Committee believes that private insurance companies should be given an opportunity to participate, and that the Federal Government should not preempt the field of insurance for international exhibitions. Similarly, there is a deductible from coverage for the first \$25,000 of loss, for it is not the Federal intent to pay for the normal wear and tear experienced during an exhibition, such as a broken frame or a piece of chipped glass. It is expected that private insurance companies could be utilized to cover that first \$25,000 of loss.

The \$250 million upper limit should not be viewed as a figure to be aimed at, and the Committee does not envision ten exhibits of \$25 million apiece. The Committee feels that greater emphasis is needed to expand availability of foreign art works to Americans who previously have not had such an opportunity. A good geographic balance of exhibition sites, and multiple sites for indemnified exhibits are encouraged. Smaller exhibits within the capability of museums in relatively small cities and those serving rural areas should also be important participants under the indemnity authority. Thus, priority should be given to a rational mixture of large and small exhibitions to be held throughout the nation. As Matthew Wilder, Director of the Amon Carter Museum of Western Art in Fort Worth, Texas, testified before the Committee:

While small museums, such as the one I represent, have fewer occasions to require a very large insurance coverage, there is, nonetheless a real need for aid to our institutions.

The Committee believes that where there is an international exchange of material, each country should provide for a similar type of indemnity. Indeed, an indemnity agreement should not be issued to a party where the country receiving material from the United States will not provide a similar type of indemnity or insurance coverage, unless there were strong overriding reasons why some type of mutual indemnity could be effected. The Committee recognizes that the Federal Council on the Arts and the Humanities is not necessarily expected to have expertise from an international viewpoint in judging compelling reasons why mutual indemnity cannot be arranged. Should such a question arise, the Council is expected to seek advice from the Department of State. In his determination of the national interest of the United States which precedes an indemnity agreement, the Secretary of State or his designee should attempt to provide to the Council relevant information and recommendations on circumstances where mutual and reciprocal indemnity is not possible.

The amount of the indemnity agreement is set by the Federal Council on the Arts and the Humanities after reviewing the value of the items as set by the owner thereof. If the Council disagrees with the value set by the owner, and the owner disagrees with the value set by the Council, no indemnity agreement shall be issued. It is contemplated that the Council shall make liberal use of consultants, both with regard to the valuation and estimation of the article to be covered, and with regard to the packaging, transportation, and exhibition of that article.

Nowhere in the legislation is there found a definition of loss. It is understood that a loss under the indemnity agreement covers partial damage to covered articles as well as loss or complete destruction.

Should a claim of loss be filed under the indemnity agreement where there is a complete loss—where the item has been totally destroyed—the total amount shall be paid. However, where there has been damage but not total loss, there is provision for the use of arbitration with regard to the dollar amount of the loss. Once that figure is agreed upon, the claim covering such loss shall be certified to the Speaker of the House and the President of the Senate, who would then approach the

Appropriations Committees for an actual appropriation of Federal funds.

ESTIMATE OF COST

It is difficult to estimate the cost of this bill. There will be certain administrative expenses incurred by the Federal Council on the Arts and the Humanities, which will become an agency as defined in title V of the U.S. Code for this purpose, with the ability to hire staff, promulgate regulations, and perform other basic housekeeping functions. Theoretically, there could be a cost of up to \$250 million if every item covered by outstanding indemnity agreements were destroyed. However, experience indicates minimal amounts of loss on this type of exhibition. Testimony presented stated that 90 percent of the loss in previous exchanges were losses of less than \$1,000. Douglas Dillon, President of the Metropolitan Museum of Art, stated to the Committee:

We have obtained detailed figures showing the British record under this system for the past six years. Works of art valued at approximately \$275 million were indemnified with only one loss of over \$25,000, which amounted to about \$33,500. This is a loss ratio of only slightly over one one-hundredth of one percent—a minute fraction of what the cost of insurance would have been.

This history, in conjunction with the \$25,000 deductible, indicates that the probable cost to the Federal Government would be minimal.

VOTES IN COMMITTEE

The Committee ordered the bill reported by unanimous voice vote. There were no roll call votes on this legislation in the Committee.

CHANGES IN EXISTING LAW

No changes have been effected in existing law.

SECTION-BY-SECTION SUMMARY

Section 101. Federal Council

This section authorizes the Federal Council on the Arts and Humanities, established under the National Foundation on the Arts and Humanities Act of 1965, to make agreements to indemnify against loss or damage eligible items, in accordance with the provisions of this Act and on such terms and conditions as the Council shall prescribe, by regulation, to protect the financial interest of the United States. For the purposes of this Act, the Council shall be deemed an "agency", within the meaning of title 5 of the United States Code.

Section 102. Eligible Items

This section provides that the Council may make an agreement of indemnification with respect to works of art (including tapestries, paintings, sculpture, folk art, graphics, and craft arts); manuscripts, rare documents, books, and other printed or published materials; other artifacts or objects; and photographs, motion pictures, or audio and video tape. To be indemnifiable, such articles must be of educational,

cultural, historical, or scientific value. In addition, the exhibition must be certified by the Secretary of State or his designee as being in the national interest.

The indemnity agreement shall cover eligible items while they are on exhibition in the United States. "On exhibition" is defined as that period of time beginning at the point when the items leave the premises of the lender, or place designated by the lender, and ending when such items are returned to the lender or the designated place.

Section 103. Application

This section provides that any person, nonprofit agency, institution, or government desiring to make an indemnity agreement shall apply therefor, in accordance with procedures and in the form and manner prescribed by the Council, by regulation. The application shall describe each item to be covered by the agreement (including its estimated value), show evidence that the items are eligible to be covered by the agreement, and set forth policies and procedures with respect to preparation for and conduct of the exhibition, including any related transportation.

Upon receipt of the application, the Council shall approve it, if it conforms to the requirements of the Act. When so approved, the agreement shall constitute a contract between the Council and the applicant, pledging the full faith and credit of the United States to pay any amount for which the Council becomes liable under the agreement. For this purpose, the Council is authorized to pledge the full faith and credit of the United States.

Section 104. Indemnity Agreement

This section provides that, upon receipt of an approvable application, the Council shall review the estimated value of the items for which coverage by the indemnity agreement is sought. If the Council agrees with such estimated value, it shall make an indemnity agreement.

The aggregate of loss or damage covered by indemnity agreements issued under the Act shall not exceed \$250 million at any one time; no indemnity agreement for a single exhibition shall cover loss or damage in excess of \$25 million. In addition, coverage under the Act shall only extend to loss or damage in excess of the first \$25,000, out of a single exhibition.

Section 105. Regulations

This section provides that the Council shall issue regulations providing for prompt adjustment of valid claims for losses covered by an indemnity agreement, including provision for arbitration of questions of the dollar value of damages involving less than total loss or destruction of the items covered. In the case of a claim of loss of a covered item, the Council shall certify the validity of the claim and the amount of the loss to the Speaker of the House of Representatives and to the President of the Senate.

Section 106. Authorization of Appropriations

This section authorizes the appropriation of such sums as may be necessary to enable the Council to carry out its functions under the Act, plus such necessary to pay certified claims.

Section 107. Report

This section requires the Council to report annually to the Congress all claims actually paid pursuant to the Act during the preceding fiscal year, pending claims as of the close of the fiscal year, and the aggregate face value of agreements entered into by the Council which are outstanding at the close of such year.

Section 108. Effective Date

This section provides that the Act shall become effective 30 days after its enactment.

ARTS AND ARTIFACTS INDEMNITY ACT

NOVEMBER 20, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

[To accompany H.R. 7782]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7782) to amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for the improvement of museum services, and to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in italic type in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

PURPOSE

H.R. 7782, as amended, establishes a new program to be administered by the existing Federal Council on the Arts and Humanities, under which certain art works and artifacts brought into this country or elsewhere when part of an existing exchange of exhibitions would be indemnified against loss or damage.

Items to be covered by an indemnity agreement are defined as works of arts, including tapestries, paints, sculpture, folk art, graphics, craft arts, manuscripts, rare documents books and other printed and published materials other artifacts and objects (which could include stamps and coins), and photographs, motion pictures, and audio and video tapes which are of educational, cultural, historical, or scientific value. These exhibitions would be certified by the Secretary of State or his designee as being in the national interest.

The indemnity agreement would constitute a contract which is, in effect, guaranteed by the full faith and credit of the United States.

BACKGROUND

It has long been recognized that international goodwill and greater understanding of foreign cultures can be effected through the exchange of cultural activities and the sharing by nations of the world of their cultural institutions, national wealth, and treasures. Exhibitions, whether unilateral in nature, or in the form of international exchanges, of paintings, statues, and other arts and artifacts, have long been recognized as an integral part of the relations of the people of the United States with the peoples of other nations.

This type of international cooperation not only creates goodwill on a government-to-government basis but also has the laudable effect of bringing to the peoples of the countries involved pictures, statues, prehistoric relics, and other items which would not normally be available to citizens unless they traveled to foreign countries.

Nancy Hanks, Chairman, National Endowment for the Arts, testified at joint hearings before the House Subcommittee on Select Education and the Senate Special Subcommittee on Arts and Humanities:

It has long been generally accepted that international exhibitions and exchanges between countries benefit the individual citizen in terms of the spiritual and cultural awareness and enlightenment that results from exposure to the artistic and cultural products and artifacts of other civilizations, both contemporary and ancient. By increasing man's knowledge of mankind, through the exhibition of these objects, we enhance man's knowledge of himself and, hopefully, stimulate future artistic and cultural activities to the ultimate benefit of the nation and its people.

The practice of exchanges of artistic and other treasures has grown over the years through active participation by this country's museums, on their own initiative and in cooperation with the Department of State.

In recent years, the frequency of this type of international cooperation has been hampered by one major factor: the cost of insurance.

It has been estimated that from two-thirds to three-fourths of the total cost of an international exhibition is the cost of insuring the matter to be exhibited. As Sherman Lee, Director of the Cleveland Museum, Cleveland, Ohio, testified before the Subcommittees:

To cite only one example, the insurance premium for foreign works lent to the Cleveland Museum during the Caravaggio and his Followers Exhibition of 1971-1972 was \$10,200, for a coverage value of \$3,800,000 in contrast to a premium for a forthcoming exhibition of Johann Liss, organized by the same museum, of \$25,000 for a coverage value of \$4,000,000.

The following table presented to the Subcommittee on Select Education by Thomas Hoving, Director of the Metropolitan Museum of Art, clearly illustrates this point:

MMA MAJOR INTERNATIONAL EXHIBITIONS OF WORKS OF ART

Date—Title	Valuation of works of art (millions)	Premiums paid
1970—The Year 1200.....	\$9.8	\$46,000
1970—Before Cortes.....	1.3	16,200
1971—Cubist Epoch.....	5.5	60,000
1972—Masterpieces of the Metropolitan Museum sent to Japan.....	27.6	1,298,000
1974—Masterpieces of Tapestry.....	9.1	87,000
1974-75—The Impressionist Epoch ¹	63.0	131,000
1975—Metropolitan Museum—U.S.S.R. Exchanges ²	82.0	(*)
1975—Art of the Momoyama Period.....	20.0	20,000
1975—French Painting 1774-1830: The Age of Revolution.....	43.5	4,160,000
Total.....	261.8	818,200

¹ Costs paid by a major Japanese newspaper.

² Major funding support provided by Federal Government (NEA and NEH).

³ U.S. Government indemnity; otherwise premiums estimated at more than \$450,000.

⁴ Shared with Detroit Institute of Art; Metropolitan Museum portion \$80,000.

As insurance premiums have risen, exhibitions which had been contemplated were not planned and ones which had been planned were cancelled. More important, many exhibitions also have been reduced in scope because of prohibitive insurance costs. Exhibitions at the Minneapolis Institute of Art, the Detroit Institute of Arts, the Cleveland Museum of Art, the Museum of Modern Art in New York City, and the Boston Museum of Fine Art, have had to be cut short because of the insurance costs.

Indeed, the Subcommittee heard from Irving Pfeffer, Professor, Virginia Polytechnic Institute, who said:

Insurance is in fact a very significant cost element in the special exhibition area and the return to the insurance premium is abnormally low from the standpoint of conventional insurance experience. . . . On most of the special exhibition policies which are written for relatively high limits, a fairly small proportion of the total premium in fact remains in the United States. . . . I would estimate in the field we are discussing here at this time approximately 75 percent of all the premium dollars in fact go to the London market.

Mr. Pfeffer provided the following table to the Committee based on research he had done for the American Association of Museum Directors:

FINE ARTS MUSEUMS, LOSS RATIOS, SPECIAL EXHIBITIONS, 1970-73, UNITED STATES AND CANADA

	1970	1971	1972	1973	1970-73
Losses paid	\$35,281	\$14,286	\$65,752	\$56,322	\$171,641
Premiums paid	\$271,900	\$344,330	\$382,019	\$391,872	\$1,390,121
Loss ratio (percent)	13.0	4.2	17.2	14.3	12.3

Source: 1973 and 1974 survey data, A.A.M.D. Study.

2. FINE ARTS MUSEUMS, CLAIMS FREQUENCY AND SEVERITY, SPECIAL EXHIBITIONS, 1970-73, UNITED STATES AND CANADA

Size of loss reported	Number of losses	Percentage of total
Less than \$1,000	153	88.9
\$1,000 to \$2,000	8	4.7
\$2,000 to \$3,000	1	.6
\$3,000 to \$4,000	2	1.2
\$4,000 to \$5,000	3	1.7
\$5,000 to \$10,000	3	1.7
More than \$10,000	2	1.2
Total	172	100.0

Source: 1973 and 1974 survey data, A.A.M.D. Study.

Museums have turned to special funds or sponsors to find support for the insurance for exhibitions which could not otherwise have been held. For example, the Museum of Modern Art in New York City has an exhibition on loan to Australia which was only made possible because the Australian Government provided an indemnity for the exhibit. A show of old masters from the Hermitage in Leningrad was exhibited in Houston recently only because a private donor met the insurance costs. However, such private support is necessarily limited.

In the 93d Congress, the cost of insuring international exhibitions became the subject of special legislation. In furtherance of the Nation's foreign relations, two specific exhibitions were announced. To facilitate those exhibitions, special legislation pertaining to indemnification against loss was enacted.

Two bills passed by the Congress provided special indemnification and made possible the showing of the Chinese archeological exhibition and the Exhibition of Scythian gold from the Soviet Union. As Dr. Ronald Berman, Chairman of the Federal Council on the Arts and Humanities, testified:

Were it not for the special legislation that pledged the faith and credit of the United States government to indemnify works of these exchanges, the insurance costs would have been prohibitive.

For example, had Congress not passed the legislation providing indemnification by the Federal Government for the cost of insuring the exhibition of Scythian gold, the cost of insurance to the sponsoring organization in the United States—the Metropolitan Museum of Art—

would have totalled an estimated \$500,000 and the exhibition would have therefore been impossible to hold.

With the history of international exhibitions, the pressure of higher insurance costs, and the precedents set by two specific pieces of legislation, the Committee deemed it proper that a generic program of indemnification for international exhibitions be established.

While there are undoubtedly foreign policy advantages resulting from international exhibitions, this legislation is not intended to result in the use of these artistic and humanistic exhibitions for political purposes. Rather, these exhibitions are viewed by the Committee as beneficial in their own right, with important cultural benefits accruing to all those who gain the opportunity to see them. As Chairman Hanks stated in her testimony:

Cultural exhibitions and exchanges of high quality should be encouraged by the laws and policies of the United States Government. They are in the national interest because of the personal esthetic, intellectual, and cultural benefits accruing to every man, woman, and child of this nation who has the opportunity to experience these beautiful and enlightening presentations. We believe that this country should do as much as any nation in the world to insure that these vitally important programs are strengthened.

THE LEGISLATIVE CONSIDERATION

The Subcommittee on Select Education of the House Education and Labor Committee held joint hearings on H.R. 7782 with the Special Subcommittee on Arts and Humanities of the Senate Committee of Labor and Public Welfare, on June 4, 1975. In addition, the House Subcommittee on Select Education held hearings in New York, New York on July 14, 1975.

Among the witnesses heard during the hearings were: the Honorable Douglas Dillon, President, Board of Trustees, Metropolitan Museum of Art, New York, N.Y.; George C. Seybolt, President Emeritus, Museum of Fine Arts, Boston, Mass.; Sherman E. Lee, Director, the Cleveland Museum of Art, Cleveland, Ohio; Barbara Shissler, Director, University Art Gallery, University of Minnesota, Minneapolis, Minn.; and Mitchell Wilder, Director, Amon Carter Museum of Western Art, Fort Worth, Texas.

In addition, testimony was received from: Dr. Ronald Berman, Chairman, Federal Council on the Arts and the Humanities; and Nancy Hanks, Chairman, National Endowment for the Arts, accompanied by Michael Straight, Deputy Chairman, and John R. Spencer, Director, Museum program; Wilder Green, Executive Director, American Federation of the Arts; Thomas Hoving, Director, Metropolitan Museum of Art, New York, accompanied by Daniel Herrick, Vice Director for Financial Affairs; Thomas M. Messer, Director, Solomon R. Guggenheim Museum, New York, trustee and former president of the Association of Art Museum Directors.

Also testifying were: Joseph Veach Noble, President of the American Association of Museums and Director, Museum of the City of New York; Richard Oldenberg, Director, the Museum of Modern Art, New York, N.Y.; Irving Pfeffer, Professor, Virginia Polytechnic

Institute; and Palmer B. Wald, Administrator, Whitney Museum of American Art.

The Subcommittee thereafter met in mark-up session on the bill H.R. 7782 on July 17, with the bill being ordered reported with an amendment to the full committee by a unanimous vote.

The Full Committee on Education and Labor met on October 29, 1975, and ordered reported to the House by a unanimous vote of 38-0, the bill H.R. 7782 as amended. A similar bill passed the Senate by voice vote on July 25, 1975.

Nancy Hanks, Chairman of the National Endowment for the Arts, who testified on behalf of the administration on this legislation, submitted the following statement on November 20, 1975, to the Committee on Education and Labor:

I am very pleased to hear that H.R. 7782, the Arts and Artifacts Indemnity Act, is being favorably considered by the Committee on Education and Labor.

The Endowment has long supported the enactment of legislation for the purposes described in the bill, and applauds this action by the Committee as a major step forward in the solution of a very serious problem for the nation's museums.

The Committee also notes that the House Appropriations Committee, in House Report 94-374, made the following statement:

The Gallery (the National Gallery of Art) has recently sponsored several exhibitions involving valuable art objects from foreign countries. To insure these exhibits the Gallery has had to purchase expensive policies or seek relief from Congress. The committee believes it would be desirable for the appropriate legislative committees to consider general legislation to obviate this need.

EXPLANATION OF H.R. 7782, AS AMENDED

Thirty days following enactment of this legislation, the Federal Council on the Arts and the Humanities would have the authority to make indemnity agreements for international exhibitions which are deemed to be in the national interest by the Secretary of State or his designee. The requirement of the Secretary of State to determine that the exhibition is in the national interest will insure that the indemnity program is used in the interests of the people of the United States and will guard against the possibility of its becoming a simple insurance relief mechanism.

The indemnity agreement made under this Act would cover the items from the period of time they leave the premises of the lender until they return: in museum terms, this is "wall-to-wall coverage."

An indemnity agreement could be applied for by any person, non-profit agency, institution or government. This language is specifically broad due to the fact that the owner of the articles to be exhibited, be it a foreign government, a museum, or a private individual, may wish to have the technical details of dealing with the Federal Council on the Arts and the Humanities attended to by a designated representative in this country. The language does not include profit-making organizations, but is limited strictly to non-profit agencies.

While an indemnity agreement could be applied for by any person, non-profit agency, institution, or government, and is intended to protect the owners of the objects to be exhibited, the agreement will be issued, in most cases, to the museum responsible for arranging the exhibition and the transportation of the objects, with the actual owners of the objects being third-party beneficiaries.

Private insurance plays an important part in the field of international exhibitions of art and other artifacts. Therefore, to insure continued participation by the private insurance industry of the United States. The bill sets limitations upon the size of the indemnities which may be issued. There is an aggregate limit of \$250,000,000 of indemnity obligations which may be outstanding at any given time, while no individual indemnity may exceed \$50,000,000.

The Committee fully understands that many international exhibitions may be worth two or three times \$50,000,000. However, the Committee believes that private insurance companies should be given an opportunity to participate and that the Federal government should not preempt the field of insurance for international exhibitions. Similarly, the bill provides for a deductible from coverage for the first \$15,000 of loss, for it is not the intent of the Federal government to pay for the normal wear and tear experienced during an exhibition, such as a broken frame or a piece of chipped glass. It is expected that private insurance companies could be utilized to cover the first \$15,000 of loss.

The aggregate of \$250,000,000 upper limit should not be viewed as a figure to be aimed at, and the Committee does not envision ten exhibitions of \$25,000,000 each. The Committee feels that greater emphasis is needed to expand availability of foreign art and other artifacts to Americans who previously have not had an opportunity to view them. Both a good geographic balance of exhibitions sites and multiple sites for indemnified exhibits are encouraged. Smaller exhibits within the capability of museums in relatively small cities and those serving rural areas should also be important participants under the indemnity authority. Thus, priorities should be given to a rational mixture of large and small exhibitions to be held throughout the nation. As Mitchell Wilder, Director of the Amon Carter Museum of Western Art in Fort Worth, Texas, testified before the Committee:

While small museums, such as the one I represent, have fewer occasions to require a very large insurance coverage, there is nonetheless a real need for aid to our institutions.

The Committee also believes that where there is an international exchange of exhibitions, each country should be encouraged to reach mutual and reciprocal agreements with regard to indemnification.

The Committee recognizes that the Federal Council on the Arts and the Humanities is not necessarily expected to have the expertise required to make judgments concerning the possibility of such mutual or reciprocal agreements. Should such a question arise, the Council is expected to seek advice from the Department of State. In determining whether or not an indemnity agreement is in the national interest of the United States the Secretary of State, or his designee, should attempt to provide to the Federal Council relevant information and recommendation on circumstances where mutual and reciprocal indemnity is not possible.

The amount of the indemnity agreement is set by the Federal Council on the Arts and the Humanities after reviewing the value of the item or items as set by the owner thereof. If the Council disagrees with the value set by the owner, and the owner disagrees with the value set by the Council, no indemnity agreement shall be issued. It is contemplated that the Council shall make use of consultants, both with regard to the evaluation and estimation of the articles to be covered, and with regard to the packaging, transportation, and exhibition of that article.

Nowhere in the legislation is there found a definition of "loss." It is understood that a "loss" under the indemnity agreement including partial damage to covered articles as well as loss or complete destruction.

Should a claim of loss be filed under the indemnity agreement where there is a complete loss—where the item has been totally destroyed—the total amount shall be paid. However, where there has been damage but not total loss, there is provision for the use of arbitration with regard to the dollar amount of the loss. Once that figure is agreed upon, the claim covering such loss shall be certified to the Speaker of the House and to the president pro tempore of the Senate, who would then approach the Appropriation Committees for an actual appropriation of Federal funds.

BUDGET STATEMENT

In accordance with Rule XI of the Rules of the House of Representatives the Congressional Budget Office has submitted the following report:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 19, 1975.

Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7782, a bill to amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for indemnities for exhibits of artistic and humanistic endeavors, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

Attachment.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

NOVEMBER 19, 1975.

1. Bill No: H.R. 7782.
2. Bill title: To amend and extend the National Foundation on the Arts and Humanities Act of 1965, to provide for indemnities for exhibits of artistic and humanistic endeavors, and for other purposes.

H.R. 680

3. Purpose of bill: This bill would authorize the Federal Council on the Arts and Humanities to make agreements to indemnify against loss or damage works of art while on exhibition in the United States or elsewhere when part of an international exchange of exhibitions. The bill is an authorization, and does not directly provide budget authority. Funding to cover loss or damage covered by indemnity agreements would be subject to subsequent appropriations action.

4. Budget impact:

[In millions]

	Fiscal year—					
	1976	Transition quarter	1977	1978	1979	1980
Possible outlays.....	\$0.3	\$0.2	\$0.7	\$0.8	\$0.9	\$1.0
Maximum indemnity agreements.....	500	250	1,000	1,000	1,000	1,000

5. Basis for estimate: Section 5 of this bill states that "the aggregate of loss or damage covered by indemnity agreements issued under this Act shall not exceed \$250 million at any one time." For the purpose of making this cost estimate, it was assumed that maximum use of this authority would be made at any one time and that the average exhibit would be covered for a period of three months. The maximum annual amount of the indemnity agreements, then, would be (4 x \$250 million) \$1,000 million. It is assumed that this bill would cover the second half of fiscal year 1976.

With (1970-74) data provided by the Association of Art Museum Directors and Virginia Polytechnic Institute, a loss rate of 5 cents per \$100 of insured value of special exhibitions above \$15,000 was derived. This loss rate, when multiplied by the annual amount of the indemnity agreements, yields the expected outlays needed to cover exhibition losses. An annual inflation rate of 15 percent was used to compute the expected losses between fiscal year 1977-1980. Administrative costs (i.e., staff, supplies, travel, etc.) were assumed to be 10 percent of expected outlays.

6. Estimate comparison: No other estimate known to be available at this time.

7. Previous CBO estimate: No previous estimate.

8. Estimate prepared by: Jeffrey J. Koshel (225-4972).

9. Estimate approved by:

C. G. NUCKOLS,
Deputy Assistant Director for Budget Estimates.

ESTIMATE OF COST

It is difficult to estimate the cost of H.R. 7782, as amended. There will be, of course, certain administrative costs incurred by the Federal Council on the Arts and the Humanities, which will become an agency as defined in Title V of the U.S. Code for this purpose, with the ability to hire staff, promulgate regulations, and perform other basic housekeeping functions.

Theoretically, there could be a loss of up to \$250,000,000 if every item covered by outstanding indemnity agreements were destroyed.

H.R. 680

However, experience indicates minimal amounts of loss on these types of exhibitions. Testimony presented to the Committee showed that ninety percent of the losses in previous exchanges were losses in the amount of less than \$1,000. Douglas Dillon, President of the Metropolitan Museum of Art, stated to the Committee:

We have obtained detailed figures showing the British record under this system for the past six years. Works of art valued at approximately \$275,000,000 were indemnified with only one loss of over \$25,000, which amounted to about \$35,000. This is a loss ratio of only slightly over 1/100 of one percent—a minute fraction of what the cost of insurance would have been.

This history, in conjunction with the \$15,000 deductible, indicates that the probable cost of the legislation to the Federal government would be minimal.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4), Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 7782, as amended, will have little inflationary impact on prices and cost in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the total Federal budget is negligible and under most circumstances would require no additional appropriations by the Congress.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 7782, as amended.

No specific oversight activities, other than the hearings accompanying the Committee's consideration of H.R. 7782, as amended, were made by the Committee, within the definition of Rule XI of the House.

SECTION-BY-SECTION SUMMARY

Section 1. Short Title

Section one of the bill provides that the bill may be cited as the "Arts and Artifacts Indemnity Act".

Section 2. Federal Council

This section authorizes the Federal Council on the Arts and Humanities, established under the National Foundation on the Arts and Humanities Act of 1965, to make agreements to indemnify against loss or damage eligible items, in accordance with the provisions of this Act and on such terms and conditions as the Council shall prescribe, by regulation, to protect the financial interest of the United States. For the purpose of this Act, the Council shall be deemed an "agency", within the meaning of Title 5 of the United States Code.

Section 3. Eligible Items

This section provides that the Council may make an indemnity agreement with respect to works of art (including tapestries, paintings, sculpture, folk art, graphics, and craft arts); manuscripts, rare documents, books, and other printed or published materials; other artifacts or objects; and photographs, motion pictures, or audio and video tape. To be indemnifiable, such articles must be of educational, cultural, historical, or scientific value. In addition, the exhibition must be certified by the Secretary of State or his designee as being in the national interest.

The indemnity agreement shall cover eligible items while they are on exhibition in the United States or elsewhere when part of an exchange of exhibitions; but in no case shall both parts of such an exchange be covered. "On exhibition" is defined as that period of time beginning at the point when the items leave the premises of the lender, or place designated by the lender, and ending when such items are returned to the lender or the designated place.

Section 4. Application

This section provides that any person, nonprofit agency, institution, or government desiring to make an indemnity agreement shall apply therefor, in accordance with procedures and in the form and manner prescribed by the Council, by regulation. The application shall describe each item to be covered by the agreement (including its estimated value), show evidence that the items are eligible to be covered by the agreement, and set forth policies and procedures with respect to preparation for and conduct of the exhibition, including any related transportation.

Upon receipt of the application, the Council shall approve it, if it conforms to the requirements of the Act. When so approved, the agreement shall constitute a contract between the Council and the applicant, pledging the full faith and credit of the United States to pay any amount for which the Council becomes liable under the agreement. For this purpose, the Council is authorized to pledge the full faith and credit of the United States.

Section 5. Indemnity Agreement

This section provides that, upon receipt of an approvable application, the Council shall review the estimated value of the items for which coverage by the indemnity agreement is sought. If the Council agrees with such estimated value, it shall make an indemnity agreement.

The aggregate of loss or damage covered by indemnity agreements issued under the Act shall not exceed \$250 million at any one time; no indemnity agreement for a single exhibition shall cover loss or damage in excess of \$50 million. In addition, coverage under the Act shall only extend to loss or damage in excess of the first \$15,000, out of a single exhibition.

Section 6. Regulations

This section provides that the Council shall issue regulations providing for prompt adjustment of valid claims for losses covered by an indemnity agreement, including provision for arbitration of questions of the dollar value of damages involving less than total loss or destruc-

tion of the items covered. In the case of a claim of loss of a covered item, the Council shall certify the validity of the claim and the amount of the loss to the Speaker of the House of Representatives and to the President of the Senate.

Section 7. Authorization of Appropriations

This section authorizes the appropriation of such sums as may be necessary to enable the Council to carry out its functions under the Act, plus such sums necessary to pay certified claims.

Section 8. Report

This section requires the Council to report annually to the Congress all claims actually paid pursuant to the Act during the preceding fiscal year, pending claims as of the close of the fiscal year, and the aggregate face value of agreements entered into by the Council which are outstanding at the close of such year.

Section 9. Effective Date

This section provides that the Act shall become effective 30 days after its enactment.



Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

To provide indemnities for exhibitions of artistic and humanistic endeavors, and
for other purposes.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Arts and Artifacts
Indemnity Act".

FEDERAL COUNCIL

SEC. 2. (a) The Federal Council on the Arts and Humanities (hereinafter in this Act referred to as the "Council"), established under section 9 of the National Foundation on the Arts and the Humanities Act of 1965, is authorized to make agreements to indemnify against loss or damage such items as may be eligible for such indemnity agreements under section 3—

- (1) in accordance with the provisions of this Act; and
- (2) on such terms and conditions as the Council shall prescribe, by regulation, in order to achieve the purposes of this Act and, consistent with such purposes, to protect the financial interest of the United States.

(b) For purposes of this Act, the Council shall be an "agency" within the meaning of the appropriate definitions of such term in title 5, United States Code.

ELIGIBLE ITEMS

SEC. 3. (a) The Council may make an indemnity agreement under this Act with respect to—

- (1) works of art, including tapestries, paintings, sculpture, folk art, graphics, and craft arts;
 - (2) manuscripts, rare documents, books, and other printed or published materials;
 - (3) other artifacts or objects; and
 - (4) photographs, motion pictures, or audio and video tape;
- which are (A) of educational, cultural, historical, or scientific value, and (B) the exhibition of which is certified by the Secretary of State or his designee as being in the national interest.

(b) (1) An indemnity agreement made under this Act shall cover eligible items while on exhibition in the United States, or elsewhere when part of an exchange of exhibitions, but in no case shall both parts of such an exchange be so covered.

(2) For purposes of this subsection, the term "on exhibition" includes that period of time beginning on the date the eligible items leave the premises of the lender or place designated by the lender and ending on the date such items are returned to the premises of the lender or place designated by the lender.

APPLICATION

SEC. 4. (a) Any person, nonprofit agency, institution, or government desiring to make an indemnity agreement for eligible items under this Act shall make application therefor in accordance with such procedures, in such form, and in such manner as the Council shall, by regulation, prescribe.

(b) An application under subsection (a) shall—

- (1) describe each item to be covered by the agreement (including an estimated value of such item);
- (2) show evidence that the items are eligible under section 3(a); and
- (3) set forth policies, procedures, techniques, and methods with respect to preparation for, and conduct of, exhibition of the items, and any transportation related to such items.

(c) Upon receipt of an application under this section, the Council shall, if such application conforms with the requirements of this Act, approve the application and make an indemnity agreement with the applicant. Upon such approval, the agreement shall constitute a contract between the Council and the applicant pledging the full faith and credit of the United States to pay any amount for which the Council becomes liable under such agreement. The Council, for such purpose, is hereby authorized to pledge the full faith and credit of the United States.

INDEMNITY AGREEMENT

SEC. 5. (a) Upon receipt of an application meeting the requirements of subsections (a) and (b) of section 4, the Council shall review the estimated value of the items for which coverage by an indemnity agreement is sought. If the Council agrees with such estimated value, for the purposes of this Act, the Council shall, after approval of the application as provided in subsection (c) of section 4, make an indemnity agreement.

(b) The aggregate of loss or damage covered by indemnity agreements made under this Act shall not exceed \$250,000,000 at any one time.

(c) No indemnity agreement for a single exhibition shall cover loss or damage in excess of \$50,000,000.

(d) Coverage under this Act shall only extend to loss or damage in excess of the first \$15,000 of loss or damage resulting from a single exhibition.

REGULATIONS

SEC. 6. (a) The Council shall prescribe regulations providing for prompt adjustment of valid claims for losses which are covered by an agreement made pursuant to section 5, including provision for arbitration of issues relating to the dollar value of damages involving less than total loss or destruction of such covered objects.

(b) In the case of a claim of loss with respect to an item which is covered by an agreement made pursuant to section 5, the Council shall certify the validity of the claim and the amount of the loss to the Speaker of the House of Representatives and the President pro tempore of the Senate.

S. 1800—3

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary (1) to enable the Council to carry out its functions under this Act, and (2) to pay claims certified pursuant to section 6(b).

REPORT

SEC. 8. The Council shall report annually to the Congress (1) all claims actually paid pursuant to this Act during the preceding fiscal year, (2) pending claims against the Council under this Act as of the close of that fiscal year, and (3) the aggregate face value of contracts entered into by the Council which are outstanding at the close of that fiscal year.

EFFECTIVE DATE

SEC. 9. This Act shall become effective 30 days after the date of the enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

FOR IMMEDIATE RELEASE

December 20, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have today signed S. 1800, "The Arts and Artifacts Indemnity Act."

S. 1800 authorizes the Federal Government, under certain circumstances, to indemnify certain art, artifacts and other objects to be exhibited internationally. One of the conditions which the bill requires to be met is that the Secretary of State or his designee certify that the proposed exchange would be "in the national interest." In approving S. 1800, I note that the legislative history links the determination of national interest specifically to exhibits and exchanges which would be in the "foreign policy interests of the United States," and "in the interests of the people of the United States" so that the indemnification program does not become simply an insurance relief mechanism. I believe that such linkage is essential to justify involvement of the Federal Government in this kind of an indemnification program, and I am therefore directing the Secretary of State to establish appropriate criteria for his certifications to assure that the intent of the legislation in this regard is properly and carefully carried out.

Another concern about S. 1800 grows out of the provisions designating the Federal Council on the Arts and Humanities as an agency for the purpose of administering the indemnification program. Under existing law, the Council is essentially an advisory body. This bill, however, would assign executive functions to the Council. Thus, its members must be officers of the United States. In this regard, four of the current statutory members of the Council -- the Secretary of the Smithsonian Institution, the Director of the National Gallery of Art, the member designated by the Chairman of the Senate Commission on Art and Antiquities, and the member designated by the Speaker of the House -- are not appointed in the manner prescribed in the Constitution for appointment of officers of the United States. Furthermore, the conversion of the Council from an advisory body into an executive agency for the purpose of the Act would place the Congressional member of the Council in violation of the Constitutional prohibition against members of Congress holding civil offices of the United States.

However, I am approving S. 1800 since these surface Constitutional defects can be cured by Executive action. Under the authority vested in me by the National Foundation on the Arts and Humanities Act of 1965 to change the membership of the Council to meet changes in Federal programs or executive branch organization, I am today directing that, because of the Constitutional provisions noted above, the four Council members previously mentioned shall not serve as members of the Council when it acts as an agency in carrying out functions under this Act.

#

December 9, 1975

Dear Mr. Director:

The following bills were received at the White House on December 9th:

S. 233 ✓
S. 364 ✓
S. 1800

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.