

104TH CONGRESS
2D SESSION

S. 1970

To amend the National Museum of the American Indian Act to make improvements in the Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18, 1996

Mr. MCCAIN (for himself, Mr. INOUE, Mr. THOMAS, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the National Museum of the American Indian Act to make improvements in the Act, 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 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Museum of the American Indian Act Amend-
6 ments of 1996”.

7 (b) REFERENCES.—Whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to or repeal of a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
2 sion of the National Museum of the American Indian Act
3 (20 U.S.C. 80q et seq.).

4 **SEC. 2. BOARD OF TRUSTEES.**

5 Section 5(f)(1)(B) (20 U.S.C. 80q-3(f)(1)(B)) is
6 amended by striking “an Assistant Secretary” and insert-
7 ing “a senior official”.

8 **SEC. 3. INVENTORY.**

9 Section 11(a) (20 U.S.C. 80q-9) is amended—

- 10 (1) by striking “(1)” and inserting “(A)”;
- 11 (2) by striking “(2)” and inserting “(B)”;
- 12 (3) by inserting “(1)” before “The Secretary”;
- 13 and
- 14 (4) by adding at the end the following new
15 paragraphs:

16 “(2) The inventory made by the Secretary of the
17 Smithsonian Institution under paragraph (1) shall be
18 completed not later than June 1, 1998.

19 “(3) For purposes of this subsection, the term ‘inven-
20 tory’ means a simple, itemized list that, to the extent prac-
21 ticable, identifies, based upon available information held
22 by the Smithsonian Institution, the geographic and cul-
23 tural affiliation of the remains and objects referred to in
24 paragraph (1).”.

1 **SEC. 4. SUMMARY AND REPATRIATION OF UNASSOCIATED**
 2 **FUNERARY OBJECTS, SACRED OBJECTS, AND**
 3 **CULTURAL PATRIMONY.**

4 The National Museum of the American Indian Act
 5 is amended by inserting after section 11 the following new
 6 section:

7 **“SEC. 11A. SUMMARY AND REPATRIATION OF**
 8 **UNASSOCIATED FUNERARY OBJECTS, SA-**
 9 **CRED OBJECTS, AND CULTURAL PATRIMONY.**

10 “(a) SUMMARY.—Not later than December 31, 1996,
 11 the Secretary of the Smithsonian Institution shall provide
 12 a written summary that contains a summary of
 13 unassociated funerary objects, sacred objects, and objects
 14 of cultural patrimony (as those terms are defined in sub-
 15 paragraphs (B), (C), and (D), respectively, of section 2(3)
 16 of the Native American Graves Protection and Repatri-
 17 ation Act (25 U.S.C. 3001(3)), based upon available infor-
 18 mation held by the Smithsonian Institution. The summary
 19 required under this section shall include, at a minimum,
 20 the information required under section 6 of the Native
 21 American Graves Protection and Repatriation Act (25
 22 U.S.C. 3004).

23 “(b) REPATRIATION.—Where cultural affiliation of
 24 Native American unassociated funerary objects, sacred ob-
 25 jects, and objects of cultural patrimony has been estab-
 26 lished in the summary prepared pursuant to

1 subsection (a), or where a requesting Indian tribe or Na-
2 tive Hawaiian organization can show cultural affiliation
3 by a preponderance of the evidence based upon geographi-
4 cal, kinship, biological, archaeological, anthropological, lin-
5 guistic, folkloric, oral traditional, historical, or other rel-
6 evant information or expert opinion, then the Smithsonian
7 Institution shall expeditiously return such unassociated fu-
8 nerary object, sacred object, or object of cultural pat-
9 rimony where—

10 “(1) the requesting party is the direct lineal de-
11 scendant of an individual who owned the
12 unassociated funerary object or sacred object;

13 “(2) the requesting Indian tribe or Native Ha-
14 waiian organization can show that the object was
15 owned or controlled by the Indian tribe or Native
16 Hawaiian organization; or

17 “(3) the requesting Indian tribe or Native Ha-
18 waiian organization can show that the unassociated
19 funerary object or sacred object was owned or con-
20 trolled by a member thereof, provided that in the
21 case where an unassociated funerary object or sacred
22 object was owned by a member thereof, there are no
23 identifiable lineal descendants of said member or the
24 lineal descendants, upon notice, have failed to make
25 a claim for the object.

1 “(c) STANDARD OF REPATRIATION.—If a known lin-
2 eal descendant or an Indian tribe or Native Hawaiian or-
3 ganization requests the return of Native American
4 unassociated funerary objects, sacred objects, or objects
5 of cultural patrimony pursuant to this Act and presents
6 evidence which, if standing alone before the introduction
7 of evidence to the contrary, would support a finding that
8 the Smithsonian Institution did not have the right of pos-
9 session, then the Smithsonian Institution shall return such
10 objects unless it can overcome such inference and prove
11 that it has a right of possession to the objects.

12 “(d) MUSEUM OBLIGATION.—Any museum of the
13 Smithsonian Institution which repatriates any item in
14 good faith pursuant to this Act shall not be liable for
15 claims by an aggrieved party or for claims of fiduciary
16 duty, public trust, or violations of applicable law that are
17 inconsistent with the provisions of this Act.

18 “(e) STATUTORY CONSTRUCTION.—Nothing in this
19 section may be construed to prevent the Secretary of the
20 Smithsonian Institution, with respect to any museum of
21 the Smithsonian Institution, from making an inventory or
22 preparing a written summary or carrying out the repatri-
23 ation of Native American human remains, associated and
24 unassociated funerary objects, sacred objects, or objects

1 of cultural patrimony in a manner that exceeds the re-
 2 quirements of this section.

3 “(f) NATIVE HAWAIIAN ORGANIZATION DEFINED.—
 4 For purposes of this section, the term ‘Native Hawaiian
 5 organization’ has the meaning provided that term in sec-
 6 tion 2(11) of the Native American Graves Protection and
 7 Repatriation Act (25 U.S.C. 3001(11)).”.

8 **SEC. 5. SPECIAL COMMITTEE.**

9 Section 12 (20 U.S.C. 80q–10) is amended—

10 (1) in the first sentence of subsection (a), by in-
 11 sserting “and unassociated funerary objects, sacred
 12 objects, and objects of cultural patrimony under sec-
 13 tion 11A” before the period; and

14 (2) in subsection (b)—

15 (A) in the matter preceding paragraph (1),
 16 by striking “five” and inserting “7”;

17 (B) in paragraph (1)—

18 (i) by striking “three” and inserting
 19 “4”; and

20 (ii) by striking “and” at the end;

21 (C) by redesignating paragraph (2) as
 22 paragraph (3); and

23 (D) by inserting after paragraph (1) the
 24 following:

1 “(2) at least 2 members shall be traditional In-
2 dian religious leaders; and” .

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