

Calendar No. 564

104TH CONGRESS
2^D SESSION

S. 1970

[Report No. 104-350]

A BILL

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

August 2, 1996

Reported without amendment

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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

AUGUST 2, 1996

Reported by Mr. MCCAIN, without amendment

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,*

1 **SECTION 1. SHORT TITLE; REFERENCES.**

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

5 (b) **REFERENCES.**—Whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to or repeal of a section or other provision, the reference
8 shall be considered to be made to a section or other provi-
9 sion of the National Museum of the American Indian Act
10 (20 U.S.C. 80q et seq.).

11 **SEC. 2. BOARD OF TRUSTEES.**

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

15 **SEC. 3. INVENTORY.**

16 (a) **IN GENERAL.**—Section 11(a) (20 U.S.C. 80q–
17 9(a)) is amended—

18 (1) by striking “(1)” and inserting “(A)”;

19 (2) by striking “(2)” and inserting “(B)”;

20 (3) by inserting “(1)” before “The Secretary”;

21 and

22 (4) by adding at the end the following new
23 paragraphs:

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

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

7 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 8 11(f) (20 U.S.C. 80q–9(f)) is amended by striking “to
 9 carry out this section” and inserting “to carry out this
 10 section and section 11A”.

11 **SEC. 4. SUMMARY AND REPATRIATION OF UNASSOCIATED**
 12 **FUNERARY OBJECTS, SACRED OBJECTS, AND**
 13 **CULTURAL PATRIMONY.**

14 The National Museum of the American Indian Act
 15 (20 U.S.C. 80q et seq.) is amended by inserting after sec-
 16 tion 11 the following new section:

17 **“SEC. 11A. SUMMARY AND REPATRIATION OF**
 18 **UNASSOCIATED FUNERARY OBJECTS, SA-**
 19 **CRED OBJECTS, AND CULTURAL PATRIMONY.**

20 “(a) SUMMARY.—Not later than December 31, 1996,
 21 the Secretary of the Smithsonian Institution shall provide
 22 a written summary that contains a summary of
 23 unassociated funerary objects, sacred objects, and objects
 24 of cultural patrimony (as those terms are defined in sub-
 25 paragraphs (B), (C), and (D), respectively, of section 2(3)

1 of the Native American Graves Protection and Repatri-
2 ation Act (25 U.S.C. 3001(3)), based upon available infor-
3 mation held by the Smithsonian Institution. The summary
4 required under this section shall include, at a minimum,
5 the information required under section 6 of the Native
6 American Graves Protection and Repatriation Act (25
7 U.S.C. 3004).

8 “(b) REPATRIATION.—Where cultural affiliation of
9 Native American unassociated funerary objects, sacred ob-
10 jects, and objects of cultural patrimony has been estab-
11 lished in the summary prepared pursuant to
12 subsection (a), or where a requesting Indian tribe or Na-
13 tive Hawaiian organization can show cultural affiliation
14 by a preponderance of the evidence based upon geographi-
15 cal, kinship, biological, archaeological, anthropological, lin-
16 guistic, folkloric, oral traditional, historical, or other rel-
17 evant information or expert opinion, then the Smithsonian
18 Institution shall expeditiously return such unassociated fu-
19 nerary object, sacred object, or object of cultural pat-
20 rimony where—

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

24 “(2) the requesting Indian tribe or Native Ha-
25 waiian organization can show that the object was

1 owned or controlled by the Indian tribe or Native
2 Hawaiian organization; or

3 “(3) the requesting Indian tribe or Native Ha-
4 waiian organization can show that the unassociated
5 funerary object or sacred object was owned or con-
6 trolled by a member thereof, provided that in the
7 case where an unassociated funerary object or sacred
8 object was owned by a member thereof, there are no
9 identifiable lineal descendants of said member or the
10 lineal descendants, upon notice, have failed to make
11 a claim for the object.

12 “(c) STANDARD OF REPATRIATION.—If a known lin-
13 eal descendant or an Indian tribe or Native Hawaiian or-
14 ganization requests the return of Native American
15 unassociated funerary objects, sacred objects, or objects
16 of cultural patrimony pursuant to this Act and presents
17 evidence which, if standing alone before the introduction
18 of evidence to the contrary, would support a finding that
19 the Smithsonian Institution did not have the right of pos-
20 session, then the Smithsonian Institution shall return such
21 objects unless it can overcome such inference and prove
22 that it has a right of possession to the objects.

23 “(d) MUSEUM OBLIGATION.—Any museum of the
24 Smithsonian Institution which repatriates any item in
25 good faith pursuant to this Act shall not be liable for

1 claims by an aggrieved party or for claims of fiduciary
 2 duty, public trust, or violations of applicable law that are
 3 inconsistent with the provisions of this Act.

4 “(e) STATUTORY CONSTRUCTION.—Nothing in this
 5 section may be construed to prevent the Secretary of the
 6 Smithsonian Institution, with respect to any museum of
 7 the Smithsonian Institution, from making an inventory or
 8 preparing a written summary or carrying out the repatri-
 9 ation of unassociated funerary objects, sacred objects, or
 10 objects of cultural patrimony in a manner that exceeds
 11 the requirements of this Act.

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

17 **SEC. 5. SPECIAL COMMITTEE.**

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

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

23 (2) in subsection (b)—

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

1 (B) in paragraph (1)—

2 (i) by striking “three” and inserting

3 “4”; and

4 (ii) by striking “and” at the end;

5 (C) by redesignating paragraph (2) as

6 paragraph (3); and

7 (D) by inserting after paragraph (1) the

8 following:

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