

Appendix F.

SUBCHAPTER XIII NATIONAL MUSEUM OF THE
AMERICAN INDIAN

PUBLIC LAW 101-185

101st Congress

§. 80q. Findings

The Congress finds that—

- (1) there is no national museum devoted exclusively to the history and art of cultures indigenous to the Americas;
- (2) although the Smithsonian Institution sponsors extensive Native American programs, none of its 19 museums, galleries, and major research facilities is devoted exclusively to Native American history and art;
- (3) the Heye Museum in New York, New York, one of the largest Native American collections in the world, has more than 1,000,000 art objects and artifacts and a library of 40,000 volumes relating to the archaeology, ethnology, and history of Native American peoples;
- (4) the Heye Museum is housed in facilities with a total area of 90,000 square feet, but requires a minimum of 400,000 square feet for exhibition, storage, and scholarly research;
- (5) the bringing together of the Heye Museum collection and the Native American collection of the Smithsonian Institution would—
 - (A) create a national institution with unrivaled capability for exhibition and research;
 - (B) give all Americans the opportunity to learn of the cultural legacy, historic grandeur, and contemporary culture of Native Americans;
 - (C) provide facilities for scholarly meetings and the performing arts;
 - (D) make available curatorial and other learning opportunities for Indians; and
 - (E) make possible traveling exhibitions to communities throughout the Nation;
- (6) by order of the Surgeon General of the Army, approximately 4,000 Indian human remains from battlefields and burial sites were sent to the Army Medical Museum and were later transferred to the Smithsonian Institution;
- (7) through archaeological excavations, individual donations, and museum donations, the Smithsonian Institution has acquired approximately 14,000 additional Indian human remains;
- (8) the human remains referred to in paragraphs (6) and (7) have long been a matter of concern for many Indian tribes, including Alaska Native Villages, and Native Hawaiian communities which are determined to provide an appropriate resting place for their ancestors;
- (9) identification of the origins of such human remains is essential to addressing that concern; and
- (10) an extraordinary site on the National Mall in the District of Columbia (U.S. Government Reservation No. 6) is reserved for the use of the Smithsonian Institution and is available for construction of the National Museum of the American Indian.

SOURCE (Pub. L. 101-185, Sec. 2, Nov. 28, 1989, 103 Stat. 1336.)

§ 80q-1. National Museum of the American Indian

(a) Establishment

There is established, within the Smithsonian Institution, a living memorial to Native Americans and their traditions which shall be known as the “National Museum of the American Indian”.

(b) Purposes

The purposes of the National Museum are to—

- (1) advance the study of Native Americans, including the study of language, literature, history, art, anthropology, and life;
- (2) collect, preserve, and exhibit Native American objects of artistic, historical, literary, anthropological, and scientific interest;

- (3) provide for Native American research and study programs; and
- (4) provide for the means of carrying out paragraphs (1), (2), and (3) in the District of Columbia, the State of New York, and other appropriate locations.

SOURCE (Pub. L. 101-185, Sec. 3, Nov. 28, 1989, 103 Stat. 1337.)

§ 80q-2. Authority of Board of Regents to enter into an agreement providing for transfer of Heye Foundation assets to the Smithsonian Institution

The Board of Regents is authorized to enter into an agreement with the Heye Foundation, to provide for the transfer to the Smithsonian Institution of title to the Heye Foundation assets. The agreement shall—

- (1) require that the use of the assets be consistent with section 80q-1(b) of this title; and
- (2) be governed by, and construed in accordance with, the law of the State of New York.

The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over any cause of action arising under the agreement.

SOURCE (Pub. L. 101-185, Sec. 4, Nov. 28, 1989, 103 Stat. 1337.)

§ 80q-3. Board of Trustees of the National Museum of the American Indian

(a) In general

The National Museum shall be under a Board of Trustees with the duties, powers, and authority specified in this section.

(b) General duties and powers

The Board of Trustees shall—

- (1) recommend annual operating budgets for the National Museum to the Board of Regents;
- (2) advise and assist the Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the National Museum;
- (3) adopt bylaws for the Board of Trustees;
- (4) designate a chairman and other officers from among the members of the Board of Trustees; and
- (5) report annually to the Board of Regents on the acquisition, disposition, and display of Native American objects and artifacts and on other appropriate matters.

(c) Sole authority

Subject to the general policies of the Board of Regents, the Board of Trustees shall have the sole authority to—

- (1) lend, exchange, sell, or otherwise dispose of any part of the collections of the National Museum, with the proceeds of such transactions to be used for additions to the collections of the National Museum or additions to the endowment of the National Museum, as the case may be;
- (2) purchase, accept, borrow, or otherwise acquire artifacts and other objects for addition to the collections of the National Museum; and
- (3) specify criteria for use of the collections of the National Museum for appropriate purposes, including research, evaluation, education, and method of display.

(d) Authority

Subject to the general policies of the Board of Regents, the Board of Trustees shall have authority to—

- (1) provide for restoration, preservation, and maintenance of the collections of the National Museum;
- (2) solicit funds for the National Museum and determine the purposes to which such funds shall be applied; and
- (3) approve expenditures from the endowment of the National Museum for any purpose of the Museum.

(e) Initial appointments to Board of Trustees

(1) Membership

The initial membership of the Board of Trustees shall consist of—

- (A) the Secretary of the Smithsonian Institution;

- (B) an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents;
- (C) 8 individuals appointed by the Board of Regents; and
- (D) 15 individuals, each of whom shall be a member of the board of trustees of the Heye Museum, appointed by the Board of Regents from a list of nominees recommended by the board of trustees of the Heye Museum.

(2) Special rule

At least 7 of the 23 members appointed under subparagraphs (C) and (D) of paragraph (1) shall be Indians.

(3) Terms

The trustee appointed under paragraph (1)(B) shall serve at the pleasure of the Board of Regents. The terms of the trustees appointed under subparagraph (C) or (D) of paragraph (1) shall be 3 years, beginning on the date of the transfer of the Heye Foundation assets to the Smithsonian Institution.

(4) Vacancies

Any vacancy shall be filled only for the remainder of the term involved. Any vacancy appointment under paragraph (1)(D) shall not be subject to the source and recommendation requirements of that paragraph, but shall be subject to paragraph (2).

(f) Subsequent appointments to Board of Trustees

(1) Membership

Upon the expiration of the terms under subsection (e) of this section, the Board of Trustees shall consist of—

- (A) the Secretary of the Smithsonian Institution;
- (B) an Assistant Secretary of the Smithsonian Institution appointed by the Board of Regents; and
- (C) 23 individuals appointed by the Board of Regents from a list of nominees recommended by the Board of Trustees.

(2) Special rule

- (A) (FOOTNOTE 2) least 12 of the 23 members appointed under paragraph (1)(C) shall be Indians. (FOOTNOTE 2) So in original. Probably should be “At”.

(3) Terms

The trustee appointed under paragraph (1)(B) shall serve at the pleasure of the Board of Regents. Except as otherwise provided in the next sentence, the terms of members appointed under paragraph (1)(C) shall be 3 years. Of the members first appointed under paragraph (1)(C)—

- (A) 7 members, 4 of whom shall be Indians, shall be appointed for a term of one year, as designated at the time of appointment; and
- (B) 8 members, 4 of whom shall be Indians, shall be appointed for a term of 2 years, as designated at the time of appointment.

(4) Vacancies

Any vacancy shall be filled only for the remainder of the term involved.

(g) Quorum

A majority of the members of the Board of Trustees then in office shall constitute a quorum.

(h) Expenses

Members of the Board shall be entitled (to the same extent as provided in section 5703 of title 5, United States Code, with respect to employees serving intermittently in the Government service) to per diem, travel, and transportation expenses for each day (including travel time) during which they are engaged in the performance of their duties.

SOURCE (Pub. L. 101-185, Sec. 5, Nov. 28, 1989, 103 Stat. 1337.)

§ 80q-4. Director and staff of the National Museum

(a) In general

The Secretary of the Smithsonian Institution shall appoint—

- (1) a Director who, subject to the policies of the Board of Trustees, shall manage the National Museum; and
- (2) other employees of the National Museum, to serve under the Director.

(b) Offer of employment to Heye Foundation employees

Each employee of the Heye Museum on the day before the date of the transfer of the Heye Foundation assets to the Smithsonian Institution shall be offered employment with the Smithsonian Institution—

- (1) under the usual terms of such employment; and
- (2) at a rate of pay not less than the rate applicable to the employee on the day before the date of the transfer.

(c) Applicability of certain civil service laws

The Secretary may—

- (1) appoint the Director, 2 employees under subsection (a)(2) of this section, and the employees under subsection (b) of this section without regard to the provisions of title 5, United States Code, governing appointments in the competitive service;
- (2) fix the pay of the Director and such 2 employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates; and
- (3) fix the pay of the employees under subsection (b) of this section in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, subject to subsection (b)(2) of this section.

SOURCE (Pub. L. 101-185, Sec. 6, Nov. 28, 1989, 103 Stat. 1339.)

§ 80q-5. Museum facilities

(a) National Museum mall facility

The Board of Regents shall plan, design, and construct a facility on the area bounded by Third Street, Maryland Avenue, Independence Avenue, Fourth Street, and Jefferson Drive, Southwest, in the District of Columbia to house the portion of the National Museum to be located in the District of Columbia. The Board of Regents shall pay not more than 2/3 of the total cost of planning, designing, and constructing the facility from funds appropriated to the Board of Regents. The remainder of the costs shall be paid from non-Federal sources.

(b) National Museum Heye Center facility

- (1) Lease of space from GSA

(A) Terms

Notwithstanding section 490(j) of title 40, the Administrator of General Services may lease, at a nominal charge, to the Smithsonian Institution space in the Old United States Custom House at One Bowling Green, New York, New York, to house the portion of the National Museum to be located in the city of New York. The lease shall be subject to such terms as may be mutually agreed upon by the Administrator and the Secretary of the Smithsonian Institution. The term of the lease shall not be less than 99 years.

(B) Reimbursement of Federal buildings fund

The Administrator of General Services may reimburse the fund established by section 490(f) of title 40 for the difference between the amount charged to the Smithsonian Institution for leasing space under this paragraph and the commercial charge under section 490(j) of title 40 which, but for this paragraph, would apply to the leasing of such space. There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out this subparagraph for fiscal years beginning after September 30, 1990.

- (2) Construction

(A) Museum facility

The Board of Regents shall plan, design, and construct a significant facility for the National Museum in the space leased under paragraph (1).

(B) Auditorium and loading dock facility

The Administrator of General Services shall plan, design, and construct an auditorium and loading dock in the Old United States Custom House at One Bowling Green, New York, New York, for the shared use of all the occupants of the building, including the National Museum.

(C) Square footage

The facilities to be constructed under this paragraph shall have, in the aggregate, a total square footage of approximately 82,500 square feet.

- (3) Repairs and alterations

After construction of the facility under paragraph (2)(A), repairs and alterations of the facility shall be the responsibility of the Board of Regents.

(4) Reimbursement of GSA

The Board of Regents shall reimburse the Administrator for the Smithsonian Institution's pro rata share of the cost of utilities, maintenance, cleaning, and other services incurred with respect to the space leased under paragraph (1) and the full cost of any repairs or alterations made by the General Services Administration at the request of the Smithsonian Institution with respect to the space.

(5) Cost sharing

(A) General rules

The Board of Regents shall pay 1/3 of the costs of planning, designing, and constructing the facility under paragraph (2)(A) from funds appropriated to the Board of Regents. The remainder of the costs shall be paid from non-Federal sources.

(B) Responsibilities of New York City and State

Of the costs which are required to be paid from non-Federal sources under this paragraph, the city of New York, New York, and the State of New York have each agreed to pay \$8,000,000 or an amount equal to 1/3 of the costs of planning, designing, and constructing the facility under paragraph (2)(A), whichever is less. Such payments shall be made to the Board of Regents in accordance with a payment schedule to be agreed upon by the city and State and the Board of Regents.

(C) Limitation on obligations of Federal funds

Federal funds may not be obligated for actual construction of a facility under paragraph (2)(A) in a fiscal year until non-Federal sources have paid to the Board of Regents the non-Federal share of such costs which the Board of Regents estimates will be incurred in such year.

(6) Designation

The facility to be constructed under paragraph (2)(A) shall be known and designated as the "George Gustav Heye Center of the National Museum of the American Indian".

(c) Museum Support Center facility

The Board of Regents shall plan, design, and construct a facility for the conservation and storage of the collections of the National Museum at the Museum Support Center of the Smithsonian Institution.

(d) Minimum square footage

The facilities to be constructed under this section shall have, in the aggregate, a total square footage of at least 400,000 square feet.

(e) Authority to contract with GSA

The Board of Regents and the Administrator of General Services may enter into such agreements as may be necessary for planning, designing, and constructing facilities under this section (other than subsection (b)(2)(B)). Under such agreements, the Board of Regents shall transfer to the Administrator, from funds available for planning, designing, and constructing such facilities, such amounts as may be necessary for expenses of the General Services Administration with respect to planning, designing, and constructing such facilities.

(f) Limitation on obligation of Federal funds

Notwithstanding any other provision of this subchapter, funds appropriated for carrying out this section may not be obligated for actual construction of any facility under this section until the 60th day after the date on which the Board of Regents transmits to Congress a written analysis of the total estimated cost of the construction and a cost-sharing plan projecting the amount for Federal appropriations and for non-Federal contributions for the construction on a fiscal year basis.

SOURCE (Pub. L. 101-185, Sec. 7, Nov. 28, 1989, 103 Stat. 1339.)

§ 80q-6. Custom House office space and auditorium

(a) Repairs and alterations

The Administrator of General Services shall make such repairs and alterations as may be necessary in the portion of the Old United States Custom House at One Bowling Green, New York, New York, which is not leased to the Board of Regents under section 80q-5(b) of this title and which, as of November 28, 1989, has not been altered.

(b) Authorization of appropriation

There is authorized to be appropriated to the Administrator of General Services \$25,000,000 from the fund established pursuant to section 490(f) of title 40 to carry out this section and section 80q-5(b)(2)(B) of this title.

SOURCE (Pub. L. 101-185, Sec. 8, Nov. 28, 1989, 103 Stat. 1341.)

§ 80q-7. Audubon Terrace

(a) In general

The Board of Regents shall—

(1) assure that, on the date on which a qualified successor to the Heye Foundation at Audubon Terrace first takes possession of Audubon Terrace, an area of at least 2,000 square feet at that facility is accessible to the public and physically suitable for exhibition of museum objects and for related exhibition activities;

(2) upon written agreement between the Board and any qualified successor, lend objects from the collections of the Smithsonian Institution to the successor for exhibition at Audubon Terrace; and

(3) upon written agreement between the Board and any qualified successor, provide training, scholarship, technical, and other assistance (other than operating funds) with respect to the area referred to in paragraph (1) for the purposes described in that paragraph.

(b) Determination of charges

Any charge by the Board of Regents for activities pursuant to agreements under paragraph (2) or (3) of subsection (a) of this section shall be determined according to the ability of the successor to pay.

(c) Definition

As used in this section, the terms “qualified successor to the Heye Foundation at Audubon Terrace”, “qualified successor”, and, “successor” mean an organization described in section 501(c)(3) of title 26, and exempt from tax under section 501(a) of title 26, that, as determined by the Board of Regents—

(1) is a successor occupant to the Heye Foundation at Audubon Terrace, 3753 Broadway, New York, New York;

(2) is qualified to operate the area referred to in paragraph (1) for the purposes described in that paragraph; and

(3) is committed to making a good faith effort to respond to community cultural interests in such operation.

SOURCE (Pub. L. 101-185, Sec. 9, Nov. 28, 1989, 103 Stat. 1342.)

§ 80q-8. Board of Regents functions with respect to certain agreements and programs

(a) Priority to be given to Indian organizations with respect to certain agreements

In entering into agreements with museums and other educational and cultural organizations to—

(1) lend Native American artifacts and objects from any collection of the Smithsonian Institution;

(2) sponsor or coordinate traveling exhibitions of artifacts and objects; or

(3) provide training or technical assistance; the Board of Regents shall give priority to agreements with Indian organizations, including Indian tribes, museums, cultural centers, educational institutions, libraries, and archives. Such agreements may provide that loans or services to such organizations may be furnished by the Smithsonian Institution at minimal or no cost.

(b) Indian programs

The Board of Regents may establish—

(1) programs to serve Indian tribes and communities; and

(2) in cooperation with educational institutions, including tribally controlled community colleges (as defined in section 1801 of title 25), programs to enhance the opportunities for Indians in the areas of museum studies, management, and research.

(c) Indian Museum Management Fellowships

The Board of Regents shall establish an Indian Museum Management Fellowship program to provide stipend support to Indians for training in museum development and management.

(d) Authorization of appropriations

There is authorized to be appropriated \$2,000,000 for each fiscal year, beginning with fiscal year 1991, to carry out subsections (b) and (c) of this section.

SOURCE (Pub. L. 101-185, Sec. 10, Nov. 28, 1989, 103 Stat. 1342.)

§ 80q-9. Inventory, identification, and return of Indian human remains and Indian funerary objects in possession of Smithsonian Institution

(a) Inventory and identification

The Secretary of the Smithsonian Institution, in consultation and cooperation with traditional Indian religious leaders and government officials of Indian tribes, shall—

(1) inventory the Indian human remains and Indian funerary objects in the possession or control of the Smithsonian Institution; and

(2) using the best available scientific and historical documentation, identify the origins of such remains and objects.

(b) Notice in case of identification of tribal origin

If the tribal origin of any Indian human remains or Indian funerary object is identified by a preponderance of the evidence, the Secretary shall so notify any affected Indian tribe at the earliest opportunity.

(c) Return of Indian human remains and associated Indian funerary objects

If any Indian human remains are identified by a preponderance of the evidence as those of a particular individual or as those of an individual culturally affiliated with a particular Indian tribe, the Secretary, upon the request of the descendants of such individual or of the Indian tribe shall expeditiously return such remains (together with any associated funerary objects) to the descendants or tribe, as the case may be.

(d) Return of Indian funerary objects not associated with Indian human remains

If any Indian funerary object not associated with Indian human remains is identified by a preponderance of the evidence as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe, the Secretary, upon the request of the Indian tribe, shall expeditiously return such object to the tribe.

(e) Interpretation

Nothing in this section shall be interpreted as—

(1) limiting the authority of the Smithsonian Institution to return or repatriate Indian human remains or Indian funerary objects to Indian tribes or individuals; or

(2) delaying actions on pending repatriation requests, denying or otherwise affecting access to the courts, or limiting any procedural or substantive rights which may otherwise be secured to Indian tribes or individuals.

(f) Authorization of appropriations

There is authorized to be appropriated \$1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section.

SOURCE (Pub. L. 101-185, Sec. 11, Nov. 28, 1989, 103 Stat. 1343.)

§ 80q-10. Special committee to review inventory, identification, and return of Indian human remains and Indian funerary objects

(a) Establishment; duties

Not later than 120 days after November 28, 1989, the Secretary of the Smithsonian Institution shall appoint a special committee to monitor and review the inventory, identification, and return of Indian human remains and Indian funerary objects under section 80q-9 of this title. In carrying out its duties, the committee shall—

(1) with respect to the inventory and identification, ensure fair and objective consideration and assessment of all relevant evidence;

(2) upon the request of any affected party or otherwise, review any finding relating to the origin or the return of such remains or objects;

(3) facilitate the resolution of any dispute that may arise between Indian tribes with respect to the return of such remains or objects; and

(4) perform such other related functions as the Secretary may assign.

(b) Membership

The committee shall consist of five members, of whom—

(1) three members shall be appointed from among nominations submitted by Indian tribes and organizations; and

(2) the Secretary shall designate one member as chairman. The Secretary may not appoint to the committee any individual who is an officer or employee of the Government (including the Smithsonian Institution) or any individual who is otherwise affiliated with the Smithsonian Institution.

(c) Access

The Secretary shall ensure that the members of the committee have full and free access to the Indian human remains and Indian funerary objects subject to section 80q-9 of this title and to any related evidence, including scientific and historical documents.

(d) Pay and expenses of members

Members of the committee shall—

(1) be paid the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General schedule under section 5332 of title 5; and

(2) be entitled (to the same extent as provided in section 5703 of such title, with respect to employees serving intermittently in the Government service) to per diem, travel, and transportation expenses; for each day (including travel time) during which they are engaged in the performance of their duties.

(e) Rules and administrative support

The Secretary shall prescribe regulations and provide administrative support for the committee.

(f) Report and termination

At the conclusion of the work of the committee, the Secretary shall so certify by report to the Congress. The committee shall cease to exist 120 days after the submission of the report.

(g) Nonapplicability of Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the committee.

(h) Authorization of appropriations

There is authorized to be appropriated \$250,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years to carry out this section.

SOURCE (Pub. L. 101-185, Sec. 12, Nov. 28, 1989, 103 Stat. 1344.)

§ 80q-11. Inventory, identification, and return of Native Hawaiian human remains and Native Hawaiian funerary objects in possession of the Smithsonian Institution

(a) In general

The Secretary of the Smithsonian Institution shall—

(1) in conjunction with the inventory and identification under section 80q-9 of this title, inventory and identify the Native Hawaiian human remains and Native Hawaiian funerary objects in the possession of the Smithsonian Institution;

(2) enter into an agreement with appropriate Native Hawaiian organizations with expertise in Native Hawaiian affairs (which may include the Office of Hawaiian Affairs and the Malama I Na Kupuna O Hawai'i Nei) to provide for the return of such human remains and (FOOTNOTE 1) funerary objects; and (FOOTNOTE 1) So in original. Probably should be "and".

(3) to the greatest extent practicable, apply, with respect to such human remains and funerary objects, the principles and procedures set forth in sections 80q-9 and 80q-10 of this title with respect to the Indian human remains and Indian funerary objects in the possession of the Smithsonian Institution.

(b) Definitions

As used in this section—

(1) the term "Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization, incorporated under the laws of the State of Hawaii by that name on April 17, 1989, the purpose of which is to provide guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues; and

(2) the term "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the Constitution of the State of Hawaii.

SOURCE (Pub. L. 101-185, Sec. 13, Nov. 28, 1989, 103 Stat. 1345.)

§ 80q-12. Grants by the Secretary of the Interior to assist Indian tribes with respect to agreements for the return of Indian human remains and Indian funerary objects

(a) In general

The Secretary of the Interior may make grants to Indian tribes to assist such tribes in reaching and carrying out agreements with—

(1) the Board of Regents for the return of Indian human remains and Indian funerary objects under section 80q-9 of this title; and

(2) other Federal and non-Federal entities for additional returns of Indian human remains and Indian funerary objects.

(b) Authorization of appropriations

There is authorized to be appropriated \$1,000,000 for fiscal year 1991 and such sums as may be necessary for succeeding fiscal years for grants under subsection (a) of this section.

SOURCE (Pub. L. 101-185, Sec. 14, Nov. 28, 1989, 103 Stat. 1345.)

§ 80q-13. Grants by the Secretary of the Interior to assist Indian organizations with respect to renovation and repair of museum facilities and exhibit facilities

(a) Grants

The Secretary of the Interior may make grants to Indian organizations, including Indian tribes, museums, cultural centers, educational institutions, libraries, and archives, for renovation and repair of museum facilities and exhibit facilities to enable such organizations to exhibit objects and artifacts on loan from the collections of the Smithsonian Institution or from other sources. Such grants may be made only from the Tribal Museum Endowment Fund.

(b) Indian organization contribution

In making grants under subsection (a) of this section, the Secretary may require the organization receiving the grant to contribute, in cash or in kind, not more than 50 percent of the cost of the renovation or repair involved. Such contribution may be derived from any source other than the Tribal Museum Endowment Fund.

(c) Tribal Museum Endowment Fund

(1) Establishment

There is established in the Treasury a fund, to be known as the “Tribal Museum Endowment Fund” (hereinafter in this subsection referred to as the “Fund”) for the purpose of making grants under subsection (a) of this section. The Fund shall consist of (A) amounts deposited and credited under paragraph (2), (B) obligations obtained under paragraph (3), and (C) amounts appropriated pursuant to authorization under paragraph (5).

(2) Deposits and credits

The Secretary of the Interior is authorized to accept contributions to the Fund from non-Federal sources and shall deposit such contributions in the Fund. The Secretary of the Treasury shall credit to the Fund the interest on, and the proceeds from sale and redemption of, obligations held in the Fund.

(3) Investments

The Secretary of the Treasury may invest any portion of the Fund in interest-bearing obligations of the United States. Such obligations may be acquired on original issue or in the open market and may be held to maturity or sold in the open market. In making investments for the Fund, the Secretary of the Treasury shall consult the Secretary of the Interior with respect to maturities, purchases, and sales, taking into consideration the balance necessary to meet current grant requirements.

(4) Expenditures and capital preservation

Subject to appropriation, amounts derived from interest shall be available for expenditure from the Fund. The capital of the Fund shall not be available for expenditure.

(5) Authorization of appropriations

There is authorized to be appropriated to the Fund \$2,000,000 for each fiscal year beginning with fiscal year 1992.

(d) Annual report

Not later than January 31 of each year, the Secretary of the Interior, in consultation with the Secretary of the Treasury, shall submit to the Congress a report of activities under this section, including a statement of—

(1) the financial condition of the Fund as of the end of the preceding fiscal year, with an analysis of the Fund transactions during that fiscal year; and

(2) the projected financial condition of the Fund, with an analysis of expected Fund transactions for the six fiscal years after that fiscal year.

SOURCE (Pub. L. 101-185, Sec. 15, Nov. 28, 1989, 103 Stat. 1345.)

§ 80q-14. Definitions

As used in this subchapter—

(1) the term “Board of Regents” means the Board of Regents of the Smithsonian Institution;

(2) the term “Board of Trustees” means the Board of Trustees of the National Museum of the American Indian;

(3) the term “burial site” means a natural or prepared physical location, whether below, on, or above the surface of the earth, into which, as a part of a death rite or ceremony of a culture, individual human remains are deposited;

(4) the term “funerary object” means an object that, as part of a death rite or ceremony of a culture, is intentionally placed with individual human remains, either at the time of burial or later;

(5) the term “Heye Foundation assets” means the collections, endowment, and all other property of the Heye Foundation (other than the interest of the Heye Foundation in Audubon Terrace) described in the Memorandum of Understanding between the Smithsonian Institution and the Heye Foundation, dated May 8, 1989, and the schedules attached to such memorandum;

(6) the term “Heye Museum” means the Museum of the American Indian, Heye Foundation;

(7) the term “Indian” means a member of an Indian tribe;

(8) the term “Indian tribe” has the meaning given that term in section 450b of title 25;

(9) the term “National Museum” means the National Museum of the American Indian established by section 80q-1 of this title;

(10) the term “Native American” means an individual of a tribe, people, or culture that is indigenous to the Americas and such term includes a Native Hawaiian; and

(11) the term “Native Hawaiian” means a member or descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

SOURCE (Pub. L. 101-185, Sec. 16, Nov. 28, 1989, 103 Stat. 1346.)

Sec. 80q-15. Authorization of appropriations

(a) Funding

There is authorized to be appropriated to the Board of Regents to carry out this subchapter (other than as provided in sections 80q-5(b)(1)(B), 80q-6, 80q-8, 80q-9, 80q-10, 80q-12, and 80q-13(c)(5) of this title)—

(1) \$10,000,000 for fiscal year 1990; and

(2) such sums as may be necessary for each succeeding fiscal year.

(b) Period of availability

Funds appropriated under subsection (a) of this section shall remain available without fiscal year limitation for any period prior to the availability of the facilities to be constructed under section 80q-5 of this title for administrative and planning expenses and for the care and custody of the collections of the National Museum.

SOURCE (Pub. L. 101-185, Sec. 17, Nov. 28, 1989, 103 Stat. 1347.)

Appendix G.

NMAI REPATRIATION POLICY STATEMENT

NATIONAL MUSEUM OF THE AMERICAN INDIAN POLICY STATEMENT ON NATIVE AMERICAN HUMAN REMAINS AND CULTURAL MATERIALS

I. *Preamble*

In November 1989, the National Museum of the American Indian Act became law. Public Law 101-185 provided for the transfer to the Smithsonian Institution of title to the assets of the Museum of the American Indian, Heye Foundation. The National Museum of the American Indian (hereinafter “Museum”), established by the Act, has a Board of Trustees which, subject to the general policies of the Smithsonian Board of Regents, has the sole authority to lend, exchange, sell, or otherwise dispose of any part of the collections of the Museum; purchase, accept, borrow, or otherwise acquire artifacts and other objects for addition to the collections of the Museum; and to specify criteria for use of the collections of the Museum for appropriate purposes, including research, evaluation, education, and method of display. Integral to the fulfillment of that is the affirmation that:

- Native American cultures and the collections that reflect those American Indian, Alaska Native and Native Hawaiian cultures provide a context for and constitute a rich part of the activities of the museum.
- The goal of the Museum’s repatriation policy is to support the continuation of ceremonial and ritual life among Native American peoples, to foster and support the study by Native Americans of their own traditions, and to forge consensus among the Museum and Native American communities while accounting for and balancing the interest of each.
- The wishes of Native American peoples with respect to human remains and funerary objects of their own ancestors must be honored.
- The wishes of Native American peoples with respect to access to and treatment and use of ceremonial and religious materials needed in the practice of their religion must be granted.
- The Native American community must have broad access to and use of information pertaining to collection materials to insure that informed decisions can be made regarding the treatment and disposition of Native American materials.
- All Native American materials, including human remains, funerary objects, ceremonial and religious objects, and communally-owned property, together with all culturally-specific information, must be treated as the sole property of the affected Native American culturally-affiliated group and with the utmost respect by scholars and interpreters of those cultures, whether in collections research, scientific study, exhibitions, or educational programs.
- Respect for Native American peoples and cultures and principles of law prohibit the retention of Native American materials that were acquired by or transferred to the National Museum of the American Indian illegally or under circumstances that invalidate the Museum’s claim to them.
- The Museum has, as one of its highest priorities the expeditious implementation of its repatriation policy. To carry out this policy, there must be continuous dialogue between the Museum and Native American peoples to assure that all viewpoints and beliefs are considered in its implementation.
- With respect to Native American peoples beyond the borders of the United States, this policy shall be carried out in accordance with the following procedures and applicable treaties and international agreements.

This policy describes the National Museum of the American Indian policy and procedure for: (1) the repatriation of Native American human remains and funerary objects; (2) the objects of religious, ceremonial, and historical importance to Native American peoples, communally-owned tribal property, and other property acquired by or transferred to the Museum illegally; and (3) the treatment and display of Native American materials.

II. *Background*

Over the years, a set of principles has evolved within the federal policy regarding Native American religious freedom and the treatment and the repatriation of cultural materials. Certain of those principles, pertaining to human remains and funerary objects, were codified into law by Public Law 101-185. The National Museum of the American Indian is committed to a policy that extends the principles of the law to other categories of Native American objects, namely, ceremonial and religious materials and communally-owned Native property.

The initial focus of all repatriation requests involves the nature of the material in question and the circumstances of its acquisition by the Museum. Each repatriation request carries with it unique facts, circumstances, and legal and ethical considerations. Thus, each request of necessity must be reviewed individually within the Museum's overall policy framework.

III. *Policy*

The National Museum of the American Indian is committed to the disposition, in accordance with the wishes of culturally-base Native Americans, of (i) Native American human remains of known individuals; (ii) human remains of individuals who can be identified by tribal or cultural affiliation with contemporary Native American peoples; (iii) funerary objects; (iv) communally-owned Native American property; (v) ceremonial and religious objects; and (vi) objects transferred to or acquired by, or hereafter transferred or acquired by, the Museum illegally or under circumstances that render invalid the Museum's claim to them. Considerations associated with each type of material follow.

A. Human remains. The Museum will repatriate any human remains that are reasonably identified as being those of a particular individual or of an individual culturally affiliated with a particular American Indian tribe or Native Hawaiian organization, upon the request of living descendants of the individual or of the particular tribe or organization. In addition, the Museum will repatriate to an appropriate descendant, tribe, or organization, upon request, any other Native American remains found to have been transferred to the Museum or otherwise acquired by the Museum illegally or under circumstances that would render invalid its claim to them. Remains excavated pursuant to lawfully-issued permits under the Antiquities Act of 1906 will be deemed to have been acquired under color of law, but subject to repatriation if individually or tribally identifiable.

B. Funerary objects. The Museum will repatriate any funerary objects associated with human remains, to be repatriated in accordance with paragraph A. above, including any funerary object which is a surrogate for a deceased person. With respect to funerary objects not associated with human remains, with the exception of surrogates addressed above, the Museum will repatriate to a particular American Indian tribe or Native Hawaiian organization, upon request, any funerary object that is reasonably identified as having been removed from a specific burial site culturally affiliated with that tribe or organization. In addition, the Museum will repatriate any other funerary objects found to have been acquired by or transferred to the Museum illegally or under circumstance that would render invalid the Museum's claim to them.

C. Communally-owned Native American property. The Museum recognizes that it holds in its collections certain objects that are communally-owned property of an American Indian tribe, Native Hawaiian organization, or Native American group itself, rather than property owned by an individual Native American person. If such property belonged to an entire tribe, organization, or group, or was held for communal purposes and could not have been legally alienated, transferred, or conveyed by an individual Native American, the Museum's claim to it is invalid, and such items will be repatriated upon request according to the procedures established herein.

D. Ceremonial and religious objects. This category of materials consists of objects that are needed by Native American religious leaders for the practice of traditional Native American religions, including the purpose of ceremonial renewal. Because objects regarded as ceremonial and religious by any given tribe may vary substantially from the objects so regarded by other tribes, this category of objects does not lend itself to a fixed set of guidelines. Thus, in keeping with the American Indian Religious Freedom Act, each request must be considered on a case-by-case basis in consultation with Native American traditional religious leaders and practitioners. The Museum will seek the counsel of other tribal elders, members of the governing bodies and other representative of the tribe making the request, and any other individuals who can provide relevant information to the specific request at hand.

E. Objects acquired illegally. The Museum will repatriate upon request to an appropriate American Indian tribe, Native Hawaiian organization, or Native American group any material acquired by or transferred to the Museum illegally or under circumstances that render invalid the Museum's claim to them. Each request for materials so acquired will be considered on a case-by-case basis and take into account all relevant evidence submitted by the particular tribe, organization, or group and available to the Museum.

F. Duplicate or abundant objects. When the Museum has duplicate material, numerous similar objects in its collection, or an abundance of a certain type of material, and a Native American, American Indian tribe, Native Hawaiian organization, or Native American group that is culturally affiliated with the material requests its repatriation, the Museum will consider disposition.

IV. Procedures

All repatriation decisions are made by the Museum Board of Trustees upon advice of the Collections Committee.

A. Inventory. The policy outlined above requires the Museum to have in place efficient procedural mechanisms to respond to repatriation requests. The National Museum of the American Indian will prepare an inventory of religious and ceremonial objects, funerary items, and all other cultural materials covered by those policy. The steps of such inventories are as follows:

1. Using the best available scientific and historical information, the Museum will identify the origin of human remains, funerary objects, and other objects covered by this policy.
2. Identification will be based on a reasonable belief standard.
3. The inventories will be made available to all affected American Indian tribes and Native Hawaiian organizations at the earliest opportunity.
4. The Museum will include in its inventories items that are not positively identifiable as being associated with a particular American Indian tribe or Native Hawaiian organization but, given the totality of the information about the materials, make it more likely than not that the item once belonged to that American Indian tribe or Native Hawaiian organization or that the human remains are culturally affiliated with that group.

B. Consultation. During the inventory process and following its completion, the Museum will consult widely with Native American peoples. The Museum will disclose all relevant information pertaining to collection objects identified in the inventories, and curatorial staff will be available to respond to additional requests for information. Physical access to materials will be provided, as requested. In addition, a special area will be made available for Native American peoples to view or otherwise inspect their culturally affiliated materials. Every effort will be made to reach agreement through informal consultation and cooperation. Where issues remain after good faith discussions, those pertaining to human remains, funerary objects and other objects covered by this policy will be referred to a Special Review Committee established by the Board of Trustees.

C. Claimants. Claims for materials may be submitted by descendants and those who can demonstrate a cultural affiliation to the materials. This group of claimants includes, but is not limited to, Native American tribal, religious, ceremonial and Hawaiian organizational leaders. If the Museum is uncertain about cultural affiliation of the party requesting the materials, the Museum may request information about affiliation. If a request is made by one Native American group for the return of materials that the Museum believes may be more closely affiliated with another Native American group, the Museum will advise both parties of the request. All parties with a demonstrable interest will be invited to join in the negotiation and decision-making process. Where competing claims exist that cannot be resolved through informal consultation, the parties will submit the dispute to the Board of Trustees.

D. Burden of Proof. The initial burden of proof with respect to any repatriation request shall be on the requesting individual or tribe to establish, on a reasonable basis, a connection to material in question. This connection may be lineal descent, tribal affiliation, and/or cultural affiliation. In some cases, this burden can be satisfied by reference to the Museum's inventory which shall, wherever possible, identify descent, tribal origin, and/or cultural affiliation. Where the inventory is inconclusive or cannot determine affiliation, the requesting party may satisfy its burden through evidence of geography, descent, kinship, archaeology, anthropology, linguistics, folklore, oral tradition, historical patterns of ownership and/or control, and other relevant information or expert opinion.

For human remains and funerary objects, once cultural affiliation has been satisfactorily established, the requesting party has met its burden of proof and the material shall be repatriated or otherwise disposed of in accordance with the wishes of the affiliated individual or tribe.

In the case of ceremonial and religious materials, the claimant must show that the materials are needed by traditional Native American religious leaders for the practice of traditional Native American religions. For communally-owned Native American property, the requesting party must show that the material has an ongoing historical, traditional, or cultural relevance important to the Native American group or culture itself, rather than property

owned by an individual Native American, and which, therefore, could not have been properly alienated, appropriated, or conveyed by any individual at the time the object was separated from such group. Once a claimant has satisfactorily established its case, and the Board of Trustees has affirmed its claim, the claimant is entitled to the material.

E. Special Review Committee on repatriation. The Board of Trustees, upon being notified by the Museum Director or the American Indian or Native Hawaiian claimant that the discussions concerning repatriation have reached an impasse, shall, within fifteen days, constitute a Special Review Committee to review the nature of the controversy, to examine the evidence presented by the parties in dispute, and present its findings and recommendations to the Collections Committee within thirty (30) days. The Collections Committee shall then review the findings and recommendations of the Special Review Committee and shall, within fifteen (15) days, submit a recommended course of action to the Board of Trustees for its consideration in accordance with the provisions of Public Law 101-185, Section 5(C) (B), *Sole Authority*.

F. Access and technical assistance. The Museum recognizes that certain items in its collections are needed by traditional Native American religious leaders for the practice of Native American religions. The Museum is committed to a policy of repatriation of these and other cultural materials. Where repatriation is not requested, or where a repatriation agreement is not reached, the Museum is committed to a policy of mutual and shared access and use of these materials, as culturally appropriate. Access and use, in the form of availability of materials for examination or for loan, will be within the purview of the collections management policy developed by the Collections Committee.

The Museum also is committed to a policy of offering American Indian tribes and Native Hawaiian organizations to which materials are repatriated, technical assistance in the care, preservation, use, and disposition of materials. Such assistance may encompass advice to tribal museums and training programs, where requested. Where repatriated materials may be altered or destroyed because of their sacred or traditional nature and function, the Museum shall obtain permission from the Native American owners prior to conducting any destructive analysis or documenting the existence of materials through reproduction or graphic representation.

V. Treatment, Care and Exhibition

The National Museum of the American Indian will develop and adopt a collections management policy that describes detailed procedures for accession, deaccession, gifts, exhibition display, handling, access, and many other aspects of collections management. That policy must respect and accommodate the cultural and religious sensitivities surrounding the Museum's collections. The museum will develop its detailed collections procedures in accordance with the policy that culturally-specific information, data, documentation, reproduction and depictions— whether contained or transmitted in written, audio, visual or computer form—are the sole property of the affiliated group, and its consent regarding treatment, care and exhibition of its cultural materials must be obtained prior to decisions being made. The following collections management principles will guide the formulation and implementation of the collections management policy.

A. Exhibition and display. Religious and ceremonial objects shall be exhibited or displayed only with the consent of the culturally affiliated group. Before displaying religious, ceremonial, or potentially sensitive material as part of exhibitions or public programs, curators shall consult with interested and concerned parties and shall consider and be guided by their views in determining the method of display. Planning of exhibitions—format and content—shall be done in consultation with Native American representatives of the tribe and/or culture involved to assure historical and cultural accuracy in the presentation of all information and materials, and to avoid desecration, insensitive treatment, and inappropriate interpretation of religious or ceremonial materials.

B. Curation. Curation and care of cultural materials shall be done in accordance with the highest standards of museum practices and consultation with the views of an appropriate representative from culturally-affiliated groups, particularly where culturally and religiously sensitive materials are involved. If an American Indian tribe, Native Hawaiian organization, or Native American group requests that the Museum retain custody of religious, ceremonial, communally-owned, or other tribal property eligible for repatriation, they shall inform the curator and other appropriate staff regarding permissible methods of handling, care, and protection of such articles.

C. Access. Access to the collections for viewing, study, the performance of ceremonies, and for other purposes of Native American people shall be allowed to the maximum extent. Facilities will be constructed within the Museum and/or under its auspices, as appropriate, for the purpose of conducting ceremonies. Public access to the collections for research, study, or viewing purposes may be restricted if such access offends the religious or cultural practices of Native American peoples.

D. **Outreach.** Education constitutes an essential purpose of the Museum. Through the loan and exchange of cultural materials and travelling exhibitions the Museum will endeavor to make its collections more widely available to American Indian communities and to present contemporary expressions on an ongoing basis. Provisions shall be made to furnish materials and information to Native American people through, but not limited to, the application of telecommunications and other technologies. The museum also is committed to training Native American people in museology by developing a full curriculum of programs at all levels—senior management, administration, curatorial, technical, fellowships support, and security.

E. **Acquisitions.** Objects will not be acquired by gift, purchase, or exchange unless the provenance is complete and consistent with principles of law and policy established by the Museum and the Smithsonian Board of Regents. In its acquisitions practices the Museum endorses and abides by the principles of the UNESCO Convention and the American Indian Religious Freedom Act. The Museum will consult with all concerned parties before acquiring materials that may be culturally or religiously sensitive. Further, the Museum will not accept archaeological materials unless they have been excavated in compliance with appropriate international agreements, negotiated tribal agreements, federal laws and guidelines, and such other state and local laws as may be applicable.

Title to all objects acquired for the permanent collections shall be obtained free and clear. As a general rule, the Museum must not accept gifts with restrictions as to use or future disposition. The Museum may, however, permit exceptions to this policy for materials that are religiously or culturally sensitive and where the donor imposes restrictions on access, display, research, treatment, storage, or care. Under exceptional circumstances, and with approval of the Board, the Director may accept objects with restrictions or limitations, provided that the condition shall be stated clearly in the instrument of conveyance and made part of the records.

Whenever an item of cultural property covered by this policy shall be offered or gifted to the Museum, or whenever it shall come to the attention of the Museum that such item is or is about to be placed on the market for sale, trade, or exchange, the Director shall notify the appropriate American Indian tribe, Native Hawaiian organization, or Native American group of known circumstances. To the extent feasible, and upon the request of the culturally-affiliated tribe or group, the Museum will coordinate efforts with the tribe or group to recover or obtain a treatment-and-care agreement, as appropriate.