

Calendar No. 842

101st CONGRESS

2d Session

S. 1980

[Report No. 101-473]

A BILL

To provide for the repatriation of Native American group or cultural patrimony.

September 26 (legislative day, SEPTEMBER 10), 1990

Reported with an amendment

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To provide for the repatriation of Native American group or cultural patrimony.

IN THE SENATE OF THE UNITED STATES

November 21 (legislative day, NOVEMBER 6), 1989

Mr. INOUE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

September 26 (legislative day, SEPTEMBER 10), 1990

Reported by Mr. INOUE, with an amendment

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

A BILL

To provide for the repatriation of Native American group or cultural patrimony.

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

[Struck out->] SHORT TITLE [] SECTION 1. This Act may be cited as the `Native American

Repatriation of Cultural Patrimony Act'. [] DEFINITIONS [] SEC. 2. For purposes of this Act-- [] (1) The term `Native American' means an Indian, Alaska

Native, or Native Hawaiian. [] (2) The term `Indian' means an individual who is a

member of an Indian tribe, including any individual who is an Alaska Native. [] (3) The term `Alaska Native' means any Eskimo, Aleut,

or Alaska Indian. [] (4) The term `Indian tribe' means any tribe, band, nation,

or other organized group or community of Indians, including any Alaska Native

village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act). [] (5) The term `Native Hawaiian' means any individual who

is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. [] (6) The term `Native Hawaiian organization' means any

organization which-- [] (A) serves and represents the interests of Native Hawaiians,

and [] (B) has as a primary and stated purpose the provision of services to Native Hawaiians. [] (7) The term `burial site' means any natural or prepared

physical location, whether originally below, on, or above the surface of the earth, into which there was intentionally deposited, as a part of the

death rites or ceremonies of a culture, the remains of a deceased Native American. [] (8) The term 'funerary object' means any artifact or object-- [] (A) which was intentionally placed with a deceased Native American, either at the time of burial or interment or at some subsequent time, as a part of the death rites or ceremonies of a culture, and [] (B) which-- [] (i) is reasonably associated with human remains subject to return pursuant to section 3, or [] (ii) has been identified, through available evidence, as having been removed from a specific burial site. [] (9) The term 'Federal agency' means any department, agency, or instrumentality of the Federal Government, including (but not limited to) the Smithsonian Institution. [] (10) The term 'Native American group' means any nation, tribe, band, village, or community of Native Americans. [] (11) The term 'Native American sacred object' means an object, including (but not limited to) any dead or live animal or animal part, plant or plant part, mineral, or other substance, that is imbued with sacred character or has ceremonial or ritual importance in the practice of a Native American religion. [] (12) The term 'Native American group or cultural patrimony' means an item having historical, traditional or cultural importance to the Native American group or culture which is associated with the Native American group itself, rather than property owned by any individual Native American, and which, therefore, cannot be legally alienated, appropriated or conveyed by any individual Native American regardless of whether or not the individual is a member of the Native American group. [] (13) The term 'museum' means any person or State or local government agency (including any institution of higher education) that receives Federal funds and has possession of, or control over, human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony. Such term does not include the Smithsonian Institution or any other Federal agency. [] (14) 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. [] (15) The term 'Office of Hawaiian Affairs' means the Office of Hawaiian Affairs established by the Constitution of the State of Hawaii. [] REPATRIATION OF NATIVE AMERICAN GROUP OR CULTURAL PATRIMONY [] SEC. 3. (a) (1) Each Federal agency, and each museum, that has possession or control over holdings or collections of Native American sacred objects or items of Native American group or cultural patrimony, including human remains and funerary objects shall, in consultation and cooperation with traditional Indian and Native Hawaiian religious leaders and tribal government officials, initiate a process for the inventory of such remains and objects and for the investigation, to the fullest extent possible, of the geographic and tribal origins of such remains and objects. [] (2) (A) The inventories and investigations that are required to be conducted under paragraph (1) shall be completed by no later than March 31, 1992. [] (B) The identification of human remains and objects conducted under paragraph (1) shall be based upon the best available scientific and historical documentation. [] (3) If the identification process conducted under paragraph (1) has established by a preponderance of the evidence the Indian

tribal origin of any particular human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, the Federal agency or museum shall, by no later than June 30, 1992, cause the affected Indian tribe or tribes to be notified of such identification. [] (4) If the identification process conducted under paragraph

(1) has established by a preponderance of the evidence the Native Hawaiian origin of any particular human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, the Federal agency or museum shall, by no later than June 30, 1992, cause notice of such identification to be made to 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). [] (b) (1) (A) If a preponderance of the evidence establishes

that human remains in the possession or control of a Federal agency (other than the Smithsonian Institution) are of a particular Indian, or are of an individual who was culturally affiliated with a particular Indian tribe, the Federal agency, upon request of the known descendants of such Indian, or such Indian tribe, as the case may be, shall expeditiously return such remains, and any funerary objects associated with such remains, to such descendants or Indian tribe. [] (B) If a preponderance of the evidence establishes that

human remains in the possession or control of a Federal agency (other than the Smithsonian Institution) are of a particular individual who is believed to be Native Hawaiian, the Federal agency, upon the request of the known descendants of such individual or the request of an appropriate Native Hawaiian organization described in subsection (a) (4), shall expeditiously return such remains, and any funerary objects associated with such remains, to such descendants or organization. [] (2) (A) If a preponderance of the evidence establishes

that funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, in the possession or control of a Federal agency (including the Smithsonian Institution), not associated with any human remains, were removed from a specific burial site of an individual,

or other site, culturally affiliated with a particular Indian tribe, the Federal agency, upon the request of such Indian tribe, shall expeditiously return such objects to such Indian tribe. [] (B) If a preponderance of the evidence establishes that

funerary objects in the possession or control of a Federal agency (other than the Smithsonian Institution), not associated with any human remains, were removed from a specific burial site of an individual believed to be a Native Hawaiian, the Federal agency, upon the request of the descendants of such individual or the request of an appropriate Native Hawaiian organization

described in subsection (a) (4), shall expeditiously return such objects to such descendants or organization. [] (c) (1) If a Native American, an Indian tribe, or a Native

Hawaiian organization described in subsection (a) (4), requests that a museum return any human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, that are in the possession of, or under the control of, the museum, the burden shall be upon the museum that has possession or control of the remains or objects to prove by a preponderance of the evidence that the museum has legal title to the remains or objects. [] (2) If a museum does not satisfy the burden of proof

described in paragraph (1) with respect to any remains or objects, the burden

shall then be upon the Native American, Indian tribe, or Native Hawaiian organization described in subsection (a)(4), that requested the return of the remains or objects to prove by a preponderance of the evidence that--

[] (A) the remains or funerary objects are of an individual who is an ancestor of the Native American or was culturally affiliated with the Indian tribe or Native Hawaiian organization, or [] (B) the Native American, Indian tribe, or Native Hawaiian organization once owned or possessed the funerary object, the Native American sacred objects, or the items of Native American group or cultural patrimony. [] (3) If-- [] (A) the museum having possession or control over any human

remains of a Native American, Native American sacred objects, funerary objects, or items of Native American group or cultural patrimony does not satisfy the burden of proof described in paragraph (1), and [] (B) the Native American, Indian tribe, or Native Hawaiian organization described in subsection (a)(4), that requested the return of the remains or objects satisfies the burden of proof described in paragraph (2) with respect to the remains or objects, [] the museum shall expeditiously return the remains or objects to

the Native American, Indian tribe, or Native Hawaiian organization. []

(d)(1) Within 120 days after the date of enactment of this Act, the Secretary of the Interior shall establish a committee to monitor and review the implementation of the inventory and identification process required under subsection (a) and the restoration activities required under subsection (b). [] (2) The committee established under paragraph (1) shall be composed of 7 members, 4 of whom shall be appointed from nominations submitted by Indian tribes, Indian organizations, and Native Hawaiian organizations described in subsection (a)(4). None of the persons appointed to the committee shall be Federal employees or officials. [] (3) The committee established under paragraph (1) shall be responsible for-- [] (A) monitoring the inventory and identification process

conducted under subsection (a) to ensure a fair, objective consideration and assessment of all available relevant information and evidence, [] (B) reviewing, upon its own motion or upon the request of any affected party, any finding relating to-- [] (i) the identity or origin of human remains, funerary

objects, Native American sacred objects, or items of Native American group or cultural patrimony, or [] (ii) the return of such remains or objects,

[] (C) arbitrating disputes between Indian tribes relating to the return of such remains or objects, [] (D) consulting with Native Hawaiian organizations described

in subsection (a)(4) on matters within the scope of the work of the committee

affecting Native Hawaiians; and [] (E) performing such other related functions as the Secretary

may assign to the committee. [] (4) The Secretary shall ensure that the committee established

under paragraph (1), and the members of the committee, have full and free access to human remains and funerary objects, Native American sacred objects,

or items of Native American group or cultural patrimony under review and to associated scientific and historical documents. [] (5) Members of the committee established under paragraph

(1) shall be reimbursed at a rate equal to the daily rate for GS-18 of the

General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) for which the member is actually engaged in committee business and for travel, subsistence, and other necessary expenses. [] (6) The Secretary shall-- [] (A) designate one of the members of the committee established under paragraph (1) as chairman, [] (B) establish such rules and regulations for the committee as may be necessary, and [] (C) provide reasonable administrative and staff support necessary for the deliberations of the committee. [] (7) The committee established under paragraph (1) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year. [] (8) The committee established under paragraph (1) shall terminate at the end of the 120-day period beginning on the day on which the Secretary of the Interior certifies, in a report submitted to the Congress, that the work of the committee has been completed. [] (e) Nothing in this section shall be interpreted as--

- [] (1) limiting the authority of any Federal agency or museum to return or repatriate human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony to Indian tribes or individuals or to Native Hawaiian individuals or organizations,
- [] (2) delaying actions on repatriation requests that are pending on the date of enactment of this Act, [] (3) denying or otherwise affecting access to the courts,
- [] (4) limiting any procedural or substantive rights which may otherwise be secured to Indian tribes or individuals or to Native Hawaiian individuals or organizations, or [] (5) taking, transferring, or affecting the legal title, or legal rights, of any museum to any human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony.

[] (f) (1) The Secretary of the Interior is authorized to make grants to Indian tribes for the purpose of assisting such Indian tribes in reaching and implementing agreements with Federal agencies, and non-Federal entities, for the repatriation of human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony. [] (2) The Secretary of the Interior is authorized to make grants to Native Hawaiian organizations described in subsection (a) (4) for the purpose of assisting such organizations in reaching and implementing agreements with Federal agencies, and non-Federal entities, for the repatriation of human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony. [] (3) The Secretary of the Interior is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and investigations required under subsection (a). [] (g) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section. [] EXCAVATIONS [] SEC. 4. (a) If a Native American group, or any member of a Native American group, asserts an interest in any human remains, Native American sacred objects, or funerary objects, which have been excavated pursuant to a permit issued by any Federal agency, the head of the Federal agency that issued the permit shall repatriate such human remains and objects to such Native American group or the member, upon request, notwithstanding any other provision of law or any permit issued under any other provision

of law. [] (b) (1) Notwithstanding any other provision of law, human remains of a Native American, Native American sacred objects, and funerary objects shall not be considered archaeological resources for purposes of any provision of law other than a provision that imposes a civil or criminal penalty for the unauthorized excavation, removal, damage, or destruction of archaeological resources. [] (2) Notwithstanding any other provision of law, the human remains of a Native American, Native American sacred objects, and funerary objects shall not be disturbed without the express consent of the governing body or representatives of the Native American group that is culturally affiliated with such human remains or sacred objects. [] (3) (A) The Secretary of the Interior shall prescribe regulations that provide for the repatriation to the appropriate Native American group of any human remains of a Native American, Native American sacred objects, or funerary objects which may have been excavated under the authority of any Federal law or under any permit issued by a Federal agency; but only after consultation with Native American governmental and religious leaders. [] (B) The absence of regulations described in subparagraph (A) shall not preclude the repatriation of human remains, sacred objects, and funerary objects to the appropriate Native American groups on a case-by-case basis. []