

107TH CONGRESS
2^D SESSION

S. 3149

To provide authority for the Smithsonian Institution to use voluntary separation incentives for personnel flexibility, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2002

Mr. FRIST (for himself, Mr. LEAHY, and Mr. COCHRAN) introduced the following bill; which was read twice, considered, read the third time, and passed

A BILL

To provide authority for the Smithsonian Institution to use voluntary separation incentives for personnel flexibility, 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.**

4 This Act may be cited as the “Smithsonian Institu-
5 tion Personnel Flexibility Act of 2002”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) EMPLOYEE.—

1 (A) IN GENERAL.—The term “employee”
2 means an employee of the Smithsonian Institu-
3 tion in the civil service who—

4 (i) is serving under an appointment
5 without time limitation; and

6 (ii) has been employed for a contin-
7 uous period of at least 3 years in the civil
8 service at the Smithsonian Institution.

9 (B) EXCLUSION.—The term “employee”
10 does not include—

11 (i) a reemployed annuitant under sub-
12 chapter III of chapter 83 or chapter 84 of
13 title 5, United States Code or any other re-
14 tirement system for employees of the Fed-
15 eral Government;

16 (ii) an employee having a disability on
17 the basis of which the employee is, or
18 would be, eligible for disability retirement
19 under subchapter III of chapter 83 or
20 chapter 84 of title 5, United States Code,
21 or any other retirement system for employ-
22 ees of the Federal Government;

23 (iii) an employee who is in receipt of
24 a decision notice of involuntary separation

1 for misconduct or unacceptable perform-
2 ance;

3 (iv) an employee who has previously
4 received any voluntary separation incentive
5 payment from the Federal Government
6 under this Act or any other authority;

7 (v) an employee covered by statutory
8 reemployment rights who is on transfer
9 employment with another organization; or

10 (vi) any employee who—

11 (I) during the 24-month period
12 preceding the employee's date of sepa-
13 ration, received and did not repay a
14 recruitment or relocation bonus under
15 section 5753 of title 5, United States
16 Code;

17 (II) within the 12-month period
18 preceding the employee's date of sepa-
19 ration, received and did not repay a
20 retention allowance under section
21 5754 of title 5, United States Code;
22 or

23 (III) within the 36-month period
24 preceding the employee's date of sepa-
25 ration, received and did not repay

1 funds provided for student loan repay-
 2 ment under section 5379 of title 5,
 3 United States Code;

4 unless the paying agency has waived its
 5 right of recovery of those funds.

6 (2) SECRETARY.—The term “Secretary” means
 7 the Secretary of the Smithsonian Institution.

8 **SEC. 3. AUTHORITY TO PROVIDE VOLUNTARY SEPARATION**
 9 **INCENTIVE PAYMENTS.**

10 (a) IN GENERAL.—The Secretary may pay, or au-
 11 thorize the payment of, voluntary separation incentive
 12 payments to employees of the Smithsonian Institution only
 13 in accordance with the plan required under section 4.

14 (b) VOLUNTARY SEPARATION INCENTIVE PAY-
 15 MENTS.—A voluntary separation incentive payment—

16 (1) shall be offered to employees on the basis
 17 of—

18 (A) organizational unit;

19 (B) occupational series or level;

20 (C) geographic location;

21 (D) specific periods during which eligible
 22 employees may elect a voluntary separation in-
 23 centive payment;

24 (E) skills, knowledge, or other job-related
 25 factors; or

1 (F) a combination of any of the factors
2 specified in subparagraphs (A) through (E);

3 (2) shall be paid in a lump sum after the em-
4 ployee's separation;

5 (3) shall be in an amount equal to the lesser
6 of—

7 (A) the amount the employee would be en-
8 titled to receive under section 5595(e) of title 5,
9 United States Code, if the employee were enti-
10 tled to payment under that section (without ad-
11 justment for any previous payment made); or

12 (B) an amount determined by the Sec-
13 retary, not to exceed \$25,000;

14 (4) may be made only in the case of an em-
15 ployee who voluntarily separates (whether by retire-
16 ment or resignation) under this Act;

17 (5) shall not be a basis for payment, and shall
18 not be included in the computation, of any other
19 type of Federal Government benefit;

20 (6) shall not be taken into account in deter-
21 mining the amount of any severance pay to which
22 the employee may be entitled under section 5595 of
23 title 5, United States Code, based on any other sepa-
24 ration; and

1 (7) shall be paid from appropriations or funds
2 available for the payment of the basic pay of the em-
3 ployee.

4 (c) LIMITATION.—No amount shall be payable under
5 this Act based on any separation occurring more than 3
6 years after the date of enactment of this Act.

7 **SEC. 4. INSTITUTION PLAN; CONSULTATION.**

8 (a) IN GENERAL.—Before obligating any resources
9 for voluntary separation incentive payments under section
10 3, the Secretary shall develop a plan outlining—

11 (1) the intended use of such incentive pay-
12 ments; and

13 (2) a proposed organizational chart for the
14 Smithsonian Institution once such incentive pay-
15 ments have been completed.

16 (b) PLAN.—The Smithsonian Institution’s plan
17 under subsection (a) shall include—

18 (1) the specific positions and functions of the
19 Smithsonian Institution to be reallocated;

20 (2) a description of which categories of employ-
21 ees will be offered voluntary separation incentive
22 payments;

23 (3) the time period during which voluntary sep-
24 aration incentive payments may be paid;

1 of employment, the entire amount of the voluntary separa-
2 tion incentive payment.

3 (c) WAIVER OF REPAYMENT REQUIREMENT.—

4 (1) EXECUTIVE BRANCH.—If the employment
5 under this section is with an Executive agency (as
6 defined in section 105 of title 5, United States
7 Code) other than the United States Postal Service
8 or the Postal Rate Commission, the Director of the
9 Office of Personnel Management may, at the request
10 of the head of the agency, waive the repayment if—

11 (A) the individual involved possesses
12 unique abilities; or

13 (B) in the case of an emergency involving
14 a direct threat to life or property, the individual
15 involved—

16 (i) has skills directly related to resolv-
17 ing the emergency; and

18 (ii) will serve on a temporary basis
19 only so long as that individual's services
20 are made necessary by the emergency.

21 (2) JUDICIAL BRANCH.—If the employment
22 under this section is with the judicial branch, the
23 Director of the Administrative Office of the United
24 States Courts may waive the repayment if the indi-
25 vidual involved—

1 (A) possesses unique abilities; and
2 (B) is the only qualified applicant available
3 for the position.

4 **SEC. 6. ADDITIONAL SPACE AND RESOURCES FOR NA-**
5 **TIONAL COLLECTIONS HELD BY THE SMITH-**
6 **SONIAN INSTITUTION.**

7 (a) IN GENERAL.—Public Law 94–98 (20 U.S.C. 50
8 note; 89 Stat. 480) is amended by adding at the end the
9 following:

10 **“SEC. 4. ADDITIONAL SPACE AND RESOURCES FOR NA-**
11 **TIONAL COLLECTIONS HELD BY THE SMITH-**
12 **SONIAN INSTITUTION.**

13 “(a) IN GENERAL.—The Board of Regents of the
14 Smithsonian Institution may plan, design, construct, and
15 equip additional storage and laboratory space at the mu-
16 seum support facility of the Smithsonian Institution in
17 Suitland, Maryland, to accommodate the care, preserva-
18 tion, conservation, deposit, and study of national collec-
19 tions held in trust by the Institution.

20 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to carry out this sec-
22 tion—

23 “(1) \$2,000,000 for fiscal year 2003; and

24 “(2) such sums as are necessary for each of fis-
25 cal years 2004 through 2008.”.

1 (b) CONFORMING AMENDMENT.—Section 3 of Public
2 Law 94–98 (20 U.S.C. 50 note; 89 Stat. 480) is amended
3 in the first sentence by striking “the purposes of this
4 Act.” and inserting “this Act (other than section 4).”.

5 (c) MUSEUM SUPPORT CENTER.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, the Smithsonian Institution may
8 enter into a single procurement contract for the con-
9 struction of additional facilities at the Museum Sup-
10 port Center of the Institution.

11 (2) REQUIREMENT.—The contract entered into
12 under paragraph (1) and the solicitation for the con-
13 tract shall include the clause specified in section
14 52.232–18 of title 48, Code of Federal Regulations.

15 **SEC. 7. PATENT OFFICE BUILDING IMPROVEMENTS.**

16 (a) AUTHORIZATION.—Pursuant to sections 5579,
17 5583, 5586, and 5588 of the Revised Statutes (20 U.S.C.
18 41, 46, 50, and 52) and Public Law 85–357 (72 Stat.
19 68), the Board of Regents of the Smithsonian Institution
20 may plan, design, and construct improvements, which may
21 include a roof covering for the courtyard, to the Patent
22 Office Building transferred to the Smithsonian Institution
23 by Public Law 85–357 (72 Stat. 68) in order to provide
24 increased public space, enhanced visitors’ services, and im-
25 proved public access.

1 (b) DESIGN AND SPECIFICATIONS.—The design and
2 specifications for any exterior alterations authorized by
3 subsection (a) shall be—

4 (1) submitted by the Secretary to the Commis-
5 sion of Fine Arts for comments and recommenda-
6 tions; and

7 (2) subject to the review and approval of the
8 National Capital Planning Commission in accord-
9 ance with section 8722 of title 40, United States
10 Code, and D.C. Code 6–641.15.

11 (c) AUTHORITY OF HISTORIC PRESERVATION AGEN-
12 CIES.—

13 (1) IN GENERAL.—The Secretary shall—

14 (A) take into account the effect of the im-
15 provements authorized by subsection (a) on the
16 historic character of the Patent Office Building;
17 and

18 (B) provide the Advisory Council on His-
19 toric Preservation a reasonable opportunity to
20 comment with regard to such improvements.

21 (2) STATUS OF SMITHSONIAN.—In carrying out
22 this subsection, and for other projects in the District
23 of Columbia subject to the review and approval of
24 the National Capital Planning Commission in ac-
25 cordance with D.C. Code 6–641.15, the Smithsonian

1 Institution shall be deemed to be an agency for pur-
2 poses of compliance with regulations promulgated by
3 the Advisory Council on Historic Preservation pur-
4 suant to section 106 of the National Historic Preser-
5 vation Act (16 U.S.C. 470f).

6 (d) RENOVATION OF PATENT OFFICE BUILDING.—

7 (1) IN GENERAL.—Notwithstanding any other
8 provision of law, the Smithsonian Institution may
9 enter into a single procurement contract for the re-
10 pair and renovation of the Patent Office Building.

11 (2) REQUIREMENT.—The contract entered into
12 under paragraph (1) and the solicitation for the con-
13 tract shall include the clause specified in section
14 52.232–18 of title 48, Code of Federal Regulations.

15 **SEC. 8. SENSE OF CONGRESS.**

16 (a) FINDINGS.—Congress finds the following:

17 (1) On December 4, 1987, Congress approved
18 House Concurrent Resolution 57, designating jazz
19 as “a rare and valuable national American treas-
20 ure”.

21 (2) Jazz has inspired some of the Nation’s lead-
22 ing creative artists and ranks as 1 of the greatest
23 cultural exports of the United States.

24 (3) Jazz is an original American art form which
25 has inspired dancers, choreographers, poets, novel-

1 ists, filmmakers, classical composers, and musicians
2 in many other kinds of music.

3 (4) Jazz has become an international language
4 that bridges cultural differences and brings people of
5 all races, ages, and backgrounds together.

6 (5) The jazz heritage of the United States
7 should be appreciated as broadly as possible and
8 should be part of the educational curriculum for
9 children in the United States.

10 (6) The Smithsonian Institution's National Mu-
11 seum of American History has established April as
12 Jazz Appreciation Month to pay tribute to jazz as
13 both a historic and living American art form.

14 (7) The Smithsonian Institution's National Mu-
15 seum of American History has received great con-
16 tributions toward this effort from other govern-
17 mental agencies and cultural organizations.

18 (b) SENSE OF CONGRESS.—It is the sense of Con-
19 gress that—

20 (1) the Smithsonian Institution has played a
21 vital role in the preservation of American culture, in-
22 cluding art and music;

23 (2) the Smithsonian Institution's National Mu-
24 seum of American History should be commended for
25 establishing a Jazz Appreciation Month; and

1 (3) musicians, schools, colleges, libraries, con-
2 cert halls, museums, radio and television stations,
3 and other organizations should develop programs to
4 explore, perpetuate, and honor jazz as a national
5 and world treasure.

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