

107TH CONGRESS
2D SESSION

S. 3149

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2002

Referred to the Committee on House Administration, and in addition to the Committees on Government Reform, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration for such provisions as fall within the jurisdiction of the committee concerned

AN ACT

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”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) EMPLOYEE.—

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

7 (i) is serving under an appointment
8 without time limitation; and

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

12 (B) EXCLUSION.—The term “employee”
13 does not include—

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

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

1 (iii) an employee who is in receipt of
2 a decision notice of involuntary separation
3 for misconduct or unacceptable perform-
4 ance;

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

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

12 (vi) any employee who—

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

19 (II) within the 12-month period
20 preceding the employee's date of sepa-
21 ration, received and did not repay a
22 retention allowance under section
23 5754 of title 5, United States Code;
24 or

1 (III) within the 36-month period
 2 preceding the employee's date of sepa-
 3 ration, received and did not repay
 4 funds provided for student loan repay-
 5 ment under section 5379 of title 5,
 6 United States Code;
 7 unless the paying agency has waived its
 8 right of recovery of those funds.

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

11 **SEC. 3. AUTHORITY TO PROVIDE VOLUNTARY SEPARATION**
 12 **INCENTIVE PAYMENTS.**

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

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

19 (1) shall be offered to employees on the basis
 20 of—

- 21 (A) organizational unit;
- 22 (B) occupational series or level;
- 23 (C) geographic location;

1 (D) specific periods during which eligible
2 employees may elect a voluntary separation in-
3 centive payment;

4 (E) skills, knowledge, or other job-related
5 factors; or

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

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

10 (3) shall be in an amount equal to the lesser
11 of—

12 (A) the amount the employee would be en-
13 titled to receive under section 5595(c) of title 5,
14 United States Code, if the employee were enti-
15 tled to payment under that section (without ad-
16 justment for any previous payment made); or

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

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

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

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

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

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

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

13 (a) IN GENERAL.—Before obligating any resources
 14 for voluntary separation incentive payments under section
 15 3, the Secretary shall develop a plan outlining—

16 (1) the intended use of such incentive pay-
 17 ments; and

18 (2) a proposed organizational chart for the
 19 Smithsonian Institution once such incentive pay-
 20 ments have been completed.

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

23 (1) the specific positions and functions of the
 24 Smithsonian Institution to be reallocated;

1 (2) a description of which categories of employ-
 2 ees will be offered voluntary separation incentive
 3 payments;

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

6 (4) the number and amounts of voluntary sepa-
 7 ration incentive payments to be offered; and

8 (5) a description of how the Smithsonian Insti-
 9 tution will operate with the reallocation of positions
 10 to other functions.

11 (c) CONSULTATION.—The Secretary shall consult
 12 with the Office of Management and Budget regarding the
 13 Smithsonian Institution’s plan prior to implementation.

14 **SEC. 5. EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE**
 15 **FEDERAL GOVERNMENT.**

16 (a) DEFINITION OF EMPLOYMENT.—In this section
 17 the term “employment”—

18 (1) in subsection (b), includes employment
 19 under a personal services contract with the Federal
 20 Government (other than the legislative branch); and

21 (2) in subsection (c), does not include employ-
 22 ment under a contract described in paragraph (1).

23 (b) REPAYMENT REQUIREMENT.—Except as pro-
 24 vided in subsection (c), an individual who has received a
 25 voluntary separation incentive payment under section 3

1 and accepts any employment for compensation with the
 2 Federal Government (other than the legislative branch)
 3 within 5 years after the date of the separation on which
 4 the payment is based shall be required to pay to the
 5 Smithsonian Institution, prior to the individual's first day
 6 of employment, the entire amount of the voluntary separa-
 7 tion incentive payment.

8 (c) WAIVER OF REPAYMENT REQUIREMENT.—

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

16 (A) the individual involved possesses
 17 unique abilities; or

18 (B) in the case of an emergency involving
 19 a direct threat to life or property, the individual
 20 involved—

21 (i) has skills directly related to resolv-
 22 ing the emergency; and

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

1 (2) JUDICIAL BRANCH.—If the employment
 2 under this section is with the judicial branch, the
 3 Director of the Administrative Office of the United
 4 States Courts may waive the repayment if the indi-
 5 vidual involved—

6 (A) possesses unique abilities; and

7 (B) is the only qualified applicant available
 8 for the position.

9 **SEC. 6. ADDITIONAL SPACE AND RESOURCES FOR NA-**
 10 **TIONAL COLLECTIONS HELD BY THE SMITH-**
 11 **SONIAN INSTITUTION.**

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

15 **“SEC. 4. ADDITIONAL SPACE AND RESOURCES FOR NA-**
 16 **TIONAL COLLECTIONS HELD BY THE SMITH-**
 17 **SONIAN INSTITUTION.**

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

1 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to carry out this sec-
3 tion—

4 “(1) \$2,000,000 for fiscal year 2003; and

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

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

11 (c) MUSEUM SUPPORT CENTER.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the Smithsonian Institution may
14 enter into a single procurement contract for the con-
15 struction of additional facilities at the Museum Sup-
16 port Center of the Institution.

17 (2) REQUIREMENT.—The contract entered into
18 under paragraph (1) and the solicitation for the con-
19 tract shall include the clause specified in section
20 52.232–18 of title 48, Code of Federal Regulations.

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

22 (a) AUTHORIZATION.—Pursuant to sections 5579,
23 5583, 5586, and 5588 of the Revised Statutes (20 U.S.C.
24 41, 46, 50, and 52) and Public Law 85–357 (72 Stat.
25 68), the Board of Regents of the Smithsonian Institution

1 may plan, design, and construct improvements, which may
2 include a roof covering for the courtyard, to the Patent
3 Office Building transferred to the Smithsonian Institution
4 by Public Law 85–357 (72 Stat. 68) in order to provide
5 increased public space, enhanced visitors’ services, and im-
6 proved public access.

7 (b) DESIGN AND SPECIFICATIONS.—The design and
8 specifications for any exterior alterations authorized by
9 subsection (a) shall be—

10 (1) submitted by the Secretary to the Commis-
11 sion of Fine Arts for comments and recommenda-
12 tions; and

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

17 (c) AUTHORITY OF HISTORIC PRESERVATION AGEN-
18 CIES.—

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

20 (A) take into account the effect of the im-
21 provements authorized by subsection (a) on the
22 historic character of the Patent Office Building;
23 and

1 (B) provide the Advisory Council on His-
2 toric Preservation a reasonable opportunity to
3 comment with regard to such improvements.

4 (2) STATUS OF SMITHSONIAN.—In carrying out
5 this subsection, and for other projects in the District
6 of Columbia subject to the review and approval of
7 the National Capital Planning Commission in ac-
8 cordance with D.C. Code 6–641.15, the Smithsonian
9 Institution shall be deemed to be an agency for pur-
10 poses of compliance with regulations promulgated by
11 the Advisory Council on Historic Preservation pur-
12 suant to section 106 of the National Historic Preser-
13 vation Act (16 U.S.C. 470f).

14 (d) RENOVATION OF PATENT OFFICE BUILDING.—

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

19 (2) REQUIREMENT.—The contract entered into
20 under paragraph (1) and the solicitation for the con-
21 tract shall include the clause specified in section
22 52.232–18 of title 48, Code of Federal Regulations.

23 **SEC. 8. SENSE OF CONGRESS.**

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

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

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

8 (3) Jazz is an original American art form which
9 has inspired dancers, choreographers, poets, novel-
10 ists, filmmakers, classical composers, and musicians
11 in many other kinds of music.

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

15 (5) The jazz heritage of the United States
16 should be appreciated as broadly as possible and
17 should be part of the educational curriculum for
18 children in the United States.

19 (6) The Smithsonian Institution’s National Mu-
20 seum of American History has established April as
21 Jazz Appreciation Month to pay tribute to jazz as
22 both a historic and living American art form.

23 (7) The Smithsonian Institution’s National Mu-
24 seum of American History has received great con-

1 tributions toward this effort from other govern-
2 mental agencies and cultural organizations.

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

5 (1) the Smithsonian Institution has played a
6 vital role in the preservation of American culture, in-
7 cluding art and music;

8 (2) the Smithsonian Institution’s National Mu-
9 seum of American History should be commended for
10 establishing a Jazz Appreciation Month; and

11 (3) musicians, schools, colleges, libraries, con-
12 cert halls, museums, radio and television stations,
13 and other organizations should develop programs to
14 explore, perpetuate, and honor jazz as a national
15 and world treasure.

Passed the Senate October 17, 2002.

Attest:

JERI THOMSON,
Secretary.