

crash of TWA Flight 800; considered and agreed to.

By Mr. DASCHLE:

S. Res. 281. A resolution to authorize representation by Senate Legal Counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MCCAIN (for himself, Mr. INOUE, Mr. THOMAS, and Mr. CAMPBELL):

S. 1970. A bill to amend the National Museum of the American Indian Act to make improvements in the Act, and for other purposes; to the Committee on Indian Affairs.

THE NATIONAL MUSEUM OF THE AMERICAN INDIAN ACT AMENDMENTS OF 1996

• Mr. MCCAIN. Mr. President, I introduce legislation to amend the National Museum of the American Indian Act of 1989. I am very pleased to be joined by Senators INOUE, THOMAS and CAMPBELL as original cosponsors of this legislation. I am particularly pleased to be joined by my good friend from Hawaii, Senator INOUE, the Vice-Chairman of the Committee on Indian Affairs, who, with his tireless dedication, has championed this particular issue for many years. This legislation is intended to amend the National Museum of the American Indian Act to ensure that the requirements for the inventory, identification and repatriation of Native American human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony in the possession of the Smithsonian Institution are being carried out in a manner consistent with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), so that these culturally important items can be returned to their rightful keepers and protectors, the Indian tribes.

The possession of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony by various Federal agencies, museums, and private collectors has been a very contentious issue for Indian tribes, tribal organizations, and Native Hawaiian Organizations for many years. Native Americans, not unlike other Americans, feel that the bones of their ancestors and the objects buried with them are sacred and rightfully belong under the protection and control of their descendants. Similarly, Native Americans feel strongly that sacred objects and objects of cultural patrimony, which have been wrongfully acquired, should be returned to the appropriate Indian tribe or Native Hawaiian organization. On the other side of the debate are archeologists, anthropologists, and others from the scientific community who feel that there is an overriding principle of scientific inquiry to unearth and study the remains of the Indians of the past in order to understand past cultures and their histories. Over the years, this debate has ranged from scholarly discussion to impassioned arguments and fi-

nally to emotional demands by Indian people for understanding and respect for their right to have these culturally and spiritually important items to be properly returned.

It is important to note that the Smithsonian Institution was the first museum to take the lead in establishing a process for the repatriation of Native American human remains and funerary objects. Under the National Museum of the American Indian Act (20 U.S.C. 80q, et seq.), Congress established a process for the inventory, identification, and repatriation of Native American human remains and associated funerary objects. This groundbreaking legislation was a critical first step in facilitating thoughtful dialogue between Indian tribes and museums regarding the proper treatment of Native American human remains, funerary objects, sacred objects and objects of cultural patrimony. These discussions resulted in the passage of the Native American Graves Protection and Repatriation Act. Since the passage of the Act, the Smithsonian Institution has continued to work diligently to fulfill the mandates of the National Museum of the American Indian Act regarding the repatriation of Native American human remains and funerary objects. In fact, in certain areas the administrative policies of the National Museum of the American Indian and the National Museum of Natural History exceed the requirements of the National Museum of the American Indian. Since 1991 the Museum of Natural History has adopted the categories and repatriation provisions described in Native American Graves Protection and Repatriation Act as museum policy. Under that policy, the museum has inventoried a substantial part of its collection of Native American human remains and returned hundreds of human remains to Native American communities. The National Museum of the American Indian has developed a substantive repatriation policy that goes well beyond the requirements of the Native American Graves Protection and Repatriation Act in order to facilitate the identification and repatriation of any Native American human remains and objects in its collections. Under its 1991 repatriation policy, the National Museum of the American Indian has prepared and distributed both the summary of ethnographic materials and the inventory of human remains and funerary objects within its entire collection to all of the 557 federally recognized Indian tribes. The Museum's summary goes beyond the requirements of Native American Graves Protection and Repatriation Act by not only including sacred objects and objects of cultural patrimony but also includes religious and ceremonial objects, and objects that are owned in common.

Under the repatriation provisions of the National Museum of the American Indian Act, the Smithsonian Institution is required only to inventory and

repatriate Native American human remains and associated funerary objects. Although the Native American Graves Protection and Repatriation Act does not cover the Smithsonian Institution, the Smithsonian has endeavored to meet or exceed each of the requirements of the Act. Despite the absence of a statutory obligation to identify and repatriate Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony, the Smithsonian Institution has committed to complete its identification and summary of Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony by December 31, 1996. Similarly, the Smithsonian has committed to completing its inventory of Native American human remains and associated funerary objects before June 1, 1998.

Mr. President, the bill I am introducing today would provide the statutory authority to the Smithsonian Institution to complete its inventory, identification, and repatriation process for the respectful return of the tribal ancestors and items of cultural importance to Native Americans. This legislation is consistent with the administrative policies of the Smithsonian as it relates to repatriation and it is consistent with the requirements of the Native American Graves Protection and Repatriation Act. I would like to commend the tremendous progress made by the Smithsonian Institution in implementing a policy that respects Indian tribes and their deeply-held beliefs by providing for the return of the remains of their ancestors and relatives and the culturally significant objects in its possession. I would like to add that representatives of the Smithsonian have worked closely with the Committee in the preparation of this legislation and have continued to demonstrate their serious commitment to returning these sacred remains and objects to their rightful owners, the Indian tribes.

Mr. President, I ask unanimous consent that the full text of the bill and the accompanying section by section analysis appear in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1970

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "National Museum of the American Indian Act Amendments of 1996".

(b) REFERENCES.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the National Museum of the American Indian Act (20 U.S.C. 80q et seq.).

SEC. 2. BOARD OF TRUSTEES.

Section 5(f)(1)(B) (20 U.S.C. 80q-3(f)(1)(B)) is amended by striking "an Assistant Secretary" and inserting "a senior official".

SEC. 3. INVENTORY.

Section 11(a) (20 U.S.C. 80q-9) is amended—
 (1) by striking “(1)” and inserting “(A)”;
 (2) by striking “(2)” and inserting “(B)”;
 (3) by inserting “(1)” before “The Secretary”; and

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

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

“(3) For purposes of this subsection, the term ‘inventory’ means a simple, itemized list that, to the extent practicable, identifies, based upon available information held by the Smithsonian Institution, the geographic and cultural affiliation of the remains and objects referred to in paragraph (1).”.

SEC. 4. SUMMARY AND REPATRIATION OF UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.

The National Museum of the American Indian Act is amended by inserting after section 11 the following new section:

“SEC. 11A. SUMMARY AND REPATRIATION OF UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.

“(a) SUMMARY.—Not later than December 31, 1996, the Secretary of the Smithsonian Institution shall provide a written summary that contains a summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony (as those terms are defined in subparagraphs (B), (C), and (D), respectively, of section 2(3) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(3)), based upon available information held by the Smithsonian Institution. The summary required under this section shall include, at a minimum, the information required under section 6 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3004).

“(b) REPATRIATION.—Where cultural affiliation of Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony has been established in the summary prepared pursuant to subsection (a), or where a requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion, then the Smithsonian Institution shall expeditiously return such unassociated funerary object, sacred object, or object of cultural patrimony where—

“(1) the requesting party is the direct lineal descendant of an individual who owned the unassociated funerary object or sacred object;

“(2) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the Indian tribe or Native Hawaiian organization; or

“(3) the requesting Indian tribe or Native Hawaiian organization can show that the unassociated funerary object or sacred object was owned or controlled by a member thereof, provided that in the case where an unassociated funerary object or sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object.

“(c) STANDARD OF REPATRIATION.—If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to this Act and

presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Smithsonian Institution did not have the right of possession, then the Smithsonian Institution shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

“(d) MUSEUM OBLIGATION.—Any museum of the Smithsonian Institution which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of fiduciary duty, public trust, or violations of applicable law that are inconsistent with the provisions of this Act.

“(e) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to prevent the Secretary of the Smithsonian Institution, with respect to any museum of the Smithsonian Institution, from making an inventory or preparing a written summary or carrying out the repatriation of Native American human remains, associated and unassociated funerary objects, sacred objects, or objects of cultural patrimony in a manner that exceeds the requirements of this section.

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

SEC. 5. SPECIAL COMMITTEE.

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

(1) in the first sentence of subsection (a), by inserting “and unassociated funerary objects, sacred objects, and objects of cultural patrimony under section 11A” before the period; and

(2) in subsection (b)—

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

(B) in paragraph (1)—

(i) by striking “three” and inserting “4”;

and

(ii) by striking “and” at the end;

(C) by redesignating paragraph (2) as paragraph (3); and

(D) by inserting after paragraph (1) the following:

“(2) at least 2 members shall be traditional Indian religious leaders; and”.

SECTION-BY-SECTION ANALYSIS OF THE NATIONAL MUSEUM OF THE AMERICAN INDIAN ACT AMENDMENTS OF 1996**SECTION ONE. SHORT TITLE**

This section cites the short title of the Act as “the National Museum of the American Indian Act Amendments of 1996”. It also provides that any reference to amendment or repeal in this Act shall be considered to be references to the provisions of the National Museum of the American Indian Act. (20 U.S.C. 80q et seq.)

SECTION TWO. BOARD OF TRUSTEES

This section amends section 5 of the National Museum of the American Indian Act by changing the reference to “an Assistant Secretary” of the Smithsonian Institution to “a senior official” of the Smithsonian.

SECTION THREE. INVENTORY

This section amends section 11 of the National Museum of the American Indian Act to require the inventory to be conducted by the Secretary of the Smithsonian be completed not later than June 1, 1998. It also defines the term “inventory” as it is used in the Act.

SECTION FOUR. SUMMARY AND REPATRIATION OF UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY

This section amends the National Museum of the American Indian Act by establishing a

new section 11a. Section 11a requires the Secretary of the Smithsonian to develop a written summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony held by the Smithsonian, based upon available information and consistent with the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3004). The summary must be completed by December 31, 1996.

Subsection (b) requires the Smithsonian to expeditiously return any Native American unassociated funerary object, sacred object, or object of cultural patrimony where the cultural affiliation has been established in the summary prepared by the Smithsonian, or where a requesting Indian tribe or Native Hawaiian Organization can show its cultural affiliation with the items by a preponderance of the evidence, and the requesting Indian tribe or Native Hawaiian Organization can establish that the object was owned or controlled by the Indian tribe or Native Hawaiian Organization, or by a member of the tribe or organization. The Smithsonian shall expeditiously return any object to any direct lineal descendant of the owner of the object.

Subsection (c) sets out the standard of repatriation under the Act. It provides that if a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony and can make a prima facie showing that the Smithsonian Institution did not have the right of possession of such object, then the Smithsonian must return such object unless it can prove that it has the right of possession of such objects.

Subsection (d) provides that any museum of the Smithsonian Institution, which repatriates an item in good faith shall not be liable for any claims of fiduciary duty, public trust, or violations of State law that are inconsistent with the provisions of this Act.

Subsection (e) provides that nothing in this Act shall be construed to prevent the Secretary of the Smithsonian from making an inventory or preparing a written summary or carrying out the repatriation of objects under this Act in a manner that exceeds the requirements of this section.

Subsection (f) defines the term “Native Hawaiian Organization” as the term is used in this Act.

SECTION FIVE. SPECIAL COMMITTEE

This section amends section 12 of the National Museum of the American Indian Act by increasing the membership of the Special Committee to seven and it shall include two members who are traditional Indian religious leaders.

● Mr. INOUE. Mr. President, I am pleased to join my Chairman, Senator JOHN MCCAIN, in the introduction of a bill to amend the National Museum of the American Indian Act.

The amendments that this bill proposes would fulfill a commitment I made to other museums and scientific institutions at the time the Congress was considering the Native American Graves Protection and Repatriation Act.

At that time, Mr. President, the National Museum of the American Indian was newly authorized and was engaged in establishing the necessary administrative structures and policies that would define its character as an institution.

Amongst the issues to be addressed by the new museum was the development of a repatriation policy, and the

need to reconcile that policy with the policies of other museums in the Smithsonian Institution.

Accordingly, while a general framework addressing repatriation was included in the National Museum of the American Indian Act that we adopted in 1989, the opportunity for the Smithsonian Institution to develop an institution-wide repatriation policy and the processes associated with the implementation of such a policy was requested, and we provided the time necessary to enable the development of that comprehensive policy.

The other museums and scientific institutions that were to be covered under the Native American Graves Protection and Repatriation Act objected in the strongest possible terms to the exclusion of the Smithsonian Institution from the act, but ultimately agreed not to oppose passage of the act based in part upon my personal commitment that the Congress would subsequently enact legislation to assure that the Smithsonian Institution would be subject to Federal repatriation law.

The bill we introduce today is designed, as I have indicated, to fulfill that commitment and to assure that the policy objectives of the Native American Graves Protection and Repatriation Act are extended to the Smithsonian Institution.

As I complete my service as a member of the Board of Trustees of the National Museum of the American Indian this year, I am pleased that my Chairman has seized the initiative to act upon the discussions in which we have been engaged with the Smithsonian Institution and thereby given his support for carrying out my promise.

I am hopeful that our colleagues in the Senate and the House will agree to act upon this legislation before the end of the 104th session of the Congress, and I thank my Chairman for his leadership.●

By Mr. MCCAIN (for himself, Mr. INOUE and Mr. STEVENS):

S. 1972. A bill to amend the Older Americans Act of 1965 to improve the provisions relating to Indians, and for other purposes; to the Committee on Indian Affairs.

THE OLDER AMERICANS INDIAN TECHNICAL AMENDMENTS ACT

Mr. MCCAIN. Mr. President, I rise today on behalf of myself and Senators INOUE and STEVENS to introduce legislation to make various technical amendments to the Older Americans Act. This bill provides greater flexibility to the Administration on Aging to assist Indian tribes in providing critically needed nutrition services to older native Americans.

In most native communities, older native Americans are held in the highest esteem because they serve a vital role in the community as the keepers of culture, language, and tradition. native American elder populations are growing rapidly throughout Indian

country, representing almost 9 percent of the total native American population. However, older Native Americans also experience levels of poverty at rates significantly higher than the national level, ranging from 29 percent for Indian elders aged 60 and older to 38 percent for rural Indian elders aged 65 and over. Older native Americans still live under some of the most remote and harsh conditions existing in Indian country.

In addition to high levels of poverty, native American elders experience comparatively higher levels of immobility and disability with severely limited self-care options. Native American elders often live alone in remote areas with no access to transportation or telephone services. In some cases, the nearest telephone or grocery store is hundreds of miles away. Many older Native Americans who live in rural areas have not graduated from high school or have no formal schooling. Employment opportunities for older native Americans are extremely limited due to the remoteness of Indian communities and the lack of formal education.

The community-based services provided to native American elders through the Older Americans Act are of great benefit to many Indian communities. Through the act, many older Native Americans can earn incomes by serving their tribal communities through the senior employment programs. The act also authorizes grants to Indian tribes and tribal organizations through title VI to administer important nutritional programs in remote areas such as those serving Alaska Native communities and rural areas on the Navajo Reservation in my home State of Arizona.

However, these programs can be strengthened to ensure that Indian tribes are able to tailor nutritional and supportive programs that are appropriate to the cultural and geographic characteristics of their communities. Often, employment and nutrition programs are difficult to administer in Indian country because of the remoteness of the service area for Indian populations and the unique character of Indian cultures. The legislation I am proposing will ensure that Indian tribes and tribal organizations serving Native American elders will be afforded maximum flexibility in administering employment and nutrition programs to provide critically needed services at the reservation level.

The bill modifies the definition of "reservation" to clarify that Indian tribes in Oklahoma and California, as well as Alaska Native communities, will maintain their eligibility to administer programs under the act. Indian reservations and Alaska Native communities suffer from the highest unemployment rates in the United States and endure the lowest incomes of all Americans. The application of this requirement only serves to frustrate the efforts of older Native Ameri-

cans to work in their own communities.

The bill will also modify the requirement for certification by the Bureau of Indian Affairs [BIA] in Section 3057e(b) to provide more flexibility to the administration and to tribal applicants by allowing the BIA to certify population statistics for tribal grant applications through a written approval letter. This change is necessary to clarify that the current procedure of obtaining written approval from the BIA is sufficient for tribal applicants to receive a grant award.

Finally, the act will simplify certain requirements that impose unreasonable and overly burdensome application and reporting requirements for tribal applicants. The bill authorizes the Assistant Secretary for Aging to take into consideration the special circumstances facing geographically isolated and small communities that do not have the infrastructure or resources to meet strict and onerous application and reporting requirements. Instead of providing much needed services for small and rural Indian communities, tribal grant recipients often find themselves preoccupied with complying with voluminous paperwork requirements.

Mr. President, the Older Americans Act provides critically needed human and social services to older Native Americans on a daily basis. The bill we are introducing today will simply ensure that older Native Americans will continue to receive the assistance they need to stay in their own homes and communities, and continue to fulfill their vital role as the keepers of culture, language and tradition.

I ask unanimous consent that the full text of this bill and the section-by-section summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1972

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Older Americans Indian Technical Amendments Act".

SEC. 2. INDIAN EMPLOYMENT; DEFINITION OF INDIAN RESERVATION.

Section 502(b)(1)(B) of such Act (42 U.S.C. 3056(b)(1)(B)) is amended to read as follows:

"(B)(i) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities; or

"(ii) if such project is carried out by a tribal organization that enters into an agreement under subsection (b) or receives assistance from a State that enters into such an agreement, will provide employment for such individuals who are Indians residing on an Indian reservation, as the term is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))."

SEC. 3. POPULATION STATISTICS DEVELOPMENT.

Section 614(b) of such Act (42 U.S.C. 3057e(b)) is amended by striking "certification" and inserting "approval".

SEC. 4. REPORTING REQUIREMENTS.

Section 614(c) of such Act (42 U.S.C. 3057e(c)) is amended—

(1) by inserting "(1)" after "(c)"; and
 (2) by adding at the end the following new paragraph:

"(2) The Assistant Secretary shall provide waivers and exemptions of the reporting requirements of subsection (a)(3) for applicants that serve Indian populations in geographically isolated areas, or applicants that serve small Indian populations, where the small scale of the project, the nature of the applicant, or other factors make the reporting requirements unreasonable under the circumstances. The Assistant Secretary shall consult with such applicants in establishing appropriate waivers and exemptions."

SEC. 5. EXPENDITURE OF FUNDS FOR NUTRITION SERVICES.

Section 614(c) of such Act (42 U.S.C. 3057e(c)), as amended by section 4, is further amended by adding at the end the following new paragraph:

"(3) In determining whether an application complies with the requirements of subsection (a)(8), the Assistant Secretary shall provide maximum flexibility to an applicant who seeks to take into account subsistence needs, local customs, and other characteristics that are appropriate to the unique cultural, regional, and geographic needs of the Indian populations to be served."

SEC. 6. COORDINATION OF SERVICES.

Section 614(c) of such Act (42 U.S.C. 3057e(c)), as amended by section 5, is further amended by adding at the end the following new paragraph:

"(4) In determining whether an application complies with the requirements of subsection (a)(12), the Assistant Secretary shall require only that an applicant provide an appropriate narrative description of the geographical area to be served and an assurance that procedures will be adopted to ensure against duplicate services being provided to the same recipients."

SECTION-BY-SECTION ANALYSIS OF THE OLDER AMERICANS INDIAN TECHNICAL AMENDMENTS ACT

SECTION 1. SHORT TITLE.

This section cites the short title of the bill, as the "Older Americans Indian Technical Amendments Act."

SEC. 2. INDIAN EMPLOYMENT; DEFINITION OF INDIAN RESERVATION.

This section amends Section 502(b)(1)(B) of the Act (42 U.S.C. 3056(b)(1)(B)) by modifying the definition of "reservation" in the current Act to conform with the definition found in Section 2601(2) of the Energy Policy Act of 1992.

SEC. 3. POPULATION STATISTICS DEVELOPMENT.

This section amends Section 614(b) of the Act (42 U.S.C. 3057e(b)) by striking the word "certification" and inserting the word "approval."

SEC. 4. REPORTING REQUIREMENTS.

This section amends Section 614(c) of the Act (42 U.S.C. 3057e(c)) by adding a new paragraph (2) which authorizes the Assistant Secretary on Aging to waive or exempt the reporting requirements of section (a)(3) for applicants that serve Indian populations in geographically isolated areas or applicants that serve small Indian populations, while still maintaining strict accountability standards.

SEC. 5. EXPENDITURE OF FUNDS FOR NUTRITION SERVICES.

This section amends Section 614(c) of the Act (42 U.S.C. 3057e(c)) by adding a new paragraph (3) which requires the

Assistant Secretary on Aging, in determining whether an application complies with the requirements of subsection (a)(8), to take into account the unique cultural and geographical considerations of the Indian populations to be served.

SEC. 6. COORDINATION OF SERVICES.

This section amends Section 614(c) of the Act (42 U.S.C. 3057e(c)) by adding a new paragraph (4) which requires the Assistant Secretary on Aging, in determining whether an application complies with the requirements of subsection (a)(12), to provide flexibility to tribal applicants by requiring only that they submit an appropriate narrative description of the geographical area and population to be served and an appropriate assurance against duplicate services being provided

By Mr. McCAIN:

S. 1973. A bill to provide for the settlement of the Navajo-Hopi land dispute, and for other purposes; to the Committee on Indian Affairs.

THE NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT OF 1996

Mr. McCAIN. Mr. President, I introduce legislation to ratify the settlement of four claims of the Hopi Tribe against the United States and to provide the necessary authority to the Hopi Tribe to issue 75-year lease agreements to Navajo families residing on the Hopi Partitioned Land. This legislation will ratify the settlement and accommodation agreements between the Department of Justice, the Hopi Tribe, the Navajo Nation, and the Navajo families residing on the Hopi Partitioned Lands.

This settlement marks an important first step in bringing this longstanding dispute between the Hopi Tribe, the Navajo Nation, and the United States to an orderly and peaceful conclusion. These agreements are the product of many years of negotiation under the auspices of the Ninth Circuit Court of Appeals mediation process. While I understand that there are factions in both the Hopi Tribe and the Navajo Nation who have voiced their opposition to this proposal, I believe that these agreements represent the only realistic way to settle the claims of the Hopi Tribe against the United States and to provide an accommodation for the hundreds of Navajos residing on Hopi Partitioned Lands.

I believe it is imperative that the Congress take steps to bring this longstanding dispute to a final resolution. It has been over 22 years since the Navajo-Hopi Settlement Act was passed to settle the disputes between the Navajo Nation and the Hopi Tribe. Since that time, the Federal Government has spent over \$350 million to fund the Navajo-Hopi Relocation Program. The funding for this settlement has exceeded the original cost estimates by more than 900 percent. And yet, there are over 130 appeals still pending, which raises a great deal of uncertainty regarding who is and is not eli-

gible for relocation benefits under the act. I am convinced that future Federal budgetary pressures will require that the Navajo-Hopi Relocation Housing Program be brought to an orderly and certain conclusion. In light of the current atmosphere in Congress, it is highly unlikely that the Federal Government will continue to provide benefits through the Office of Navajo and Hopi Indian Relocation much longer. In order to bring this process to an orderly conclusion, I will introduce separate legislation in the near future that will provide for an orderly phase out of the Navajo-Hopi Relocation Housing Program in 5 years. As an important first step, it is critical that the Congress pass legislation to settle the outstanding claims of the Hopi Tribe against the United States.

The legislation I am introducing today will provide a resolution to these outstanding claims while allowing those Navajo families who are inclined to remain on Hopi Partitioned Land the opportunity to do so for 75 years under an accommodation agreement with the Hopi Tribe. The settlement agreement provides that those eligible Navajo families wishing to receive relocation benefits will have a time certain in which to apply for and receive their benefits. The Agreement also recognizes the Hopi Tribe's right to exercise jurisdiction over the Hopi Partitioned Lands where Navajo families are residing.

The settlement agreement settles four claims by the Hopi Tribe against the United States. The first claim settled by the agreement is Hopi Tribe versus Navajo Tribe, et al., pending in the U.S. District Court in Phoenix, which is a claim for damages due to the failure of the Federal Government to make timely rental value determinations required under 25 U.S.C. 640d-15(a).

The second claim settled by this agreement is Secakuku versus Hale, et al., pending in the U.S. Court of Appeals for the Ninth Circuit, which is a claim for damages against the United States for post-partition damages to the Hopi partitioned lands caused by overgrazing before the lands were partitioned.

The third claim settled by this agreement is Hopi Tribe v. United States, pending in the United States Court of Federal Appeals, which is a claim for damages for the failure of the Federal Government to collect livestock trespass penalties, forage consumed fees, and property damages fees on behalf of the Hopi Tribe.

The last claim settled by the agreement is a claim against the United States for the failure of the Federal Government to give the Hopi Tribe quiet possession of the Hopi lands that are used and occupied by Navajo families.

In exchange for waiving these claims against the United States and for providing an accommodation agreement for the Navajo families residing on the

Hopi Partitioned Lands, the United States will pay the Hopi Tribe \$50.2 million under a structured settlement which is keyed to the performance of certain activities under the settlement agreement.

The settlement agreement provides that funds shall be paid out in the following manner: First, the Hopi Tribe will receive \$2.4 million once the tribe files a motion to dismiss its appeal in the Ninth Circuit in *Secakuku* versus Hale; second the Hopi Tribe will receive \$22.7 million once legislation extending the tribe's leasing authority to 75 years has been enacted and once the tribe's claims in the Court of Claims for damages due to any Federal action which occurred before 1982 are dismissed; third, the Hopi Tribe will receive \$10 million once 65 percent of the Navajo families residing on the Hopi reservation have signed the accommodation agreement or request to be relocated and once the Hopi Tribe's claims in the Court of Claims for livestock trespass damages against the United States from 1983 through 1988 are dismissed; fourth the Hopi Tribe will receive \$15.1 million once 75 percent of the Navajo families residing on the Hopi reservation have signed the accommodation agreements or request to be relocated and once the Hopi Tribe's claims in the Court of Federal Appeals for livestock trespass damages against the United States from 1989 through and including 1996 are dismissed.

This settlement has the support of the Navajo Nation, Hopi Tribe, the Departments of Justice and Interior, and the State of Arizona. The accommodation agreement for the Navajo families was negotiated and approved by representatives of the Navajo families residing on the Hopi Partitioned Land. While I understand that this legislation ratifying the settlement agreement does not completely resolve the disputes between the Navajo and Hopi Tribes, I believe the agreement represents significant progress toward an overall settlement of these highly contentious and longstanding claims between the two tribes.

Finally, I would like to congratulate all the parties for their dedication and hard work in crafting these historic agreements. I am pleased to note that the parties have been sensitive to the concerns of local government in negotiating this settlement agreement, which enjoys the support of the Governor of the State of Arizona.

Mr. President, I ask unanimous consent that the full text of the bill and the accompanying section by section analysis appear in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1973

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Navajo-Hopi Land Dispute Settlement Act of 1996".

SEC. 2. FINDINGS.

The Congress finds that—

(1) it is in the public interest for the Tribe, Navajos residing on the Hopi Partitioned Lands, and the United States to reach a peaceful resolution of the longstanding disagreements between the parties under the Act commonly known as the "Navajo-Hopi Land Settlement Act of 1974" (Public Law 93-531; 25 U.S.C. 640d et seq.);

(2) it is in the best interest of the Tribe and the United States that there be a fair and final settlement of certain issues remaining in connection with the Navajo-Hopi Land Settlement Act of 1974, including the full and final settlement of the multiple claims that the Tribe has against the United States;

(3) this Act, together with the Settlement Agreement executed on December 14, 1995, and the Accommodation Agreement (as incorporated by the Settlement Agreement), provide the authority for the Tribe to enter agreements with eligible, traditional Navajo families in order for those families to remain residents of the Hopi Partitioned Lands for a period of 75 years, subject to the terms and conditions of the Accommodation Agreement;

(4) the United States acknowledges and respects—

(A) the sincerity of the traditional beliefs of the members of the Tribe and the Navajo families residing on the Hopi Partitioned Lands; and

(B) the importance that the respective traditional beliefs of the members of the Tribe and Navajo families have with respect to the culture and way of life of those members and families;

(5) this Act, the Settlement Agreement, and the Accommodation Agreement provide for the mutual respect and protection of the traditional religious beliefs and practices of the Navajo families residing on the Hopi Partitioned Lands; and

(6) the Tribe is encouraged to work with the Navajo families residing on the Hopi Partitioned Lands to address their concerns regarding the establishment of family or individual burial plots for deceased family members who have resided on the Hopi Partitioned Lands.

SEC. 3. DEFINITIONS.

Except as otherwise provided in this Act, for purposes of this Act, the following definitions shall apply:

(1) ACCOMMODATION.—The term "Accommodation" has the meaning provided the term "Accommodation" under the Settlement Agreement.

(2) HOPI PARTITIONED LANDS.—The term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as effect on the date of enactment of this Act).

(3) NAVAJO PARTITIONED LANDS.—The term "Navajo Partitioned Lands" has the meaning provided that term in the proposed regulations issued on November 1, 1995, at 60 Fed. Reg. 55506.

(4) NEW LANDS.—The term "New Lands" has the meaning provided that term in section 700.701(b) of title 25, Code of Federal Regulations.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the agreement between the United States and the Hopi Tribe executed on December 14, 1995.

(7) TRIBE.—The term "Tribe" means the Hopi Tribe.

SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.

The United States approves, ratifies, and confirms the Settlement Agreement.

SEC. 5. CONDITIONS FOR LANDS TAKEN INTO TRUST.

The Secretary shall take such action as may be necessary to ensure that the following conditions are met prior to taking lands into trust for the benefit of the Tribe pursuant to the Settlement Agreement:

(1) SELECTION OF LANDS TAKEN INTO TRUST.—

(A) PRIMARY AREA.—In accordance with section 7(a) of the Settlement Agreement, the primary area within which lands may be taken into trust by the Secretary for the benefit of the Tribe under the Settlement Agreement shall be located in northern Arizona.

(B) REQUIREMENTS FOR LANDS TAKEN INTO TRUST IN THE PRIMARY AREA.—Lands taken into trust in the primary area referred to in subparagraph (A) shall be—

(i) land that is used substantially for ranching, agriculture, or another similar use; and

(ii) to the extent feasible, in contiguous parcels.

(2) ACQUISITION OF LANDS.—Before taking any land into trust for the benefit of the Tribe under this section, the Secretary shall ensure that:

(A) At least 75 percent of the eligible Navajo heads of household (as determined under the Settlement Agreement) have entered into an accommodation or have chosen to relocate and are eligible for relocation assistance (as determined under the Settlement Agreement).

(B) The Tribe has consulted with the State of Arizona concerning the lands proposed to be placed in trust, including consulting the State concerning the impact of placing those lands into trust on the State and political subdivisions thereof resulting from the removal of land from the tax rolls in a manner consistent with the provisions of part 151 of title 25, Code of Federal Regulations.

SEC. 6. ACQUISITION THROUGH CONDEMNATION OF CERTAIN INTERSPERSED LANDS.

(a) IN GENERAL.—

(1) ACTION BY THE SECRETARY.—

(A) IN GENERAL.—The Secretary shall take action as specified in subparagraph (B), to the extent that the Tribe, in accordance with section 7(b) of the Settlement Agreement—

(i) acquires private lands; and

(ii) requests the Secretary to acquire through condemnation interspersed lands that are owned by the State of Arizona and are located within the exterior boundaries of those private lands in order to have both the private lands and the State lands taken into trust by the Secretary for the benefit of the Tribe.

(B) ACQUISITION THROUGH CONDEMNATION.—With respect to a request for an acquisition of lands through condemnation made under subparagraph (A), the Secretary shall, upon the recommendation of the Tribe, take such action as may be necessary to acquire the lands through condemnation and pay the State of Arizona fair market value for those lands in accordance with applicable Federal law, if the conditions described in paragraph (2) are met.

(2) CONDITIONS FOR ACQUISITION THROUGH CONDEMNATION.—The Secretary may acquire lands through condemnation under this subsection if—

(A) that acquisition is consistent with the purpose of obtaining not more than 500,000 acres of land to be taken into trust for the Tribe;

(B) the State of Arizona concurs with the United States that the acquisition is consistent with the interests of the State; and

(C) the Tribe pays for the land acquired through condemnation under this subsection.

(b) DISPOSITION OF LANDS.—If the Secretary acquires lands through condemnation under subsection (a), the Secretary shall take those lands into trust for the Tribe in accordance with this Act and the Settlement Agreement.

(c) PRIVATE LANDS.—The Secretary may not acquire private lands through condemnation for the purpose specified in subsection (a)(2)(A).

SEC. 7. ACTION TO QUIET TITLE.

If the United States fails to discharge the obligations specified in section 9(c) of the Settlement Agreement with respect to voluntary relocation of Navajos residing on Hopi Partitioned Lands, or section 9(d) of the Settlement Agreement, relating to the implementation of sections 700.137 through 700.139 of title 25, Code of Federal Regulations, on the New Lands, including failure for reason of insufficient funds made available by appropriations or otherwise, the Tribe may bring an action to quiet possession that relates to the use of the Hopi Partitioned Lands after February 1, 2000, by a Navajo family that is eligible for an accommodation, but fails to enter into an accommodation.

SEC. 8. PAYMENTS IN LIEU OF TAXES.

Section 6901(1) of title 31, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (F);

(2) by striking the period at the end of subparagraph (G) and inserting “; and”; and

(3) by inserting at the end the following new subparagraph:

“(H) Fee lands owned by the Hopi Tribe or members of the Hopi Tribe that are taken into trust by the Secretary of the Interior pursuant to the agreement between the United States and the Hopi Tribe executed on December 14, 1995.”.

SEC. 9. 75-YEAR LEASING AUTHORITY.

The first section of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415) is amended—

(1) in subsection (a), by inserting before the period at the end of the second sentence the following: “, and except leases of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned lands, which may be for a term of years not to exceed seventy-five years”; and

(2) by adding at the end the following new subsection:

“(c) For purposes of this section—

“(1) the term ‘Hopi Partitioned Lands’ means lands located in the Hopi Partitioned Area, as defined in section 168.1 (g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this subsection); and

“(2) the term ‘Navajo Indians’ means members of the Navajo Tribe.”.

SEC. 10. REAUTHORIZATION OF THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

Section 25(a)(8) of Public Law 93-531 (25 U.S.C. 640d-24(a)(8)) is amended by striking “1996, and 1997” and inserting “1996, 1997, 1998, 1999, and 2000”.

SECTION BY SECTION ANALYSIS OF THE NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT OF 1996

SECTION ONE.—SHORT TITLE

This section cites the short title of the Act as the “Navajo-Hopi Land Dispute Settlement Act of 1996”.

SECTION TWO.—FINDINGS

This section sets out the findings of the Congress.

SECTION THREE.—DEFINITIONS

This section sets out the definitions used in the Act.

SECTION FOUR. RATIFICATION OF THE SETTLEMENT AGREEMENT

This section provides that the United States approves, ratifies and confirms the Settlement Agreement between the Hopi tribe and the United States executed on December 14, 1995.

SECTION FIVE.—CONDITIONS FOR LANDS TAKEN INTO TRUST

This section provides that, in accordance with section 7(a) of the Settlement Agreement lands which may be taken into trust by the Secretary of the Interior for the Hopi tribe shall be located in Northern Arizona. It provides that lands selected by the Hopi tribe shall be in contiguous parcels if feasible and shall be lands that were substantially used for ranching and agriculture. It further provides that the Secretary shall ensure that at least 75 percent of the heads of households, as determined by the Settlement Agreement, have entered into an accommodation agreement with the Hopi tribe or have chosen to receive their relocation benefits, prior to placing land into trust for the Hopi tribe pursuant to this settlement. The Secretary must also ensure that the Hopi tribe has consulted with the State of Arizona regarding the lands to be placed in trust consistent with 25 C.F.R. part 151.

SECTION SIX.—ACQUISITION BY CONDEMNATION OF CERTAIN INTERSPERSED LANDS

This section authorizes the Secretary of the Interior, at the request of the Hopi tribe take such action as is necessary to acquire, through condemnation action, lands owned by the State of Arizona that are located within the exterior boundaries of lands owned by the Hopi tribe. It also provides that the Secretary shall pay the State of Arizona fair market value for such lands. It further provides that the Secretary may only acquire such lands if the State of Arizona concurs with the acquisition, the tribe pays for the lands acquired through the condemnation, and the Hopi tribe has not exceeded the 500,000 acre limit in the settlement agreement. Finally, the section provides that the Secretary shall take lands acquired under the section into trust for the benefit of the Hopi Tribe in accordance with the Settlement Agreement.

SECTION SEVEN.—ACTION TO QUIET TITLE

This section provides that if the United States fails to discharge its obligations under section 9 of the settlement agreement, the Hopi Tribe is authorized to bring an action of quiet possession against any Navajo family residing on the Hopi Partitioned Lands after February 1, 2000, that has not entered into an accommodation agreement with the Hopi Tribe.

SECTION EIGHT.—PAYMENTS IN LIEU OF TAXES

This section amends 31 U.S.C. 6901 to authorize payments in lieu of taxes for those lands acquired by the Hopi Tribe and taken into trust by the Secretary of the Interior pursuant to the Settlement Agreement.

SECTION NINE.—75 YEAR LEASING AUTHORITY

This section amends 25 U.S.C. 415 to provide authority to the Hopi tribe to enter into 75 year leases with Navajo Indians residing on the Hopi Partitioned Lands.

SECTION TEN.—REAUTHORIZATION OF THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM

This section extends the authorization of appropriations for the Navajo-Hopi Relocation Housing Program through the year 2000.

ADDITIONAL COSPONSORS

S. 1009

At the request of Mr. D'AMATO, the names of the Senator from Missouri [Mr. BOND] and the Senator from Kan-

sas [Mrs. FRAHM] were added as cosponsors of S. 1009, a bill to prohibit the fraudulent production, sale, transportation, or possession of fictitious items purporting to be valid financial instruments of the United States, foreign governments, States, political subdivisions, or private organizations, to increase the penalties for counterfeiting violations, and for other purposes.

S. 1098

At the request of Mr. HELMS, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 1098, a bill to establish the Midway Islands as a National Memorial, and for other purposes.

S. 1592

At the request of Mr. LAUTENBERG, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1592, a bill to strike the prohibition on the transmission of abortion-related matters, and for other purposes.

S. 1799

At the request of Ms. SNOWE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1799, a bill to promote greater equity in the delivery of health care services to American women through expanded research on women's health issues and through improved access to health care services, including preventive health services.

S. 1873

At the request of Mr. INHOFE, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 1873, a bill to amend the National Environmental Education Act to extend the programs under the Act, and for other purposes.

S. 1885

At the request of Mr. INHOFE, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 1885, a bill to limit the liability of certain nonprofit organizations that are providers of prosthetic devices, and for other purposes.

S. 1908

At the request of Mrs. FEINSTEIN, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1908, a bill to amend title 18, United States Code, to prohibit the sale of personal information about children without their parents' consent, and for other purposes.

S. 1936

At the request of Mr. CRAIG, the names of the Senator from Arizona [Mr. MCCAIN] and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of S. 1936, a bill to amend the Nuclear Waste Policy Act of 1982.

S. 1968

At the request of Mr. FAIRCLOTH, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 1968, a bill to reorder United States budget priorities with respect to United States assistance to foreign countries and international organizations.