



# **Report on the Size, Composition, and Structure of the Board of Regents**

Prepared for:  
Governance and Nominating Committee  
of the Board of Regents of the Smithsonian Institution

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## EXECUTIVE SUMMARY

BoardSource was retained by the Governance and Nominating Committee of the Smithsonian Institution to research and report on seven issues related to board composition and structure: (1) size, (2) representation of the three branches of government, (3) number of Citizen Regents, (4) Regent selection and appointment process, (5) committee structure, (6) size and function of the Executive Committee, and (7) roles of the Chancellor and Board Chair. From late November 2007 through mid-January 2008, we reviewed key documents and interviewed 49 stakeholders.

BoardSource approached its review mindful that it is part of a broader, ongoing process to rectify a governance crisis experienced by the organization. The crisis was precipitated by media stories on compensation and expense practices of some senior management and certain revenue-generating contracts by the Smithsonian. Through much of 2007, the Board focused on improving the governance practices of the Smithsonian, establishing a new Governance and Nominating Committee to review its governance practices and an Independent Review Committee (IRC) to review issues arising from an Inspector General's report on the former Secretary's expenses, the Regents' response to the report, and Congressional concern about these matters. The recommendations of both the Governance and Nominating Committee (as adopted by the Board of Regents) and the IRC were fully considered throughout our review.

This report summarizes our findings, discusses good governance principles that should guide decisions about board size, composition, and practices, and offers four options as to board size and composition. We also make some suggestions to further improve board governance practices, but we fully recognize the significant efforts already underway to implement the many recommendations of the Governance and Nominating Committee. In addition, sorting through Board issues in the absence of a permanent Secretary presents notable challenges given that success depends greatly on the relationship between the Board and the Secretary. Therefore, the Governance and Nominating Committee and the Board itself should consider these suggestions at the appropriate time.

### Findings and Interview Results

#### Board Size and Composition

The Board consists of 17 members, including two *ex officio* members (the Chief Justice of the United States and the Vice President of the United States), six Congressional Regents (three each from the Senate and House), and nine Citizen Regents. This composition reflects the public/private nature of the Smithsonian and its unique historical structure. While many interviewees thought the Board size was about right, our findings identified constraints on the Board's overall capacity for effective governance from the combination of the Board's current size and composition. Each category of Regents brings its own set of benefits and limitations, making it difficult to ensure adequate capacity to lead the Board and the organization, to include appropriate skills and experiences on the Board, and to distribute work evenly among Regents. In addition, unlike other boards, for a significant number of Regents, the Smithsonian has limited ability to shape Board nominations and to hold Regents accountable for performance.

## Committee Structure

The Smithsonian Board of Regents has six standing committees to carry out its responsibilities: Executive, Finance and Investments, Audit and Review, Governance and Nominating, Compensation and Human Resources, and Facilities Revitalization. In addition, the Board has convened an *ad hoc* Search Committee. Committees are chaired by Citizen Regents, and most committees include Regent and non-Regent members. Our findings surfaced concerns about the need to consider new committees to handle fundraising and strategic planning activities at the appropriate time. Committees are also challenged by the need for greater manpower and more diversity of expertise.

## Executive Committee

The Executive Committee is responsible for setting meeting agendas, following up on Board decisions, monitoring organizational progress, acting on behalf of the Board between meetings, and serving as consultants to the Secretary on issues outside the purview of other committees. At the time of our interviews, the Executive Committee consisted of three members – two Citizen Regents and the Chief Justice as Chancellor. Since then, the Chancellor has stepped off the Executive Committee, and the Board is expected to elect a third member in January 2008. Our findings raised questions about the small size of the Executive Committee, as well as its purpose and communication with the full Board.

## **Principles of Good Governance in Nonprofit Boards**

Decisions about the appropriate size, structure, and composition of the Board and its committees are best made in reference to a set of principles of good governance. The principles we offer highlight key responsibilities of nonprofit boards that drive board size and structure decisions:

- I. Governance structures and practices should empower the board to execute its oversight responsibilities and ensure mission success.
- II. Board size and composition should reflect the unique nature of the organization.
- III. Committee structures should enable the board to fulfill its governance responsibilities.
- IV. Nonprofit boards are most effective when their members are driven by a passion for the mission of the organization and are accountable for the health and performance of the organization.
- V. Good governance depends upon a constructive partnership between the board and chief executive built on trust and mutual respect.
- VI. Success requires continued leadership, continued openness, and constant outreach.

Taken one by one, these principles speak to critical elements of good governance in nonprofit boards. Read together, the principles form a complete and integrated context for governance structures, decisions, and practices.

Already, these principles have guided the work and recommendations of the Governance and Nominating Committee. In particular, the Committee's focus on the importance of establishing a

constructive partnership, and its recommendations and actions in support thereof, have set the stage for improved governance structures and practices.

## **Analysis and Alternatives**

Current board composition and committee structures may not give the Smithsonian Board the capacity it needs. Solutions lie either in changing the structure of the Board, which requires statutory legislation, and/or in supplementing Board work with support from other sources.

Alternatives for changing the committee structure include adding a development/campaign committee and a strategic planning/issues committee at the appropriate time. Other changes to committee practices could also help alleviate some of the challenges of managing committee workload, such as spreading committee leadership responsibilities to Congressional Regents, spreading committee leadership responsibilities among Citizen Regents, and continuing to include non-Regents with special skills and experience on committees.

Alternatives for changing the Executive Committee include either increasing the number of Executive Committee members through statutory amendment or including additional Regents in Executive Committee deliberations. Ultimately, the decision about the appropriate size of the Executive Committee will require balancing the need for an Executive Committee that is large enough to represent the full Board but small enough to be functional. In addition, the role of the Executive Committee should be reviewed periodically to ensure that it does not to replace the full functioning of the Board of Regents.

Alternatives for changing board size and composition include adding Citizen Regents, reducing the number of Congressional Regents, and/or changing the voting status of *ex officio* Regents. Of critical note is that a decision to change the size or composition of the Board would require opening the Smithsonian's charter, which is not a decision to be made lightly.

## **Options for Board Size, Composition, and Executive Committee**

To assist the Board of Regents in its consideration of board size and composition, we identify four options that include different combinations of individual components for board size, board composition, and Executive Committee size and composition:

1. Modified Current Structure: A Board of 17 members with an expanded Executive Committee
2. Governing Board within a Statutory Board: A Board of 17 to 19 members with an Executive Committee of 5 members
3. Slightly Larger Board: A Board of 21 to 23 members with an Executive Committee of 5 members
4. Large Board: A Board of 30 to 40 members with an Executive Committee of 10 members

Each of these options has its own risks and rewards. From a governance perspective, some are better than others. Our analysis highlights these considerations to assist the Board in making the best decision for the Smithsonian.

## **Other Matters for Consideration**

We also offer a separate set of suggestions for consideration by the Governance and Nominating Committee at an appropriate time. In some cases, these suggestions could be implemented now. In other cases, their implementation should await Board decisions or the conclusion of work and changes already underway:

1. Broaden Board capacity by adding non-Regents to committees.
2. Communicate expectations for Congressional Regents.
3. Add a development committee.
4. Reevaluate the need for the Facilities Revitalization Committee at the appropriate time.
5. Closely monitor the use of the Executive Committee.
6. Once the new Secretary is retained, consider recommending that the Board undertake a vision-setting and strategic planning process.
7. Continue efforts to build commonality of purpose, knowledge, and commitment among Regents.
8. Consider a policy to address attendance by Regents.

## **Conclusion**

The work of the Governance and Nominating Committee and the IRC, coupled with other actions by the Board of Regents, has demonstrated the Smithsonian's ongoing commitment to improved governance practices, self-reflection, accountability, and transparency. We hope that these findings and analyses assist the Governance and Nominating Committee in furthering its efforts and in moving forward on Recommendation 1 of the Committee's Report.

## PART 1: BACKGROUND AND CONTEXT

### Context of this Report

On June 14, 2007, the Governance Committee of the Smithsonian Institution's Board of Regents released a report outlining 25 recommendations for strengthening governance at the Smithsonian. The Board of Regents adopted all 25 recommendations on June 18, 2007. BoardSource<sup>1</sup> was engaged by the then renamed Governance and Nominating Committee of the Board of Regents in late November 2007 to assist in the implementation of Recommendation 1 from the Governance Committee Report.

Recommendation 1 states, "To ensure that the Board is positioned to provide effective leadership, the Governance Committee will examine the appropriate structure and composition of the Board, the Executive Committee, and Board committees and report to the Board in January 2008 on its findings and recommendations."<sup>2</sup> This recommendation further states:

...The last change to the Board's structure occurred over 30 years ago when the number of Citizen Regents was increased from six to nine. The Committee found that best practices for good governance include a periodic review of board size and structure to ensure it continues to meet the organization's need for effective governance. The Committee determined that considerable analysis, including input from stakeholders, and further deliberations are necessary before making any suggestions with regard to whether changing the charter would improve governance.

The Governance Committee identified some fundamental questions about the structure and composition of the Board and its committees, including: (1) what is the appropriate size of the board; (2) what is the appropriate size and function of the Executive Committee; (3) what is the appropriate representation of the Legislative, Executive, and Judicial Branches on the Board; (4) what is the appropriate Board Committee structure; (5) what is the appropriate number of Citizen Regents on the Board; (6) what is the appropriate process for selection and appointment of Regents; and (7) what are the appropriate roles of the Chancellor and the Board Chair?

The framework of Recommendation 1 became the mandate for our work. BoardSource operated under the assumption that the Smithsonian Institution will keep its current status as a unique

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<sup>1</sup> BoardSource is the premier resource for leadership development, practical information, training, and tools and promising practices for leaders of nonprofit organizations nationwide. The organization has more than 12,000 members and serves more than 75,000 nonprofit leaders. As a recognized expert on nonprofit governance, BoardSource hosts an annual conference (the BoardSource Leadership Forum) which brings together more than 800 experts, board members, and chief executives of nonprofit organizations from around the world. BoardSource also served as a co-convenor of the Work Group on Nonprofit Governance and Fiduciary Responsibility, one of five groups reporting to the Panel on the Nonprofit Sector that had been convened by Independent Sector in response to concerns of Congress about accountability and governance practices in the nonprofit sector.

<sup>2</sup> Recommendation 1, Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007.

hybrid public/private entity. There was no attempt – or request – to look at whether the Smithsonian should be a federal agency, a pure 501(c)(3), or any other alternative structure.

## History of Recent Governance Issues

The genesis of the Governance Committee’s study in early 2007 was a series of issues and events that called into question the effectiveness of the Smithsonian’s governance and management. Media reports about business contracts between Smithsonian Business Ventures and outside companies were followed by reports that raised issues about the compensation of senior executives. A January 2007 report by the then Acting Inspector General (IG) for the Smithsonian on the former Secretary’s compensation and expenses highlighted concerns about unauthorized or unsupported transactions. The Board’s decision to retroactively authorize those expenditures was followed by public criticism and expressions of concern by certain members of Congress.

In addition to early questions about whether the Board of Regents exercised appropriate oversight over management’s compensation, expenses, and certain revenue-generating transactions with corporations, media reports and some members of Congress have continued to raise new issues.<sup>3</sup> New concerns focus on the adequacy of facilities and the storage of art and artifacts, as well as the compensation, expenses, and expenditures of several other senior staff, including the former Deputy Secretary and Chief Operating Officer of the Smithsonian and at least one director of a Smithsonian museum.

In 2007, the U.S. Senate Rules and Administration Committee held three hearings on operations and governance at the Smithsonian on April 11, June 26, and December 12. In September 2007, the Government Accountability Office (GAO) released a report on the facilities and security challenges, recommending that the Smithsonian “include privately funded projects in its capital plan...and comprehensively analyze funding options and report to Congress and the Office of Management and Budget on a funding strategy.”<sup>4</sup> GAO has also looked into governance changes at the Smithsonian and plans to “continue to address these issues in our ongoing work, in which we are assessing the Board of Regents’ governance changes and how the board is addressing long-term governance challenges facing the Smithsonian,” with a report planned for 2008.<sup>5</sup>

The Board of Regents has taken a number of steps to review its governance practices. First, it formed a new Governance Committee to review the governance policies and practices of the Smithsonian. It also established an Independent Review Committee (IRC) to review issues arising from the IG’s report, the Board’s responses to that report, and Congressional concerns. Reports from the IRC and the Governance Committee were issued within days of each other and,

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<sup>3</sup> More recently, the Smithsonian garnered media attention over a controversy involving a gift from the American Petroleum Institute (API). After some Regents questioned the gift, the company withdrew the donation. The details of the proposed transaction and the concerns of individual Regents were disclosed in a newspaper article. James V. Grimaldi and Jacqueline Trescott, “Smithsonian Questions \$5 Million In Oil Money,” *The Washington Post*, November 3, 2007.

<sup>4</sup> Government Accountability Office, *SMITHSONIAN INSTITUTION Funding Challenges Affect Facilities’ Conditions and Security, Endangering Collections* (Report GAO-07-1127), September 2007.

<sup>5</sup> Statement of Mark L. Goldstein (U.S. Government Accountability Office), Oversight Hearing on the Smithsonian Institution, Senate Committee on Rules and Administration, December 12, 2007.

despite different mandates, made congruent and extensive recommendations. The Board of Regents then reviewed and adopted all of the Governance Committee's recommendations on June 18, 2007. It has pressed forward to implement many of those recommendations, using a scorecard to track the Board's progress.<sup>6</sup>

## **Methodology of this Report**

BoardSource approached its review mindful that it is part of a broader, ongoing process to rectify a governance crisis experienced by the institution. In doing so, we took into account the extensive work and recommendations of both the Governance and Nominating Committee (formerly the Governance Committee) and the IRC.

From late November through late December, BoardSource engaged in an intensive but limited review of the Smithsonian's governance structure. We reviewed key documents, including the Report of the Governance Committee, Report to the Board of Regents by the IRC, and other documents including minutes, bylaws, various relevant legal memoranda, internal governance surveys and analyses, legislative history, among others. In particular, BoardSource took into account the recommendations of the Governance and Nominating Committee regarding proposed changes in governance practices and the IRC regarding the structure and composition of the Board of Regents.

One limitation of the compressed time frame of this assignment was the lack of an opportunity to observe personally the Board of Regents in action in Board and committee meetings. In this regard, we relied on the observations and insights of an extended group of stakeholders, a majority of whom were recommended by the Office of the Regents. We interviewed, in person and by telephone, more than 49 individual stakeholders<sup>7</sup> including 12 current Regents,<sup>8</sup> 2 former Regents, 7 Regent Liaisons, 8 senior Smithsonian staff, 1 non-Regent member of a Board committee, 4 Advisory Board Chairs or Advisory Board members, 2 Museum Directors, 1 non-Regent Member of Congress, 5 senior Congressional staff members, and 7 members of the nonprofit community.

In order to encourage candor, interviewees were advised that specific comments would not be attributed to any particular individual in the report, unless individual approval was obtained.

## **Framework for this Report**

In Part 2, this report summarizes the findings from our interviews, highlights issues raised in those interviews, and provides extensive reporting on the views of key stakeholders (largely without attribution). By including a number of specific comments from interviewees, the Report

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<sup>6</sup> The scorecard tracks implementation of each of the 25 recommendations of the Governance Committee. Overlaps with the IRC recommendations are also noted. For a copy of the scorecard, see <http://www.si.edu/about/Regents/scorecard.htm>.

<sup>7</sup> At some interviews, more than one individual was present. These were counted as one interview except in instances where a Congressional Regent and his/her Regent Liaison were interviewed simultaneously and the Regent Liaison was not also interviewed separately.

<sup>8</sup> For a roster of current Regents, see Appendix 1.

seeks to provide the Committee with a nuanced sense of the diversity and complexity of views on the various subjects.

In Part 3, the report articulates good governance principles and best practices, based on BoardSource's extensive experience and work with other nonprofit organizations, that should be taken into account as the Board considers the analysis and alternatives presented in Part 4.

In Part 5, the report outlines options for board size, composition, and executive committee structure. Finally, in Part 6, we offer eight suggestions for changes to current governance practices to be considered at the appropriate time.

Throughout the process, BoardSource has appreciated the advice and assistance of the Office of the Board of Regents, other Smithsonian staff, and the Chair of the Governance and Nominating Committee. The Governance and Nominating Committee was given the opportunity to respond to an earlier draft of the report; however, BoardSource retained complete control over the final report, findings, and options.

## **PART 2: FINDINGS AND INTERVIEW RESULTS**

### **Section 1. Board Size and Composition**

#### **Special Nature of the Organization**

An Act of Congress in 1846<sup>9</sup> created the Smithsonian after the approval of a bequest from James Smithson, which was originally accepted in 1836. James Smithson, a British scientist, left his estate “to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men.”<sup>10</sup> According to a Special Report of the General Counsel of the Smithsonian, after considerable debate, Congress created the “Smithsonian Institution as an independent trust ‘establishment’ of the United States.”<sup>11</sup>

The Smithsonian was created by Congress “under its exclusive Constitutional authority to legislate for the District of Columbia.”<sup>12</sup> The federal legislation established an independent Board of Regents – which included representatives from all three branches of government and private citizens – and a Secretary to carry out the responsibilities of the trust. The Board’s size and structure are detailed in the charter and have only been changed twice by statutory amendment – once in 1894 removing the Governor of the District of Columbia as a Regent and in 1970 increasing the number of Citizen Regents from six to nine. Both changes required an amendment by Congress.<sup>13</sup>

At present, approximately 70% of the Smithsonian’s \$1 billion operating revenue comes from federal appropriations<sup>14</sup> and 30% comes from private trust and other funds. The Smithsonian includes 19 museums and nine research centers in three areas: science and technology, history and culture, and art.

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<sup>9</sup> The Smithsonian Act of August 10, 1846, as amended, is codified, 20 U.S.C. §§ 41–67. See Appendix 2.

<sup>10</sup> For more information, see <http://www.si.edu/about/history.htm>.

<sup>11</sup> “Special Report of the General Counsel,” Proceedings of the Board of Regents, September 18, 2006. According to this report, “Trusts were well known in 19th-century America under the Nation’s common law heritage. A trust is a fiduciary relationship whereby a trustee holds property for the benefit of the trust beneficiary. To create a trust there must be a trust purpose, a beneficiary, property and a trustee. The Smithson bequest satisfied these four elements: it had a trust purpose (the creation of “an Establishment for the increase and diffusion of knowledge”), a beneficiary (all mankind), property (“the whole of my property”) and a trustee (the United States). In addition, Smithson attached two conditions to the trust: that it be administered in Washington, D.C., and that the establishment be named the Smithsonian Institution.”

<sup>12</sup> 20 U.S.C. §§ 42, 43. See Appendix 2.

<sup>13</sup> 20 U.S.C. §§ 42, 43. See Appendix 2.

<sup>14</sup> The federal appropriations fall into two categories: (1) facilities capital appropriation and (2) salaries and expenses appropriation.

## Current Composition

At present, the Smithsonian Institution's Board of Regents consists of 17 members, including:

- Two members – the Chief Justice of the United States and the Vice President of the United States – who are *ex officio* members and serve as a duty of their respective offices.
- Three Senators appointed by the President *Pro Tempore* of the U.S. Senate for six-year terms. Typically, two are from the majority party and one is from the minority party.
- Three Representatives appointed by the Speaker of the U.S. House of Representatives for two-year terms. Typically, two are from the majority party and one is from the minority party.
- Nine citizens recommended by the Board of Regents and appointed by Congress. Two Citizen Regents must reside in the District of Columbia and seven must be inhabitants of some state, but no two of them from the same state.<sup>15</sup> For Citizen Regents to be confirmed, a Congressional Regent introduces a bill – one in the House and one in the Senate – that is cosponsored by the other two Regents in his or her chamber. Citizen Regents may serve up to two consecutive six-year terms.

Board meeting attendance averages 12 out of 17 Regents. Most Congressional Regents and Citizen Regents have solid attendance records. The Vice President almost never comes. The Chief Justice attends the vast majority of meetings. The Chief Justice also serves as Chancellor of the Board; the responsibilities of the Chancellor are outlined in the Governance Committee Report<sup>16</sup> and are being further revised.

In addition, Congressional Regents and the *ex officio* Regents each have a Regent Liaison who supports them in their service as a Regent, serving as their “eyes and ears.” Typically the Regent Liaison is a staff member in the Regent’s office.<sup>17</sup> At present, most Regent Liaisons attend all Board of Regent meetings, even if the Congressional Regent or *ex officio* Regent whom they support does not attend.

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<sup>15</sup> 20 U.S.C. §§ 42 (a). See Appendix 2.

<sup>16</sup> “Recommendation 3: To enhance Board leadership, the Regents adopt the following specific duties and responsibilities for the positions of Chancellor and Chair of the Board and will initiate a change to the Bylaws to separate these positions,” Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007. This recommendation – along with all recommendations in this *Report* – was adopted by the Board of Regents on June 18, 2007, and the bylaws of the Board of Regents were updated to reflect this in September 2007. See Appendices 3 and 4.

<sup>17</sup> There is no standard profile of a Regent Liaison. At present, they hold various positions including Chief of Staff, senior policy advisor, legislative assistant, scheduler, etc.

## Issues Raised by Board Size and Composition

### 1. Board capacity for effective governance

**A majority of interviewees endorsed the current Board size on the grounds that it supports both quality deliberations and a diversity of perspectives.**

Many individuals we spoke to believed a board of 17 Regents to be about the right size because it is small enough to allow for personal engagement and large enough to include some diversity. Regents, in particular, expressed concern that a larger board would diffuse responsibility by decreasing the level of individual involvement and lowering the quality of conversation. As a Regent explained, *“I do believe the Board is the right size....Attendance is in [inverse] proportion to size of the Board. I’m on a lot of boards with a lot of directors....They don’t take their responsibilities seriously. Attendance is low. Regents view their responsibility seriously. We have good attendance records and participation. People do their homework.”*

Another Regent observed, *“I think it works well. My experience is, if it [the board] gets too large, nobody will be there. Right now, they all feel they have input and can be there. You can get involved in what is going on. It’s small enough so that we know each other and don’t hesitate to speak up when we disagree, but not small enough that it is incestuous.”*

Senior Smithsonian staff also felt that the Board is a manageable size. As one staff member explained, *“The size is about right I would guess. I want it large enough to be diverse but small enough to be manageable. It’s not a fundraising board. I get nervous when I see proposals to make it a board of 48; I see the dysfunctions on other boards and it makes our Board look great.”*

**However, some interviewees favored increasing Board size to redistribute workload more evenly.**

Several interviewees suggested that the Board needs to be slightly larger to address composition and division of labor challenges. One Citizen Regent said, *“I don’t know the right size. Citizen Regents, who can chair committees, are stretched thin.”*

A Regent Liaison commented that the size *“is about right. But, it could be usefully expanded slightly with Citizen Regents.”* Another explained, *“We could expand by two and add in some financial expertise. That would change the balance.”*

Congressional voices are somewhat split on the issue of board size. Some have expressed general support for the current size of the Board of Regents. One critical Congressional staff member said, *“Best practice says boards should be smaller. Don’t worry regarding [the current] size. We would not like it to be bigger.”* Others in Congress disagree, expressing concern that *“if...six of 17 slots are taken by them [Congressional Regents], they may have a delayed ability to deal with the issues.”*

On this point, Congresswoman Eleanor Holmes Norton proposed a bill on October 24, 2007, that would change the Board size from 17 to 21 Regents, all of whom would come from the private sector. In her statement introducing the legislation, she explained, *“the Regents must be free to give new...attention...to finding and helping to raise substantially more funds from private sources.”*

In an April 11, 2007, meeting of the Senate Committee on Rules and Administration, Senator Dianne Feinstein opened with the following comment, *“Comparable museums, like the Met for example, have five public officials that serve ex officio, but that is in addition to a robust board of 40 that includes experts in museum management, fundraising, and the law. We need to strive for this level of diversity and commitment among the Smithsonian’s Regents. I’m afraid the Board has become largely honorific, and I think that’s the last thing this institution needs.”*<sup>18</sup>

**Some respondents argued that the Board’s composition, rather than its size, was problematic.**

Overall, size in and of itself does not seem to be perceived as a problem for the Smithsonian. As one Regent explained, *“The issue is not the size or shape of the Board. The issue is the passionate involvement of the Regents and finding ways to make it possible for them to function.”*

The Board is populated with high-profile, highly successful individuals, all of whom are very busy. Critics are concerned that government Regents do not have time to pay adequate attention to the Smithsonian because they do not have control over their calendars and commitments. Several Congressional leaders have suggested that the Board composition is problematic. As one Congressional staff member said, *“I don’t think the size is a problem. I see it as perfectly reasonable and large enough to have diversity. The presence of government officials – Vice President, Chief Justice, six members of Congress – is a dysfunctional model because none of those people have the time nor do they have experience that adds to the ability to oversee the Board. In earlier times when Congress was not all year (1800s), there may have been a stronger argument to do this.”*

Senator Dianne Feinstein expressed a related concern: *“The Congressional Regents, the Vice President, and the Chief Justice all add unique perspectives to the Board and I know they are providing an invaluable public service. But given their day jobs, I wonder if they can dedicate the time, attention, and expertise that are so greatly needed at the Smithsonian at this time.”*<sup>19</sup>

The Smithsonian has developed a reportedly effective solution to the limitations of government Regents by working closely with Regent Liaisons who are in regular communication with both Smithsonian staff and their governmental representatives. For example, Regent Liaisons have two pre-Board meeting briefings, the first to provide input on the meeting agenda and the second

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<sup>18</sup> Statement of Chairman Senator Dianne Feinstein, Oversight Hearing on the Operations and Governance of the Smithsonian Institution, Senate Committee on Rules and Administration, April 11, 2007.

<sup>19</sup> Statement of Chairman Senator Dianne Feinstein, Oversight Hearing on the Operations and Governance of the Smithsonian Institution, Senate Committee on Rules and Administration, April 11, 2007.

to review the board books, so that they may brief their Regents. They attend Board and committee meetings with their Regents, and they meet periodically with the Inspector General.

As one of the Regent Liaisons described their role, *“Having Liaisons to do leg work helps Regents in the decision-making process. Even though their time commitment might not be 100%, through our eyes and ears, they can hear what is going on when they can’t be there. They’re always briefed.”* Regent Liaisons were praised by other Regents and Smithsonian staff for helping to keep Congressional and *ex officio* Regents informed and for assisting them in carrying out their duties.

## 2. Benefits and drawbacks of different categories of Regents

Given the complex composition of the Board of Regents, we sought to explore the three categories of Regents – Congressional Regents, *ex officio* Regents, and Citizen Regents – and the benefits and drawbacks each brings to the Board.

### *Congressional Regents*

**Nearly all interviewees affirmed that Congressional Regents are invaluable in generating support on Capitol Hill for the Smithsonian.**

Our interviews surfaced universal support for Congressional Regents, with the exception of some non-Regent members of Congress (and staff) who expressed some concern about competing and possible conflicts of interest. Most interviewees acknowledged that the Congressional Regents are critical to the Smithsonian because of their understanding of and access to the Hill. They were generally praised for their personal commitment and behind-the-scenes support, which includes introducing legislation for Regents’ appointment and informing colleagues about Smithsonian activities and funding needs. Congressional Regents also participate in Board and committee meetings. Like the Board writ large, when problems of governance and leadership were identified, Congressional Regents became even more actively involved.

Congressional Regents are important to the Smithsonian governance structure because they represent the legislative branch of government. One Congressional Regent explained, *“We represent the government and ensure resources are utilized in the best possible way. 70% of the funding comes from the U.S. government, and that is the reason to have us there, to ensure the Smithsonian adheres to the highest standards. Our names and U.S. Congress are on there. We can’t fail in our duty.”* Congressional Regents represent the American public’s interest on the Board. As elected officials, they offer a recognized mechanism for the public to raise concerns.

Congressional Regents also serve as conduits for communication between Congress and the Smithsonian. For Congress, they help facilitate oversight, alongside the Authorizing and Appropriations Committees. As one senior Congressional staff member said, *“We expect them to educate the rest of the members. If something needs to be done, we expect the Congressional Regents to tell us.”*

Their peer-to-peer relationship with colleagues is an important channel for communicating institutional opportunities and challenges to Congress. One senior Smithsonian staff member said, “*We have six members of Congress and, with one exception...all are engaged. They’re not only showing up, but they’re very engaged. Leahy and Matsui – you can’t ask for more. They bring the Smithsonian point of view to the discussions on the Hill.*”

For the Smithsonian, they bring Congressional perspectives and concerns into the boardroom and the institution’s management. Likewise, as a senior Smithsonian staff member added, “*Because so much of the money is from the Hill, the Congressional Regents try to protect us from ourselves in not making missteps – for example, they give us advice and suggest better ways to approach issues.*”

Most interviewees agreed that the number of Congressional Regents has to be balanced between the Senate and the House and the majority and minority parties. One senior Smithsonian staff member explained why the current number works: “*It’s difficult because you can’t have just one from each side; you have to have at least two from each, so that’s already four, and it’s better to have six [for attendance issues].*”

A Regent Liaison explained, “*I think a 3:3 House:Senate ratio is a nice mix. When the majority changes over, I think it’s good to have the majority party have more say because they have more influence with their people in charge. I like that dynamic. It’s very helpful.*”

### **Chief Justice**

The Chief Justice is an *ex officio* member of the Board and represents the judiciary branch of government. Traditionally, he has served as Chancellor of the Board of Regents and as a member of the three-person Executive Committee. In June 2007, on the recommendation of the Governance and Nominating Committee, the roles of Chancellor and Board Chair were separated and clarified.<sup>20</sup> This structure was in place at the time of our interviews. Since then, the Chancellor has stepped off the Executive Committee, and the duties of the Chancellor are being further revised.

### **Most interviewees advocated keeping the Chief Justice as a Regent because of his skills at facilitating deliberations and the stature he brings to the Board.**

The Chief Justice brings considerable value to the Board of Regents, as well as some inherent limitations. One Regent summarized his contribution: “*There are three benefits of the Chief Justice. First, he has a long view of what is needed for the institution by the nature of his job. Second, he leads well and has a fantastic ability to get to the heart of the matter. That comes with what he does all day. Third, the Chief Justice improves the standing of the institution and*

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<sup>20</sup> In the *Report of the Governance Committee to the Board of Regents* (June 14, 2007), Recommendation 3 indicated, “To enhance Board leadership, the Regents adopt the following specific duties and responsibilities for the positions of Chancellor and Chair of the Board and will initiate a change to the Bylaws to separate these positions.” The Board of Regents adopted this recommendation on June 18, 2007 and the Bylaws of the Board of Regents were updated to reflect this in September 2007. See Appendices 3 and 4.

*the Regents. His presence underscores that the Smithsonian is uniquely American and draws better people to the table. If the Chief Justice can make the meeting, then I certainly can show up.”*

Many respondents appreciated the Chief Justice’s skill at running meetings. As one Regent explained, *“Regarding the Chief Justice, I view the judicial representation as providing a kind of discipline of thought relative to the process – how one considers and weighs the different perspectives and how one comes out in the decision-making process.”*

The Chief Justice carries considerable ballast that raises the stature of the Smithsonian Board and can be beneficial during contentious Board discussions. One Regent observed, *“Absolutely he travels with the gavel. This is true of both [the past and current Chief Justice]....That chair, that gavel, is given great regard and abided by.”*

Because the Chief Justice is appointed for life, he is immune to political pressures, unlike Congressional Regents and the Vice President. As one Regent remarked, *“Nobody else is appointed for life but he is, which frees him up not to worry. He has the longevity and freedom to think for the American people. He thinks on how we deliver on the promise, the rightness, and wrongness [of our actions]. Congressional members and even Citizen Regents can’t do this. He can set himself aside.”*

At the same time, this *ex officio* assignment carries some risk to the Smithsonian because of the lifetime appointment, authority of the position, and the additional roles played by the Chief Justice. As one interviewee noted, *“The dynamics in the board meeting and during the discussion change when the Chief Justice is present. On the one hand, his participation is limited in some respects on many matters because of concerns with the potential for conflicts of interest. On the other hand, by virtue of his stature and position, he is not a peer on the board or at meetings. When he does opine, his words carry more weight and force than those of other Regents, and they are not inclined to debate or challenge his views or engage in the kind of frank and thorough discussions that are so necessary on a well functioning board.”*

A few interviewees expressed concerns about the Chief Justice’s role as Chancellor, noting the importance of retaining his prestige and parliamentary skills, but questioning the breadth of the Chancellor’s responsibilities as they existed at the time of the interviews. As noted in this report, further modifications to those responsibilities are underway.

### *Vice President*

**Almost all interviewees noted that the Vice President did not contribute to the Board in a meaningful way on a regular basis.**

Like the Chief Justice, the Vice President serves as an *ex officio* member of the Board of Regents. His value is as a representative of the executive branch of government. In practice, the last few Vice Presidents have not often participated directly in Board meetings (with a single exception), and participation from their designated Liaison has been inconsistent. As one senior Smithsonian staff member explained the role of the Vice President and his Regent Liaison,

*“They are monitoring, but not contributing...The idea of having the executive branch represented is interesting but not helping in any way.”*

Many interviewees did not see much value-added from the Vice President’s office and even suggested eliminating the Vice President from the Board. As one senior Congressional staff member observed, *“The Vice President...poses a problem. In a normal board, inactive members would be asked to leave.”*

**However, a few respondents noted that this affiliation may be important to keep in reserve for special circumstances.**

Most Regents, however, were reluctant to change this *ex officio* position and were uneasy about severing the relationship. As one Regent explained, *“He has a representative in the room, and the representative does weigh in from time to time. The Vice President’s slot hasn’t been a plus or minus. It’s a statement of the multiple and unique structure. If you were under threat, you’d want the person at the table.”*

In fact, the relationship with the Vice President has served the Smithsonian well on occasion, providing critical access to assistance when needed, such as in budget disputes.

The Vice President’s office has signaled its openness to reconsidering the role of the Vice President by letter from David Addington to the IRC raising questions about the Smithsonian’s governance structure.<sup>21</sup>

### *Citizen Regents*

**Interviewees unanimously cited the immense contributions of Citizen Regents in terms of bringing diversity, relevant expertise, and outside perspectives into the boardroom.**

The nine Citizen Regents play several invaluable roles on the Board. Structurally, they are the private, nongovernmental counterpart in this public/private partnership. As one Congressional Regent explained, the *“value of Citizen Regents is to connect to the private sector and what’s going on in the field, to bring in people who can help with mission.”*

Another said that they *“represent different sectors and that is important – the art world, science world, financial world. We need it. They represent the rest of the country. They bring their expertise, their background, their love of the Smithsonian. What Citizen Regents will bring, as we move forward, will be involvement in fundraising.”*

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<sup>21</sup> In a letter to the Honorable Charles A. Bowsher, Chairman, Independent Review Committee, David Addington, chief of staff to the Vice President, raised the questions about the structure: *“Does the presence of eight senior Federal officials on the Board of Regents [Vice President, Chief Justice, three Senators, and three Representatives] benefit or burden the Institution?...What if any changes should the Institution seek with respect to the existence, composition, selection or functions of the Board of Regents?”* Exhibit 1: Letter from David Addington, Chief of Staff to the Vice President, to the Honorable Charles A. Bowsher Chairman, Independent Review Committee (dated May 18, 2007), Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007.

While recognizing that all Regents bring diversity of backgrounds and perspectives, Citizen Regents in particular ensure that the Board has relevant and specific experience (e.g., management, real estate, legal) and needed skills (e.g., financial, investment, programmatic). They offer access to the corporate and philanthropic sectors. And, because they are private citizens, they may have greater flexibility in their personal schedules and freedom to express their points of view.

Citizen Regents also bring a voice and viewpoint from outside of government and political circles. As one senior Smithsonian staff member said, *“They bring perspective, skills. We’re quasi-federal. We are more cocooned, and Citizen Regents bring us into the real world. They bring a non-government face to the Smithsonian.”* Another pointed out that, when communicating externally, *“Citizen Regents can do things that Congressional Regents can’t, such as speak more freely, defend a controversial exhibit, go to other stakeholders, and apply pressure.”*

### **However, interviewees expressed differing assumptions and opinions about fundraising expectations of Citizen Regents.**

Respondents articulated conflicting perspectives about what is and should be expected of Citizen Regents in terms of fundraising, both giving and getting. One Citizen Regent observed that there *“has been a tendency to put people on the Board with at least a large eye on financial capacity. I don’t think it’s necessary because the Smithsonian has enough gravitas so that people will be generous. I don’t think being a Regent will be why you give. This complicates who you put on.”*

As one senior Smithsonian staff member said, *“[Former Secretary] Small’s priority was stacking it with millionaires, but I don’t see it as a fundraising board. We have other boards for that.”*

### **Many interviewees observed that Citizen Regents carry a disproportionate amount of Board work, especially through committee leadership and other committee assignments.**

Many respondents at all levels commented on the amount of time and effort that Citizen Regents have invested in Board work over the last year. While the Citizen Regents have more autonomy and flexibility in their schedules, they are being asked to do more than they signed up for and with no special support. One Citizen Regent said board service *“wasn’t supposed to be so [time] consuming, and it wasn’t until recently. If it does take this much time, it should be on matters of more interest.”*

Another Citizen Regent observed, *“Congressional Regents have staff who pay attention and work with them. I don’t have that, someone who listens to everything. The time demand is a big issue for the Regents going forward. Hopefully, it won’t be as intense as it was this year.”*

In practice, Citizen Regents are also essential to Board success because they shoulder a greater burden for board leadership. Currently, all committees are chaired by Citizen Regents. Given this, some noted the importance of all Citizen Regents understanding the expectations associated

with their position. As one Citizen Regent commented, *“There is lots of weight on the Regents. Nine is a lot [of Citizen Regents]. If all came in thinking it’s not just one day per quarter but some time every week, then nine would be enough. As it stands, nine is too light.”*

### 3. Common set of fiduciary responsibilities

#### **Most respondents believed that all Regents share the same set of fiduciary responsibilities.**

Recent developments and, in turn, our interviews have surfaced the issue of fiduciary responsibilities of Smithsonian Regents and, in particular, government Regents.<sup>22</sup> This legal issue is outside the scope of our engagement. However, we raise it in this report as a unique challenge for the Smithsonian Board given its composition.

In its report, the IRC noted that the Smithsonian Board had basic fiduciary responsibilities: “The IRC recognizes the historical value of having the three branches of government represented on the Board. Fiduciary constraints, however, require that the Smithsonian be run by a governing board whose members act as true fiduciaries and who have both the time and the experience to assume the responsibilities of setting strategy and providing oversight.”<sup>23</sup>

In practice, the Board operates with the understanding that all Regents share the same duties. As one Citizen Regent commented, *“I think they should [have the same fiduciary responsibilities], and they act like they do.”* A Congressional Regent echoed that sentiment, saying *“I don’t think anyone makes a distinction. All Regents are just appointed in different ways.”*

The Governance and Nominating Committee recently articulated a common set of “Duties and Responsibilities of Regents” that makes no distinction between Citizen and government Regents.<sup>24</sup> One Regent expressed the basic understanding shared by most Regents, Congressional and Citizen alike: *“Our job is to be the literal fiduciaries of this place as an institution. I hope we all agree that we have a duty of care and loyalty to the institution, not to Congress or to donors....I do expect all Regents to have the same responsibilities, except for the ex officio members. The Vice President doesn’t come. He sends a representative sometimes. The Chief Justice has a major role. He might not be able to accept full fiduciary responsibility of a full Board member.”*

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<sup>22</sup> All nonprofit board members are subject to fiduciary duties by state law of the state of incorporation, as well as common law. In addition, where the entity in question is a trust, directors act as trustees and are expected to adhere to the fiduciary standards of trust law. Questions have arisen, in part, because while the Smithsonian is registered with the IRS and tax exempt under IRC Section 501(c)(3), its origins lie in Congressional action and federal law.

<sup>23</sup> “Recommendation 5: The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight,” Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007.

<sup>24</sup> “Recommendation 2: To establish clear governance expectations, the Regents adopt the following description of duties and responsibilities of all Regents,” Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007. See Appendix 5.

**Several interviewees also raised questions about whether government Regents have conflicts of interests with regard to Board service.**

Most interviewees acknowledged that the *ex officio* Regents – the Chief Justice and the Vice President – are somehow different than the other Regents. As one senior Smithsonian staff member said, *“The issue of fiduciary responsibility has come up in relation to the Chief Justice and the Vice President. The Vice President has a lot to do, and he has to balance his duties. He is not in violation of his fiduciary role if he doesn’t come, and the same for the Chief Justice. They’d come if they had to.”*

On more than one occasion, interviewees raised questions about whether conflicts of interests existed as a result of the unique structure of the Smithsonian. With respect to Congressional Regents, some wondered whether such conflicts existed, particularly when Congressional Regents spoke on behalf of the Smithsonian in budget discussions. As noted by the IRC,<sup>25</sup> this issue may be more complicated when a Congressional Regent serves as a member or chair of the Authorization or Appropriations Committees.

Others have suggested a different way of understanding the relationship between the Smithsonian and Congress. As a Congressional Regent explained, this kind of duality of interests is built into their jobs, *“People say you have a conflict of interest. For me, I fight on behalf of my district to get the resources we need. Does that mean I have a conflict of interest?”*

Several interviewees noted that the Chief Justice might also have a potential conflict of interest if a case involving the Smithsonian were to appear before the Supreme Court. The current Chief Justice does not vote in Board meetings, nor did he in Executive Committee meetings when he was a member.

As noted by the Smithsonian itself, the unique nature of the organization establishes a fiduciary duty to the United States as the beneficiary of the Trust established by Congress to receive and administer the gift from James Smithson.<sup>26</sup> With this in mind, interviewees commented that Congressional Regents could be said to be acting in a manner consistent with both their fiduciary obligations to the institution and their duties as members of Congress when they take actions on behalf of the Smithsonian.

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<sup>25</sup> “Recommendation 7: Congressional Regents Should Accept Fiduciary Responsibilities,” Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007.

<sup>26</sup> According to Smithsonian Directive 150, “The Board of Regents bears the responsibility of the United States as trustee for carrying out the Smithson bequest and the public trust for which it provided... The responsibilities imposed on a trustee have their roots in English common law. A trust is a fiduciary relationship whereby a trustee holds and administers property for stated purposes on behalf of a named beneficiary.” *SMITHSONIAN DIRECTIVE 150, Smithsonian Institution Origins, Governance, and Relationship to the Federal Government*, April 16, 1996.

#### 4. Unequal distribution of work among types of Regents

##### **A majority of interviewees observed that the expectations of government and Citizen Regents are different.**

While the duties and responsibilities of Regents are generally shared by all (with the exception of two *ex officio* Regents), the way the work is divided is not. There are notable differences in the expectations of and assignments made to Regents. All bring important and unique contributions to the Board. Congressional Regents provide access to the Hill, and Citizen Regents provide access to the corporate and philanthropic communities. Board work takes place both at and between Board meetings, with all Regents contributing, albeit in different ways.

One Regent captured the sentiment expressed by many: *“There is a difference in expectations, yes. Congressional Regents carry the leadership and burden of getting support on the Hill. The Citizen Regents do as much as possible in working with the institution on projects and fundraising. It is a tricky point.”*

A Regent Liaison also observed the imbalance, *“Congressional Regents are in a beneficial position because they have a staff member to help. I brief my boss, read, and highlight what he should read. With my briefing notes and his reading, he asks questions. Do Citizen Regents have the luxury and time to review the materials? They need to be a dedicated bunch.”*

##### **Many interviewees assumed that Citizen Regents would have greater flexibility and devote more time to the Smithsonian.**

Citizen Regents are expected to have and devote more time to the Smithsonian. As one senior Smithsonian staff member commented, *“There’s an expectation that the Citizen Regents will be more engaged. The Congressional Regents vary. It’s tricky as Congressional members because their first job is to be a member of Congress.”*

Another Citizen Regent acknowledged this expectation: *“We have an understanding that there is more of a time requirement needed for both the Citizen and government Regents, but [this does] not mean that they need to be the same. If I as a Citizen Regent have more time and am willing to spend more time, then I don’t need the same time commitment from the Congressional Regents. We just need a serious commitment that they will be there when they are needed.”*

Citizen Regents also shoulder a greater workload in terms of Board and committee leadership (See Part 2, Section 2). As one senior Smithsonian staff member commented, *“Citizen Regents do a lot of the work. Most of the groundwork is done by the Citizen Regents; they chair the committees.”* Another staff member said, *“Time commitment is a big one. Citizen Regents will chair committees, but Congressional Regents might not have the time.”*

## **Several interviewees also spoke about the importance of all Regents attending meetings.**

Several respondents pointed out that meeting attendance should be required of all Regents. As one Citizen Regent commented, *“Whoever is on the Board should be required to attend a certain number of meetings.”*

## **5. Ability to shape Regent nominations and optimize Board composition**

Many interviewees expressed concern that the Board of Regents does not have the diversity of skills and expertise it needs to govern an institution as large and complex as the Smithsonian. This is driven, in part, by the unique Board composition that includes three branches of government and private citizens and by the Board nomination and approval processes for Congressional and Citizen Regents.

### *Ex Officio Regents*

## **Some interviewees acknowledged that the contributions of the Chief Justice depend on the personality of the individual.**

By definition, the Board of Regents has no control over the *ex officio* Regents who serve by virtue of their positions. The inclusion of the Chief Justice presents considerable rewards and risk to the Board of Regents precisely because the position is such a powerful one – in the country and on the Board – and a lifetime appointment. As one Advisory Board member said, *“The Chief Justice’s [contributions], from my secondary knowledge, depend on the person. Rehnquist moved through meetings in an authoritarian way and short-changed the attention that the Board should have given to issues. Roberts is different, but the Board shouldn’t be dependent on who’s wearing the black robe at the time.”*

## **Most interviewees were less concerned about the impact of the Vice President because he has not historically participated on the Board.**

The role of the Vice President appears to present somewhat less risk, in part because it is limited to a maximum of eight years and in part because past Vice Presidents have not been noticeably involved in the Board. But, their failure to attend, or reliably to send a delegate, was perceived as somewhat problematic. As a senior Smithsonian staff member said, *“Maybe the Vice President doesn’t need to be a Regent because he’s never going to be engaged. Having some kind of executive branch representative is a good thing, but we haven’t had it in practice.”*

Acknowledging that the Vice President serves as the designated representative of the executive branch, one Regent suggested, *“The Vice President [position] doesn’t have to be the Vice President. We do want to keep both [ex officio positions] on the Board.”*

As a senior Congressional staff member pointed out, the position for the Vice President was *“built for a gentler time and day....Honorific board members dilute the import and substance of a board....We don’t want to signal to other boards that it’s acceptable.”*

## Congressional Regents

### **Most interviewees felt that Congressional Regents took their Board service seriously.**

The inclusion of Congressional Regents, like the *ex officio* Regents, presents some risk because the Board has no say in their selection and no assurances of their commitment. In practice, however, they have generally been engaged and supportive; this appears to be more by personal commitment than intentional design. As one interviewee described it, *“There’s some sense that a Smithsonian Regent spot was a plum assignment. It has a certain cachet in these circles.”*

Furthermore, respondents have described a collegiality among Congressional Regents that transcends party lines. One interviewee said, *“I got a sense that this is a place where party doesn’t make a difference. [The Congressional Regents] care about the Smithsonian for the good of the American people.”*

### **Some interviewees suggested that expectations for Congressional Regents’ service should be explicitly communicated in advance.**

Some interviewees suggested that the current leadership could be more proactive in establishing expectations for Congressional Regents. One interviewee pointed to an example where a board chair laid out what was expected of appointed board members: *“When [James] Wolfensohn was chair of the Kennedy Center board, he went to Clinton to say, ‘Don’t put people on who won’t raise money for the Center’....If they have a good relationship with the Speaker, they can ask to not have people who will just occupy the seat but for those who will play a part. The Speaker then needs to go to the [potential Regent] and say ‘You’ve really got to get engaged.’ Many will be truthful. It’s an honor because the stuff that goes on at the Smithsonian is wonderful. It’s a terrific honor.”*

A Citizen Regent observed, *“I asked...a former Regent about this and there is usually one [Congressional Regent] who isn’t as engaged....He shouldn’t have accepted the role, but we didn’t have a Regent’s job description or performance standards. If we had clear standards of performance and duties when the House and Senate selected members, it might be different.”*

However, some believe that trying to influence the appointment process may be futile. As one senior Smithsonian staff member said, *“We start out with the presumption that the commitment [of Congressional members] is there. There has been every indication that it’s a plum assignment. We can’t tell the Speaker of the House, ‘This is what you should look for.’ The process has worked. Appointments are a risk but generally come due to commitment to the Smithsonian.”*

Likewise, an Advisory Board member commented, *“There’s not much you can do about Congress. Some are good enough and have staff who help. Some have real commitment to the institution. The cost of getting rid of the Congressional part of the Board is greater. If they self-select for the role, they usually have an interest in the Smithsonian or in the fields it covers.”*

## *Citizen Regents*

### **Several interviewees criticized the strong influence that the previous Secretary exerted over nominating Citizen Regents.**

The Citizen Regents are looked to for their diversity of skills and expertise, as well as their private sector connections and fundraising potential. Criticism from the media and from Congress focused on most having been handpicked by the former Secretary, Lawrence Small, with approval from the Nominating Committee.

The Independent Review Committee also identified this issue of the Secretary having too much control over Regent nominations. It noted: “Contributions to the Smithsonian should not be the determining factor for service on the Board, but only one of many factors considered in the selection of Regents. Care should be taken to avoid appointing Regents who have clear personal and professional ties to the Secretary that may compromise the Board’s independence.”<sup>27</sup>

### **Many interviewees pointed to changes in the current nomination and appointment process that make it more inclusive and thorough.**

The recruitment and nomination process has changed considerably over the past year, and the Governance and Nominating Committee has taken the lead. It has recently articulated criteria for recruiting Citizen Regents that include personal characteristics; geographic and cultural diversity; museum, educational, and research experience; nonprofit administrative or governance experience; academic or scholarly background; business, financial, and/or investment experience; and government-related experience.<sup>28</sup>

One senior Smithsonian staff member described the current process: The “*nomination [for the last Regent] came through the [Governance and Nominating] Committee. In the past, there had been significant input from the Secretary, and the Nominating Committee was not a strong player. The Secretary identified candidates and presented them to the Nominating Committee for approval. Now the Regents are more in charge. The Secretary’s nominations go into the pool.*”<sup>29</sup>

These efforts for more intentional recruitment are important, but the Board’s power in selecting Regents is circumscribed by the requirement that they be appointed by Congress. As one senior

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<sup>27</sup> “Recommendation 8: The Board Should be Expanded or Reorganized to Allow for the Addition of Regents with Needed Expertise,” Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007.

<sup>28</sup> “General Criteria for Identifying Candidates for the Smithsonian Board of Regents” adopted by the Board of Regents on September 17, 2007. See Appendix 6.

<sup>29</sup> The Nominating Committee and the Governance Committee merged in 2007. “Recommendation 9: To strengthen board development and integrate the nominating and governance process, the Governance Committee will assume the responsibilities of the Nominating Committee and be renamed the Governance and Nominating Committee. The Committee will develop criteria for the nomination of new Citizen Regents to ensure that the skill sets and diversity necessary for a dynamic Board are identified. It also will review existing processes for appointing Board committee members and chairs and will recommend improvements,” Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007.

Smithsonian staff member acknowledged, *“The Regents don’t make appointments. They can only make recommendations to the Hill. But, if we can show that we did it properly, it helps the process.”*

Another senior Smithsonian staff member hinted at how this affects the relationship between Congressional and Citizen Regents, saying *“...they [Congressional Regents] act as if they have control over Citizen Regents....The Regents nominate, then Congressional Regents introduce legislation. They are our advocates and view that as their responsibility.”*

Not surprisingly, Congress has become more involved in current nominations and renominations this year. As one senior Congressional staff member said, *“The former Secretary played a major role and was able to preserve himself and [his] idea of how the Smithsonian should be run. [Congress] can reject any nominee, but it rarely happens. Things are now being looked at much more carefully.”*

Likewise, the House Committee on House Administration has become more active in vetting Regent recommendations. Starting in October 2007, they invited candidates for Citizen Regent positions to meet with members of the Committee. And, they are considering maintaining this process going forward. As one Congressional staff member said, *“I think this should be a permanent change. It forces us to focus on the Smithsonian. My expectation is that this practice will continue with new Regents and renominations.”*

## Section 2. Committee Structure

### Current Committee Structure

Stemming from the recommendations made in the Governance Committee Report, a number of changes were made to the committee structure in 2007. The Committee on Facilities Revitalization, previously an *ad hoc* committee, was made a standing committee. In addition, the Governance Committee assumed the responsibilities of the Nominating Committee and the two committees merged under the name of Governance and Nominating Committee.<sup>30</sup>

The Smithsonian Board of Regents currently has six Standing Committees to carry out its responsibilities: Executive, Finance and Investment (which has an Investment Subcommittee), Audit and Review, Governance and Nominating, Compensation and Human Resources, and Facilities Revitalization.<sup>31</sup> In addition, the Board has convened an *ad hoc* Search Committee to search for the new Secretary of the Smithsonian.

The Governance and Nominating Committee holds responsibility for recommending committee members for appointment. In 2007, the Governance and Nominating Committee adopted the following to guide the committee:<sup>32</sup>

- Number of Committees: In general, all Regents are expected to serve on at least one but no more than three standing committees.
- Committee Chairs: At an appropriate point in their tenure, all Citizen Regents are expected to chair one standing committee.
- Number of Members: In general, all committees should have no fewer than three and no more than six Regent members, except the Executive Committee, which, by the charter, is limited to three members.
- Non-Regent Members: For those committees requiring expertise from the Regents that is either lacking or would greatly benefit from supplementation, the Committee will actively

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<sup>30</sup> “Recommendation 8: “To provide a mechanism for immediate and continuing Board attention to the Smithsonian’s facilities needs and to underscore the Regents’ commitment to resolving the facilities backlog, the *ad hoc* Committee on Facilities Revitalization will become a standing committee of the Board,” and “Recommendation 9: To strengthen board development and integrate the nominating and governance process, the Governance Committee will assume the responsibilities of the Nominating Committee and be renamed the Governance and Nominating Committee. The Committee will develop criteria for the nomination of new Citizen Regents to ensure that the skill sets and diversity necessary for a dynamic Board are identified. It also will review existing processes for appointing Board committee members and chairs and will recommend improvements,” Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007.

<sup>31</sup> See Appendix 7.

<sup>32</sup> “General Guidelines for Appointment to Standing Committees of the Board of Regents,” Presented to the Board of Regents on September 17, 2007. According to the Board of Regents Governance Scorecard, these will be applied in January 2008. See Appendix 8.

consider candidates from outside the Board. The Committee will particularly rely on members from the museum Advisory Boards and Regent Emeriti.

A review of the various committees of the Smithsonian revealed an interesting pattern of leadership assignments. All Chairs of Smithsonian Board of Regent committees are current Citizen Regents (with the exception of a single non-Regent who serves as head of the Investment Subcommittee).

According to the bylaws, the following committees must contain at least three Regents: Audit and Review, Governance and Nominating, and Facilities Revitalization. The Finance and Investment Committee must contain no fewer than four Regents.<sup>33</sup> In general, Regents serve on two to four committees, with a notable exception reflecting the extensive participation of the Chair of the Executive Committee.<sup>34</sup> The Vice President does not participate on any committees.

Most committees include both Regents and non-Regents. The Search Committee is the most inclusive of individuals who are not currently Regents (though they may have served before as such), with the Investment Subcommittee following as a close second, reflecting the need for experienced and savvy investment advice. The only two committees that do not include any non-Regents are the Executive Committee and the Compensation and Human Resources Committee.<sup>35</sup>

The following exhibit illustrates the number of Committee members and the number of Citizen Regents, Congressional Regents, and non-Regent members that comprise each committee.

**Exhibit 1: Committee Assignments**

	Committee Members	Citizen Regents	Congressional Regents	Non-Regents
Executive	3	2	0	0
Finance and Investments	8	4	2	2
Investment Subcommittee	7	3	0	4
Audit and Review	5	4	0	1
Governance and Nominating	5	3	1	1
Compensation and Human Resources	4	3	1	0
Facilities Revitalization	7	2	4	1
Ad Hoc Search	11	2	2	6

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<sup>33</sup> At present, both of these committees can only be comprised of Regents by virtue of the Bylaws of the Board of Regents of the Smithsonian Institution §§4, updated September 2007. See Appendix 4.

<sup>34</sup> See Appendix 7.

<sup>35</sup> Membership of the Executive Committee is specified in the U.S. Code. Membership for the Compensation and Human Resources Committee is outlined in the Committee’s charter.

## Issues Raised with Current Committee Structure

### 1. Sufficiency of committee structure to handle board responsibilities

Given the breadth of the Smithsonian Institution, with 19 museums and nine research centers, and its extensive mission and need for financial support as “an establishment for the increase and diffusion of knowledge,” the first question that arose was whether there were enough committees to get the work of the Board done.

Noting the important role that committees of the Board are playing in bringing matters to the attention of the Board, one staff member said, *“The full Board relies on committees to vet issues...for staff and the Regents...and to act as the champion of the issues that go to the Board.”*

#### **Most Regents initially thought there were enough committees to get the board’s work done.**

Most Regents initially expressed the view that there were enough committees to handle the work of the Board and were cautious about adding committees due to concerns about (1) removing matters from the full Board’s consideration, (2) building bureaucracy within the Board, and (3) adding to Regent workload. All Regents were clear that it would be too high a price to pay if adding more committees required opening the charter.

#### **However, some interviewees recognized that Regent workload is substantial and proposed several new committees.**

Regent workload was a serious consideration. More than one Regent expressed this concern: *“Look, these people are volunteers; they are not getting paid for this, and we need to recognize that they have many other obligations.”*

When pressed about the needs of the Smithsonian for additional funding, financial knowledge, and programmatic expertise, many Regents and staff mentioned the possibility of other committees, such as program and development committees, as well as the need for strategic planning by the Board. Referring to the many recent Board agenda items that have focused on facilities, special exhibits, and major gifts, one staff member said that *“40% of the current agenda [for Board meetings] is not vetted by committee. We need a development committee and a program committee in addition to all of the current committees.”*

#### ***Strategic Planning and Program Committee***

A number of Regents spoke of their interest in exploring ways to ensure full realization of the mission of the Smithsonian Institution. Several expressed strong views about the importance of considering strategy and priority setting for the three focal areas of activity: science, history and culture, and arts. For some Regents and staff, this activity could be accomplished through a program committee or through a strategic planning exercise. For others, it was important that such activities be the responsibility of the Secretary and the Board as a whole.

As one Regent put it: *“We don’t need too many committees – maybe one for strategy and long-term planning. Program issues get into the Secretary’s domain...and we don’t want to step into the Secretary’s purview. It could be part of strategic planning. We do need to discuss it. There are many smart people among the Regents who can offer their own experiences. We haven’t tapped it as much as we should.”*

### **A number of Regents spoke to the importance of focusing on strategic planning and strategic issues.**

Another Regent highlighted the importance of strategic planning with the involvement of the whole Board with this comment: *“The Smithsonian needs a true strategic plan and a strategic planning process that steps back and asks what is our mission? What’s laid out in the law? What is our mission in the modern context and with the constituencies to whom we have to answer today [Congressional, larger arts and sciences, and public interests]? Strategic planning should be done with involvement from advisory groups, staff, board members, etc. This is not something that the Board needs to do by itself through a committee or otherwise.”*

Another noted the importance of having all the Board’s work take on a more strategic focus: *“I hope we can...have existing committees take on more of strategy and program. Facilities is the wrong focus; it’s really strategy.”*

### **Others addressed the need for focus on programs, not just buildings.**

There was some interest, among some staff and some Regents, in a program committee of the Board of Regents. As a senior Smithsonian staff member put it: *“They need a program review and assessment committee. This could have a director or two, particularly from the arts and sciences, as well as an Advisory Board member of the history museum, and two or three Regents. It would give us an opportunity to look at what we are doing, look at content, oversight, strategy, all of it. To me, that is the guts of the place...There is a feeling that the Regents are so concerned with audit, review, and finance that it removes them from the guts of what the institution is doing.”*

Another staff member said, *“Cristián is articulate on an issue everyone feels strongly about. Larry Small was so focused on buildings. He had no idea what the program needs were. He thought we turned the lights on and off and that was it. If the Regents have a Facilities Revitalization Committee, they need a Program Committee.”*

A Regent offered this view: *“There might need to be a committee around the programs of the place – the substantive pursuits of the place. I don’t want to make the Regents the curators, but we do need to talk about high-level monitoring and assistance, inspiration for the research that’s done, the education conducted, as well as the priorities and agenda over many years ahead...These committees could be magnets for Regents because they are more interesting than Audit or Finance or Facilities.”*

On the other hand, other Regents thought the Board would cover the programs through its other work. As one Regent put it: *“I think the program side is covered by the work we do through the*

*other various committees. Quite honestly, I don't want a Board member trying to figure out what the arts or the Natural History museums should be doing next month. I trust the people at the museums. I'm not looking for Regents who are experts in that."*

Similarly, another Regent commented: *"You know, the place is so diverse that I'm not certain that the Regents – Congressional or Citizen – ought to do anything other than listen to programs....Our role is just to monitor and comment on the programming."*

### **Resource Development or Fundraising Committee**

In November 2007, the Board of Regents announced a \$2.5 billion campaign to raise needed funds for facilities maintenance and improvements. Given this, a number of Regents spoke to the importance of considering some form of development committee.

### **Regents had mixed thoughts regarding the need for a development committee.**

As one Regent put it: *"You could make the case that we will need a development committee. We've never had that before. If we go to campaign mode, someone will need to take on the job. Congressional Regents are limited somewhat, and the Chief Justice can't do it at all."*

Another Regent questioned the need, noting *"Before you do that, you ought to go back and define the roles of the Regents. If it is an expectation that the Board will be actively involved in development, then yes. There was some discussion of a development committee to oversee policies and to define parameters for philanthropic solicitation, but that's not what I'm used to when they [board members] take the lead."*

And another noted the overlap between the possible campaign and the current Facilities Revitalization Committee: *"Facilities is the wrong name for the Committee. Development is the right one, I think. Maybe strategy and development go together – can they be put together?"* This was echoed by a senior Smithsonian staff member who said: *"I would change the Facilities Committee to a development committee because we need money for different things, and it is really about raising money."*

Others, however, noted a concern about overemphasizing development: *"Any time you have anything like this, you need a development committee. It could be a subset of strategic planning. The fear is that development takes precedence over everything else. There's potential for criticism in the development area with naming rights, for example. I'd rather it be under strategy, or it will drive everything."*

At least one Regent spoke to the issue of Congressional responsibility: *"Yes, you could have a development committee, but that's really acknowledging that Congress doesn't have ultimate responsibility, which I prefer not to do."*

## 2. Sufficiency of capacity and expertise on committees

### **Committees have neither sufficient expertise nor sufficient numbers of Regents to get the work done.**

Through the course of interviewing, two issues arose about whether committees had sufficient expertise and sufficient numbers of Regents to conduct their business. The issue of expertise had been flagged by the IRC and by Charles Bowsher's testimony at the June 26, 2007, hearing before the U.S. Senate Committee on Rules and Administration:

“...in the financial management area, we think the Audit Committee should be staffed by people that have financial management background. We think in the compensation area and some of the museum expertise and building expertise, this is what is needed. And we think it can be done with several options being recommended... We do believe that a certain amount of expertise that is not there now has to be brought onto the Board of Regents.”<sup>36</sup>

### **The Board has added non-Regents to fill in where needed.**

The Board has added capacity to existing committee membership, including both specific experiences and skills, particularly in the area of audit, finance, and investment. The Governance Committee Report also acknowledged the important work of non-Regents on Board committees.<sup>37</sup>

Comments from interviewees indicated widespread support for the practice of adding expertise to committees through the inclusion of non-Regents. Many comments referred to the possibility of continuing and expanding the use of Advisory Board members and outside experts on committees as a way of expanding board capacity without having to add Regents.

As one Regent said, “*We’d like to have more Regents but we can’t do it due to the risk [of opening the charter]. One way to handle it is to reapportion Regents so they have fewer committees and each has a chairmanship. Committee assignments could be made so that maybe committees could have a Regent Chair and two other Regents, and we could populate the committees with folks from Advisory Boards, etc.*”

Another Regent said, “*We could supplement committees with non-Regents so as to have the benefit of real expertise on committees – especially audit and compensation. We would love to have someone who was a compensation consultant on that committee.*”<sup>38</sup>

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<sup>36</sup> Statement of Charles Bowsher, Hearing on Governance Reform and a Report by the Smithsonian’s Independent Review Committee, Senate Committee on Rules and Administration, June 26, 2007.

<sup>37</sup> In the ‘Rationale’ for Recommendation 9, it is noted that “The Bylaws also do not address appointment of non-Regents to committees, even though this is permitted by committee charters and established practices. Non-Regents contribute significantly to the work of Board committees, and the Governance Committee will consider appropriate Bylaw amendments and/or suggested committee charter revisions that address and encourage such appointments.” Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007.

<sup>38</sup> At present, membership on the Compensation and Human Resources Committee is limited to Regents, per the charter for this Committee.

Staff members were also interested in continuing to add capacity to committees through non-Regent participation: *“It might be better to have larger committees – maybe add people from the National Board and museums. Does this help get work done? I don’t see any drawbacks of non-Regents. The other thing it [involving non-Regents] does is it’s a training ground for future Regents.”*

### 3. Committee membership for Advisory Board members

Including Advisory Board members on Board committees provides the Board with a unique opportunity to experience the collegiality of Advisory Board members, as well as to test the relevance of their experiences and skills.

As one Regent noted: *“They [Advisory Board members] care a lot and we should tap into it. If we don’t, we will miss an opportunity. The Regents came together because of crisis. We need to engage the Advisory Boards because they want to know what is going on.... They want to be part of the solution. Some might make great Regents. Some come up and are impressive.”*

It also offers the opportunity to address dissatisfaction among members of the various Advisory Boards. A survey conducted by the Office of Policy and Analysis in 2007 found that Advisory Board members think the Regents are out of touch with the real issues and concerns facing the units and the Smithsonian as a whole.<sup>39</sup> Tension between the Acting Secretary and Advisory Board of the National Museum of the American Indian over the selection of a new director were also well publicized in 2007.<sup>40</sup>

#### **Interviewees expressed some dissatisfaction with service on Advisory Boards.**

Respondents acknowledged a gap between the expectations of Advisory Board members and the realities of their responsibilities. While they clearly understand their role as a fundraising and advisory arm to the associated unit, they were frustrated with the level of engagement and clearly recognized their second-tier position.<sup>41</sup> Several referred to the discrepancy between assurances of their importance provided at the time of recruitment and the limited roles they encountered once they joined an Advisory Board.

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<sup>39</sup> Office of Policy and Analysis, Smithsonian Institution, *Smithsonian Advisory Boards as an Instrument of Governance*, September 2007.

<sup>40</sup> Jacqueline Trescott, “Director’s Selection Rankles Trustees At Indian Museum,” *The Washington Post*, September 19, 2007.

<sup>41</sup> Some directors have addressed this issue by including other responsibilities for their Advisory Boards. As one director of a museum put it: *“I went out and recruited these people...who would say, ‘So what am I on, the board?’ I’d have to say, ‘No, you’re an Advisory Board member, but then there’s the Regents.’ People would say, ‘If you want me to be engaged, I’m interested. But, if you just want me to raise money, I’m not interested.’ So I tell my Advisory Board, ‘You are only advisory from a legal perspective, and you don’t have fiduciary responsibilities, but I will treat you like a true board of directors. I will give you access to all information and provide complete transparency and promise that I will not make any substantive decisions without first consulting with the board.’ That was my choice to run it that way, and it has allowed me to get some heavy-hitter people on my board.”*

As one respondent put it when referring to the Smithsonian National Board: *“These Boards started as a development arm and a way to engage people who would support the Smithsonian. The attractive part of job was that you got to do neat stuff...The last few years has led to frustrations on that board. The more they get members to join the board by telling them they’re doing important work, the more they will sit back and say, ‘We’re not doing that much; why are we not doing more? Well...we’re waiting to hear from the Regents.’”*

These ideas and others<sup>42</sup> might be considered in the review already underway under the aegis of the Governance and Nominating Committee. The Chair of the National Board and Virginia Clark of the Smithsonian, among others, are studying the relationship between the Regents and Advisory Boards. This group will report to the Regents in 2008.

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<sup>42</sup> As the Governance and Nominating Committee continues its review of Advisory Boards, it might wish to consider specific ideas from interviewees, including (1) having Advisory Board members interact with Regents at an annual meeting; (2) developing a Council of Chairs of Advisory Boards to deal with pan-institutional issues and to meet directly with the Board of Regents, rather than the Secretary to prevent “thinning” of the agenda; and (3) having someone from the Advisory Boards report to the Board at every Board meeting or have the Regents attend the Advisory Board meetings. In addition, the Committee may also wish to consider the following questions:

1. Could Advisory Boards serve as arms of the Board of Regents in governing the institution as a whole? Should they be responsible for governance-type responsibilities – like budget review, strategic planning, accession/de-accession decisions, and fundraising – at the unit level?
2. How should Advisory Boards fit within the governance and management structures of the Smithsonian? Should a direct line relationship exist between the Advisory Boards and their units or the Board of Regents?
3. Could Advisory Boards be involved with an institution-wide strategic planning process? In doing so, could leaders of those institutions be involved with a Regent-led Board committee to engage the entire institution in a cohesive strategic planning process that rolls out mutually supportive fundraising initiatives at the unit and the pan-institutional level?
4. Should the roles and responsibilities of the Advisory Boards be connected directly to a new, shared governance model that might be instituted by the new Secretary? Should the leaders of Advisory Boards be grouped, not around a Regent-led committee, but around areas of common interests like arts, culture, and science, and integrated with management teams that are similarly focused?
5. Should the role of the National Board be expanded or clarified, particularly given the commitment of the Board to a \$2.5 billion campaign and the possibility that the Board might constitute a new development committee?

## Section 3. Executive Committee

### Current Function and Structure of the Executive Committee

According to the bylaws of the Board of Regents, “The Executive Committee shall have and may exercise all powers of the Board of Regents when the Board of Regents is not in session, except those expressly reserved to itself by the Board of Regents, provided that all such proceedings shall be reported to the Board of Regents when next the Board meets.”<sup>43</sup> The charter of the Executive Committee further details the role of this committee, and indicates that the Executive Committee will serve the Board of Regents by:<sup>44</sup>

- Setting the agendas for meetings of the Board of Regent.
- Ensuring that the Secretary’s draft minutes of Regents’ meetings properly record the Regents’ views and actions before the minutes are proposed for adoption by the Board.
- Following up on Regents’ meetings action items assigned or delegated to the Committee or, in some cases, to its Chair (for example, to authorize certain actions by the Secretary).
- Monitoring the institution’s progress between meetings of the Board in typically informal sessions with the Secretary.
- Acting on behalf of the Board whenever the Board is not in session, mindful that the Committee represents the interests of all of the Regents when considering measures that are normally brought before them.
- Serving as the Secretary’s consultants, giving their opinion on such matters as institutional policies, senior executive recruitments, and such other matters that are not within the specific purview of other committees of the Board.

The size of the Executive Committee is set by statute at three members<sup>45</sup> and any change to its size would require a statutory amendment. By the bylaws, the Governance and Nominating Committee (formerly the Nominating Committee) is responsible for recommending candidates as members of the Executive Committee.<sup>46</sup> Members of the Executive Committee are elected by the Board of Regents. Two members constitute a quorum.

The bylaws of the Board of Regents require that two members of the Executive Committee are Citizen Regents. Traditionally, the Chancellor has been the third member of the Executive Committee. He recently described his role on the Executive Committee this way: “*As Chancellor, I review the agenda and discussion topics, but I do not vote on substantive*

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<sup>43</sup> Bylaws of the Board of Regents of the Smithsonian Institution §§3.01, updated September 2007. See Appendix 4.

<sup>44</sup> Executive Committee Charter, Board of Regents, Smithsonian Institution.

<sup>45</sup> 20 U.S.C. §§ 44. See Appendix 2.

<sup>46</sup> Bylaws of the Board of Regents of the Smithsonian Institution §§4.03, updated September 2007. See Appendix 4.

matters.”<sup>47</sup> As noted previously, the Chief Justice has recently stepped down from the Executive Committee, and the Board will elect a third member to the Executive Committee at the upcoming Board meeting.

According to many reports and respondents, the Board – particularly the Executive Committee – often deferred responsibility for setting meeting agendas to the previous Secretary. It has since changed this process. At present, while setting the Board meeting agenda is the Executive Committee’s responsibility, the Board uses a rigorous review process that solicits feedback from multiple sources before the agenda is finalized by the Executive Committee. The Office of the Regents issues a call for topics to staff, and staff works with committees to determine agenda items. Based on this information, the Office of the Regents drafts a mock agenda, which is then presented to the Acting Secretary and his direct reports for discussion; during the discussion, potential agenda items are prioritized. The Office of the Regents then revises the agenda and presents it to the Chair of the Executive Committee.<sup>48</sup> The Office of the Regents then takes the revised agenda to the Regent Liaisons for their input. At the conclusion of this discussion, the Office of the Regents revises the agenda again and sends it to all members of the Executive Committee. The Executive Committee then meets, provides feedback, and finalizes the agenda.<sup>49</sup> The final agenda and materials are sent to all Regents, Regent Liaisons, and senior staff.

## **Issues Raised by Executive Committee Function and Structure**

### **1. Size and composition of the Executive Committee**

There were differing opinions on the appropriate size of the Executive Committee. Several Regents thought it was the right size, but others thought it should be larger. One Regent suggested adding a fourth person to the Committee; another suggested having five to seven members. There was support for a larger Executive Committee among many others we interviewed, including Regent Liaisons and senior Congressional staff members.

#### **Many respondents thought the Executive Committee should be larger.**

As one interviewee noted, *“The Executive Committee could be bigger – maybe two more. Now it is the Chair, the Chief Justice, and one other, and that’s too small. Sometimes the decisions at the Executive Committee are not representative of the full body. We could have other committee chairs be part of it. If they were to deliberate about what goes on agenda, ...that would force committee chairs to be responsible and get materials ready, and [Board] binders prepared.”*

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<sup>47</sup> Letter from Chief Justice John Roberts to Mr. David M. Walker, Comptroller General, U.S. Government Accountability Office dated December 10, 2007.

<sup>48</sup> After the January 28, 2007, Board meeting, the new Chair of the Board will be elected.

<sup>49</sup> We have been advised that, with the Chancellor stepping off of the Executive Committee, he will meet with the Executive Committee for purposes of finalizing the agenda and preparing for meetings.

The IRC voiced a similar view, recommending “that the Executive Committee be enlarged to five members and its activity limited in practice to handling routine affairs of the Board between meetings and when special meetings, either in person or telephonically, cannot be arranged.”<sup>50</sup>

**Some interviewees, though, worried about making the Executive Committee too large.**

Others spoke to the concern about making the Executive Committee too large. As one Regent noted, “*I worry about the challenge of getting members together regularly who are highly engaged in the Smithsonian and in another part of their life. [The Executive Committee] gets together many times and talks via e-mail. Once an e-mail has more than four people, it can slow things down. I worry...that a big Executive Committee will become passive. A small committee means that the members need to be ready to engage.*”

The Acting Secretary indicated that it would be preferable to keep the Executive Committee small so as to make it easy to convene when decisions are needed quickly.

Several interviewees mentioned the importance of including only Regents on the Executive Committee, regardless of size.

## 2. Purpose of the Executive Committee

**Respondents expressed support for and concerns about how the Executive Committee is used.**

Several interviewees elaborated on the value of having an Executive Committee. A member of an Advisory Board put it this way, “*You like to have a place where the CEO can expect confidentiality and really have good ‘give and take.’ Sometimes it can be the Executive Committee but it could also be the Finance Committee. A committee like this really becomes the board. This is especially true in nonprofits which have funders on the board. So often, the executive committee becomes a normal coping mechanism of how the work gets done.*”

The Acting Secretary indicated that he wished to use the Executive Committee increasingly for consultation and advisory purposes on particular kinds of issues, such as notable real estate transactions, certain contracts, and other issues of strategic importance.

But more than one Regent noted that the frequent use of the Executive Committee by the Acting Secretary was a function of his interim status: “*Cristián is acting and so is doing a lot of checking. I don’t think the permanent Secretary will do as much checking.*”

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<sup>50</sup> “Recommendation 5: The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight,” Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007. The IRC also recommended that “All actions of the Executive Committee should be presented to the full Governing Board for review.”

Some expressed concern about whether the broad scope of the Executive Committee should be changed. As one interviewee put it, *“Some Regents will chafe at it and say that the Executive Committee has too much power.”*

### **Some interviewees viewed new agenda-setting procedures as a check-and-balance on the Secretary.**

What gets on the Board agenda plays a major role in how effective the Board will be in providing oversight and leadership. Previously, the Secretary appeared to have had undue influence over the agenda. The new process for setting the agenda affords all Regents – not just the Executive Committee and the Secretary – an opportunity to manage what comes before the Board.

Regarding the role of the Secretary, as one Regent explained, *“We ask him [the Acting Secretary] to give us his best shot at what he thinks ought to be on the agenda. We review it and make it our own. There needs to be some independence so the Board can put anything on the agenda that we need to. If we try to meddle in things that belong to the CEO, he would be justified. But, we’re not trying to get to that point. This [Acting] Secretary pushes back and we push back. We have an open conversation to get on the same page.”*

Regents described a healthier process whereby issues now come to the Board at earlier stages in the decision-making process and with better context, which enables the Board to weigh in appropriately. As one Regent captured the new approach, *“Now we put items on the agenda at least twice – once before they’re baked and again after they’re baked. This changes the level of engagement and discussion. If something is already complete, then Regents can hold back.”*

### **3. Communications between the Executive Committee and the full Board**

#### **Several interviewees expressed concern about whether the Executive Committee communicates appropriately with the full Board.**

Doubt and concerns about communication between the Executive Committee and the full Board relate to the period when Lawrence Small was Secretary: *“There was some chagrin at decisions made by the [current] Executive Committee and the prior Executive Committee regarding interaction with Larry Small. Regents were frustrated that they were not told information by the Executive Committee.”*

Some of these problems seem to persist even now: *“There’s no communication from the Executive Committee, except when they report in at the Board meeting. Then they don’t provide much detail about what was discussed. We do sign off on certain things, but there is not much communication.”*

Others, however, thought the current level of communication was appropriate. As one Regent put it, *“I think clearly, in the last year, they’ve communicated to the entire Board and have done a good job in those communications.”*

## Part 3: Principles of Good Governance in Nonprofit Boards

Decisions about the appropriate size, structure, and composition of the Board of Regents, as well as its committee structure, are best made in reference to a set of principles of good governance. The six principles we offer highlight key responsibilities of nonprofit board members that drive board size and structure decisions and establish the foundation for a strong, collaborative leadership team focused on mission success.<sup>51</sup> As such, they form a context within which to consider difficult, and sometimes contradictory, views, beliefs, and values. They also can serve as a touchstone for difficult decisions, as well as a framework against which to judge the commitments, actions, and performances of Regents in the future.

### **Principle I. Governance structures and practices should empower the board to execute its oversight responsibilities and ensure mission success**

The beginning of any discussion about governance structure starts with a clear understanding of, and commitment to, the responsibilities of a board. While there are many, for purposes of this review and analysis, we call your attention to five general, overarching ones:

- *Drive Mission Success.* At the heart of every nonprofit lies its mission, its *raison d'être*. The governing board is fundamentally responsible for ensuring the success of the mission of the institution. All the work of the board comes back to this fundamental charge. All board responsibilities are in furtherance of this goal, and all decisions should be made in ways that support the mission. The board ensures success in this area through the strategic planning and priority setting process and by measuring progress against specified goals.
- *Provide Critical Oversight.* As the organization's governing body, the board is uniquely situated and qualified to oversee the organization's programs, its financial practices and health, and its adherence to legal and ethical conduct.
- *Oversee the Chief Executive's Performance and Compensation.* The board is responsible for hiring and overseeing the performance of the chief executive through whom it implements its policies and operates the institution, and for setting his or her compensation. The quality of the relationship between the board and the chief executive, and their mutual commitment to the success of the mission, is key to effective leadership of an institution.
- *Ensure Appropriate Resources.* No mission, and no organization, can be successful without adequate resources. The board's responsibility is to ensure adequate resources from available sources to drive the mission of the organization forward.

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<sup>51</sup> More can be found in numerous publications on nonprofit governance, including BoardSource, *The Source: Twelve Principles of Governance That Power Exceptional Boards*, 2005.

- *Protect and Enhance Organizational Reputation.* As the governing body, the board is responsible for steering the organization's values and conduct in ways to promote the mission of the institution and its reputation among stakeholders.

It is important to note that governance responsibilities of nonprofit organizations extend beyond programmatic and financial oversight. This is not to diminish the importance of oversight responsibilities; they are fundamental to board purpose and the starting point, as it were, of board responsibilities.

However, they are not the only responsibilities of a nonprofit board. Nonprofit organizations are created to ensure the success of their missions, as well as to address the opportunities and challenges inherent in their missions. Whether they be arts or cultural institutions, science or educational institutions, philanthropic funding or social needs organizations, all nonprofits exist to serve their communities, constituents, patrons, donors, supporters, and clients. Mission success is the holy grail, and oversight activities play an important role in ensuring progress towards that goal.

For this reason, best practice in nonprofit governance calls for governance structures that best facilitate the execution of these, and other, responsibilities.

## **Principle II. Board size and composition should reflect the unique nature of the organization**

No two nonprofit organizations are exactly alike. Their histories, communities, size, focus, resources, programs, and leaders are different – reflecting the particular type of organization, its mission, and organizational life cycle stage at a given point in time. For that reason, boards usually reflect the past and present successes and challenges and the future aspirations of their organizations.

While there are practices that are commonly believed to be good for any organization of almost any size, both the size of a board and its composition should reflect, among other things, the organization's unique mission, corporate structure, programmatic interests and reach, and funding needs. So, while recent research by BoardSource<sup>52</sup> indicated that of the approximately 1100 nonprofit organizations responding to the survey, the average board size was 16 persons, there is no magic in that specific number.

Good governance practices lead organizations to set the size and composition of the board, not arbitrarily but thoughtfully and intentionally. In doing so, they take into account the organization's current and future opportunities and challenges, and they balance the need for inclusion of desired skills, experience, and access with a recognition of the impact of additional directors on the quality of board discussions and the commitment of individual board members. The risk of too few board members is that the board does not have the capacity to execute its work. It may be missing skills and experiences that it needs, or it may be missing horsepower and time. The risk of too many board members is that individual directors feel less personal

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<sup>52</sup> BoardSource, *Nonprofit Governance Index 2007*.

accountability, and the exchange of views within the board and the decisions made by the board suffer from that withdrawal of commitment.

Organizations can benefit significantly from having views of key communities, key constituencies, and key funders/donors on their boards. These board members bring important views and often unique perspectives to board discussions. They can offer critical access to others who provide programmatic or financial support. And they can offer credibility by reputation and association, and strengthen relationships with critical partners and affiliates.

When it comes to board size and composition, good governance demands a hard look at institutional needs, individual commitment and experience, and interpersonal dynamics.

### **Principle III. Committee structures should enable the board to fulfill its governance responsibilities**

Boards establish committees to support and carry out the work of the board between board meetings. With the board's roles and responsibilities as the parameters for committee structure, the decision to establish committees is grounded in the maxim, "form follows function," – i.e., the type, role, composition, and charge of committees are defined by the responsibilities and functions of the board itself. Commonly, nonprofit boards have committees to facilitate the board's oversight responsibilities – such as finance, investment, and audit committees – and committees to facilitate the board's obligation to secure resources for an organization – such as development or campaign committees. They also may have standing or *ad hoc* committees to address strategic issues or strategic planning and discreet, topical issues, such as a new chief executive search.

Committees often are used as a convenient mechanism for board members and staff to execute board oversight functions, to identify issues for board consideration, as well as to discuss and vet issues prior to formal consideration by the full board. The critical point here is that committees work to serve the board, not to replace it. When it comes to executive committees, the risk is omnipresent that they will, by virtue of their expansive charters, act for the board in inappropriate ways. So, good governance practice ensures that executive committees, if they exist, serve to handle board-level issues when decisions are needed between board meetings, not to supplant full board engagement, and that executive committee decisions are raised with, and ratified by, the full board at a later date.

### **Principle IV. Nonprofit boards are most effective when their members are driven by a passion for the mission of the organization and are accountable for the health and performance of the organization**

Unlike their for profit counterparts, nonprofit organizations are mission-driven institutions. Their boards reflect this purpose in composition and in individual member interest and commitment. Purely voluntary in nature, nonprofit boards are best made up of individuals who have a commonality of commitment to, and interest in, the mission of the institution. This commitment is manifested through individual attendance, participation, knowledge, support, and outreach. It

depends on the board being engaged in meaningful work and given adequate and appropriate information from staff on the issues that matter most to the organization.

Effective nonprofit governing boards recognize that while each individual board member brings different skills, experiences, and assets to the organization, each acts in a fiduciary capacity, unless otherwise specified by law. As such, regardless of board size, all governing board members are equally accountable for the ultimate and overall performance and success of the institution. For this reason, board members should be subject to similar expectations and judged by similar criteria of performance.

### **Principle V. Good governance depends upon a constructive partnership between the board and chief executive built on trust and mutual respect**

“Exceptional boards govern in constructive partnership with the chief executive, recognizing that the effectiveness of the board and chief executive are interdependent.”<sup>53</sup> While nonprofit boards have the primary legal responsibility for governance of their organizations, they execute their policies through, and delegate the day-to-day operations to, the chief executive. Together, boards and chief executives form a leadership team that is responsible for ensuring mission success.

Good governance is highly dependent on the quality of the relationship between the board and the chief executive. While it is clear that the board holds the paramount authority in the relationship, neither can be successful without the other, and each is positioned to thwart each other.

A relationship characterized by mutual trust and forthrightness is one in which both parties are secure in their ability to speak openly and in their willingness to hold each other accountable. When chief executives do not bring the right matters to the board at the right time, boards are unable to steer the organization in the right direction; when boards do not raise concerns at the right time, do not maintain confidentiality in the boardroom, or do not address performance issues, chief executives are not able to call on the board’s wisdom when needed.

### **Principle VI. Success requires continued leadership, continued openness, and constant outreach**

Boards that exhibit good governance practices demonstrate leadership on a continuing basis. In tune with the organization’s needs and their own capacity to address those needs, these boards are constantly engaged in the process of self-examination and self-improvement. For them, good governance is intentional, not incidental or accidental.

Such boards find ways to provide public access to appropriate and accurate information, operate non-defensively, and value transparency. They understand that nonprofit organizations are different from for-profit companies, they value and institute models of shared governance, and they make continuous efforts to reach out to key communities, constituents, and stakeholders.

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<sup>53</sup> BoardSource, *The Source: Twelve Principles of Governance That Power Exceptional Boards*, 2005.

The commitment to transparency is grounded in the special tax-exempt status created by the Internal Revenue Code for nonprofit organizations. Where organizations act in the public interest, boards play an important role in actively demonstrating their commitment to transparency – both internally within the board and between the board and the staff, and externally between the board and the organization and the public to which it owes a special obligation. And, for an organization like the Smithsonian Institution, the obligation to operate in the public interest is heightened because of its statutory origins and its constant support from public funds.

## **Application to the Smithsonian Institution**

We noted at the outset that the Governance and Nominating Committee<sup>54</sup> has already taken many of these and other good governance principles into account in formulating its recommendations. In particular, the articulation by the Governance and Nominating Committee of the importance of a constructive partnership between the Secretary and the Board of Regents is critical, especially given recent history at the Smithsonian. The Committee's recommendations have helped to strengthen governance structures and practices at the Smithsonian.

Taken one by one, the principles speak to critical elements of good governance in nonprofit boards. Read together, the principles form a complete and integrated context for governance decisions and practices. Individually and as a whole, the principles provide a context within which to consider the options and recommendations of this report.

Four of these principles – I, II, III, and IV – are especially applicable to the issues of this engagement and the request of the Governance and Nominating Committee for assistance in implementing Recommendation 1 of its Report.

Principles I, II, and IV, in particular, provide guidance in determining the appropriate size and composition of the Board of Regents. They speak to the importance of structuring the Board to facilitate and empower it to execute its responsibilities for oversight and mission while recognizing and honoring the unique nature of the institution. They also speak to the need to ensure accountability on the part of all members of the Board and the Board as a whole.

Principle III provides a critical context for understanding the role and responsibilities of the various committees of the Board, as well as the Executive Committee. Principle IV also speaks to the issue of appropriate composition of the Executive Committee by noting the importance of accountability and parity among Board members.

Principle V speaks directly to the quality of the relationship between the Board and the Secretary, and the importance of establishing a relationship based on mutual trust, open and honest communication, and common goals. While the relationship between the Board and the Secretary is not the subject of this report, it is noteworthy given recent history at the Smithsonian.

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<sup>54</sup> At the time of its report, it was called the Governance Committee.

Lastly, Principle VI speaks to the leadership role of the Board as a nonprofit institution, reinforcing the importance of continued transparency and self-reflection contained in many of the recommendations of the Governance and Nominating Committee to date.

## **PART 4: ANALYSIS AND ALTERNATIVES**

### **Section 1. Alternative Approaches to Current Committee Structure (Other Than the Executive Committee)**

While examining issues related to Board size and composition, it is also important to understand what areas of oversight and leadership might need more attention from the Board and, in turn, what committees might be helpful. Given the extraordinary amount of work confronting the Regents, particularly at this time, it is understandable that many Regents did not volunteer the need for additional committees. As noted in Part 2 though, when pressed about the Board's need to find ways to address outstanding issues, many of them acknowledged the importance of supporting capital campaign activities and focusing significant time on institutional strategic issues and programmatic considerations. This section of the report first addresses the need for additional committees of the Board and then turns to how to manage additional work with already strained resources.

#### **Additional Committees**

The six standing committees of the Board are similar to those seen at many large nonprofit organizations. The decision by the Board, on recommendation of the Governance Committee, to change the former Nominating Committee to the Governance and Nominating Committee comports with leading practice today, as does the existence of the Audit and Review Committee, separate from other financial oversight that resides in the Finance and Investment Committees.

These Committees are similar to those seen at many large nonprofit organizations, with some exceptions. Many boards that have fundraising responsibilities also have development committees; some others have strategic planning or program committees. In addition to standing committees, boards sometimes establish *ad hoc* committees to address important issues of the moment such as a search committee, as the Smithsonian has, or a capital campaign committee. The board's oversight activities also can be supplemented by a focus on strategic issues through specific *ad hoc* committees established to address such issues.

In conformance with Principle III – that committee structures should enable the board to fulfill its governance responsibilities – the Board of Regents should consider whether its current committee structure is sufficient to handle the Board's responsibilities. In particular, two issues stand out from the interviews and our reviews as areas in which the Board might wish to consider enhancing its current committee structure – resource development and strategic issues.

#### ***1. Development/Campaign Committee***

At the Smithsonian, involvement of the Board of Regents in resource development for the institution has taken two paths – personal contributions and assistance in securing federal appropriations. While the personal generosity of individual Regents is both laudatory and exemplary, and the support Regents provide in securing adequate federal funding is critical and vital, the needs of the organization appear so extensive that the Board will need to take on a more significant role in securing appropriate resources. For that reason, the Board

should consider whether to establish a standing development committee of the Board that is charged with leading the Board's efforts to ensure appropriate resources.

We recognize the particular challenges in having a development committee of the Board, when at least eight of the Regents might be reluctant, or even unwilling, to engage in such activities because of their governmental affiliations. We also recognize that many of Regents are already working very hard. However, given the Board's public commitment to raise significant funds over the next years, we believe the Board should consider a formal Board-level structure, like a committee, to drive a successful campaign of that magnitude.

Establishing such a Board-level committee would demonstrate to the entire organization, the public, the media, and Congress that the Board recognizes and accepts responsibility for ensuring appropriate resources beyond the efforts of Congressional Regents with federal allocations and beyond the private philanthropy of individual Regents. In addition, it would support visibly and formally staff efforts to raise funds and provide a structure within which to set and review fundraising policies as well as to vet potentially controversial gifts.

Accepting responsibility for securing additional resources does not mean that the Board alone would be responsible for raising the funds. A development committee could, and perhaps should, include non-Regents members from the National Board and from various Advisory Boards. The decision to create a Board-level committee of this sort offers a much needed opportunity for the Board of Regents to work closely with the National Board and various Advisory Boards on a common effort.

## 2. Strategic Issues/Planning or Program Committee

There was significant interest both within the Board and the staff in increasing the Board's involvement with both the programmatic issues and strategic concerns of the organization. While several interviewees urged consideration of a program committee, others framed their interest in terms of strategic planning.

Program committees are sometimes established by boards to provide the opportunity for a closer review and consideration of program work and priorities. They can be popular committees with board members because they offer the chance to directly engage with staff around the activities and issues in which board members are most interested. Staff sometimes sees program committees as a way to engage the board around individual programs and program priorities.

Program committees have real drawbacks, though. Perhaps most importantly, they place board activity at the wrong level; instead of focusing on pan-institutional issues, they tend to devolve to details and specific programs. In doing so, they reduce governance from its oversight, steering, and policy-setting role to a managerial and operational one. They also can provide an unhealthy way for individual board members to engage the organization around their own individual interests and preferences. While these committees may offer the illusion of program "oversight," they actually bring the board to management's level. For these reasons, they are not generally favored as a best practice.

The better approach, especially for an organization as large as the Smithsonian, is for the Board to *lift* its sights to strategic issues and strategic considerations to a pan-institutional level. There are at least two ways this can be achieved:

- *Engage in pan-institutional strategic planning*  
The selection of a new Secretary offers an opportunity for the organization to engage in a new strategic planning process. Several Regents spoke eloquently about the importance of engaging in a full process. This would naturally offer the opportunity for the Board to engage around program priorities and would establish a concrete process within which to assess funding needs. Such work could be led by a strategic planning committee of the Board on which non-Regents from the National Board and/or from Advisory Boards could serve or some other pan-institutional committee that could include Regents, members of Advisory Boards, and key Smithsonian staff.
- *Create a Strategic Issues Committee*  
To the extent that the Board wants to set up a formal mechanism within which to consider strategic issues, it could establish a strategic issues committee that could consider issues such as the following (provided only as examples) at a level deeper than that which may be possible at Board meetings:
  - a. Program priorities – In times of constrained resource, what will we continue to do and what will we no longer do?
  - b. Out-of-the-ordinary commitments – What are the short- and long-term implications of major contracts, such as the Showtime deal or the American Petroleum Institute gift?
  - c. Fee generation – Can we find ways to generate fees for museum attendance or gifts to museums in ways that work for Congress and the public?

Both of these suggestions offer three salutary benefits. First, they permit Board members to engage more deeply around areas of importance and concern. Second, they facilitate more Board engagement with staff, particularly around program areas. In doing so, they address the perceived need for Board recognition of the importance of, and involvement in, program priorities. Third, they open the possibility for yet another way for the Regents to work with Advisory Board members.

## **Committee Workload**

As noted above, several Regents spoke about the heavy workload. At least two Regents raised workload as an issue in assessing their ability to continue as Regents. While it is likely that the current workload is being driven by the leadership crisis within the institution, it is also likely that the workload will stay high due to renewed commitment, fundraising activities, more active governance processes, enhanced oversight interest, and a new chief executive. For these reasons, it will be important for all Regents to continue identifying ways to work as efficiently as possible.

From a committee perspective, this can be achieved by spreading the leadership of the Board across the numerous committees and by adding capacity to committees through additional external resources:

1. *Spread committee leadership responsibilities beyond the current Citizen Regents*  
Currently, all Board committees are chaired by Citizen Regents. We understand the time demands on Congressional Regents and believe their work on the Hill to be crucial to the Smithsonian's success, but we wonder whether they could share responsibilities for committee leadership. Obviously, this would have to be clear before Congressional Regents committed to serving on this Board.<sup>55</sup>

2. *Spread committee leadership responsibilities among Citizen Regents*  
If it is not feasible for Congressional Regents to serve as committee chairs, then committee chairmanships could continue to be staffed by Citizen Regents with the understanding that their other committee assignments would be reduced. This option would require an additional infusion of non-Regents to committees to add capacity and resources, as Citizen Regents could only be expected to chair one committee and serve on one to two other committees.

3. *Continue to add resources to committees by including non-Regents with special skills and experience*  
Regardless of whether Congressional Regents chair committees, we encourage the ongoing practice of adding capacity to existing committees by including non-Regents with two caveats. First, we suggest that the Board use the opportunity to include individuals other than former Regents (though they are also good candidates). In particular, we see this as an opportunity to involve members of the Advisory Boards. Doing so will help to build relationships and extend the Regents' access and reach to the larger Smithsonian community. Second, we do not advise having Board committees chaired by non-Regents because doing so moves accountability and responsibility for Board leadership and work to external individuals and effectively reduces Board control over options, decisions, and results.

Of course, these suggestions assume that the Board does not increase in size. Were that to be the case, the Board would have additional Regents to allocate to committee work. (See Part 5: Options for Board Size, Composition, and Executive Committee.)

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<sup>55</sup> The time commitment for serving on this Board should be made clear to potential Congressional Regents. This is not an honorary position, but one in which individual Regents – with the possible exception of the *ex officio* members – are expected to participate fully. The time commitment could be included in the “job description” for Congressional Regents, as more fully described above.

## **Section 2. Alternative Approaches to the Executive Committee**

In many of our interviews, Regents and stakeholders alike spoke of the need to expand the size of the Executive Committee. At the time of our interviews, the Executive Committee was comprised of two Citizen Regents and the Chief Justice as Chancellor. Since the Chief Justice did not vote as a matter of practice, that composition put the power to decide matters between board meetings in the hands of two individuals. Were there to be a disagreement between the two Citizen Regents, the Executive Committee could have found itself in a stalemate and the organization unable to move forward.

Recently, the Chancellor has stepped off the Executive Committee and the Board is expected to elect a third, voting member of the Committee on January 28. This will ensure that a vote of two out of three members of the Executive Committee would be sufficient to approve action in the event of disagreement.

### **Size of the Executive Committee**

With so few Regents on the Executive Committee, the risk is greater that a strong Secretary can exercise undue influence over the discussions and decisions of the Executive Committee. Looking back at the relationship between the former Secretary and the Executive Committee, we questioned whether the Executive Committee would have been better positioned to ask questions of the former Secretary if it had been larger. Going forward, if the Executive Committee is to serve as an advisory group for the Secretary, would the quality of that advice be improved if more voices are at the table?

Determining the correct size of the Executive Committee is a matter of judgment for the Board. Boards take different positions on this – some include officers of the board and others include committee chairs, among other options. As the Governance and Nominating Committee moves forward to decide its recommendations on this issue, it should keep in mind two points. On the one hand, it is important to have enough Regents on the Executive Committee so that a board does not delegate decision-making power to too small a group to be representative of the whole board. On the other hand, it is equally important not to have so many Regents on the Executive Committee that it is difficult to schedule meetings when needed (of necessity, Executive Committee meetings are often scheduled with limited notice).

As noted above, any change in the number of full voting members of the Executive Committee would necessitate a statutory change. Were the Board to consider opening the charter, it also could change the number of members required for a quorum.

In the absence of opening the charter, it may be possible for the Board to increase the number of individuals assigned to participate in Executive Committee deliberations (without changing the actual voting membership of the Executive Committee), assuming review by legal counsel confirms the propriety of such actions. If the Board believes it wise to expand participation in the deliberations of the Executive Committee by including non-voting Regents, it also could consider adding two such Regents to address the concerns of many of the individuals with whom we spoke, bringing the number of Executive Committee meeting attendees to five.

## **Role of the Chief Justice as Chancellor**

We recognize that the Chief Justice's role was examined by the Governance and Nominating Committee and that its recommendations regarding a separation of duties between the Chancellor and the Chair of the Board already have been adopted by the Board of Regents in bylaw changes and related job descriptions.<sup>56</sup> The recent decision by the Chief Justice to step down from the Executive Committee will permit the Board to elect an Executive Committee of three voting members and will further balance the Board's leadership.

With the Chancellor no longer a member of the Executive Committee, we have been advised that the duties of the Chief Justice as Chancellor will now be: (1) to preside over board meetings; (2) to appoint members and chairs of board committees; (3) to appoint an Acting Secretary when necessary; and (4) to preside over official ceremonies of the organization. The Chancellor's appointment of members of committees and committee chairs (other than members of the Executive Committee, who are elected by the Board in conformance with statutory requirements) is based on recommendations of the Governance and Nominating Committee and made with the approval of the Board. We understand that these responsibilities will be reflected in an updated description of the duties of the Chancellor.

These revised responsibilities will permit the Chief Justice to continue presiding over Board meetings, a role which was highly valued and appreciated by virtually all Regents. Regents recognized that the Chief Justice is particularly astute in identifying issues that others may not appreciate and noted his parliamentary skills, openness to debate, inclusion of multiple voices, and welcoming demeanor. Additionally, Regents noted that his life-long tenure is an asset to the institution because it permits him to take the long view when providing advice.

We have also been advised that the Executive Committee will meet with the Chancellor for purposes of finalizing board meeting agendas.<sup>57</sup> This will provide the Executive Committee with the benefit of his advice and assistance, as well as ensure that he is prepared to facilitate and moderate discussions at the board table.

## **Role of the Executive Committee**

Lastly, the role of the Executive Committee should be a restrained one so as not to replace the full functioning of the Board of Regents. The IRC referred to this issue in its recommendation that the Executive Committee's role be restricted to handling necessary matters between Board

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<sup>56</sup> "Recommendation 3: To enhance Board leadership, the Regents adopt the following specific duties and responsibilities for the positions of Chancellor and Chair of the Board and will initiate a change to the Bylaws to separate these positions," Governance Committee, *Report of the Governance Committee to the Board of Regents*, June 14, 2007. This recommendation – along with all recommendations in this Report – was adopted by the Board of Regents on June 18, 2007, and the bylaws of the Board of Regents were updated to reflect this in September 2007. See Appendices 3 and 4.

<sup>57</sup> We understand that this is the only expected regular meeting between the Chancellor and the Executive Committee.

meetings.<sup>58</sup> The current charter of the Executive Committee is quite broad and not inappropriate in its assigned duties. However, the work of the Executive Committee should be carefully managed to ensure that important conversations and critical decisions are considered and made by the full Board. Here, where the Executive Committee has been delegated the setting of the agenda as well as the right to make decisions for the Board between meetings and the role of advisor to the Secretary, there is a real risk that the Executive Committee could become a board-within-a-board, which could reduce the commitment and accountability of the Board of Regents itself.

Finally, while responsibility for setting the Board meeting agenda incorporates full Board, staff, and Secretary input, the final agenda still rests with the Executive Committee. Particularly as the new Secretary is appointed, it is essential that the Secretary have an appropriate say in what comes before the Board. This is also an opportunity for the Secretary and Executive Committee to ensure that meeting agendas address the need for and desire of the Board to handle more strategic (versus operational) issues.

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<sup>58</sup> Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007, page 102.

### **Section 3. Alternative Approaches to Board Size and Composition**

A board of 17 members is neither good nor bad in and of itself. What matters is whether the Board has the manpower to carry out the work that needs to be done. Stakeholders voiced concerns about the Board's capacity to carry out its oversight and direction setting responsibilities given the complexity of the institution, that eight of the 17 Regents have significant commitment and time constraints because of their government jobs, and that the burden of committee leadership and a large portion of the committee work falls on the remaining nine Citizen Regents, many of whom also hold significant responsibilities and external commitments.

In practice, the 17 Regents may not be equally and completely engaged. According to our findings, the Vice President does not come, the Chief Justice does not vote, and the six Congressional Regents participate primarily in Board and committee meetings and as advocates on the Hill. This leaves nine Citizen Regents to handle most of Board committee leadership responsibilities. To fill in needed capacity and expertise, the Board has added non-Regents to all but two of its committees.

To the extent that the current structure may not give the Smithsonian the Board capacity it needs, solutions lie either in changing the size and/or the composition of the Board, which is discussed below, or in supplementing Board work with support from other sources, which is discussed in Part 4, Sections 1 and 2.

#### **Alternatives for Changing Board Size and Composition**

We appreciate that a decision to change the Board size or composition would require opening the charter and that doing so is not a decision to be made lightly. We are not in a position to evaluate the legal issues or political risks related to this option. But, we do feel it is important for the Board to look at all of the alternatives, consider the implications of each, and then make a decision based on what is best for the institution in the long-term.

The Board can gain more active, engaged, and diverse Regents through one of the following three alternatives:

1. *Maintain a Board of 17 Regents, but adjust the numbers and/or responsibilities of government Regents*

These alternatives acknowledge the current limitations of the *ex officio* and Congressional Regents, but still honor their historical relationship to the institution. They can be taken together or singularly, but with some caution for the balance between the three branches of government:

- *Make the Chief Justice a non-voting, ex officio member of the Board but retain his recently modified responsibilities as Chancellor, including presiding over full Board meetings*

This addresses his current practice of not voting but retains his valuable historic connection and commitment to the institution.<sup>59</sup>

- *Make the Vice President a non-voting, ex officio member of the Board*

This addresses the current reality that the Vice President has not been involved. In addition, his seat could be filled by either a Citizen Regent or another appointment from the executive branch, with the understanding that active participation is required.

- *Reduce the number of Congressional Regents to four*

This takes into account the role of the Federal government in funding the Smithsonian, as well as the limited availability of members of Congress. This would create two additional positions for Citizen Regents, thereby affording the Board more Regents with greater diversity and control over their schedules.

2. *Increase the size of the Board by adding Citizen Regents, but retain the current numbers and responsibilities of government Regents*

This would give the Board more Regents to carry out the work of the Board and committees. Citizen Regents offer the greatest potential for diversity of skills and experience. They also bring somewhat more flexibility in their schedules and capacity for fundraising. The challenge will be determining the right number of total Regents to ensure that meaningful participation and genuine engagement of all Regents. By definition, this alternative would shift the balance between government Regents and Citizen Regents.

3. *Change the size of the Board, as well as the numbers and responsibilities of government Regents*

This alternative is a combination of the above alternatives. It allows the Board to address problems caused by a limited number of Regents and Regents with special limitations.

## **Considerations Related to Changing Board Size and Composition**

In considering these alternatives, several factors come into play. First, in keeping with Principle IV (having a board of equally committed and accountable members), the Board needs to have enough truly active and engaged individuals to effectively carry out the work of the Board and its committees. Not all individuals will be able to dedicate the same amount of time to their Board service, but they all need to be equally dedicated to the institution and able to carry out their duties.

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<sup>59</sup> “Recommendation 6: The Role of the Chief Justice and Vice President Should Be Clarified,” Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007. Specifically, it notes, “The IRC recommends such a unique structure because it believes the historic role played by the Chief Justice in governance of the Smithsonian should not lightly be discarded and because the Chief Justice has made it clear he wishes to remain associated with the Institution.”

Second, in keeping with Principle II (the need for board structure to reflect the organization's unique circumstances), changes need to take into account the value of retaining the three branches of government. As noted in the IRC Report, "...the governmental Regents play an important substantive, as well as symbolic, role at the Smithsonian."<sup>60</sup> The public/private partnership that underlies the Smithsonian's history and funding sources are part of its strength. In practice, this will require finding the right balance between Congressional and Citizen Regents.

Third, once again in keeping with Principle II (to enable a board to govern), the Board has to be right-sized. Ultimately, if the Board believes that changing the structure will improve performance and that opening the charter is a worthwhile risk, then the Board should not be constrained by the current count of 17 Regents. There is no magic in that exact number. In fact, BoardSource research shows that "Boards with 15 to 22 members were rated as more effective by their chief executives and repeatedly reported better governance practices."<sup>61</sup>

Right-sizing the Board means that it needs to be large enough to allow for needed diversity and expertise, yet small enough to allow for real oversight and genuine engagement. The boardroom needs to allow for robust discussion, and Regents need to be held accountable for their participation. In the interest of parity and accountability, most if not all Regents should have the same set of expectations, responsibilities, and voting rights.

Finally, as noted above, these structural changes require opening the charter, which presents a unique challenge. One school of thought believes that the current Board structure is flawed and that the Smithsonian should seize this opportunity to make changes. At the moment, there seems to be some support for a thoughtful, well-reasoned recommendation from the Smithsonian for opening the charter and restructuring the Board. Reactions to changes could be explored through informal conversations with Congressional staff before making a final decision about whether to open the charter. Some interviewees pointed to the American Red Cross as an organization that successfully worked with Congress to update its charter in the wake of a scandal.

Another school of thought believes that opening the charter is like opening Pandora's box. Concerns include questions about the constitutionality of the Board structure, worries about additional limitations or requirements placed on the Smithsonian in the process (by those who do not truly understand the tradition and rationale behind the structure), and fear of losing the institution's unique status (thus increasing the possibility of greater political pressure and budgetary controls, as well as losing the institution's programmatic independence). There are also concerns about timing. The energy and effort required to make changes could distract the organization – staff and Board leadership – from completing the changes already underway and moving beyond the current crisis.

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<sup>60</sup> "Recommendation 5: The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight, Independent Review Committee," Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007.

<sup>61</sup> BoardSource, *Nonprofit Governance Index 2007*, page 10.

## PART 5: OPTIONS FOR BOARD SIZE, COMPOSITION, AND EXECUTIVE COMMITTEE

In order to assist the Board of Regents in its consideration of board size and composition, we offer four different board structures below. The options we propose all begin with a common platform – that, in keeping with Principle II, the governance structure of the Smithsonian should reflect the organization’s founding, its mission, and its unique status.

The legislative history establishing the Smithsonian clearly reflects Congress’s recognition that its acceptance of James Smithson’s gift was a unique situation that called for a correspondingly unique governing structure. Because it was established by a law of Congress, the Smithsonian derives its existence and authority from federal law, not from state law as do most nonprofit organizations. The Smithsonian’s unique status has been recognized by federal courts over the years, resulting in decisions that variously hold the Smithsonian to be an establishment, an agency, or an authority of the federal government in some circumstances and not in others.<sup>62</sup>

Consistent with its intent to establish the Smithsonian outside the executive branch of government, Congress established a unique board structure with representatives of all three branches of government serving alongside citizens. Its distinct existence – and its unique governing structure – was designed to ensure the “wise and faithful use of this discretionary power” and to reduce any chance of “misuse or misapplication of funds” by Congress itself.<sup>63</sup> That unique structure continues today, after two separate Congressional amendments, one in 1894 and one in 1970.

The options outlined below continue the inclusion of representatives of the three branches of government on the Board of Regents. While not perfect from a pure governance perspective, this composition reflects four critical factors: (1) appropriate deference to Congressional intent and its thoughtful and extensive consideration of the special status of the Smithsonian both in establishing the organization and in defining its governance structure; (2) the unique nature and function of the Smithsonian; (3) the particular benefits accrued to the Smithsonian from this composition, as highlighted in the interviews we conducted and the materials we reviewed; and (4) the fact that approximately 70% of the Smithsonian’s budget comes from federal appropriations.<sup>64</sup>

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<sup>62</sup> Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007, page 28.

<sup>63</sup> “Special Report of the General Counsel,” Proceedings of the Board of Regents, September 18, 2006.

<sup>64</sup> For this reason, we did not include an option similar to that selected by the American Red Cross in its recent governance review (for more information, see [http://www.redcross.org/static/file\\_cont5765\\_lang0\\_2202.pdf](http://www.redcross.org/static/file_cont5765_lang0_2202.pdf)). That option would have moved the two *ex officio* members and the six Congressional members to a governmental advisory council. While it would have addressed some of the concerns highlighted in our interviews, including potential conflicts of interest and time and commitment constraints on government officials, it would have distanced Congressional Regents from Board matters and institutional funding, deprived the organization of the wisdom of the Chief Justice and access to Vice President, and reduced the attractiveness of the Board to donors and other stakeholders. We explored this option with numerous interviewees and found virtually no support for it.

More specifically, the significant benefits that accrued to the Smithsonian from the full participation of Congressional Regents were highlighted by numerous interviewees. Their capacity to articulate the needs and activities of the Smithsonian to Congressional members and committees, as well as their ability to bring the public's perspective to the Smithsonian, has resulted in strong support in Congress and improved Board governance and leadership throughout this crisis. The Chief Justice's skills in managing Board meetings, in encouraging open dialog, and in balancing voices at the table were also cited by Regents as a significant benefit of the current governance structure. And, the ability of the Smithsonian Board to access the Vice President when needed was also a positive element of the current structure.

Lastly, the current composition of the Board reinforces the unique nature of the Smithsonian Institution as a national organization, a national trust, and a national treasure. From the perspective of the public, it seems fitting that this national treasure be governed by a group of individuals who represent the nation itself.

### **Options for Governance Structures**

The options represent several different combinations of individual components for Board size, Board composition, Executive Committee size, and Executive Committee composition. Any one of the options outlined below is a viable solution given the Smithsonian's unique governance structure. However, they are not equal; from a governance perspective, some are better than others. To assist the Governance and Nominating Committee and the Board in assessing the merits of each option, we have included as Exhibit 2 a matrix that lists the benefits and challenges for each option.

Selections were made based on our experience and judgment, as well as the broad governance principles and practices discussed above. As such they are not interchangeable. For example, one option offers a small Board with a small Executive Committee while another offers a larger Board with a larger Executive Committee. It would not be appropriate to consider a large Board with a small Executive Committee.

The decision as to which to pursue is a complex one, especially where there are so many political and legal implications to those that require changes to the statutory charter. BoardSource offers these options to highlight the different benefits, to build the basis for a robust discussion, and to ensure that the Governance and Nominating Committee, and ultimately the Board, have a full understanding of the trade-offs involved with each option. As noted above, full consideration of these options, however, necessitates a clear understanding of the legal and political risks involved with some of the options. For these reasons, BoardSource urges the Board to obtain advice from qualified experts and to consider that advice fully in the decision-making process.

In deciding which to select, we recommend that the Board gauge each option against the principles outlined in this report, recognizing that the Smithsonian is a unique institution and that its governance structures should reflect its history, its mission, its programmatic and funding needs, and its stakeholders. The Board and its own structures should reflect its responsibilities for oversight – both of the institution and the Secretary – and for the success of the mission.

### **Option 1: Modified Current Structure (17 Members)**

This first option maintains a Board of 17 Regents, including representatives of all three branches of government, as currently constituted. It includes an Executive Committee of three Regents with two additional non-voting participants and a quorum of two. Its only change is increasing the number of participants/advisors of Executive Committee deliberations.

This change can be effected within the current governance structure and requires only limited modification to current practices. It perpetuates a Board that, in practice, may not have the capacity to execute its responsibilities and a correspondingly small Executive Committee. The Board's current practice of including non-Regents on committees is one mechanism to help alleviate the problem of limited capacity.

### **Option 2: Governing Board within a Statutory Board (17 to 19 Members)**

This second option, drawn from the IRC Report,<sup>65</sup> maintains a Board of 17 to 19 Regents, including representatives of all three branches of government but in a slightly different configuration – two *ex officio* Regents (Chief Justice and Vice President) to serve without voting authority or fiduciary duties, 11 Citizen Regents (two more than the current nine), and four to six Congressional Regents (depending on whether the Board stays at 17 or expands to 19). This option includes an Executive Committee of five Regents. The most distinguishing feature of this option is the creation of a “governing board” comprised of Citizen and Congressional Regents.

While this option keeps the Board at or near its current size, it would require statutory change. It adds, at most, four Citizen Regents, which addresses only some of the need for greater diversity of skills and expanded capacity for committee leadership and work. The “governing board” structure acknowledges the practical limitations of the *ex officio* Regents – one does not vote and the other almost never attends meetings. However, it also creates a problematic board-within-a-board structure that formalizes different expectations for different types of Regents.

### **Option 3: Slightly Larger Board (21 to 23 Members)**

This option expands the Board to 21 to 23 Regents, including representatives of all three branches of government, as currently constituted, and 13 to 15 Citizen Regents. It includes an Executive Committee with five Regents and a quorum of three. This option is distinguished by the addition four to six more Citizen Regents, in addition to the current nine, and the slightly larger Executive Committee.

This option addresses the Board's need for greater capacity to carry out board work through committees and for greater diversity of skills and experience by adding Citizen Regents. It

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<sup>65</sup> “Recommendation 5: The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight,” “Recommendation 6: The Role of the Chief Justice and Vice President Should Be Clarified,” and “Recommendation 8: The Board Should be Expanded or Reorganized to Allow for the Addition of Regents with Needed Expertise,” Independent Review Committee, *A Report to the Board of Regents of the Smithsonian Institution*, June 18, 2007.

preserves the current connection to all three branches of government, as well as the drawbacks of different expectations of different types of Regents. It, too, would require statutory change.

#### **Option 4: Large Board (30 to 40 Members)**

This option expands the Board to 30 to 40 Regents, including representatives of all three branches of government, as currently constituted, and 22 to 32 Citizen Regents. It establishes an Executive Committee of 10 – including Chairs of all committees, the Chair of the Board, and some Congressional Regents – and a quorum of six. This option is distinguished by its considerably larger size and expanded Executive Committee.

This option responds to the Board's need for greater diversity of skills and experience and greater capacity to carry out board work through committees. It adds considerably more Citizen Regents and creates the possibility for adding significant donors to the Board. It risks, however, the dangers of larger boards, whereby individuals may be less inclined to participate and, in turn, may feel less personally accountable. Out of necessity, it may rely more heavily on the Executive Committee to function on behalf of the Board. While the expanded Executive Committee enables better coordination and communication between committees, it also can create a board-within-a-board problem that can disengage the rest of the Board. This option also would require statutory change.

## Exhibit 2: Options for Board and Executive Committee Size and Composition

	<u>Option 1</u> <i>Modified Current Structure</i>	<u>Option 2</u> <i>Governing Board within a Statutory Board</i>	<u>Option 3</u> <i>Slightly Larger Board</i>	<u>Option 4</u> <i>Large Board</i>
<b>Board Size</b>				
Number of Regents	17	17 – 19	21 – 23	30 – 40
<b>Board Composition</b>				
Ex Officio	2	2 (non-voting)	2	2
Congressional Regents	6	4 or 6	6	6
Citizen Regents	9	11	13 – 15	22 – 32
<b>Executive Committee</b>				
Voting Members	3	5	5	10
Non-Voting Participants/Advisors	2	did not discuss	0	0
Quorum	2	did not discuss	3	6
<b>Benefits</b>				
Preserves unique history and relationship to Congress	✓	✓	✓	✓
Preserves the benefits of Chief Justice’s participation	✓	✓	✓	✓
Simplifies fiduciary structure/reduces potential for conflicts of interest for Chief Justice and Vice President		✓		
Preserves capacity of Vice President’s office to provide assistance	✓	✓	✓	✓
Preserves commitment of Congressional Regents and roles as liaisons between Congress and Smithsonian	✓	✓	✓	✓
Small enough to ensure active oversight and leadership by full Board	✓	✓	✓	
Adds capacity to Board for committee leadership and work		✓	✓	✓
Creates a “governing board” whose members are all able and willing to participate fully		✓		
Opens new Board positions to add skills		✓	✓	✓
Spreads representation of Board on Executive Committee		✓	✓	✓
Establishes workable quorum/voting mechanism on Executive Committee			✓	✓
Does not require change in statutory charter	✓			
<b>Challenges</b>				
Requires change in statutory charter		✓	✓	✓
Continues a Board that is effectively smaller than 17	✓			
Maintains a structure with different expectations for different Regents	✓	✓	✓	✓
May not give Board enough capacity for committee leadership and work	✓	✓		
Creates two formal tiers of trustees within one board		✓		
Establishes large Board that diffuses perceptions of accountability				✓
Discourages full participation and robust deliberations in boardroom				✓
Risks confusing donor recognition with governing responsibilities				✓
Continues small Executive Committee	✓			
Continues an Executive Committee that operates with a quorum of two	✓			
Does not discuss membership or quorum of Executive Committee		✓		
Risks Executive Committee acting as the “board”				✓

## PART 6: SUMMARY OF OTHER MATTERS FOR CONSIDERATION

Regardless of which option the Board selects, the Governance and Nominating Committee might wish to consider a number of changes to current practice that are mentioned earlier in this report. For the Committee's convenience, these are summarized below. Some of these are based on what are considered good governance practices today and our experiences with other nonprofit organizations. Some echo or support recommendations of the IRC and Governance Committee Reports.

In making these suggestions, we recognize that the Board is actively engaged in implementing a significant number of recommendations from the Governance and Nominating Committee, and that these activities are the culmination of a very active year of work on improving governance structures and practices. A number of changes are already in process and the Board has not yet had the time to experience their impact. In addition, the organization is operating with an acting leader as the search continues for a permanent Secretary. For these reasons, we offer these suggestions for the Committee's consideration at the appropriate time.

1. *Broaden Board capacity by adding non-Regents to committees*

The Board has already added a number of non-Regents to various Board committees to help ensure that those committees have access to appropriate skills and experiences. We encourage the Board to continue to add additional capacity this way and to look for opportunities to access the larger Smithsonian community, including members and leaders of Advisory Boards.

2. *Communicate expectations for Congressional Regents*

To ensure that the Congressional leadership understands the needs of the Smithsonian when appointing Congressional (and other) Regents, we suggest that designated members of the Board of Regents meet with appropriate individuals to discuss the skills, interest needed at the board level, and time commitment. The Board may also want to provide a written description of the expectations of all Regents, including Congressional Regents.

3. *Add a development committee*

To ensure that the Board of Regents is ready to support a major capital campaign and to demonstrate leadership to various affected stakeholders, we suggest that the Board consider adding a development/fundraising committee. Alternatively, this could be an *ad hoc* campaign committee. Either way, the committee could include Advisory Board members, which would bring added resources to the committee and provide another mechanism for linking the Board of Regents with the Advisory Boards.

4. *Reevaluate the need for the Facilities Revitalization Committee at the appropriate time*

This committee began with a set of responsibilities that focused on the identification of current facilities needs and a \$2.5 billion campaign. We now understand that the Facilities Revitalization Committee has been given (or is being given) a broader set of responsibilities and that it will serve much like the Building and Grounds Committee of a university. Since this kind of committee can run the risk of becoming too operational in nature, mimicking management responsibilities for facilities renovation and prioritization of projects, we

suggest that the Governance and Nominating Committee evaluate the need for its continued existence once the current work is complete and the capital campaign is underway.

5. *Closely monitor the use of the Executive Committee*

While the charter of the Executive Committee enumerates a set of responsibilities that are common to such committees, we suggest that the Governance and Nominating Committee closely monitor the activities of the Executive Committee to ensure that it does not begin to act in lieu of the full Board when it should and could be engaged. Given the breadth of its charter, and the general tendency of powerful Executive Committees to be used by chief executives in lieu of full Board participation, it will be important to ensure that the Executive Committee find ways to communicate its discussions and reviews at and in between board meetings and to seek ratification of actions when possible.

6. *Once the new Secretary is retained, consider recommending that the Board undertake a vision-setting and strategic-planning process*

As part of its review, the Governance and Nominating Committee set forth a set of guiding principles which it adopted to reinforce a “foundation of integrity and responsibility.” With the advent of a new Secretary, the Board may wish to expand this effort by working closely with the new Secretary in reviewing and refining the current vision of how the Smithsonian will realize its mission through a pan-institutional strategic-planning process that would identify programmatic and fundraising goals. At the appropriate time, the Governance and Nominating Committee may wish to suggest that the Board establish a Strategic Planning Committee or a pan-institutional committee to lead the institution through the process.

Setting a vision and planning for the future will offer a unique opportunity to engage the entire Smithsonian community and stakeholders in a common process that will unite key parties. It will also offer the chance to leverage extended resources across the institution in a common effort, including the opportunity to utilize the various Advisory Boards in a united effort with management and with the Board of Regents to engage in a strategic planning process or in a similar strategic review process. Such a process could include unit-by-unit planning, or it could be groups of “families” of study – like arts, culture, and science.

7. *Continue efforts to build commonality of purpose, knowledge, and commitment among Regents*

The Governance and Nominating Committee has already made a number of recommendations that will reinforce commonality of purpose and commitment among Regents, including (1) designing and maintaining an up-to-date job description for Regents and charters for committees and (2) providing and improving orientation and ongoing education for Regents about their responsibilities and the institution. At the appropriate time, we suggest that the Governance and Nominating consider recommending that the Board hold an annual retreat at which the Board and senior staff can focus on long-term strategic issues. A board retreat also can build rapport between and among board and senior staff members, increasing board members’ knowledge and understanding of the institution, and focusing attention on big picture, long-term issues related to strategy and mission. This might be combined with the June Board meeting, which we understand from interviews is traditionally devoted to strategic planning.

8. Consider a policy to address attendance by Regents

The Governance and Nominating Committee has already recommended to the Board that it develop a mechanism for regular assessments of the Board, committees, and individual Regents. This is a best practice today and should help to ensure parity of performance among board members. At the appropriate time, the Committee may also wish to recommend that the Board establish a policy for Board meeting attendance that includes a mechanism for handling Regents who, repeatedly, do not attend meetings. Such a policy would apply to all Regents, except *ex officio* ones. This would help ensure that all board seats are filled with individuals who are ready to apply themselves to the work at hand.

## **PART 7: CONCLUSION**

Good governance practices are essential to the health and well-being of a board. Board size and composition affect the sense of accountability within the boardroom, the quality of discussions and decision-making, and the capacity of the organization to achieve its mission. While every nonprofit organization should consider its size and composition within the framework of its mission, its needs, its opportunities, and its challenges, an organization as unique as the Smithsonian faces special challenges.

The decisions this Board makes about its governance structures will drive the Smithsonian's future success. While the governance crisis of this year is, no doubt, a searing experience, it has opened the way for the Board to demonstrate true leadership. Already, the extraordinary work of the Governance and Nominating Committee and the Independent Review Committee, coupled with the actions of the Board of Regents, has demonstrated an ongoing commitment to self-reflection, accountability, and transparency. We hope that this report helps illuminate the path forward to success.

## **APPENDICES**

### **1. Board Roster**

### **2. Charter**

Source: Exhibit 28, Independent Review Committee, A Report to the Board of Regents of the Smithsonian Institution, June 18, 2007.

### **3. Duties of the Chancellor and Chair of the Board**

Source: Appendix A, Recommendation 3, Governance Committee, Report of the Governance Committee to the Board of Regents, June 14, 2007.

### **4. Bylaws**

Source: Office of the Regents, Updated September 2007.

### **5. Duties and Responsibilities of Regents**

Source: Appendix A, Recommendation 2, Governance Committee, Report of the Governance Committee to the Board of Regents, June 14, 2007.

### **6. General Criteria for Identifying Candidates for the Smithsonian Board of Regents**

Source: Office of the Regents, September 2007.

### **7. Committee Assignments**

Source: Office of the Regents, November 28, 2007.

### **8. General Guidelines for the Appointment to Standing Committees of the Board of Regents**

Source: Office of the Regents, September 2007.

# Appendix 1

**Board of Regents, Smithsonian Institution**  
**Members – January 2008**

A list of the members of the Board of Regents as of January 2008 follows:

***Ex Officio***

- The Chief Justice of the United States
- The Vice President of the United States

***Three Senators Appointed by President Pro Tempore of the U.S. Senate***

- Thad Cochran
- Chris (Christopher J.) Dodd
- Patrick J. Leahy

***Three Representatives Appointed by the Speaker of the U.S. House of Representatives***

- Xavier Becerra
- Sam Johnson
- Doris Matsui

***Nine Citizens Approved by the Board of Regents***

- Eli Broad (California)
- Phillip Frost (Florida)
- Shirley Ann Jackson (New York)
- Robert P. Kogod (Washington, D.C.)
- Roger W. Sant (Washington, D.C.)
- Alan G. Spoon (Massachusetts)
- Patricia Q. Stonesifer (Washington)
- 2 Vacancies

# Appendix 2

SMITHSONIAN INSTITUTION  
Charter Provisions  
(Title 20, United States Code, Sections 41-70)

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*Chapter 3. Smithsonian Institution,  
National Museums and Art Galleries*

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*Subchapter I- Charter Provisions*

**§ 41. Incorporation of Institution**

The President, the Vice President, the Chief Justice, and the heads of executive departments are constituted an establishment by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men, and by that name shall be known and have perpetual succession with the powers, limitations, and restrictions hereinafter contained, and no other.

(R.S. § 5579; Feb. 27, 1877, ch. 69, 19 Stat. 253; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

**CODIFICATION**

R.S. § 5579 derived from Acts Aug. 10, 1846, ch. 178 § 1, 9 Stat. 102; Mar. 20, 1871, ch. 1, 17 Stat. 1.

R.S. §§ 5579 to 5594 (codified as sections 41 to 46, 48, 50, 51 to 53, 54 to 57, and 67 of this title) constituted Title 73 of the Revised Statutes, entitled "The Smithsonian Institution." A preamble to these sections was as follows: "James Smithson, esquire, of London, in the kingdom of Great Britain, having by his last will and testament given the whole of his property to the United States of America, to found, at Washington, under the name of the Smithsonian Institution' an establishment for the increase and diffusion of knowledge among men; and the United States having, by an act of Congress, received said property and accepted said trust; therefore, for the faithful execution of said trust, according to the will of the liberal and enlightened donor."

R.S. § 5579, as originally enacted, constituted the President, the Vice-President, the Secretaries of State, the Treasury, War, and the Navy, the Postmaster-General, the Attorney-General, the Chief Justice, the Commissioner of the Patent Office, and the Governor of the District of Columbia, and such persons as they might elect honorary members, an establishment by the name of the "Smithsonian Institution," for the purposes and with the powers specified in the section as set forth here.

**AMENDMENTS**

1894—Act Mar. 12, 1894, substituted "the Chief Justice, and heads of executive departments" for "the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney General, the Chief Justice, the Commissioner of Patents, the governor of the District of Columbia, and other such persons as they may elect honorary members".

1877—Act Feb. 27, 1877, substituted "Patents" for "Patent Office".

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 42. Board of Regents; members**

(a) The business of the Institution shall be conducted at the city of Washington by a Board of Regents, named the Regents of the Smithsonian Institution, to be composed of the Vice President, the Chief Justice of the United States, three Members of the Senate, three Members of the House of Representatives, and nine other persons, other than Members of Congress, two of whom shall be

resident in the city of Washington, and seven of whom shall be inhabitants of some State, but no two of them of the same State.

(b) Notwithstanding any other provision of law, the Board of Regents of the Smithsonian Institution may modify the number of members, manner of appointment of members, or tenure of members, of the boards or commissions under the jurisdiction of the Smithsonian Institution, other than—

- (1) the Board of Regents of the Smithsonian Institution; and
- (2) the boards or commissions of the National Gallery of Art, the John F. Kennedy Center for the Performing Arts, and the Woodrow Wilson International Center for Scholars.

(R.S. § 5580; Mar. 12, 1894, ch. 36, 28 Stat. 41; Dec. 15, 1970, Pub. L. 91-551, § 1(a), 84 Stat. 1439, as amended Oct. 21, 1998, Pub. L. 105-277, Div. A., § 101(e) [Title III, § 355], 112 Stat. 2681-303.)

#### CODIFICATION

R.S. § 5580 derived from Acts Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103; Jan. 10, 1865, ch. 11, 13 Stat. 420; Mar. 20, 1871, ch. 1, 17 Stat. 1.

#### AMENDMENTS

1998— Act Oct. 21, 1998, designated the existing provisions as subsec. (a) and added subsection (b).

1970—Pub. L. 91-551 authorized three additional persons on the Board of Regents.

1894—Act Mar. 12, 1894, struck out “The Governor of the District of Columbia,” after “the Chief Justice of the United States,”.

#### CROSS REFERENCES

National Zoological Park, administration by Regents of Smithsonian Institution, see section 81 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### § 43. Appointment of regents; terms of office; vacancies

The regents to be selected shall be appointed as follows: The Members of the Senate by the President thereof; the Members of the House by the Speaker thereof; and the nine other persons by joint resolution of the Congress. The Members of the House so appointed shall serve for the term of two years; and on every alternate fourth Wednesday of December a like number shall be appointed in the same manner to serve until the fourth Wednesday in December in the second year succeeding their appointment. The Senators so appointed shall serve during the term for which they shall hold, without reelection, their office as Senators. Vacancies, occasioned by death, resignation, or otherwise, shall be filled as vacancies in committees are filled. The regular term of service for the other nine members shall be six years; and new elections thereof shall be made by joint resolutions of Congress. Vacancies occasioned by death, resignation, or otherwise may be filled in like manner by joint resolution of Congress.

(R.S. § 5581; Dec. 15, 1970, Pub. L. 91-551, § 1(b), (c), 84 Stat. 1440.)

#### CODIFICATION

R.S. § 5581 derived from Act Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103.

#### AMENDMENTS

1970—Pub. L. 91-551 authorized the appointments of three additional members of the Board by joint resolution of the Congress.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 44. Organization of board; expenses; gratuitous services**

The Board of Regents shall meet in the city of Washington and elect one of their number as chancellor, who shall be the presiding officer of the Board of Regents, and called the chancellor of the Smithsonian Institution, and a suitable person as Secretary of the institution, who shall also be the secretary of the Board of Regents. The board shall also elect three of their own body as an executive committee, and shall fix the time for the regular meetings of the board; and, on application of any three of the regents to the Secretary of the institution, it shall be his duty to appoint a special meeting of the Board of Regents, of which he shall give notice, by letter, to each of the members; and, at any meeting of the board, eight shall constitute a quorum to do business. Each member of the board shall be paid his necessary traveling and other actual expenses in attending meetings of the board, which shall be audited by the executive committee, and recorded by the Secretary of the board; but his service as Regent shall be gratuitous.

(R.S. § 5582; Dec. 15, 1970, Pub. L. 91-551, § 1(d), 84 Stat. 1440.)

**CODIFICATION**

R.S. § 5582 derived from Act Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103.

**AMENDMENTS**

1970—Pub. L. 91-551 increased the number of members required to constitute a quorum from five to eight.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 45. Special meetings of members**

The members of the institution may hold stated and special meetings, for the supervision of the affairs of the institution and the advice and instruction of the Board of Regents, to be called in the manner provided for in the bylaws of the institution, at which the President, and in his absence the Vice President, shall preside.

(R.S. § 5585.)

**CODIFICATION**

R.S. § 5585 derived from Act Aug. 10, 1846, ch. 178, § 8, 9 Stat. 103.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**§ 46. Duties of Secretary**

The Secretary of the Board of Regents shall take charge of the building and property of the institution, and shall, under their direction, make a fair and accurate record of all their proceedings, to be preserved in the institution until no longer needed in conducting current business; and shall also discharge the duties of librarian and of keeper of the museum, and may, with the consent of the Board of Regents, employ assistants.

(R.S. § 5583; Oct. 25, 1951, ch. 562, § 2(4), 65 Stat. 639.)

#### CODIFICATION

R.S. § 5583 derived from Act Aug. 10, 1846, ch. 178, § 7, 9 Stat. 105.

#### AMENDMENTS

1951—Act Oct. 25, 1951, inserted “until no longer needed in conducting current business”.

#### CROSS REFERENCES

Management and disposition of records, see sections 2101 et seq., 2301 et seq., 2501 et seq., 2901 et seq., 3101 et seq., and 3301 et seq. of Title 44, Public Printing and Documents.

Statement of expenditures, see section 49 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### § 46a. Employment of aliens by Secretary

The Secretary of the Smithsonian Institution, subject to adequate security and other investigations as he may determine to be appropriate, and subject further to a prior determination by him that no qualified United States citizen is available for the particular position involved, is authorized to employ and compensate aliens in a scientific or technical capacity at authorized rates of compensation without regard to statutory provisions prohibiting payment of compensation to aliens.

(Pub. L. 88-549, Aug. 31, 1964, 78 Stat. 754.)

### § 47. Acting Secretary

The chancellor of the Smithsonian Institution may, by an instrument in writing filed in the office of the Secretary thereof, designate and appoint a suitable person to act as Secretary of the Institution when there shall be a vacancy in said office, and whenever the Secretary shall be unable from illness, absence, or other cause to perform the duties of his office; and in such case the person so appointed may perform all the duties imposed on the Secretary by law until the vacancy shall be filled or such inability shall cease. The said chancellor may change such designation and appointment from time to time as the interests of the institution may in his judgment require.

(May 13, 1884, ch. 44, 23 Stat. 21.)

#### PRIOR PROVISIONS

Act May 13, 1884, is derived from Act Jan. 24, 1879, ch. 21, 20 Stat. 264.

### § 48. Salary and removal of Secretary and assistants

The Secretary and his assistants shall, respectively, receive for their services such sum as may be allowed by the Board of Regents; and shall be removable by the Board of Regents whenever, in their judgment, the interests of the institution require such removal.

(R.S. § 5584.)

#### CODIFICATION

R.S. § 5584 derived from Act Aug. 10, 1846, ch. 178, § 7, 9 Stat. 105.

Provisions which related to semi-annual payments on the first day of January and July have been omitted.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

## § 49. Statement of expenditures

The Secretary shall submit to Congress annually at the beginning of each regular session thereof a detailed statement of the expenditures of the preceding fiscal year, under appropriations for "International Exchanges," "North American Ethnology," and the "National Museum."

(Oct. 2, 1888, ch. 1069, 25 Stat. 529.)

### CROSS REFERENCES

Annual report of salaries, see section 58 of this title.

Printing and distribution of reports of Smithsonian Institution, see section 1341 of Title 44, Public Printing and Documents.

## § 50. Reception and arrangement of specimens and objects of art

Whenever suitable arrangements can be made from time to time for their reception, all objects of art and of foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens belonging to the United States, which may be in the city of Washington, in whosoever custody they may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them, and shall be so arranged and classified in the building erected for the Institution as best to facilitate the examination and study of them; and whenever new specimens in natural history, geology, or mineralogy are obtained for the museum of the Institution, by exchanges of duplicate specimens, which the Regents may in their discretion make, or by donation, which they may receive, or otherwise, the Regents shall cause such new specimens to be appropriately classed and arranged. The minerals, books, manuscripts, and other property of James Smithson, which have been received by the Government of the United States, shall be preserved separate and apart from other property of the Institution.

(R. S. § 5586.)

### HISTORICAL AND STATUTORY NOTES

#### CODIFICATION

R.S. § 5586 derived from Act Aug. 10, 1846, ch. 178, § 6, 9 Stat. 105.

**PRESERVATION OF SEPTEMBER 11<sup>th</sup> ARTIFACTS IN NATIONAL MUSEUM OF AMERICAN HISTORY**  
Pub.L. 107-117, Div. B, Ch. 7, § 701, Jan. 10, 2002, 115 Stat. 2311, provided that:

**"(a) In general.**—The Secretary of the Smithsonian Institution shall collect and preserve in the National Museum of American History artifacts relating to the September 11<sup>th</sup> attacks on the World Trade Center and the Pentagon.

**"(b) Types of artifacts.**—In carrying out subsection (a) [of this note], the Secretary of the Smithsonian Institution shall consider collecting and preserving—

**"(1)** pieces of the World Trade Center and the Pentagon.

**"(2)** still and video images made by private individuals and the media;

**"(3)** personal narratives of survivors, rescuers, and government officials; and

**"(4)** other artifacts, recordings, and testimonials that the Secretary of the Smithsonian Institution determines have lasting historical significance.

**"(c) Authorization of appropriations.**— There is authorized to be appropriated to the Smithsonian Institution \$5,000,000 to carry out this section [this note]."

**THE SMITHSONIAN ASTROPHYSICAL OBSERVATORY SUBMILLIMETER ARRAY**  
Pub. L. 106-383, §§ 1 to 2, Oct. 27, 2000, 114 Stat. 1459, provided that:

**"Sec. 1. Facility authorized.**

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, construct, and equip laboratory, administrative, and support space to house base operations for the Smithsonian Astrophysical Observatory Submillimeter Array located on Mauna Kea at Hilo, Hawaii.

**"Sec. 2. Authorization of appropriations.**

"There are authorized to be appropriated to the Board of Regents of the Smithsonian Institution to carry out this Act, \$2,000,000 for fiscal year 2001, and \$2,500,000 for fiscal year 2002, which shall remain available until expended."

**SMITHSONIAN INSTITUTION TRANSPORTATION PROGRAM**

Pub. L. 105-178, Title I, § 1214(b), June 9, 1998, 112 Stat. 204, provided that:

"(1) **In general.**—The Secretary of Transportation shall allocate amounts made available by this subsection for obligation at the discretion of the Secretary of the Smithsonian Institution, in consultation with the Secretary of Transportation, to carry out projects and activities described in paragraph (2).

"(2) **Eligible uses.**—Amounts allocated under paragraph (1) may be obligated only—

"(A) for transportation-related exhibitions, exhibits, and educational outreach programs;

"(B) to enhance the care and protection of the Nation's collection of transportation-related artifacts;

"(C) to acquire historically significant transportation-related artifacts; and

"(D) to support research programs within the Smithsonian Institution that document the history and evolution of transportation, in cooperation with other museums in the United States.

"(3) **Authorization of appropriations.**—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) \$1,000,000 for each of fiscal years 1998 through 2003 to carry out this subsection.

"(4) **Applicability of Title 23.**—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code [section 101 et seq. of Title 23]; except that the Federal share of the cost of any project or activity under this subsection shall be 100 percent and such funds shall remain available until expended."

**NATIONAL MUSEUM OF HEALTH AND MEDICINE**

NOTE: Pub. L. 105-78, Title VII, §§ 701, 703 to 708, Nov. 13, 1997, 111 Stat. 1524, the National Health Museum Development Act, which authorized construction of the National Health Museum and provided for the establishment and termination of the National Health Museum Commission, was repealed by Pub. L. 107-303, Title III, § 303, Nov. 27, 2002, 116 Stat. 2361.

[The National Health Museum had no affiliation with the Smithsonian Institution, other than being a "National" museum.]

**WEST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING**

Pub. L. 103-151, Nov. 24, 1993, 107 Stat. 1515, provided that:

**"SECTION 1. PLANNING DESIGN, AND CONSTRUCTION OF WEST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY BUILDING.**

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, and construct the West Court of the National Museum of Natural History building.

**"SECTION 2. FUNDING.**

"No appropriated funds may be used to pay any expense of the planning, design, and construction authorized by section 1."

**EAST COURT OF NATIONAL MUSEUM OF NATURAL HISTORY MUSEUM**

Pub. L. 101-455, Oct. 24, 1990, 104 Stat. 1067, as amended by Pub. L. 103-98, § 1(a), Oct. 6, 1993, 107 Stat. 1015, provided that:

**"SECTION 1. ADDITIONAL SPACE IN NATIONAL MUSEUM OF NATURAL HISTORY.**

"The Board of Regents of the Smithsonian Institution is authorized to plan, design, construct, and equip approximately 80,000 square feet of space in the East Court of the National Museum of Natural History building.

**"SECTION 2. AUTHORIZATION OF APPROPRIATIONS.**

"There is authorized to be appropriated to the Smithsonian Institution for fiscal year 1991 and succeeding fiscal years not to exceed \$30,000,000 to carry out this Act."

[Section 1(b) of Pub. L. 103-98 provided that: "The amendment made by subsection (a) [amending section 2 of Pub. L. 101-455, set out above] shall take effect as of October 24, 1990."]

**CONSTRUCTION OF CHARLES McC. MATHIAS, JR. LABORATORY FOR ENVIRONMENTAL RESEARCH**  
Pub. L. 99-617, § 1, Nov. 6, 1986, 100 Stat. 3488, provided that:

"(a) **Construction authorization.**—The Board of Regents of the Smithsonian Institution is authorized to construct the Charles McC. Mathias, Jr. Laboratory for Environmental Research.

"(b) **Location.**—The Charles McC. Mathias, Jr. Laboratory for Environmental Research shall be located at the Smithsonian Environmental Research Center, a bureau of the Smithsonian Institution, located at Edgewater, Maryland.

"(c) **Authorization of appropriations.**—Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution \$1,000,000 to carry out the purposes of this section.

"(d) **Transfer of funds.**—Any portion of the sums appropriated to carry out the purposes of this section may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

**SMITHSONIAN ASTROPHYSICAL OBSERVATORY AND SMITHSONIAN TROPICAL RESEARCH INSTITUTE; AUTHORIZATION OF CONSTRUCTION AND APPROPRIATIONS**

Pub. L. 99-423, Sept. 30, 1986, 100 Stat. 963, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to plan and construct facilities for the Smithsonian Astrophysical Observatory and the Smithsonian Tropical Research Institute.

"Sec. 2. Effective October 1, 1986, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution:

"(a) \$4,500,000 for the Smithsonian Astrophysical Observatory; and

"(b) \$11,100,000 for the Smithsonian Tropical Research Institute.

"Sec. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

**FRED LAWRENCE WHIPPLE OBSERVATORY; PURCHASE OF LAND**

Pub. L. 98-73, Aug. 11, 1983, 97 Stat. 406, provided:

"That the Smithsonian Institution is authorized to purchase land in Santa Cruz County, Arizona, for the permanent headquarters of the Fred Lawrence Whipple Observatory.

"Sec. 2. Effective October 1, 1984, there is authorized to be appropriated \$150,000 to carry out the purposes of this Act."

**CONSTRUCTION OF NATIONAL MUSEUM OF AFRICAN ART, CENTER FOR EASTERN ART, AND STRUCTURES FOR RELATED EDUCATIONAL FACILITIES**

Pub. L. 97-203, §§ 1 to 3, June 24, 1982, 96 Stat. 129, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to construct a building for the National Museum of African Art and a center for Eastern art together with structures for related educational activities in the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at Tenth Street Southwest, in the city of Washington.

"Sec. 2. Effective October 1, 1982, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution \$36,500,000 to carry out the purposes of this Act. Except for funds obligated or expended for planning, administration, and management expenses, and architectural or other consulting services, no funds appropriated pursuant to this section shall be obligated or expended until such time as there is available to such Board, from private donations or from other non-Federal sources, a sum which, when combined with the funds so appropriated, is sufficient to carry out the purposes of this Act.

"Sec. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

#### SMITHSONIAN INSTITUTION; DEVELOPMENT OF PROPERTY ADJACENT TO ORIGINAL BUILDING

Pub. L. 96-36, July 20, 1979, 93 Stat. 94, provided:

"That the Board of Regents of the Smithsonian Institution is authorized to plan for the development of the area south of the original Smithsonian Institution Building adjacent to Independence Avenue at Tenth Street, Southwest, in the city of Washington.

"Sec. 2. Effective October 1, 1979, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution \$500,000 to carry out the purposes of this Act.

"Sec. 3. Any portion of the sums appropriated to carry out the purposes of this Act may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

#### SMITHSONIAN INSTITUTION PLANS FOR AND CONSTRUCTION OF MUSEUM SUPPORT FACILITIES; APPROVAL OF PLANS AND SPECIFICATIONS; SITUS; TRANSFER OF LAND; APPROPRIATIONS; CONTRACTS BY GENERAL SERVICES ADMINISTRATION

Pub. L. 94-98, Sept. 19, 1975, 89 Stat. 480, as amended by Pub. L. 95-569, Nov. 2, 1978, 92 Stat. 2444, provided:

"The Regents of the Smithsonian Institution are authorized to prepare plans for, and to construct, museum support facilities to be used for (1) the care, curation, conservation, deposit, preparation, and study of the national collections of scientific, historic, and artistic objects, specimens, and artifacts; (2) the related documentation of such collections of the Smithsonian Institution; and (3) the training of museum conservators. No appropriation shall be made to construct the facilities authorized by this Act until the Committee on Public Works and Transportation of the House of Representatives and the Committee on Rules and Administration of the Senate, by resolution approve the final plans and specifications of such facilities.

"Sec. 2. The museum support facilities referred to in section 1 shall be located on federally owned land within the metropolitan area of Washington, District of Columbia. Any Federal agency is authorized to transfer land under its jurisdiction to the Smithsonian Institution for such purposes without reimbursement.

"Sec. 3. There is authorized to be appropriated to the Smithsonian Institution \$21,500,000 to carry out the purposes of this Act. Any portion of the sums appropriated for such purposes may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such purposes."

[Amendment of section 3 of this Act effective Oct. 1, 1979.]

[Any reference in any provision of law enacted before Jan. 4, 1995, to the Committee on Public Works and Transportation of the House of Representatives treated as referring to the Committee on Transportation and Infrastructure of the House of Representatives, see section 1(a)(9) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.]

#### NATIONAL MUSEUM

The National Museum was not created by any express statutory provision for that purpose. It was first mentioned in an appropriation for postage for "the National Museum in the Smithsonian Institution," contained in Act June 20, 1874, ch. 328, § 1, 18 Stat. 103. An appropriation for a building for the use of the National Museum was made by Act Mar. 3, 1879, ch. 182, § 1, 20 Stat. 397, and annual appropriations have continuously been made for expenses of heating, etc., such building.

#### NATIONAL MUSEUM EXHIBIT

Res. Feb. 28, 1922, ch. 86, 42 Stat. 399, authorized the Secretary of State to transfer to the custody of the Secretary of the Institution for safekeeping and exhibition in the National Museum the sword of George Washington and the staff of Benjamin Franklin, presented by Samuel T. Washington, and the sword of Andrew Jackson, presented by the family of General Robert Armstrong.

#### TRANSPORTATION OF PROPERTY

The Quartermaster-General and his officers were required to receive and transport property for the National Museum by a provision of Act July 5, 1884, ch. 217, 23 Stat. 107.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

## NOTES OF DECISIONS

Placement of natural history objects in Institution

### 1. Placement of natural history objects in Institution

The objects of natural history belonging to the government are to be placed in the Smithsonian Institution. 1857, 9 Op.Atty.Gen.46.

## § 50a. Gellatly art collection; estimates of sums needed for preservation and maintenance

The Smithsonian Institution is authorized to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the John Gellatly art collection.

(June 5, 1929, ch. 9, 46 Stat. 5)

## NOTES OF DECISIONS

Validity of transfer 1

### 1. Validity of transfer

Where owner of valuable art collection offered it to the Smithsonian Institution upon certain conditions, and offer was accepted and transfer was completed, and Institution made payments of rent on gallery then under lease in New York, made payments of salary to the curator and expended sums for maintenance and upkeep, payments did not constitute a consideration so as to invalidate the transfer as a gift. Gellatly v. Wetmore, C.A.D.C. 1949, 177 F.2d 73, 85 U.S.App.D.C. 227, certiorari denied 70 S.Ct. 513, 339 U.S. 905, 94 L.Ed. 1334.

Where owner of valuable art collection signed a formal document of transfer of art collection to the Smithsonian Institution, and Congress by acts approved, and appropriated funds necessary to meet conditions of the transfer and thereafter the owner of the collection married a woman who was ignorant of the transfer, which was never repudiated by the owner but was expressly confirmed prior to his death, the transfer was binding, and there was no basis in law or in equity to set aside the transfer or to allow a recovery in behalf of the owner's estate. Gellatly v. U.S. Ct.Cl. 1947, 71 F.Supp. 357, 108 Ct.Cl. 650.

## § 51. Library

The Regents shall make, from the interest of the fund, an appropriation, not exceeding an average of \$25,000 annually, for the gradual formation of a library composed of valuable works pertaining to all departments of human knowledge.

(R.S. § 5587.)

## CODIFICATION

R.S. § 5587 derived from act Aug. 10, 1846, ch. 178, § 8, 9 Stat. 105.

## PUBLIC USE OF RESEARCH AND STUDY FACILITIES OF CERTAIN INSTITUTIONS

Under provisions of R.S. § 94 and act Mar. 3, 1875, ch. 179, 18 Stat. 512, the Joint Committee on the Library of Congress was authorized to extend the use of the Library to the Regents of the Smithsonian Institution. These provisions were not classified to the Code, being rendered superfluous by a general declaration of public policy by Congress, by a joint resolution adopted Apr. 12, 1892, 27 Stat. 395, to the effect that facilities for study and research in the Library of Congress, the National Museum, and similar institutions shall be afforded investigators, students, etc., in the several states and territories as well as in the District of Columbia.

#### CROSS REFERENCES

Appropriation of interest moneys, see section 54 of this title.

Regulations governing Smithsonian Institution; see sections 151 and 152 of Title 2, The Congress.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### § 52. Evidence of title to site and buildings

The site and lands selected for buildings for the Smithsonian Institution shall be deemed appropriated to the institution, and the record of the description of such site and lands, or a copy thereof, certified by the chancellor and Secretary of the Board of Regents, shall be received as evidence in all courts of the extent and boundaries of the lands appropriated to the institution.

(R.S. § 5588.)

#### CODIFICATION

R.S. § 5588 derived from Act Aug. 10, 1846, ch. 178, § 4, 9 Stat. 104.

#### FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 44 on this section, see note of Advisory Committee set out under rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Proof of official record, see rule 44.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in s 57, 67 of this title.

### § 53. Protection of property

All laws for the protection of public property in the city of Washington shall apply to, and be in force for, the protection of the lands, buildings, and other property of the Smithsonian Institution. All moneys recovered by or accruing to the Institution shall be paid into the Treasury of the United States, to the credit of the Smithsonian bequest, and separately accounted for.

(R. S. § 5589.)

#### CODIFICATION

R.S. § 5589 derived from Act Aug. 10, 1846, ch. 178, § 5, 9 Stat. 104.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title.

### § 53a. Authorization of appropriations

Appropriations are authorized for the maintenance of the Astrophysical Observatory and the making of solar observations at high altitudes; for repairs and alterations of buildings and grounds occupied by the Smithsonian Institution in the District of Columbia and elsewhere; and for preparation of manuscripts, drawings, and illustrations for publications.

(Aug. 22, 1949, ch. 494, § 2, 63 Stat. 623.)

### § 54. Appropriation of interest

So much of the property of James Smithson as has been received in money, and paid into the Treasury of the United States, being the sum of \$541,379.63, shall be lent to the United States

Treasury and invested in public debt securities with maturities requested by the Smithsonian Institution bearing interest at rates determined by the Secretary of the Treasury, based upon current market yields on outstanding marketable obligations of the United States of comparable maturities, and this interest is hereby appropriated for the perpetual maintenance and support of the Smithsonian Institution; and all expenditures and appropriations to be made, from time to time, to the purposes of the Institution shall be exclusively from the accruing interest, and not from the principal of the fund. All the moneys and stocks which have been, or may hereafter be, received into the Treasury of the United States, on account of the fund bequeathed by James Smithson, are hereby pledged to refund to the Treasury of the United States the sums hereby appropriated.

(R. S. § 5590; Pub. L. 97-199, § 1, June 22, 1982, 96 Stat. 121.)

#### CODIFICATION

R.S. § 5590 derived from Acts Aug. 10, 1846, ch. 178, § 2, 9 Stat. 102; Feb. 5, 1867, ch. 34, § 2, 14 Stat. 391.

#### AMENDMENTS

1982—Pub. L. 97-199 substituted “and invested in public debt securities with maturities requested by the Smithsonian Institution bearing interest at rates determined by the Secretary of the Treasury, based upon current market yields on outstanding marketable obligations of the United States of comparable maturities, and this interest is hereby” for “, at 6 per centum per annum interest; and 6 per centum interest on the trust-fund and residuary legacy received into the United States Treasury, payable in half-yearly payments, on the first of January and July in each year, is”, substituted “purposes of the Institution” for “purposes of the institution”, and substituted “are hereby pledged” for “are pledged”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 2 of Pub. L. 97-199 provided that:

“The amendment made by the first section [amending this section] shall apply with respect to fiscal years beginning after September 30, 1982.”

#### CROSS REFERENCES

Expenses of Smithsonian Institution Trust Fund, see section 1321 of Title 31, Money and Finance.  
Permanent indefinite appropriation for Smithsonian Institution, see section 1305 of Title 31.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 67 of this title; title 31, section 1305.

### § 55. Acceptance of other sums

The Secretary of the Treasury is authorized and directed to receive into the Treasury, on the same terms as the original bequest of James Smithson, such sums as the Regents may, from time to time, see fit to deposit, not exceeding, with the original bequest, the sum of \$1,000,000. This shall not operate as a limitation on the power of the Smithsonian Institution to receive money or other property by gift, bequest, or devise, and to hold and dispose of the same in promotion of the purposes thereof.

(R.S. § 5591; Mar. 12, 1894, ch. 36, 28 Stat. 41.)

#### CODIFICATION

R.S. § 5591 derived from Act Feb. 5, 1867, ch. 34, § 1, 14 Stat. 391.

#### AMENDMENTS

1894—Act Mar. 12, 1894, made the limitation on deposits into the treasury inapplicable to receipt of gifts, bequests and devises and dispositions of money or other property.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**NOTES OF DECISIONS**

**1. Fund raising**

The Board of Regents of Smithsonian Institution may employ a firm of experts to assist in increasing the endowment of the Institution, said firm being paid out of contributions to be donated for that purpose. 1924, 34 Op.Atty.Gen. 338

**2. Limitations on interest payments**

This section does not place a limitation on the amount which the Smithsonian Institution may receive but only limits the amount upon which the Treasury of the United States is authorized to pay interest at the rate of 6% per annum. 1924, 34 Op.Atty.Gen.338.

**§ 56. Disposal of unappropriated money**

The Regents are authorized to make such disposal of any other moneys which have accrued, or shall hereafter accrue, as interest upon the Smithsonian fund, not herein appropriated, or not required for the purposes herein provided, as they shall deem best suited for the promotion of the purpose of the testator.

(R. S. § 5592.)

**CODIFICATION**

R.S. § 5592 derived from Act Aug. 10, 1846, ch. 178, § 9, 9 Stat. 105.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 57, 67 of this title.

**NOTES OF DECISIONS**

**1. Disposal of accumulated interest**

While the principal of the endowment fund of the Smithsonian Institution may not be appropriated by the Board of Regents, the accumulated interest thereon may be used by the Board in promotion of the purpose of the endowment. 1924, 34 Op.Atty.Gen. 338.

**§ 57. Disbursements**

Whenever money is required for the payment of the debts or performance of the contracts of the institution, incurred or entered into in conformity with the provisions of sections 41 to 46, 48, 50, 51 to 53, 54 to 57, and 67 of this title, or for making the purchases and executing the objects authorized by said sections, the Board of Regents, or the executive committee thereof, may certify to the chancellor and secretary of the board that such sum of money is required, whereupon they shall examine the same, and, if they shall approve thereof, shall certify the same to the proper officer of the Treasury for payment. The board shall submit to Congress, at each session thereof, a report of the operations, expenditures, and condition of the institution.

(R.S. § 5593.)

**CODIFICATION**

R.S. § 5593 derived from Act Aug. 10, 1846, ch. 178, § 3, 9 Stat. 103.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 67 of this title.

## § 58. Omitted

## HISTORICAL AND STATUTORY NOTES

### CODIFICATION

Section, Act Mar. 3, 1899, c. 424, § 1, 30 Stat. 1085, which required that the salaries of all officers and employees paid from appropriations under the Smithsonian Institution be reported to Congress annually, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under 31 U.S.C.A. § 1113. See, also, page 192 of House Document No. 103-7.

## § 59. Collections of National Ocean Survey, Geological Survey, and others deposited in National Museum

All collections of rocks, minerals, soils, fossils, and objects of natural history, archaeology, and ethnology, made by the National Ocean Survey, the United States Geological Survey, or by any other parties for the Government of the United States, when no longer needed for investigations in progress shall be deposited in the National Museum.

(Mar. 3, 1879, ch. 182, § 1, 20 Stat. 394; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Nov. 13, 1991, Pub. L. 102-154, Title I, 105 Stat. 1000; May 18, 1992, Pub. L. 102-285, § 10(a), 106 Stat. 171.)

### CODIFICATION

Words "Coast and Interior Survey" appearing in Act Mar. 3, 1879, were in prior editions of the Code changed to "Coast and Geodetic Survey." Congress never created a Coast and Interior Survey. In a communication dated Nov. 6, 1940, the Director of the Geological Survey explained that the words "Coast and Interior Survey" were inadvertently incorporated upon authority of report contained in Senate Misc. Doc. No. 9, 45th Congress, 3d Session, which recommended the "Coast and Geodetic Survey" be changed to "United States Coast and Interior Survey" and an organization be created in the Interior Department to be known as the "United States Geological Survey." Congress adopted only the latter suggestion.

The Coast and Geodetic Survey was consolidated with the National Weather Bureau in 1965 to form the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. The Environmental Science Services Administration was abolished in 1970 and its personnel, property, records, etc., were transferred to the National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090. By order of the Acting Associate Administrator of the National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, the Coast and Geodetic Survey was redesignated the National Ocean Survey. See notes under section 311 of Title 15, Commerce and Trade.

### CHANGE OF NAME

Pub. L. 102-285, § 10(a), May 18, 1992, 106 Stat. 171, redesignated the Geological Survey and provided that on and after May 18, 1992, it shall be known as the United States Geological Survey. An earlier statute [Pub. L. 102-154, Title I, Nov. 13, 1991, 105 Stat. 1000] had provided for the identical change of name effective on and after Nov. 13, 1991. See note under section 31 of Title 43, Public Lands.

### NATIONAL MUSEUM

Establishment of the National Museum, see note set out under section 50 of this title.

### NATIONAL MUSEUM OF AMERICAN HISTORY

Pub. L. 96-441, § 2, Oct. 13, 1980, 94 Stat. 1884, provided that: "The bureau of the Smithsonian Institution known as the Museum of History and Technology and so referred to in the Act entitled 'An Act to authorize the construction of a building for a Museum of History and Technology for the Smithsonian Institution, including the preparation of plans

and specifications, and all other work incidental thereto', approved June 28, 1955 (20 U.S.C. 59 note), shall be known as the 'National Museum of American History'."

For provision deeming references to the Museum of History and Technology in laws and regulations to be references to the National Museum of American History, see section 3 of Pub. L. 96-441, set out as a note under section 71 of this title.

#### MUSEUM OF HISTORY AND TECHNOLOGY FOR THE SMITHSONIAN INSTITUTION

Act June 28, 1955, ch. 201, 69 Stat. 189, authorized construction of a building for a Museum of History and Technology, which was redesignated the National Museum of American History, for the use of the Smithsonian Institution, at a cost not to exceed \$36,000,000.

#### § 60. Army articles furnished to National Museum

The Secretary of the Army is authorized to furnish to the National Museum, for exhibition, upon request therefor by the administrative head thereof, such articles of arms, materiel, equipment, or clothing as have been issued from time to time to the United States Army, or which have been or may hereafter be produced for the United States Army, and which are objects of general interest or of foreign or curious research, provided that such articles can be spared.

(Mar. 4, 1921, ch. 166, § 1, 41 Stat. 1438; July 26, 1947, ch. 343, Title II, § 205(a), 61 Stat. 501; Oct. 31, 1951, ch. 654, § 3(4), 65 Stat. 708.)

#### AMENDMENTS

1951—Act Oct. 31, 1951, struck out "are surplus or" after "articles".

#### CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, Title II, 61 Stat. 501. Section 205(a) of Act July 26, 1947, was repealed by section 53 of Act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of Act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

#### SECRETARY OF AIR FORCE

For transfer of certain personal property and personal property functions, insofar as they pertain to the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order No. 39 [§ 2vv], eff. May 18, 1949.

#### §§ 61 to 64. Repealed Oct. 31, 1951, ch. 654, § 1(37) to (40), 65 Stat. 702

#### HISTORICAL AND STATUTORY NOTES

Section 61, Act Mar. 3, 1879, ch. 182, § 1, 20 Stat. 397, required archives, records and materials relating to the Indians of North America to be turned over from the Geographical and Geological Survey to the Smithsonian Institution for purposes of completion of collection of information and its publication.

Section 62, Act Aug. 1, 1914, ch. 223, § 1, 38 Stat. 661, authorized the Secretary of Commerce to transfer instruments of historical value of the Coast and Geodetic Survey [the National Ocean Survey] to the Smithsonian Institution. See section 483 of Title 40, Public Buildings, Property, and Works.

Section 63, Act June 5, 1920, ch. 235, § 1, 41 Stat. 930, related to transfer, by the Secretary of Commerce, of Coast and Geodetic Survey [the National Ocean Survey] instruments of historical value, to educational institutions and museums. See sections 483 and 484 of Title 40.

Section 64, Act Mar. 3, 1883, ch. 143, 22 Stat. 629, related to distribution of specimens of National Museum and Bureau of Fisheries to schools and colleges. See sections 483 and 484 of Title 40.

**§ 65. Repealed. Pub. L. 89-674, § 3, Oct. 15, 1966, 80 Stat. 953**

Section, Act July 7, 1884, ch. 332, 23 Stat. 214, required the Director of the National Museum to report annually to Congress on the progress of the Museum during the year and its present condition. See section 65a of this title.

**§ 65a. Director of the National Museum**

**(a) Duties; programs and studies; annual report to Congress**

The Director of the National Museum under the direction of the Secretary of the Smithsonian Institution shall—

(1) cooperate with museums and their professional organizations in a continuing study of museum problems and opportunities, both in the United States and abroad;

(2) prepare and carry out programs by grant, contract, or directly for training career employees in museum practices in cooperation with museums, their professional organizations, and institutions of higher education either at the Smithsonian Institution or at the cooperating museum, organization, or institutions;

(3) prepare and distribute significant museum publications;

(4) perform research on, and otherwise contribute to, the development of museum techniques, with emphasis on museum conservation and the development of a national institute for museum conservation;

(5) cooperate with departments and agencies of the Government of the United States operating, assisting, or otherwise concerned with museums; and

(6) report annually to the Congress on progress in these activities.

**(b) Authorization of appropriations.**

There are hereby authorized to be appropriated to the Smithsonian Institution for the fiscal year 1981, the sum of \$803,000, and for the fiscal year 1982, the sum of \$1,000,000.

(Pub. L. 89-674, § 2, Oct. 15, 1966, 80 Stat. 953; Pub. L. 91-629, §§ 1, 2, Dec. 31, 1970, 84 Stat. 1875; Pub. L. 93-345, §§ 1, 2, July 12, 1974, 88 Stat. 339; Pub. L. 94-336, July 1, 1976, 90 Stat. 795; Pub. L. 96-268, June 13, 1980, 94 Stat. 485.)

**AMENDMENTS**

1980—Subsec. (b). Pub. L. 96-268 substituted provisions authorizing appropriations of \$803,000 for fiscal year 1981 and \$1,000,000 for fiscal year 1982 for provisions which had authorized appropriations of \$1,000,000 each year for fiscal years 1978, 1979, and 1980.

1976—Subsec. (b). Pub. L. 94-336 substituted provisions authorizing the appropriation of \$1,000,000 each year for fiscal years 1978, 1979, and 1980, for provisions under which there had been authorized to be appropriated whatever sums as might be necessary to carry out the purposes of the section, with a proviso that no more than \$1,000,000 could be appropriated annually through fiscal year 1977, of which no less than \$200,000 was to be allocated and used to carry out subsec. (a)(4) of this section.

1974—Subsec. (a)(4). Pub. L. 93-345, § 1, inserted “, with emphasis on museum conservation and the development of a national institute for museum conservation” following “museum techniques”.

Subsec. (b). Pub. L. 93-345, § 2, substituted provisions limiting to \$1,000,000 the amount which may be appropriated annually through fiscal year 1977, with no less than \$200,000 annually to be allocated and used to carry out the purposes of subsection (a)(4) of this section for provisions limiting to \$1,000,000 the amount which could be appropriated annually through fiscal year 1974, of which \$300,000 annually had to be allocated and used according to the formula of 33 1/3 per centum for purposes of subsec. (a)(2), 33 1/3 per centum for assistance to museums under section 954(c) of this title, and 33 1/3 per centum for assistance to museums under section 956(c) of this title.

1970—Subsec. (a)(2). Pub. L. 91-629, § 2, inserted the provisions that programs be prepared and carried out by grant, contract, or directly and which authorized the training of career employees in museum practices in cooperation with institutions of higher education, and substituted provisions which authorized training programs to be conducted either at the Smithsonian Institution, or at the cooperating museum, organization, or institutions, for provisions which authorized such programs to be conducted at the best locations.

Subsec. (b). Pub. L. 91-629, § 1, substituted provisions which authorized to be appropriated such sums as necessary to carry out the purposes of this section, with no more than \$1,000,000 to be appropriated annually through fiscal year 1974, of which \$300,000, annually, to be allocated in the enumerated manner, for provisions which authorized to be appropriated to carry out this section, not to exceed \$200,000 for the fiscal year ending June 30, 1968, \$250,000 for the fiscal years ending June 30, 1969, and June 30, 1970, and \$300,000 for the fiscal year ending June 30, 1971, and in each subsequent fiscal year, only such sums as the Congress hereafter authorizes by law.

#### SHORT TITLE

Pub. L. 89-674, § 1, provided: "That this Act [enacting this section and repealing section 65 of this title] may be cited as the 'National Museum Act of 1966'."

#### **§ 66. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(19), 63 Stat. 400, eff. July 1, 1949, renumbered Sept. 5, 1950, ch. 849, § 6(a),(b), 64 Stat. 583**

Section, Act Mar. 3, 1915, ch. 75, § 1, 38 Stat. 839, related to exchange of typewriters and adding machines. See section 481 of Title 40, Public Buildings, Property, and Works.

#### **§ 67. Right of repeal**

Congress may alter, amend, add to, or repeal any of the provisions of sections 41 to 46, 48, 50, 51 to 53, and 54 to 57, of this title; but no contract or individual right made or acquired under such provisions shall be thereby be divested or impaired.

(R. S. § 5594.)

#### CODIFICATION

R.S. § 5594 derived from Act Aug. 10, 1846, ch. 178, § 11, 9 Stat. 106.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 57 of this title.

#### **§ 68. Repealed Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111**

Section, Act Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1081, related to advertisements for proposals for purchases and services. See section 5 of Title 41, Public Contracts.

#### **§ 69. Anthropological researches; cooperation of Institution with States, educational institutions, or scientific organizations**

The Secretary of the Smithsonian Institution is hereby authorized to cooperate with any State, educational institution, or scientific organization in the United States to continue independently or in cooperation anthropological researches among the American Indians and the natives of lands under the jurisdiction or protection of the United States and the excavation and preservation of archaeological remains.

(Apr. 10, 1928, ch. 335, § 1, 45 Stat. 413; Aug. 22, 1949, ch. 494, § 1, 63 Stat. 623.)

#### AMENDMENTS

1949—Act Aug. 22, 1949, substituted "to continue independently or in cooperation anthropological" for "for continuing ethnological" and inserted "and the natives of lands under the jurisdiction or protection of the United States".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 70 of this title.

**§ 70. Authorization of appropriations; cooperative work**

There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$20,000, which shall be available until expended for the purposes stated in section 69 of this title: *Provided*, That at such time as the Smithsonian Institution is satisfied that any State, educational institution, or scientific organization in any of the United States is prepared to contribute to such investigation and when, in its judgment such investigation shall appear meritorious, the Secretary of the Smithsonian Institution may direct that an amount from this sum equal to that contributed by such State, educational institution, or scientific organization, not to exceed \$2,000, to be expended from such sum in any one State during any calendar year, be made available for cooperative investigation: *Provided further*, That all such cooperative work and division of the result thereof shall be under the direction of the Secretary of the Smithsonian Institution: *Provided further*, That where lands are involved which are under the jurisdiction of the Bureau of Indian Affairs or the National Park Service, cooperative work thereon shall be under such regulations and conditions as the Secretary of the Interior may provide.

(Apr. 10, 1928, ch. 335, § 2, 45 Stat. 413.)

Statutory provisions for individual Smithsonian Bureaus are set forth in Title 20, United States Code, Sections 71-85, as follows:

*Subchapter II- National Gallery of Art*

Section 71. Designation of site.

[Included in the "Historical and Statutory Notes" following this section are notes on: (i) Pub.L. 106-385, Oct. 27, 2000, 114 Stat. 1463, Renaming the National Museum of American Art as the Smithsonian American Art Museum; (ii) Pub.L. 98-523, Oct. 19, 1984, 98 Stat. 2433, General Post Office Building; Transfer to Smithsonian Institution for Use as Art Galleries; Relocation of United States International Trade Commission; (iii) Pub.L. 96-441, §§ 1, 3, 4, Oct. 13, 1980, 94 Stat. 1884, renaming the National Collection of Fine Arts as the National Museum of American Art; and the Museum of History and Technology as the National Museum of American History; and (iv) Act Mar. 24, 1937, c. 50, 50 Stat. 51, §§ 1 to 5, designating the then-existing bureau of the Smithsonian Institution known as the national gallery of art as the National Collection of Fine Arts.]

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# Appendix 3

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

3. To enhance Board leadership, the Regents adopt the following specific duties and responsibilities for the positions of Chancellor and Chair of the Board and will initiate a change to the Bylaws to separate these positions:

### Duties of the Chancellor

- The Chancellor presides over Board of Regents meetings. The Chancellor leads and furthers the Board's deliberations by providing an opportunity for all Regents to participate and sees that the Board follows proper decision-making procedures.
- The Chancellor serves as a member of the Executive Committee and in that capacity participates in developing the agenda for Board meetings.
- With approval of the Board, the Chancellor appoints members and chairs of Board committees, other than the Executive Committee.
- The Chancellor presides over official ceremonies of the Institution.
- The Chancellor may, by instrument in writing filed with the office of the Secretary, appoint an Acting Secretary when there is a vacancy in the office or whenever the Secretary is unable to perform the duties of the office.

### Duties of the Chair of the Board

- The Chair plays a leadership role in guiding the Board of Regents in its deliberations and the exercise of its oversight function. The Chair directs the Board's attention to the immediate and long-term strategic planning needs of the Smithsonian and oversees the Board's, Board committees', and individual Regents' evaluation of their effectiveness. The Chair also works closely with the Chancellor in developing the agenda for Board meetings.
- The Chair represents the Board in dealing with the Secretary and senior management on matters that arise between Board meetings. The Chair works in partnership with the Secretary and senior management to communicate and oversee the carrying out of the policies adopted or approved by the Board and reports to the Board on the conduct and management of the affairs of the Smithsonian.
- The Chair establishes the process for selecting a new Secretary. Together with the Chair of the Compensation and Human Resources Committee, the Chair leads the Board in its annual evaluation of the Secretary's performance and compensation.
- The Chair is the chief spokesperson and advocate for the Board of Regents. The Chair communicates with the Congress, other Smithsonian stakeholders and the media on behalf of the Board. The Chair serves as the primary liaison between the Board and the Smithsonian National Board and other Advisory Boards.
- The Chair presides over Board of Regents meetings in the event the Chancellor is absent.
- The Chair serves as Chair of the Executive Committee.

**Rationale:** The Smithsonian Charter provides for a "Presiding Officer," called the "Chancellor," who is elected by the Regents and possesses certain statutory responsibilities. By tradition, the Regents have selected the Chief Justice of the United States — who by statute is an *ex officio* member of the Board — as Chancellor. The Bylaws provide that the Chancellor is also the Chair of the Board and that he may call on the Executive Committee for assistance. In practice, the Chair of the Executive Committee has performed many of the duties and responsibilities of the Chair of the Board.

The Smithsonian has greatly benefited from each Chief Justice's willingness to continue this tradition. By virtue of a Chief Justice's life-tenure judicial office, he brings to the role of Chancellor practical experience in presiding over deliberative proceedings and a long-range perspective of the Smithsonian's institutional interests. His presence as Chancellor reinforces the distinctive nature of the Smithsonian as a public trust of the United States. But by virtue of his judicial office, the Chief Justice, as Chancellor, also faces constraints in exercising the full range of responsibilities of the Chair of the Board. Accordingly, the current Chief Justice, like his predecessors, has limited his role as Chair of the Board in important respects and delegated a broad range of duties to the Chair of the Executive Committee.

To formalize the division of the past and augment the central role of the Chair of the Board, the Governance Committee recommends that the Regents amend the Bylaws to separate the positions of Chancellor and Chair of the Board. This division of responsibilities is consistent with the concerns expressed by the IRC that the Board should structure its organization to bring more resources to bear on day-to-day leadership and oversight. The Committee recommends that, prior to approval and implementation of a Bylaw change, the Regents recognize this division of responsibilities through appropriate means. The roles of the Chancellor and Chair may be further refined as a result of the Governance Committee review of Board structure and functions.

# Appendix 4

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**BYLAWS OF THE BOARD OF REGENTS  
OF THE  
SMITHSONIAN INSTITUTION**

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**SMITHSONIAN INSTITUTION**  
Bylaws of the Board of Regents  
2007

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*Section 1. Promulgation*

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**1.01 CHARTER**

These bylaws have been adopted by the Board of Regents to govern the conduct of the Smithsonian Institution's business pursuant to an Act of Congress approved August 10, 1846, as amended (20 U.S.C. § 41, et seq.) which act as so amended is hereinafter referred to as the "Charter." These bylaws are in all respects subject to the provisions of the Charter and shall be interpreted accordingly.

**1.02 AMENDMENT**

These bylaws may be amended at any meeting of the Board of Regents by a majority vote of the Regents present, provided that the proposed amendments have been mailed to each member of the Board of Regents not later than thirty days prior to such meeting.

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*Section 2. Board of Regents*

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**2.01 POWERS AND COMPOSITION**

The governing body of the Smithsonian Institution is the Board of Regents specified in the Charter. (See also 20 U.S.C. § 42.)

**2.02 APPOINTMENT**

Members of the Board of Regents are appointed or elected in the manner specified by the Charter. When a vacancy arises from death, resignation or retirement of a citizen member elected by joint resolution of Congress, the Board of Regents shall nominate a proposed successor for consideration by the Senate and the House of Representatives. (See also 20 U.S.C. § 43.)

**2.03 TERM OF OFFICE AND VACANCIES**

Regents shall serve such terms, and vacancies on the Board of Regents shall be filled, as specified in the Charter. In nominating citizen members of the class, other than residents of the District of Columbia, for election by joint resolution of Congress, the Board of Regents shall give consideration to rotation of membership among citizens of the various states. The Board of Regents shall not nominate citizen members to succeed themselves after they have served two consecutive six-year terms. (See also 20 U.S.C. § 43.)

## **2.04 MEETINGS**

The Board of Regents shall hold regular and special meetings at such times and places as the Board of Regents may from time to time determine, provided that one meeting annually shall be held in the District of Columbia, and provided further that any meeting at which a Chancellor or a Secretary is elected shall be held in the District of Columbia. A special meeting of the Board of Regents may be called on request of any three members of the Board of Regents. (See also 20 U.S.C. § 44.)

## **2.05 NOTICE OF MEETINGS**

Notice of regular meetings of the Board of Regents shall be given in writing to each Regent at least thirty days prior to such meetings. Notices of special meetings shall be given to each Regent at least ten days prior to such meetings. Information about matters to be considered shall be furnished to the Regents as soon as practicable prior to each meeting. (See also 20 U.S.C. § 44.)

## **2.06 ACTION BY BALLOT WITHOUT A MEETING**

When requested by the Executive Committee, any action required or permitted to be taken at a meeting of the Board of Regents, except the election of a Secretary or the nomination of a member of the Board, may be taken without a meeting if a majority of the Board of Regents votes to approve the action by responding affirmatively to a written ballot distributed to each Regent by the Office of the Secretary. The ballot shall set forth the proposed action(s) and provide an opportunity to specify approval or disapproval of each proposed action, a place for the Regent's signature, and a reasonable time within which to return the ballot to the Office of the Secretary. Each Regent who wishes to vote must mark and sign the ballot and return it to the Office of the Secretary within the time specified. The Regents' approval or disapproval of any action by this method shall have the same force and effect as a vote by the Board of Regents at a formal meeting of the Board. All ballots returned to the Office of the Secretary shall be filed with the records of the proceedings of the Board of Regents maintained in the Office of the Secretary.

## **2.07 EMERGENCY MEETINGS**

When requested by the Executive Committee, any six Regents, the Chancellor, the Chairman of the Executive Committee, or the Secretary, the Office of the Secretary may convene an emergency meeting of the Board of Regents by providing 72 hours notice, including notice by telephonic communication. The emergency meeting may be conducted in person, telephonically, or by such other means as may be determined by the Executive Committee.

## **2.08 METHOD OF COMMUNICATION FOR ACTION WITHOUT A MEETING**

Any and all communications to and from Regents seeking or taking action by the Regents without a meeting may be made by hand delivery, by deposit in

U.S. Mail, by express mail, by electronic facsimile, or by such other means as may be determined by the Executive Committee.

**2.09 QUORUM**

At any meeting of the Board of Regents, eight members constitute a quorum, but in the absence of a quorum a lesser number may adjourn the meeting. (See also 20 U.S.C. § 44.)

**2.10 MINUTES**

Minutes of meetings of the Board of Regents shall be made available to all members of the Board of Regents and to the Congress as soon as practicable after each meeting.

**2.11 REGENT EMERITUS**

The Board of Regents may, by resolution, confer the title of Regent Emeritus on former Regents who accept responsibilities for continuing activities in the interests of the Smithsonian Institution.

**2.12 INDEMNIFICATION**

Members of the Board of Regents, Regents' Committees and Smithsonian advisory bodies, Regents Emeritus, officers, or employees of the Smithsonian may be indemnified for any and all liabilities and reasonable expenses incurred in connection with any claim, action, suit, or proceeding arising from present or past service for the Smithsonian Institution, in accordance with resolutions adopted by the Board.

**2.13 ETHICS AND CONFLICTS OF INTEREST**

The Board of Regents shall adopt and members of the Board of Regents shall adhere to ethics guidelines setting forth appropriate standards of conduct, provisions to avoid potential conflicts of interest, and requirements for disclosure of personal interests that may relate to the Smithsonian Institution.

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*Section 3. Executive Committee*

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**3.01 POWERS; COMPOSITION**

The Board of Regents shall elect from its members an Executive Committee consisting of three members (in accordance with 20 U.S.C. § 44). The Executive Committee shall have and may exercise all powers of the Board of Regents when the Board of Regents is not in session, except those expressly reserved to itself by the Board of Regents, provided that all such proceedings shall be reported to the Board of Regents when next the Board meets.

**3.02 APPOINTMENT**

Elections to the Executive Committee may be made at any regular or special meeting of the Board of Regents. The Executive Committee shall include at

least two citizen members of the Board of Regents who are elected by joint resolution of Congress.

### **3.03 MEETINGS**

The Executive Committee shall hold meetings at such times as it shall determine. Meetings of the Executive Committee shall be held in the District of Columbia unless otherwise determined by the Executive Committee. Expenses of Regents in attending meetings of the Executive Committee, including travel expenses to and from the place of meeting, may be paid by the Institution. Two members of the Executive Committee shall constitute a quorum.

### **3.04 MINUTES**

Minutes of all meetings of the Executive Committee shall be made available to all members of the Board of Regents as soon as practicable.

### **3.05 RULES**

The Executive Committee shall have power to adopt rules for the conduct of its business in respect to all matters not provided for in the bylaws or by rules adopted by the Board of Regents.

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## *Section 4. Other Committees*

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### **4.01 AUDIT AND REVIEW COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint an audit and review committee including no fewer than three members of the Board of Regents. The audit and review committee shall do all things necessary to assure the Board that the Institution's accounting systems and internal financial controls are in good order and to facilitate communication between the Board of Regents and the Institution's internal auditors, its independent auditors, and those of the General Accounting Office. The audit and review committee shall provide a direct channel of communication between the Board of Regents and the Institution's independent auditors who shall be certified public accountants nominated by the committee and appointed by the Board of Regents. The audit and review committee shall review the Institution's operations for compliance with approved programs and policies and shall perform related functions as directed by the Board of Regents. The committee may call upon the Institution's officers or staff for assistance as necessary and may employ outside professional assistance in performance of its duties if it deems this desirable. The audit and review committee shall report its findings directly to the Board of Regents at appropriate intervals but not less frequently than annually.

#### **4.02 FINANCE AND INVESTMENT COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint a Finance and Investment Committee including no fewer than four members of the Board of Regents. The Finance and Investment Committee shall be responsible for oversight of the Institution's annual budgets, long-range financial planning, investment program and strategies, and shall perform such related functions as may be assigned to it by the Board of Regents. The Finance and Investment Committee may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its duties if it seems desirable. The Finance and Investment Committee shall report its findings, conclusions and recommendations to the Board of Regents.

#### **4.03 GOVERNANCE AND NOMINATING COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint a governance and nominating committee including no fewer than three members of the Board of Regents. The governance and nominating committee shall be responsible for oversight of the governance policies and practices of the Board of Regents and the Smithsonian, for making recommendations to the Board to improve governance policies and practices, for assessing the effectiveness of the Board and its members and committees, for recommending candidates for service as citizen members of the Board, for nominating candidates for election as Chancellor, Chair, or members of the Executive Committee, and for such other nominations or recommendations as may be required by the Board from time to time. The governance and nominating committee may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its duties.

#### **4.04 FACILITIES REVITALIZATION COMMITTEE**

With approval of the Board of Regents, the Chancellor shall appoint a facilities revitalization committee including no fewer than three members of the Board of Regents. The facilities revitalization committee shall be responsible for providing leadership and oversight for the revitalization and maintenance of the Smithsonian physical plant, working with the Congress to address facilities capital needs, and shall perform such related functions as may be assigned to it by the Board of Regents. The facilities revitalization committee may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its duties.

#### **4.05 OTHER STANDING OR SPECIAL COMMITTEES**

The Board of Regents shall have power to establish other standing or special committees. Any committee so established may call upon the Institution's officers or staff for assistance and may seek outside consultation or professional assistance in the performance of its assigned functions.

#### **4.06 QUORUM**

Unless otherwise specified by the Board of Regents, a majority of the members of all standing and special committees as may be established by the Board shall constitute a quorum.

#### **4.07 CHAIR; RULES**

Each committee established by the Board of Regents shall perform its functions under the general direction of a chair appointed by the Chancellor with approval of the Board of Regents. Each such committee shall have the power to adopt rules for the conduct of its business in respect of all matters not provided for in the bylaws or by rules adopted by the Board of Regents. Expenses of members in attending meetings of committees established by the Board of Regents, including travel expenses to and from the place of meeting, may be paid by the Institution. Each committee established by the Board of Regents shall keep or cause to be kept minutes of its meetings, which shall be filed and maintained in the office of the Secretary of the Institution.

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### *Section 5. Officers*

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#### **5.01 CHANCELLOR**

The presiding officer of the Institution shall be the Chancellor elected in accordance with the Charter. The Chancellor shall have the duties and responsibilities set forth in the Charter and as designated by the Board of Regents. The Chancellor may call upon the Chair of the Board, the Executive Committee, or any other committee established by the Board of Regents for assistance in the performance of the Chancellor's duties.

#### **5.02 CHAIR OF THE BOARD**

The Board of Regents shall elect from its members a Chair of the Board, who shall also serve as Chair of the Executive Committee. The Chair shall lead the Board of Regents in its deliberations and the exercise of its oversight function. The Chair shall be the chief spokesperson for the Board of Regents, shall represent the Board in dealings with the Secretary and senior management between meetings of the Board, and shall have such other duties and responsibilities designated by the Board of Regents. The Chair shall be elected for a term of one year and may serve until a successor is duly elected. A Regent may be elected to the office of Chair for no more than three consecutive terms.

#### **5.03 SECRETARY**

The Secretary, who shall be elected in accordance with the Charter, shall serve as the chief executive officer of the Institution. The Secretary shall be responsible for carrying into effect the policies and programs approved by the Board of Regents and those provided for in applicable laws and regulations.

All employees of the Institution shall perform their duties under the Secretary's general direction. The Secretary shall provide for maintaining the Institution's official records, including the proceedings of the Board of Regents, the Executive Committee, and other standing and select committees of the Board. In accordance with applicable statutes and the policies established by the Board of Regents, the Secretary may employ assistants and shall prescribe and document the Institution's organization structure, operating policies and procedures, and delegations of authority. (See also 20 U.S.C. §§ 44 and 46.)

#### **5.04 DEPUTY SECRETARY/CHIEF OPERATING OFFICER AND UNDER SECRETARIES**

In consultation with the Board of Regents, the Secretary shall appoint a Deputy Secretary/Chief Operating Officer and one or more Under Secretaries who shall be the Secretary's principal officer(s) for administering the operations of the Institution. Pursuant to the written designation and appointment by the Chancellor, the Deputy Secretary/Chief Operating Officer or an Under Secretary may exercise all the functions and authorities of the Secretary whenever the Secretary shall be unable from illness, absence, or other cause to perform the duties of the office. (See also 20 U.S.C. §§ 46, 47, and 48.)

#### **5.05 CHIEF FINANCIAL OFFICER**

In consultation with the Board of Regents, the Secretary shall designate a Chief Financial Officer, who shall have charge of all funds of the Institution, keep the books of account, designate depositories for funds of the Institution, and generally supervise investment of the Institution's funds as limited by section 4.02. The Chief Financial Officer shall assist the Board of Regents, its committees, and the Secretary in the exercise of their fiduciary responsibilities. The Chief Financial Officer or his or her designee shall attend all meetings of the Board of Regents and relevant Board committees and shall have the right and obligation to bring directly to the Board or its committees any information on financial or compliance matters that he or she reasonably determines should be brought to their attention. (See also 20 U.S.C. §§ 46 and 48.)

#### **5.06 GENERAL COUNSEL**

In consultation with the Board of Regents, the Secretary shall appoint a counselor who shall serve as general counsel to the Institution and shall advise the Secretary and the Board of Regents on such legal matters as may be referred to the counselor by the Secretary or the Board of Regents or its committees. The General Counsel or his or her designee shall attend all meetings of the Board of Regents and its committees and shall have responsibility for preparing and keeping Board and committee minutes. The General Counsel shall have the obligation to bring directly to the Board or its committees any information on legal or compliance matters that are within the purview of the Board of Regents by statute, bylaw, or as may be directed by the Board of Regents, and shall have the right to bring directly to the Board or

its committees any such information that he or she reasonably determines should be brought to their attention. (See also 20 U.S.C. §§ 46 and 48.)

#### **5.07 OTHER SENIOR OFFICERS**

In consultation with the Board of Regents, the Secretary shall appoint such other senior officers and assign them such titles, duties, and responsibilities as may be necessary for effective management of the Institution's affairs. In accordance with their assigned responsibilities, such other senior officers shall provide advice and assistance to the Secretary, the Deputy Secretary/Chief Operating Officer, and one or more Under Secretaries, and shall provide direction to organization units designated by the Secretary. (See also 20 U.S.C. §§ 46 and 48.)

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### *Section 6. Administration*

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#### **6.01 AUTHORITY TO RECEIVE AND DISPOSE OF PROPERTY**

In accordance with policies established by the Board of Regents, the Secretary may accept or receive for the Institution gifts, grants, bequests, and other transfers of real and personal property, and may hold and dispose of the same in promotion of the purposes of the Institution, and shall administer and budget the use of such property for the purposes specified, if any. The Secretary may delegate this authority to employees of the Institution. (See also 20 U.S.C. § 55.)

#### **6.02 ENDOWMENT FUND; OTHER NONAPPROPRIATED FUNDS**

Unless otherwise designated by the donor or directed by the Board of Regents, all monies derived from gifts made by will, trust, or similar instrument shall be received in and held in the Smithsonian Institution endowment fund. The Board of Regents may augment the Institution's endowment fund from time to time through budgetary transfers of the net income derived from investments, donations, or revenues from auxiliary activities. (See also 20 U.S.C. §§ 54 to 56.)

#### **6.03 APPROPRIATED FUNDS**

The Institution shall, in accordance with applicable statutes and administrative regulations, request an annual appropriation for the necessary expenses of the Smithsonian Institution in executing its statutory responsibilities. The Board of Regents shall authorize the expenditure of appropriated funds by the Secretary in accordance with law and the policies of the Board of Regents. (See also 20 U.S.C. §§ 53a, 54, 65a and 70.)

#### **6.04 BUDGET**

The Secretary shall prepare and recommend an annual budget for consideration by the Board of Regents showing the Institution's program plans, its estimated income from all sources, and the expenditures proposed

for the ensuing fiscal year. With approval of the Board of Regents, the Secretary shall submit the Institution's request for appropriations to the Office of Management and Budget for incorporation in the Budget of the United States. The Secretary shall provide all supporting data required for Congressional review of the Institution's budget. When the annual appropriation act has been approved, the Board of Regents shall review the Institution's budget with the Secretary and authorize the Secretary to expend appropriated and nonappropriated funds in accordance with the approved budget. The Secretary may authorize any necessary reprogramming within any limitations established by the Board of Regents or the Congress and may recommend to the Board of Regents any necessary amendment of the Institution's budget. The Institution shall make no expenditures except those authorized in a budget so approved or so amended.

#### **6.05      **AUDIT****

The accounts of the nonappropriated funds of the Institution shall be audited annually by a recognized firm of certified public accountants, which shall submit its report to the Board of Regents. This audit shall be in addition to audits of grant and contract funds conducted by the designated Federal audit agency and audits conducted by the General Accounting Office under other authority with respect to appropriated funds. The Secretary shall provide for an internal audit of the Institution's activities to ensure compliance with statutes and budgetary authorizations in the execution of programs.

#### **6.06      **EXECUTION OF DOCUMENTS****

Pursuant to the Secretary's general authority as chief executive officer of the Institution, the Secretary may execute in the name and behalf of the Institution any documents necessary to the acceptance, transfer, sale or redemption of real or personal property (including the sale or redemption of stocks, bonds, other investments) acquired or to be acquired, held, or disposed of by the Institution through gifts, devises, bequests, or other transfers, and may execute loans, mortgages, sureties, contracts, and any other documents necessary to the administration of the Institution. Such actions shall be reported to the Board of Regents in accordance with policies established by the Board. The Secretary may delegate authority for executing such documents to employees of the Institution.

# Appendix 5

## RECOMMENDATIONS TO PROMOTE A CONSTRUCTIVE PARTNERSHIP

2. To establish clear governance expectations, the Regents adopt the following description of duties and responsibilities of all Regents:

### Duties and Responsibilities of Regents

The Board of Regents is entrusted with the governance of the Smithsonian Institution and overseeing its mission to increase and diffuse knowledge. Regents are responsible for carrying out their duties in a manner that encourages prudent and independent decision-making, places the Smithsonian's interests above personal interests and ensures that decisions are in keeping with the Smithsonian mission. The expectations of Regents in carrying out their duties and responsibilities are as follows:

- Regents operate in a culture of inquiry, regularly attending Board and committee meetings and engaging in meaningful and forthright discussion about issues that shape the Smithsonian's strategic plans and operations. The Board values independent thinking and encourages Regents to raise questions, challenge conclusions and advocate for solutions that affirm the primacy of the Smithsonian mission.
- Regents review and approve the Smithsonian's ongoing and future strategic plans and articulate Smithsonian priorities in a manner that continually reinforces and affirms the Smithsonian mission and culture. Regents establish major policies for the Institution and oversee implementation by the Secretary.
- Regents elect the Secretary, set the Secretary's compensation and annually evaluate the Secretary's performance. With input from the Secretary, Regents evaluate and establish compensation for the senior leadership team and plan for management development and succession. Regents hold management accountable for performance and regularly assess their own individual, Board and committee effectiveness.
- Regents work in partnership with the Secretary, who is responsible for implementing the policies and priorities articulated by the Board. They maintain open communication with the Secretary regarding information – both positive and negative – that impacts the Smithsonian's mission and operations. Regents request information from the Secretary and staff as necessary in order to oversee management in its operation of the Smithsonian and its programs.
- Regents are transparent in their dealings with one another and in their relationships with the Secretary, staff, Smithsonian National Board and Advisory Board Members, donors, the Congress and other stakeholders, and act as ambassadors for the Institution. Regents are accessible to the Secretary and senior staff and encourage them to bring important issues to the attention of the Regents. Regents establish and oversee processes to engage Smithsonian National Board and other Advisory Board members in promoting the Institution's mission and activities.
- Regents review and approve Smithsonian budgets and work in collaboration with the Secretary and the Congress to address the Institution's financial and human resource needs for the accomplishment of its mission and strategic priorities. Regents oversee and assist the Smithsonian's efforts to generate resources through private fundraising and revenue-generating activities.
- Regents oversee the Smithsonian's legal and ethical compliance obligations, the integrity and reliability of financial reporting and audit processes, and management's procedures for identifying and managing risks. Regents are mindful of their own ethical obligations to the Institution and follow the Regents Ethics Guidelines.
- Regents demonstrate their commitment to ongoing Board development by identifying potential candidates for Citizen Regents for consideration by the Congress. All new Regents participate in Board orientations.

**Rationale:** The Charter and Bylaws establish the Board as the Smithsonian’s governing authority, but the specific duties and responsibilities of individual Regents are not explicitly stated. Without a formal job description, the role of a Regent was subject to individual interpretation. The best practices of nonprofit boards strongly encourage members to have a basic shared understanding of their roles and expectations. The Governance Committee believes that adopting a clear statement of Regent duties and responsibilities will reaffirm that the Board is the Smithsonian’s ultimate governing authority and that the Regents will act accordingly.

This job description establishes expectations for all Regents, including *ex officio* and Congressional members, who act collectively as a governing body. The Governance Committee notes that the review of Board structure and functions described in Recommendation 1 will address the appropriate role and obligations of *ex officio*, Congressional, and Citizen Regents. Following that review, the Committee may suggest revisions to this job description.

Each current and prospective Regent should take into consideration whether he or she has sufficient time and ability to fulfill the requirements of the position as defined.

# Appendix 6

## **GENERAL CRITERIA FOR IDENTIFYING CANDIDATES FOR THE SMITHSONIAN BOARD OF REGENTS**

The Governance and Nominating Committee acknowledges that one of its most critical functions is recommending candidates for membership to the Board of Regents. In that regard, the Committee regularly assesses the skills and talents of the entire Board to identify both its strengths and weaknesses and to ensure that nomination process is targeted to improve the Board's effectiveness not only as the Smithsonian's governing body, but also as a constructive partner with management and staff to address the challenges of the 21st Century.

1. Personal Characteristics for all Regents: The Committee supports the nomination of distinguished Americans who (1) are or will become passionate about the Smithsonian and its varied activities, (2) can devote considerable time to the Institution and the execution of the duties associated with being a Regent, (3) have the capacity to contribute to constructive institutional change in significant ways, (4) maintain high personal standards of honesty and integrity, and (5) are committed to transparency and accountability in governance. The Committee notes that special consideration should be given to candidates who have demonstrated their dedication to the Smithsonian through service on advisory boards, on Board committees as non-Regent members, or in other ways that have benefited the Institution over a period of time.
2. Geographic and Cultural Diversity: The Committee recognizes the importance of diversity on the Board of Regents and the contributions members from various and disparate backgrounds can contribute to the Smithsonian. Although the Charter requires that Citizen Regents come from seven different states and the District of Columbia, the Committee believes that a commitment to diversity also requires seeking candidates from historically underrepresented regions of the country. Similarly, the Committee acknowledges the importance of seeking candidates from different fields of personal and professional experience and from diverse ethnic backgrounds.
3. Museum, Educational, and Research Experience: The Committee believes that the Board benefits from members with significant prior experience at museums, educational institutions, or research centers which routinely encounter many of the issues and challenges facing the Smithsonian.
4. Non-Profit Administrative or Governance Experience: The Committee recognizes that candidates with backgrounds in the administration or governance of non-profit organizations or serving on their boards bring important and relevant perspectives as Regents. The Committee also believes that service on corporate boards is relevant to addressing many of the complex governance issues that the Board will address.
5. Academic or Scholarly Background: The Committee strongly agrees that the Board maintain representation from individuals with career experience in such fields as history and culture, the arts, and science.

6. Business, Financial, and/or Investment Experience: The Committee recognizes the importance to the Board to have members that possess business, financial, or investment skills and who are willing to share their expertise and advice with the staff of the Institution.

7. Government-Related Experience: The Committee strongly believes that candidates with distinguished careers in public service, especially in positions of high responsibility in the Federal government, can provide unique contributions to the governance of the Smithsonian.

# Appendix 7



**BOARD OF REGENTS  
COMMITTEE ASSIGNMENTS**

**Executive**

Roger Sant, Chair  
Chief Justice John Roberts  
Alan Spoon

**Audit and Review**

Phillip Frost, Chair  
Robert Kogod  
Roger Sant  
Patty Stonesifer  
Don Chapin\*

**Compensation and Human Resources**

Patty Stonesifer, Chair  
Senator Thad Cochran  
Roger Sant  
Alan Spoon

**Facilities Revitalization**

Robert Kogod, Chair  
Senator Thad Cochran  
Senator Patrick Leahy  
Representative Xavier Becerra  
Representative Sam Johnson  
Roger Sant  
Richard Darman\*

**Finance and Investment**

Eli Broad, Chair  
Senator Patrick Leahy  
Representative Sam Johnson  
Phillip Frost  
Shirley Ann Jackson  
Alan Spoon  
Hacker Caldwell\*  
David Silfen\*

**Investment Subcommittee**

David Silfen\*, Chair  
Eli Broad  
Roger Sant  
Alan Spoon  
Afsaneh Beschloss\*  
Hacker Caldwell\*  
J. Tomilson Hill III\*

**Governance and Nominating**

Shirley Ann Jackson, Chair  
Representative Doris Matsui  
Robert Kogod  
Patty Stonesifer  
Diana Aviv\*

**Search**

Alan Spoon, Chair  
Jeff Minear (for Chief Justice)  
Senator Patrick Leahy  
Representative Xavier Becerra  
Anne d'Harnoncourt  
Roger Sant  
Walter Massey\*  
Hacker Caldwell\*  
Irwin Shapiro\*  
Maxine Singer\*  
Rick West\*

\*Non-Regent

11/28/07

# Appendix 8

## **GENERAL GUIDELINES FOR APPOINTMENT TO STANDING COMMITTEES OF THE BOARD OF REGENTS**

The Governance and Nominating Committee is responsible for recommending members to the Chancellor for appointment on both standing and ad hoc committees of the Board of Regents. In doing so, the Committee first identifies the expertise necessary for each committee and then matches the skills, background and interest of individuals, both Regents and non-Regents, to a committee's needs.

The following overarching principles guide the Committee:

1. Number of Committees: In general, all Regents are expected to serve on, at least, one, but no more than three standing committees.
2. Committee Chairs: At an appropriate point in their tenure, all Citizen Regents are expected to chair one standing committee.
3. Number of Members: In general, all committees should have no fewer than three and no more than six Regent members, except the Executive Committee, which, by the Charter, is limited to three members.
4. Non-Regent Members: For those committees requiring expertise from the Regents that is either lacking or would greatly benefit from supplementation, the Committee will actively consider candidates from outside the Board. The Committee will particularly rely on members from the museum advisory boards and Regent Emeriti.

As part of its comprehensive review of the structure and composition of the Board, charters of all standing committees, and the relationship between the Regents and museum advisory boards, the Committee expects that these guidelines will be further modified and refined.