

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is centered within the hourglass shape.

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Report RL33560

*Smithsonian: Background, Funding, and Policy Issues*

Susan Boren, Domestic Social Policy Division

July 27, 2006

**Abstract.** This report provides background and legislative history on the Smithsonian Institution (SI) as well as delineating funding and current policy issues. It begins with a discussion about the initial acceptance of James Smithson's will and gift, and provides legislative history including the final passage and enactment of the Organic Act of 1846. It details the Smithsonian's acquisition and creation of other museums through legislation and explores growing federal government involvement in the Smithsonian Institution. It also outlines funding levels for the SI museums and explains the private trust account. Finally, it discusses the policy issue of private versus federal funding, recent controversies over the Smithsonian's contract with CBS/Showtime, and the condition of Smithsonian buildings.

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# CRS Report for Congress

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## **Smithsonian: Background, Funding, and Policy Issues**

**Updated July 27, 2006**

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# Smithsonian: Background, Funding, and Policy Issues

## Summary

The Smithsonian Institution (SI) is a museum, education, and research complex comprised of 19 museums and galleries, the National Zoo, and 9 research facilities throughout the United States and around the world. In addition, there are 144 affiliated museums. The Smithsonian Institution is estimated to be 75 to 80 percent federally funded, and also is supported by private donations, and trust funds.

The Organic Act of 1846 established the Smithsonian Institution in response to James Smithson's will and gift. Increases in federal support for the Smithsonian have developed through the years as a result of adding authority for multiple museums to the jurisdiction of the Smithsonian Institution. The idea of 19 museums did not necessarily originate with the Smithsonian. The range of legislation enacted shows the increasing control of the federal government over the shape of the Smithsonian Institution and the subsequent justification for increased appropriations.

The Federal commitment in terms of funding for the Smithsonian Institution appears extensive. Congressional appropriations for the Salaries and Expenses of the Smithsonian have grown exponentially from \$18.5 million in FY1966 to \$516.6 million in FY2006. Private trust funds also help sustain the Smithsonian Institution. In FY2006, trust funds totaled \$274 million. In spite of private trust funds, Congress and the courts tend to characterize the Smithsonian primarily as a federal entity.

A recent contract between the Smithsonian Institution and CBS/Showtime for a new cable programming service called "*Smithsonian on Demand*" has called into question the decision of the Secretary of the Smithsonian and the SI's Board of Regents. This issue has captured considerable media attention. Judging from the vote of the House Members on the FY2007 Interior appropriations bill, the full House and the Senate Appropriations Committee have differing views on the Showtime issue.

There are, in addition, other issues of importance concerning the Smithsonian Institution, including appropriate levels of funding for all Smithsonian research facilities and museums, and the issue of maintenance and preservation of Smithsonian buildings. According to Government Accountability Office (GAO), many years of insufficient investment in "Facilities Capital" and maintenance have led to the long term deterioration of the physical plant of the SI.

This report will be updated as congressional action occurs.

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# Smithsonian: Background, Funding, and Policy Issues

This report provides background and legislative history on the Smithsonian Institution (SI) as well as delineating funding and current policy issues. It begins with a discussion about the initial acceptance of James Smithson's will and gift, and provides legislative history including the final passage and enactment of the Organic Act of 1846. It details the Smithsonian's acquisition and creation of other museums through legislation and explores growing federal government involvement in the Smithsonian Institution. It also outlines funding levels for the SI museums and explains the private trust account. Finally, it discusses the policy issue of private versus federal funding, recent controversies over the Smithsonian's contract with CBS/Showtime, and the condition of Smithsonian buildings.

## Background

The Smithsonian Institution is a museum, education, and research complex comprised of 19 museums and galleries, the National Zoo, and 9 research facilities throughout the United States and around the world. In addition, there are 144 affiliated museums. The SI is responsible for more than 400 buildings with an estimated 8 million plus square feet of space. There were more than 24 million visitors to SI museums last year, a 24% increase over FY2004. The Smithsonian Institution is estimated to be 75% to 80% federally funded, and also is supported by private donations, and trust funds.

The Organic Act was enacted in response to the Smithson will and gift, twenty years from the date of the will of James Smithson, and eight years from the date of initial consideration by Congress of a bill to establish the Smithsonian Institution. The Organic Act, "An Act to Establish the Smithsonian Institution for the Increase and Diffusion of Knowledge among Men" was passed by Congress and enacted on August 10, 1846.

In his message to Congress in December 1835, President Andrew Jackson announced the Smithson will and gift, but added that there was no precedent for this, and that he had no authority to accept it. A lengthy debate occurred in Congress concerning the acceptance of the bequest and what shape it would take. The matter was referred to the Senate Committee on the Judiciary on May 2, 1836 and the resolution to accept the will and gift passed the Senate. The House explored legislation to accept the Smithson gift and with the help of Representative and former President John Quincy Adams, the House and Senate agreement passed in 1836 authorizing the acceptance of the claim to the will and gift and an appropriation of

\$10,000 to cover the costs.<sup>1</sup> This was an acceptance of the Smithson will and fund only, *not* establishment of the Smithsonian Institution. In December 1838, President Martin Van Buren announced that the fund of about \$500,000 had been received in the Treasury, and reminded the Congress of its obligation to fulfill the object of the bequest — i.e., to establish the Smithsonian Institution. There was no precedent for dealing with bequests of this nature, and there were very few scientific foundations that could be used as models.<sup>2</sup>

The final law, the Organic Act of 1846, established the Smithsonian Institution. It created the Smithsonian Board of Regents, which to this day appears to have considerable power; it provided for an Executive Committee and Secretary of the Smithsonian. In addition, it authorized construction of a Smithsonian building; it provided for the transfer of the collections of James Smithson, and delineated the duties of the Secretary including providing employment. It provided an appropriation not to exceed \$25,000 a year from the interest of the Smithsonian endowment fund for operations.<sup>3</sup> It authorized the managers of the Smithsonian Institution to spend income according to “the purposes” set forth by James Smithson; and it reserved the right of Congress to alter, amend, and repeal any of the provisions of the act.<sup>4</sup>

## Smithsonian Board of Regents

The governing body of the Smithsonian Institution includes the Secretary of the Smithsonian and its Board of Regents, currently composed of 17 members.<sup>5</sup> Eight of the Regents are United States officials, including the Vice President, the Chief Justice, three Members of the Senate (appointed by the President of the Senate), and three Members of the House of Representatives (appointed by the Speaker of the House). The remaining nine Regents are private citizens, i.e., individuals “other than Members of Congress,” and are appointed by joint resolution of Congress.<sup>6</sup> The Board of Regents elects an Executive Committee and Secretary as specified by the Charter. In accordance with the policies established by the Board of Regents, the Secretary may accept or receive gifts, grants, bequests, and other transfers of property for the Smithsonian Institution. The Secretary and the Regents provide supervisory power over the Smithsonian Institution.

Through the years, there have been joint resolutions of Congress to appoint Members of the Smithsonian’s Board of Regents. For example, in the 103<sup>rd</sup> Congress H.J.Res. 105/S.J.Res. 37 provided for the appointment of Hanna Gray (President Emeritus of the University of Chicago) as a citizen Regent of the Smithsonian (P.L.

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<sup>1</sup> Further legislative history appears in Paul Oehser’s book, *The Smithsonian Institution* (New York: Praeger, 1970), pp. 16-25.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid., p.255.

<sup>5</sup> 20 U.S.C. § 42-44; Bylaws of the Board of Regents and Charter Provisions of the Smithsonian, SI, Washington, DC, 1995.

<sup>6</sup> 20 U.S.C. § 43.

103-19). In the 104<sup>th</sup> Congress, H.J.Res. 110 provided for the appointment of Howard H. Baker Jr. (Former Senator from Tennessee) as citizen Regent (P.L. 104-82). In the 109<sup>th</sup> Congress, H.J.Res 19 provided for the appointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution (P.L. 109-11), and H.J.Res 82 provided for the reappointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution (P.L.109-217).

## Statutory Authority of the Smithsonian

Increases in federal support for the Smithsonian have developed as a result of adding authority for multiple museums to the jurisdiction of the institution. The idea of 19 museums did not necessarily originate with the Smithsonian — in many instances the Smithsonian was not the initiator of the concept of additional museums, but rather these were placed under the jurisdiction of the Smithsonian through acts of Congress, thus, adding responsibility to the institution, and with it, the need for additional appropriations.

Statutory authority for the Smithsonian Institution has been amended and added to by numerous acts over time. The range of legislation enacted shows the increasing control of the federal government over the shape of the Smithsonian Institution and the subsequent justification for increased congressional appropriations. Some examples are listed here:

- Incorporation of the Institute: August 10, 1846, c. 178, 9 Stat. 102, amended; March 20, 1871, 17 Stat. 1, amended March 12, 1894, 28 Stat. 41.
- National Zoo — placed under the authority of the Regents of the Smithsonian April 30, 1890, 26 Stat. 78, amended by P.L. 87-360, 75 Stat. 779.
- National Gallery of Art, March 24, 1937, 50 Stat. 51; acceptance of the Mellon Educational and Charitable Trust by the Smithsonian.
- Establishment of the National Portrait Gallery, March 28, 1958, 72 Stat. 68, P.L. 87-443, amended April 27, 1962, 76 Stat. 62, P.L. 94-209; February 5, 1976.
- Joseph H. Hirshhorn Museum and Sculpture Garden, P.L. 89-788, November 7, 1966, 80 Stat. 1403.
- National Museum of the American Indian, P.L. 101-185, November 28, 1989, 103 Stat. 1336.
- Authorize construction of the Smithsonian Institution's National Air and Space Museum extension at Dulles Center Oct 1, 1996, 110 Stat. 3025, P.L.104-222.
- To establish within the Smithsonian the National Museum of African American History and Culture, P.L. 108-184, 117 Stat 2676, December 16, 2003. (A precursor to this act was P.L. 107-106).

## Funding for the Smithsonian Institution

The federal commitment in terms of funding for the Smithsonian Institution appears extensive. The chart below (see **Figure 1**) shows that Congressional appropriations combined with government grants and contracts from federal agencies provide the largest share of support for the Smithsonian, totaling an estimated 74% of the total Smithsonian budget.

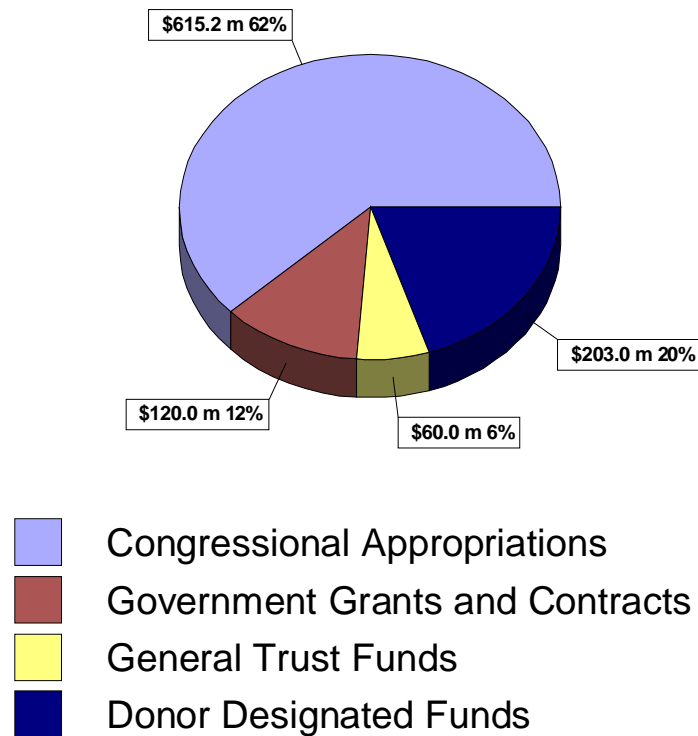
### The Private Smithsonian — Trust Funds

In addition to congressional appropriations, the Smithsonian Institution receives income from trust funds to expand its programs. The SI trust fund account includes three types of funds: general trust funds, contributions from private sources or donor designated funds, and federal government grants and contracts from other agencies. General trust funds include but are not limited to investment income from the endowment, earnings from unrestricted endowments, proceeds from the museum shops, SI books and publications sales, and membership programs such as Smithsonian Resident Associates. For FY2006 (the most recent estimate available), the total Trust funds available for operations were estimated at \$274.0 million, comprised of \$59.0 million from general trust funds, \$109.0 million from government grants and contracts from federal agencies, and \$106.0 million from donor-designated funds. The chart (**Figure 1**) below is based on actual FY2005 dollars from trust funds and from Congressional appropriations.



**Figure 1. Sources of SI Support, FY2005**

(FY2005 Actual Dollars in Millions)



**Source:** Smithsonian Budget Justification to Congress, FY2007.

The Smithsonian was created by the instrumentality of a private trust, and is sustained by a private endowment, the income from which is in the general trust and is always kept separate from federal funding in terms of accounting.<sup>7</sup> In addition, there is no restriction or limitation on the power of the Smithsonian 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.”<sup>8</sup>

Congress recently expressed concern over the extent to which the SI’s financial managers are investing in “hedge funds,” i.e., higher risk funds, to boost the endowment. The SI has tried to assure the Congress that it is not reducing the endowment from these investments.

<sup>7</sup> 20 U.S.C. §54.

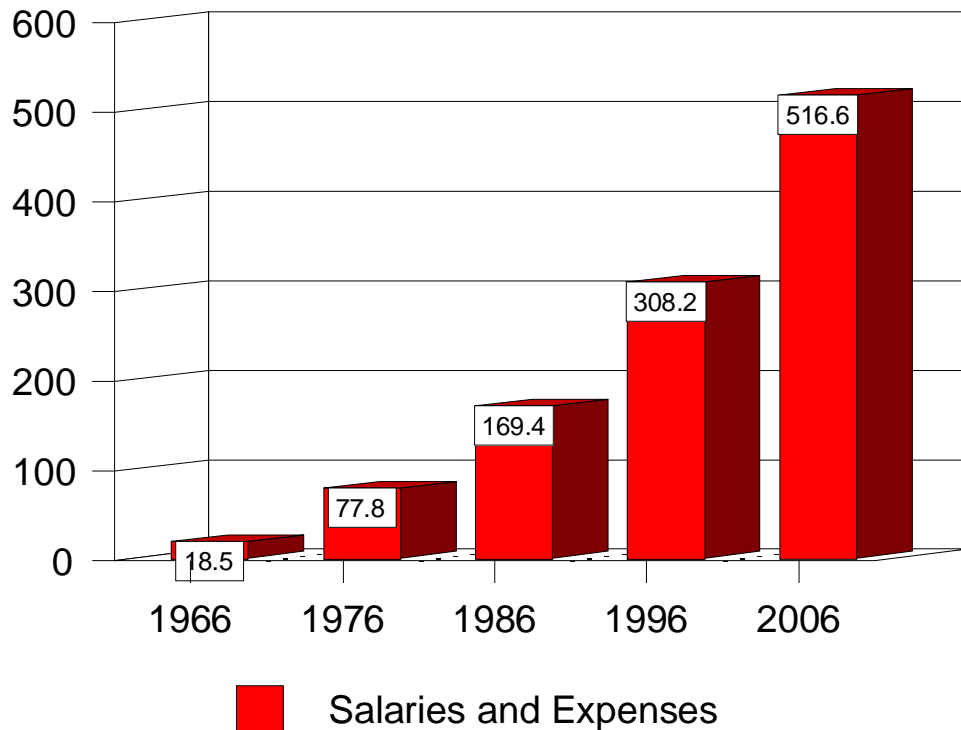
<sup>8</sup> 20 U.S.C. §55.

## Appropriations for the Smithsonian Institution

Congressional appropriations for the Smithsonian Institution are provided through the Interior, Environment and Related Agencies appropriations bills. This funding reinforces the concept that the Smithsonian is a “federal entity.” Through these appropriations, the funding for the Smithsonian’s Salaries and Expenses have grown exponentially from a total of \$18.5 million in FY1966 to \$516.6 million in FY2006. (See **Figure 2**.)

**Figure 2. Smithsonian Institution: Funding for Salaries and Expenses, FY1966-FY2006**

(\$ in millions)



**Source:** Smithsonian budget office (excerpted from unpublished tables).

Salaries and Expenses cover administration of all of the museums and research institutions that are part of the SI. (See **Appendix A**.) Total appropriations for the Smithsonian (which includes Facilities Capital/Construction plus Salaries and Expenses) have grown dramatically as well from \$373.1 million in FY1996 to \$615.1 million in FY2006. (See **Table 1**.) Both Salaries and Expenses and Total appropriations for the SI are indicators of a substantial federal commitment to the Smithsonian Institution.

**Table 1. Appropriations for the Smithsonian Institution (SI), FY1996-FY2006**

Fiscal year	Salaries and Expenses	Total SI appropriations
1996	\$308,188,000	\$376,092,000
1997	\$318,492,000	\$371,342,000
1998	\$333,408,000	\$402,258,000
1999	\$351,854,000	\$412,254,000
2000	\$371,230,000	\$438,130,000
2001	\$386,902,000	\$453,854,000
2002	\$420,960,000	\$518,860,000
2003	\$446,096,000	\$554,875,000
2004	\$488,652,000	\$596,279,000
2005	\$489,035,000	\$615,158,000
2006	\$516,568,000	\$615,097,000

**Source:** Smithsonian Budget Justification to Congress (annual budget documents).

## FY2007 Funding for the Smithsonian Institution

**FY2007 Actions.** For FY2007, the House passed Department of Interior, Environment, and Related Agencies bill (H.R. 5386) would provide \$624.1 million for the Smithsonian, a decrease of \$20.3 million from the Administration's proposed \$644.4 million for FY2007, but a \$9.0 million increase over the enacted FY2006 level (\$615.1 million). (See **Table 2.**) For Salaries and Expenses, the House approved \$517.1 million, a decrease from the Administration's request of \$537.4 million, and a slight increase over the FY2006 amount of \$516.6 million. Salaries and Expenses cover administration of all of the museums and research institutions that are part of the SI. It also includes program support and outreach, and facilities services (security and maintenance). The House passed bill cut the Smithsonian's Salaries and Expenses funding on the grounds that Congress was not consulted on the contract that the Smithsonian Institution made with Showtime. (See the discussion under "*Showtime Business Venture.*") During House consideration, an amendment was adopted to *prohibit* funds from being used to support activities that could in any way limit access to SI's collections and research materials. Currently, SI's outreach programs extend to many communities across all states.

For FY2007, the Senate Appropriations Committee-reported bill would provide \$644.4 million for SI, the same as the Administration's request, an increase of \$20.3 million over the House-passed bill (\$624.1 million) and an increase of \$29.3 million over the FY2006 level. For Salaries and Expenses, the Senate Appropriations Committee would provide \$537.4 million, the same as the Administration's request,

\$20.8 million above the FY2006 level, and \$20.3 million above the House-passed bill. The Senate Appropriations Committee-reported bill had no punitive amendments with regard to the Showtime deal, nor did it have any language limiting the salary of the Secretary of the Smithsonian. (*See the later discussion under "Showtime Business Venture."*)

**Facilities Capital.** For FY2007, the House and the Senate Appropriations Committee approved \$107.0 million for facilities capital, the same as the Administration's budget. This would be an increase over the FY2006 level of \$98.5 million. The House-passed bill and the Senate Appropriations Committee-reported bill provided \$91.1 million for revitalization, \$5.4 million for construction, and \$10.5 million for facilities planning and design. Revitalization funds are for addressing advanced deterioration in SI buildings, helping with routine maintenance and repair in SI facilities, and making critical repairs. (See the later discussion on "*Smithsonian Institution Buildings: Maintenance and Preservation.*")

**National Museum of African American History and Culture.** A new National Museum of African American History and Culture (NMAAHC) has been authorized within the Smithsonian Institution through P.L. 108-184. The museum will collect, preserve, study, and exhibit African American historical and cultural material and will focus on specific periods of history, including the time of slavery, Reconstruction, the Harlem Renaissance, and the Civil Rights Movement. For FY2007, the House-passed bill and the Senate Appropriations Committee-reported bill supported the Administration's budget request for \$3.0 million, a slight increase from the FY2006 appropriation of \$2.9 million. The funding will cover operating costs, including personnel for planning, and capital fund raising. Space has been selected on the Mall near the Washington Monument. Other groups, such as Latinos, have been seeking museum space on the Mall, and legislation has been introduced (H.R. 2134, S. 2475) that would appoint a Commission to study the feasibility of an American Latino museum on the Mall or adjacent to it. The House Appropriations Committee's report on FY2006 appropriations stipulated that the SI's purchase of any additional buildings would require initial consultation with the House and Senate Committees on Appropriations.

**National Museum of the American Indian (NMAI).** The FY2007 House-passed bill, the Senate Appropriations Committee, and the Administration budget would provide \$31.2 million for operating expenses for the National Museum of the American Indian. For FY2006, Congress enacted \$30.5 million. The estimated total cost of construction for the NMAI was approximately \$219.3 million. The groundbreaking ceremony for the NMAI took place September 28, 1999, and the grand opening ceremony was September 21, 2004.

**National Zoo.** For FY2007, the House-approved and the Senate Appropriations Committee-reported bill provided \$21.4 million for salaries and expenses at the National Zoo. The Senate Appropriations Committee approved \$20.7 million, the same as the budget request. In the House-passed bill, \$1 million is to address critical infrastructure including fire detection and suppression systems. Recently, Members of Congress and the public have expressed increased concern about the National Zoo's facilities and the care and health of its animals. The Smithsonian Institution has a plan to revitalize the zoo to make the facilities safer for the public and healthier for the

animals. The Administration's FY2007 request estimated \$13.0 million (under the Facilities Capital account) to begin Phase II of the Asia Trail and Elephant Trails to provide ample space for the elephants. It also included renewing facades, roofs, and skylights at Rock Creek (\$2.0 million); and an upgrade of critical infrastructure (\$1.0 million), including installing fire protection systems and upgrading utilities. The new construction and renovation will help the Zoo come into compliance with the Department of Agriculture and American Zoo and Aquarium Association standards, and help correct "infrastructure deficiencies" found throughout the National Zoo. The House agreed to provide the full amount for Facilities Planning and Design, but asked to review the list of the Zoo's projects for Facilities Planning and Design before approval. The Senate Appropriations Committee-reported bill does not contain similar language.

**Table 2** below lists the appropriations for the Smithsonian Institution for FY2005 through FY2007, the FY2007 Administration request, and the House-passed and Senate Appropriations Committee-reported figures for FY2007.

**Table 2. Appropriations for the Smithsonian Institution,  
FY2005-FY2007**  
(\$ in thousands)

<b>Smithsonian Institution (SI)</b>	<b>FY2005 Approp.</b>	<b>FY2006 Approp.</b>	<b>FY2007 Request</b>	<b>FY2007 House Passed</b>	<b>FY2007 Senate Comm.</b>
Salaries and Expenses	\$489,035	\$516,568	\$537,394	\$517,094	\$537,394
Facilities Capital	126,123	98,529	107,000	107,000	107,000
<b>Total SI Appropriations</b>	<b>\$615,158</b>	<b>\$615,097</b>	<b>\$644,394</b>	<b>\$624,094</b>	<b>\$644,394</b>

**Source:** Compiled by CRS.

## Issues

### Private Versus Federal Designation

Congress wants to assure greater accountability for the Federal funds expended by the Smithsonian Institution. Therefore, Congress and the courts are still grappling with how to characterize the Smithsonian: as primarily an institution governed by a private trust and therefore a "private trust instrumentality," or primarily as a "federal entity" or "federal agency."<sup>9</sup>

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<sup>9</sup> Information on the court cases in this discussion have been provided by Terry Halstead, Legislative Attorney, American Law Division, CRS.

In 1997, the D.C. Circuit Court held that the Smithsonian was not an executive branch “agency” (*Dong v. Smithsonian Institution*) for purposes of the Privacy Act<sup>10</sup>. The Privacy Act incorporated the definition of “agency” from the Freedom of Information Act, which defines “agency” as an “executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.”<sup>11</sup> Applying the Freedom of Information Act definition to the Smithsonian, the court held that the Smithsonian was not an “establishment in the Executive branch” or a “Government controlled corporation.” The Smithsonian characterized itself as a “trust instrumentality of the United States.”<sup>12</sup>

The unique character of the Smithsonian has featured prominently in other court cases. It would appear that the Smithsonian is, at a minimum, an “establishment of the United States.” All moneys received by the Smithsonian are held in the U.S. Treasury.<sup>13</sup> The Smithsonian is required to submit annual reports on its operations to Congress, and is further audited by the Government Accountability Office.<sup>14</sup> If there is a lawsuit against the Smithsonian, the SI is generally represented by government attorneys from the Department of Justice.

The aforementioned factors imply “federal” status, and under some federal statutes the Smithsonian is considered a “federal agency.” For example, in certain court cases under the Federal Tort Claims Act, the Federal Employment Compensation Act, and the Inspector General Act, the Smithsonian, for these purposes, is considered a “federal agency.”<sup>15</sup> Several other court cases have determined that the Smithsonian is at its core a “federal entity” in spite of the existence of a private funding source.<sup>16</sup>

However, there is still some reluctance to declare the Smithsonian a “federal agency” or “federal entity.” The decisions in numerous court cases are based on the precise language of the “agency” definition in the particular statute being cited in a

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<sup>10</sup> *Dong v. Smithsonian* (125 F.3d 877, 883 (D.C. Cir. 1997)). There were other court cases that conflicted with *Dong* including *Cotton v. Adams* 798 F. Supp. 22 (D.D.C. 1992).

<sup>11</sup> 5 U.S.C. §552(f); 5 U.S.C. §552a(a)(1).

<sup>12</sup> *O’Rourke v. Smithsonian Institution Press*, 399 F.3d 113 (2d Cir. 2005)

<sup>13</sup> 20 U.S.C. §53.

<sup>14</sup> 20 U.S.C. §49, §§57-58.

<sup>15</sup> *Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian*; *Marley v. Ibelli*, 203 F. Supp.2d 302, 308 (S.D.N.Y. 2001); 5 U.S.C.App.3, § 8G(a)(2).

<sup>16</sup> *Marley v. Ibelli*, 203 F. Supp.2d 302, 308 (S.D.N.Y. 2001) There appears to be a “constitutional” component to the determination that the Smithsonian is a “federal entity.” SI was created by Congress to further the government’s objective of increasing and diffusing knowledge. Although not a Smithsonian case, *Lebron v. National R. R. Passenger Corporation*, 513 U.S. 374 (1995) provides a precedent in a parallel sense that the Smithsonian is constitutionally regarded as a “government entity.”

case, as the Department of Justice's Office of Legal Counsel confirms.<sup>17</sup> Therefore, declaring the Smithsonian a "federal entity" is determined on a case by case basis, but it appears that the majority of case findings tend to favor the characterization of "federal entity." The impact Congress has on the SI is greater if the SI is considered a federal entity, particularly with regard to the next issue, the Showtime Business Venture.

## Showtime Business Venture

Members of Congress have expressed concern over the new business venture between the Smithsonian and Showtime. The venture, called "Smithsonian On Demand," is a new cable programming service that will offer commercial-free shows about Smithsonian resources and collections. According to the SI, the Smithsonian will take advantage of the power of cable television to expand access to objects, scientists, and scholars in keeping with its mission to "diffuse knowledge."

Congress's primary concern is that the national collections of the Smithsonian might not be available to the public and that access by other film makers could be limited or restricted completely. The SI asserts that its collections will remain open to all researchers. Further, according to the SI, it will not limit access to other producers, and in fact will hire independent film makers to help in production of the programs for the channel. The SI originally claimed that it did not need to divulge the terms of its contract with CBS/Showtime, because it was a private business contract that did not involve federal funds. Some lawmakers asserted that, because of the substantial federal support of the SI, they had a right to know about this contract, while others contended that they should have been informed as a courtesy.

To express its disapproval with the Smithsonian over the Showtime business venture, the House Interior, Environment, and Related Agencies Appropriations Subcommittee included bill language limiting the Smithsonian's ability to execute any contract or legal agreement which could limit access by the public to the Smithsonian collections.<sup>18</sup> This bill language was retained in the House Appropriations Committee-reported bill and the House-passed bill. The House also reduced funding below the Administration's request for the Smithsonian Institution's Salaries and Expenses by \$20.3 million from \$537.4 million to \$517.1 million. Additionally, the House agreed to limit the salary of the Secretary of the Smithsonian to not more than that of the President of the United States (approximately \$400,000) and to reduce the salaries of any other SI officer or employee now receiving more than the President to the level of the President. According to the Smithsonian's most recently available return, the current Secretary, Lawrence Small, received a salary of \$813,000 for the

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<sup>17</sup> 12 Op. A.G. 122, 123-24 (1988).

<sup>18</sup> A copy of the letter from the chairman and ranking member of the Subcommittee on Interior, Environment and Related Agencies Appropriations to the Secretary of the Smithsonian, Lawrence Small, is available at [<http://www.current.org/pbpb/documents/Smithsonian-letter-from-house-Ap06.pdf>].

2003 tax year.<sup>19</sup> Generally, the Secretary and his assistants receive compensation for their services “as may be allowed by the Board of Regents.”<sup>20</sup>

On May 25, 2006, the House Administration Committee<sup>21</sup> conducted an oversight hearing on the Smithsonian’s contract with Showtime. Secretary Small testified, admitting in hindsight that Congress should have been consulted about the 30-year contract with Showtime. The Secretary indicated that he did not realize the contract would be so controversial. In the hearing on May 25, 2006 the Secretary did provide for the Congress details of the 30-year contract with Showtime. There was criticism of the contract as an instrument with a 30-year term.

On June 29, 2006, the Senate Appropriations Committee reported the Interior Appropriations bill for FY2007 (S.Rept. 109-275). The Senate Appropriations Committee expressed concern about the House-passed reduction of SI funds, stating that the Smithsonian admitted its “missteps” in not consulting Congress in the process of negotiating with Showtime. The Senate Appropriations Committee stated that the reduction will not have a noticeable impact on the venture, and that any reduction may damage “already thin program budgets in each of the institution’s existing museums, research centers and the National Zoo” (S.Rept. 109-275, p. 110). Finally, the Senate Appropriations Committee does *not* believe that the “visiting public would be well-served by a reduction of the Federal resources required by the Institution to carry out its mission.” There has been no final action by the Senate on the FY2007 Interior Appropriations bill.

## Smithsonian Institution Buildings: Maintenance and Preservation

The Facilities Capital program is a vital component of the Smithsonian. It has as its goal to provide modernized facilities and to preserve the historic structures of the SI in order to serve the public and preserve collections. According to the SI and GAO, many years of insufficient investment in both Facilities Capital and maintenance have led to deterioration of the physical plant of the SI. The Smithsonian has some buildings that are well over 100 years old. More than half of the buildings, according to the Smithsonian, have heating, air-conditioning and electrical systems

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<sup>19</sup> Jacqueline Trescott, “Smithsonian Investigating Its Sales Division’s Salaries,” *Washington Post*, p. C1, Apr. 19, 2006.

<sup>20</sup> To compare with the salaries of other museum directors, we found that the Director of the Metropolitan Museum of Art received over \$800,000 (including a housing allowance) using 2003 data. The president of the Getty Museum received over \$600,000 including a housing allowance, using 2004 data. The Director of the Guggenheim Museum in New York received over \$600,000 using 2003 data. Both the Director of the Museum of Modern Art and the Whitney Museum in New York received over \$500,000 using 2003 data. The Director of the Kimball Museum in Dallas, Texas received slightly over \$500,000 according to the Kimball’s press office (2006 data). These are all estimates from consultations with press offices.

<sup>21</sup> The Committee on House Administration can conduct oversight on any activity related to the operations and activities of Smithsonian Institution, other than construction of its facilities.



that are well beyond repair and are in need of replacement. A study in 2001 by professional engineers entitled *Smithsonian Institution Museums and Facilities: Critical Assessment and Improvement Objectives (2001)* and another report by the National Academy of Public Administration (NAPA) indicated that there was at a minimum \$1.5 billion in unmet need for capital revitalization of the Smithsonian over the next decade as reported in 2001. These reports did not take into consideration any anti-terrorism modifications needed, since the reports were published prior to 9/11. Both reports determined that a critical investment was needed to improve and preserve the Smithsonian's physical plant for the 21<sup>st</sup> century.

A later study by the Government Accountability Office<sup>22</sup> indicated that SI needs a substantial investment, for revitalization and construction and maintenance projects, i.e., \$255 million a year for the next nine years totaling \$2.3 billion. These estimates could also grow, as they were only initial estimates and assessments.

The National Zoo is now well over 100 years old, dating back to the 1890's. The American Zoo and Aquarium Association states the critical importance of completing a strategic plan for the zoo, including improvement of structural, electrical and fire safety systems. The National Academy of Sciences study of Zoo animal care suggests that plans should move forward expeditiously for the Zoo to keep the animals from harm. The Asia Trail project will provide a larger expanse for the Asian elephants. The projected cost for Phase II of the elephant trails is \$13.0 million for FY2007. In addition, according to the SI, there is a need for renovating roofs, facades, and skylights at the Rock Creek facility and upgrading of infrastructure.

According to NAPA and GAO, concern over asbestos in some storage areas of the older SI buildings has led to restricted access to some collections. Artifacts such as historic aircraft have sustained water damage. Maintaining climate control and desired temperature levels for conserving collections has become a problem in some of the older buildings.

A new report from the National Trust for Historic Preservation places the Smithsonian's 135-year-old Arts and Industries building (constructed between 1879 and 1881) on the most endangered historic sites list. Originally called the "National Museum," the building was closed indefinitely in 2004 because of its deteriorating roof and its infrastructure. It served as the only Smithsonian museum on the Mall until the completion of the National Museum of Natural History in 1910. The National Trust for Historic Preservation recommends the creation of an advisory panel to study how to preserve the building.<sup>23</sup>

There has been no consensus on how to deal with the long-term deterioration in the SI buildings or how to fund the Smithsonian Institution's revitalization and repair. Appropriations for "Facilities Capital" from the Congress do not appear to meet more

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<sup>22</sup> GAO, Smithsonian Institution: Facilities Management Reorganization is Progressing, but Funding remains a Challenge, GAO-050369, Apr. 25, 2005.

<sup>23</sup> National Trust for Historic Preservation, *America's 11 Most Endangered Historic Places*. 2006.

than a portion of the total estimated need with at least \$1.5 billion in maintenance backlog. Private fund-raising is difficult when it comes to renovation/repair type funding — repair of leaky pipes, roof repairs, and replacement of heating and air-conditioning systems are not high profile items for which contributors will readily donate. Some groups recommend an aggressive fund-raising campaign. Others suggest entry fees as a solution. However, the Smithsonian prides itself on “free access” to its collections, without entry fees.<sup>24</sup>

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<sup>24</sup> One construction success story is the Old Patent Office Building of 1846, which has been renovated, and after a six-year project reopened to the public on July 1, 2006, as the National Portrait Gallery and the Smithsonian Art Museum (at a cost of \$298 million). (Benjamin Forgey, “*Museums Reborn: Patently Inspiring*,” Washington Post, June 25, 2006.) According to SI, donors were willing to contribute to “enhancements” and did so for the Portrait Gallery and the Smithsonian Art Museum — contributing, among other “enhancements,” to the auditorium and the roof over the courtyard.

## Appendix A

### Museums and Research Centers Under the Smithsonian's Jurisdiction

#### American Museums

Anacostia Museum/Center for African American History and Culture  
Arts and Industries building (closed)  
Center for Folklife and Cultural Heritage  
National Museum of African American History and Culture  
National Museum of American History, Behring Center  
National Museum of the American Indian  
    Cultural Resources Center (Suitland Maryland)  
    George Gustav Heye Center (New York)  
National Postal Museum  
Ripley Center and Discovery Theater

#### Art Museums

Archives of American Art  
Arthur Sackler Gallery  
Freer Gallery of Art  
Cooper-Hewitt, National Design Museum  
Hirshhorn Museum and Sculpture Garden  
National Museum of African Art  
National Portrait Gallery  
Renwick Gallery  
Smithsonian American Art Museum

#### Science Museums and Research Centers

National Air and Space Museum  
    & Udvar-Hazy Center & and NASM Silver Hill facility  
National Museum of Natural History  
National Zoological Park  
Smithsonian Astrophysical Observatory  
Smithsonian Center for Materials Research and Education  
Smithsonian Environment Research Center  
Smithsonian Tropical Research Institute