



SOCIETY FOR AMERICAN ARCHAEOLOGY

September 17, 1996

The Honorable Elton Gallegly  
Chairman  
House Resources Committee Subcommittee  
on Native Americans and Insular Affairs  
1522 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Gallegly:

The Society for American Archaeology (SAA) wishes to take this opportunity to comment on a bill that recently passed the Senate: S. 1983—proposed amendments to the Native American Graves Protection and Repatriation Act (NAGPRA), which soon will be sent to the House for consideration. SAA agrees that clarification of certain components of NAGPRA is desirable. Clearly the intent of S. 1983 is to address some of these areas. However, SAA believes that S. 1983 as currently stated is more than a clarification, and that parts of the bill remain unclear and are likely to have major unintended consequences. As it is currently worded, S. 1983 could potentially become a tool for stopping many kinds of development on federal land.

In particular, there are several areas where SAA believes it is both necessary and desirable to modify the proposed language of S. 1983:

In Section 3002(c)(5), SAA suggest that the words "any intentional" and "purposes of study" are too inclusive and ambiguous, and would pose problems for archaeological compliance on federally funded or otherwise sponsored development projects on public lands. Under Section 106 of the National Historic Preservation Act, such projects now require agencies to determine and evaluate project effects on archaeological and historic sites. In some cases, studies involving excavation are carried out to mitigate project impacts on significant sites so the development can go forward. The language of S. 1983 could well make agency compliance under Section 106 virtually impossible without written consent if human remains are suspected of being present or are inadvertently encountered at such sites. This is far more constraining than the current consultation procedure and could result in substantial project delay or stoppage.

The "written consent" component of Section 3002(c)(5) presupposes that there are either "lineal descendants" or an "appropriate Indian tribe or Native Hawaiian organization." There are many parts of the United States where this is simply not the case. In addition, some human remains are simply too ancient for affiliation with any present-day Indian tribe

to be credibly determined. Written consent would not be obtainable under these circumstances, and hence projects that might affect Native American human remains could not proceed after a good faith effort to locate either lineal descendants or an appropriate tribe or Native Hawaiian organization. At a more practical level, SAA would expect that many tribal officials or organizations would refuse to consent, in writing, to intentional removal of human remains, particularly in a time-constrained situation as is typical of construction projects. Such refusal could thus halt any public lands development project that might encounter human remains.

In sum, SAA believes that S. 1983 may have unforeseen consequences for federal agency compliance with the National Historic Preservation Act and may result in substantial delays or cancellation of federally funded, permitted, or assisted projects. SAA believes that the implications of S. 1983 should be further understood before it is considered by your subcommittee. SAA therefore recommends that the subcommittee convene a hearing to take testimony from federal agencies, state historic preservation officers, private businesses operating on public lands, archeological organizations, and Native Americans and Native Hawaiians.

SAA would be pleased to consult with the subcommittee on drafting language that would avoid the problems it sees with the present version. SAA thanks you for your attention and looks forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "William D. Lipe". The signature is written in dark ink and is positioned below the word "Sincerely,".

William D. Lipe, Ph.D.  
President