



SOCIETY FOR AMERICAN ARCHAEOLOGY

## **SAA Comment on H.R. 2893: NAGPRA Amendment**

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In the waning moments of the first session of the 105th Congress, Rep. Doc Hastings (R-Wash.) introduced H.R. 2893, an amendment to the Native American Graves Protection and Repatriation Act (NAGPRA). The amendment would increase opportunity for scientific study of human remains and cultural items; would remove a provision for the return of cultural items to tribes lacking cultural affiliation, based only on recent land use; and would clarify NAGPRA's language concerning the treatment of inadvertent discoveries of human remains and objects.

Enactment of H.R. 2893 would result in a shift in the way in which NAGPRA balances public interests in America's past (as illuminated mainly by scientists) and the appropriately privileged interests of related Indian tribes and Native Hawaiian organizations.

H.R. 2893 was stimulated by the controversy over the disposition of the Kennewick skeleton discovered in Rep. Hastings's district. The U.S. Army Corps of Engineers' decision that these remains were culturally affiliated with the Umatilla tribe, and its decision to repatriate the remains without scientific study, not only led to a lawsuit by a number of prominent scientists but also apparently to a relatively widespread public concern that NAGPRA may have gone too far in compromising the broad public interest in the nation's prehistoric heritage. As a response to this controversy, H.R. 2893 would achieve three major objectives:

*(1) To enhance scientific recording and study of cultural items.* It would require that newly excavated cultural items (human remains, funerary objects, sacred objects, and objects of cultural patrimony) on federal lands be recorded according to generally accepted scientific standards and that federal agencies retain control over those items for 90 days after the publication of a notice of their discovery in the Federal Register. In addition, study of culturally unaffiliated remains and items is permitted (but not required) to determine cultural affiliation or to obtain information of scientific, historical, or cultural value. Culturally affiliated remains and items may be studied only if the study is "reasonably expected to provide significant new information concerning the prehistory or history of the United States," and only so long as such study does not delay repatriation of items claimed by a culturally affiliated tribe or Native Hawaiian organization for more than 180 days.

In this context it is important to recognize that H.R. 2893 neither diminishes the ability of culturally affiliated tribes or Native Hawaiian organizations to achieve repatriation nor alters NAGPRA's definition of cultural affiliation. No study would be allowed if the remains or items are claimed by lineal descendants, if the study would violate a museum's policies or prior agreements, or if the scientific benefits of the study are shown to be clearly outweighed by curatorial, cultural, or other reasonable concerns. Newly excavated or discovered items from

tribal lands also would be exempt from study, unless permitted by the tribe. Control by lineal descendants of the remains and items of their ancestors, and the control of Indian tribes over remains and items recently excavated on their lands, is slightly enhanced by the amendment because those remains or items would no longer be subject to NAGPRA's current provisions for scientific study.

*(2) To eliminate the provision of NAGPRA that provides for repatriation of recently excavated cultural items based on recent land use and in the absence of cultural affiliation.* Under the proposed change--removing Section 3(a)(2)(C)--these cultural items still would be subject to repatriation under regulations to be promulgated by the Secretary of the Interior, just like other unaffiliated items.

*(3) To clarify the disposition of inadvertently discovered cultural items.* The disposition of "inadvertent discoveries" of cultural items by federal agencies is not being consistently governed by NAGPRA's provisions for intentional excavations. This apparently uncontroversial clarification of congressional intent was originally suggested in a bill, S. 110, introduced by Sen. Daniel Inouye (D-Hawaii). This section of the amendment appears to be in the interests of both the scientific and Native American communities and is in complete conformance with NAGPRA's original intent.

H.R. 2893 will stimulate debate because it seeks a new balance between legitimate Native American concerns in human remains and other cultural items and legitimate scientific and public interests in those remains and items. It will bring to light new and important information about the prehistory and history of the United States, but will sometimes delay repatriation or offend native groups opposed to study. The government affairs page of SAA's web site (<http://www.saa.org>) contains the full text of H.R. 2893, the text of NAGPRA as it would be modified by the bill, and current SAA analysis of the legislation.

Based on SAA's current analysis, the Board of Directors supports this legislation but is actively seeking to identify problems the bill might create and to explore and understand objections to the bill. If necessary, SAA will seek appropriate changes. Given the significance of H.R. 2893 for the discipline of archaeology, we hope that you will take the time to review these proposed changes to NAGPRA and communicate your opinions to your representatives in Congress. You should explain how the amendment would affect your state and, if you support it, should ask your representative directly to become a cosponsor. Questions, comments, and concerns about SAA's position on the bill should be directed to Bill Lovis, chair of the SAA Committee on Repatriation ([Lovis@pilot.msu.edu](mailto:Lovis@pilot.msu.edu)).