

Date of Hearing: April 24, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2836 (Gloria) – As Amended March 22, 2018

SUBJECT: Native Americans: repatriation.

SUMMARY: Requires the University of California (UC) Regents, or their designee, to establish and support a systemwide Native American Graves Protection and Repatriation Act (NAGPRA) Implementation and Oversight Committee, with specified membership, and for any campus subject to the federal NAGPRA to establish a campus implementation committee with specified membership and duties, as defined, and to timely submit the policies, procedures, and guidelines to the Native American Heritage Commission for review and approval by July 1, 2019. Specifically, **this bill:**

- 1) Requests the UC Regents to establish a systemwide NAGPRA Implementation and Oversight Committee, with membership as specified.
- 2) Requests any UC campus that is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001, et seq.) to establish a campus NAGPRA Implementation Committee, which shall also be known as the NAGPRA Committee for that campus, with membership as specified.
- 3) Requests the UC Regents to support the systemwide NAGPRA Committee and each campus NAGPRA Committee, as well as adopt and implement systemwide policies regarding the culturally appropriate treatment of Native American human remains and cultural items while in the possession of a UC campus or museum, including policies regarding research requests and testing following the submission of a request for repatriation.
- 4) Allows a campus NAGPRA Committee to adopt additional policies, procedures, or guidelines to supplement the systemwide policies, as specified.
- 5) Requests that all claims for repatriation or claims of any violation of the policies, procedures, or guidelines adopted pursuant to the bill's provisions shall be submitted to the campus NAGPRA Committee for determination.
- 6) Authorizes the UC Regents to delegate their responsibilities created pursuant to this article to the President of the UC or another person determined to be appropriate.
- 7) Requires the California State Auditor (CSA) to conduct an audit every two years regarding the UC's compliance with the federal NAGPRA and this chapter.
- 8) Requires the CSA to report its findings to the Legislature and to all other appropriate entities.
- 9) Requires the Native American Heritage Commission to do the following:
 - a) Solicit, review, and nominate persons for membership on the systemwide NAGPRA Implementation and Oversight Committee;

- b) Solicit, review, and nominate persons for membership on the campus NAGPRA Implementation Committees; and,
- c) Review, provide comment and guidance on, and approve all policies, procedures, and guidelines proposed pursuant to Article 3 (commencing with Section 8025) of Chapter 5 of Part 2 of Division 7 of the Health and Safety (as created by this bill).

10) Makes additional conforming and technical changes to law.

11) Makes various Legislative findings and declarations.

EXISTING LAW:

Federal law.

- 1) Creates the NAGPRA of 1990, which, in part:
 - a) Requires federal agencies and institutions, including museums that receive federal funding, to repatriate "cultural items" to lineal descendants and culturally-affiliated Indian tribes and Native Hawaiian organizations, as provided;
 - b) Defines cultural items to include human remains, funerary objects, sacred objects, and objects of cultural patrimony, as specified;
 - c) Declares that the Secretary of the Interior may assess civil penalties on museums that fail to comply;
 - d) Establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands;
 - e) Makes it a criminal offense to traffic in Native American human remains without right of possession or in Native American cultural items obtained in violation of the Act, as provided; and,
 - f) Establishes penalties for trafficking in remains or cultural items, including up to 12 months imprisonment and a \$100,000 fine for first offender violations (Public Law 101-601; 25 U.S.C. 3001-3013).

State law.

- 1) Establishes the UC, a public trust to be administered by the Regents of the UC and grants the Regents full powers of organization and government, subject only to such legislative control as may be necessary to insure security of its funds, compliance with the terms of its endowments, statutory requirements around competitive bidding and contracts, sales of property and the purchase of materials, goods and services (Article IX, Section (9)(a) of the California Constitution).
- 2) Grants the UC Regents regulatory authority over the UC (Education Code (EC) Section 92440, et seq.).

- 3) Creates the California NAGPA (Cal NAGPA), which, in part:
- a) Requires that any agency or museum that has possession or control over collections of California Native American human remains and associated funerary objects shall complete an inventory of all these remains and associated funerary objects, as specified;
 - b) Provides that a tribe claiming state cultural affiliation and requesting the return of human remains and cultural items listed in the inventory or summary of an agency or museum that requests the return of human remains and cultural items not listed in the inventory but believed to be in the possession or control of the agency or museum in the state, shall do both of the following:
 - i) File a written request for the human remains and cultural items with the commission and the agency or museum believed to have possession or control; and,
 - ii) Provide evidence to establish that the items claimed are cultural items and are culturally affiliated with the California Indian tribe making the claim. Evidence of cultural affiliation need not be provided in cases where cultural affiliation is reasonably established by the inventory or summary.
 - c) Creates a dispute resolution process if there is more than one request for repatriation for the same item, or there is a dispute between the requesting party and the agency or museum, or if a dispute arises in relation to the repatriation process, as detailed;
 - d) Provides that any agency or museum that fails to comply with the requirements of this chapter may be assessed a civil penalty by the commission, not to exceed \$20,000 for each violation, pursuant to regulations adopted by the Native American Heritage Commission; and,
 - e) Further provides that a penalty assessed under this section shall be determined on the record after the opportunity for a hearing (Health and Safety Code Section 8010, et seq.).

FISCAL EFFECT: Unknown

COMMENTS: *Double referral.* This bill was passed by the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media on April 17, 2018, with a vote of 7-0.

Purpose for the measure. According to the author, "Despite both federal and state laws governing the return of human remains and funerary objects, the application of these statutes has been inconsistent at best." The author contends that, "This bill is necessary in order to bring consistent standards and best practices to the University of California's system's compliance with the federal Native American Graves Protection and Repatriation Act, passed in November 1990".

Background on federal and Cal NAGPRA. The federal NAGPRA was enacted on November 16, 1990, to address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. In 1990, the Congressional Budget Office estimated that NAGPRA would apply to the remains of between 100,000 and 200,000 individuals in museum and Federal agency collections. In the last 15 years, museums and Federal agencies have

announced their willingness to repatriate the remains of 31,093 individuals. Another 111,000 human remains were listed as “culturally unidentifiable”.

The federal NAGPRA assigned several implementation responsibilities to the Secretary of the Interior, including:

- 1) Promulgating implementing regulations;
- 2) Establishing and providing staff support to the Native American Graves Protection and Repatriation Review Committee;
- 3) Making grants to assist museums, Indian tribes, and Native Hawaiian organizations in fulfilling their responsibilities under the Act;
- 4) Extending inventory deadlines for museums that demonstrate a good faith effort;
- 5) Publishing notices for museums and Federal agencies in the Federal Register;
- 6) Assessing civil penalties on museums that fail to comply with provisions of the Act; and,
- 7) Responding to notices of inadvertent discoveries of Native American cultural items on Department of the Interior lands.

The Cal NAGPRA, enacted in 2001, created a process whereby California Native Tribes could seek to repatriate human remains and objects from their cultural heritage from museums and custodial institutions. Additionally, Cal NAGPRA established a ten-member appointed Repatriation Commission with authority to order repatriation, to mediate disputes, to subpoena, and to impose civil penalties. Further, Cal NAGPRA required any agency or museum that has possession or control over collections of California Native American human remains and associated funerary object to complete, by January 1, 2003, an inventory of all items and include specified information in the inventory that will facilitate return of the objects.

Current UC Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items. The UC established its Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items, found here:

[https://policy.ucop.edu/doc/2500489/HumanCulturalRemains in May 2011](https://policy.ucop.edu/doc/2500489/HumanCulturalRemains%20in%20May%202011).

The general principles of the UC's policy apply to all human remains in the UC's collections. The policy also pertains specifically to Native American and Native Hawaiian human remains and Cultural Items (defined per NAGPRA). The policy is intended to ensure the UC complies with NAGPRA.

Additionally, the intent of the policy is to assure that the respectful and dignified treatment of human remains and the consideration of living descendants of those deceased. The UC policy recognizes that individuals and communities have cultural and religious concerns that must be considered in determining the treatment and disposition of human remains in its collections.

Committee comments. Committee Staff understands that the UC has expressed the following concerns with this measure:

- 1) Some of the findings and declarations are not characterized accurately.
- 2) The ability of the Native American Heritage Commission being able to unilaterally grant approval responsibility over UC policy.
- 3) Creation of an on-going and extensive involvement by the CSA. The UC notes that this would expand existing workload for key UC officials engaged in this work.
- 4) Creation of unintended consequence of slowing repatriation efforts.

Moving forward, the author should work with the UC to address the concerns enumerated above.

Prior legislation. AB 978 (Steinberg), Chapter 818, Statutes of 2001, in part, enacted the California NAGPRA of 2001 to establish a process for repatriating Native American human remains and cultural items that are currently in the possession of any state or local agency or any museum that receives state funds.

REGISTERED SUPPORT / OPPOSITION:

Support

Pechanga Band of Luiseño Indians
United Auburn Indian Community

Opposition

None on file.

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