

Date of Hearing: April 11, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
AB 226 (Ramos) – As Amended March 20, 2023

SUBJECT: University of California: California Native American Graves Protection and Repatriation Act of 2001.

SUMMARY: Urges the University of California (UC) to report each UC campus's progress towards completing repatriation, as specified. Specifically, **this bill:**

- 1) Urges the UC, on or before June 30, 2024, and annually thereafter, to report each campus of the UC's progress towards completing repatriation pursuant to the California Native American Graves Protection and Repatriation Act (CalNAGPRA) of 2001.
- 2) Urges the UC Office of the President to provide available funding to sufficiently support each campus of the UC's efforts towards completing repatriation, per CalNAGPRA.
- 3) Urges the UC to prohibit use of any Native American human remains or cultural items for purposes of teaching or research at the UC.
- 4) Defines, for purposes of this measure, the following terms:
 - a) "Act" means CalNAGPRA of 2001; and,
 - b) "Institution" means a campus of the UC.

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 Section 92440, et seq.).
- 3) Creates the CalNAGPRA, which, in part:
 - a) Applies the state's repatriation policy consistently with the NAGPRA;
 - b) Facilitates the implementation of NAGPRA with respect to publically funded agencies and museums in California;
 - c) Encourages voluntary disclosure and return of Native American human remains and cultural items by a private institution or museum;
 - d) Stipulates that an agency or museum receiving a repatriation request shall repatriate human remains and cultural items, as specified; and,
 - e) Stipulates that if there is a committee or group of California Indian tribes authorized by their respective tribal governments to accept repatriation of human remains and cultural items originating from their state aboriginal territory or culturally affiliated with those tribal governments, the items may be repatriated to those groups (Health and Safety Code (HSC) Section 8010, et seq.).
- 4) Establishes UC NAGPRA, a structure for a UC systemwide campus-based NAGPRA process for repatriation for UC campuses that have Native American cultural artifacts or remains. Creates UC NAGPRA, a UC administrative oversight committee, with membership as follows:
 - a) Three voting members of a California Indian tribe as defined under the federal NAGPRA that are either an elder, spiritual leader, tribal leader, tribal member, or designated by the governing body of the individual's tribe;
 - b) One voting member of a California Indian tribe that is not recognized by the federal government, but is indigenous to the territory that is now known as the State of California, is listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of

Regulations and is determined by the commission to be a tribe that is eligible to participate in the repatriation process set forth in this chapter;

- c) Four voting members from the UC. Not fewer than two of these members shall be affiliated with an American Indian or Native American Studies program; and,
- d) One nonvoting member from each UC campus that is subject to the federal NAGPRA (HSC Section 8026).

FISCAL EFFECT: Unknown

COMMENTS: *Purpose of this measure.* According to the author, “the UC system is not compliant with NAGPRA of 1990 and the 2001 California counterpart, CalNAGPRA.” The author states that, “the State Auditor has conducted two audits on this issue and in the most recent [audit] has found that although some improvements have been made, the UC system has not taken adequate action to ensure a timely return of Native American remains and cultural items.”

Further, the author states, “AB 226 builds upon the work of the legislature when it comes to properly repatriating Native American remains and cultural items in the University of California system.”

Lastly, the author contends that, “this bill is vital to preserve tribal culture and ensure Native American tribes have the opportunities to pay honor and respect to our ancestors and elders, including those who have come before, and to the tribal members that continue to create pathways for future generations.”

This measure, in part, urges the UC, on or before June 30, 2024, and annually thereafter, to report each campus of the UC’s progress towards completing repatriation pursuant to the CalNAGPRA.

Background on federal and CalNAGPRA. 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 museums 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 CalNAGPRA, 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, CalNAGPRA established a ten-member appointed Repatriation Commission with authority to order repatriation, to mediate disputes, to issue subpoenas, and to impose civil penalties. Further, CalNAGPRA required any agency or museum that has possession or control over collections of California Native American human remains and associated funerary objects to complete, by January 1, 2003, an inventory of all items and with specified information in the inventory that will facilitate return of the objects.

The Legislature amended CalNAGPRA in 2018 in response to allegations from stakeholders that the UC had an inferior record of completed repatriations and that participation by tribes in the repatriation process had been limited.

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. The UC policy, found here: <https://policy.ucop.edu/doc/2500489/NAGPRA>, took effect on January 1, 2022.

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 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.

Recent California State Auditor (CSA) Audits. The CSA released a second report of the UC's compliance with federal and state NAGPRA on November 17, 2022: <http://www.bsa.ca.gov/pdfs/reports/2021-047.pdf>. The CSA audit found that although the UC has made progress since the initial CSA audit in 2020, the UC must take extra steps to ensure the timely return of Native American remains and cultural items.

Additionally, the CSA noted that the UC campuses of Berkeley, Riverside, Santa Barbara, and San Diego continue to maintain large collections of Native American human remains and

cultural items; and that some of said campuses have failed to conduct a comprehensive review of all Native American human remains and cultural items in their control.

Further, the CSA concluded, among other things, that the UC Office of the President (UCOP) had yet to ensure that campuses have the necessary and appropriate guidance to return their collections, including newly discovered collections, in a timely and consistent manner. For tribes attempting to regain their ancestors, the lack of uniformity has caused frustration and complication. Additionally, UC campuses have not begun consultations with tribes as mandated by the CalNAGPRA. Lastly, the UCOP-required repatriation implementation plans have not been finalized; and the UCOP has not formally committed to providing sustainable funding for repatriation-related activities.

The CSA suggests amending state law to require the UC to regularly report on UC campuses' progress toward completion of repatriation, to require UCOP to provide adequate funding to support campuses' repatriation efforts, and to review CalNAGPRA to allow individuals with other types of educational backgrounds to qualify for committee membership.

The UCOP's response to the audit was that the UC remains committed to fully implementing all of the CSA's recommendations. The UC Provost and Executive Vice President for Academic Affairs stated the following:

“The University is making a stronger commitment to repatriating ancestral remains and cultural items in a prompt and respectful manner. To strengthen this ongoing effort, the University intends to implement each recommendation to the University made by your office. We will continue to look for ways to make real and meaningful progress in our efforts. We look forward in the coming months to keeping you and our many other partners in this effort apprised of our actions.”

This measure appears to align to the CSA's policy recommendations.

Bones used in classes likely taken from Native American graves. In August of 2020, a professor of integrative biology at UC Berkeley self-reported previously undisclosed holdings of Native American skeletal remains being used for teaching in the department. The professor's disclosure of the remains was prompted by the then interim UC systemwide policy that asks high-risk departments to locate and disclose all previously unreported holdings of any potentially NAGPRA/CalNAGPRA-eligible human remains.

The UC Berkeley campus wrote to the Native American Heritage Commission in May 2022; their letter found here: https://nahc.ca.gov/wp-content/uploads/2022/07/Action-2_NAHC_UC-Berkeley_Campus-Policy-Search-Findings_May-16.pdf in part states:

“As per the policy, this large number of unreported human remains were moved to an appropriate and secure location, and a preliminary determination was made to determine whether the items fall under NAGPRA or CalNAGPRA, as per the UC policy. The remains were moved from the department in July 2021, and an analysis of the remains was led by Sabrina Agarwal [UC Berkeley Chair of the NAGPRA Advisory Committee] from September - December 2021, in order to determine only for each remain element if it could be Native American in origin and the overall minimum number of individual ancestors. No in depth or destructive analysis was made. It was determined that the minimum number of individuals that could potentially be Native American archaeological ancestral is 95. There

were a total of 22 minimum number of individuals determined to not be Native American (medically marked and/or labeled specimens). We note that while these ancestral remains are certainly archaeological, there is no way to determine the provenance of where they were removed. Further, the 95 minimum number of individuals is represented by thousands of smaller disarticulated and commingled skeletal and dental remains.”

“As per the policy under section “Protecting Previously Unreported Items Potentially Subject to NAGPRA or CalNAGPRA” these ancestral remains are now managed and preserved securely and there is absolutely no research or instructional use, in accordance with the requirements of Section V.J.2. Since it is possible that these ancestral remains are subject to NAGPRA or CalNAGPRA our campus will comply with all applicable portions of the policy (e. g. Consultation, Inventory/Summary completion, and respectful treatment), NAGPRA (including 43 C.F.R. Section 10.13), CalNAGPRA, and campus policies and procedures.”

The UC’s policy on Native American remains has explicitly prohibited the use of Native American remains for use for either teaching or research. To ensure this policy was clearly understood, the UC systemwide Provost underscored the particular restrictions in a letter sent to all UC Chancellors on October 27, 2022.

This measure, in part, urges the UC to prohibit use of any Native American human remains or cultural items for purposes of teaching or research at the UC.

Related legislation. SB 61 (Dodd), which is awaiting a hearing in the Senate Committee on Appropriations, in part, requires the UCOP, as a condition for the use of state funds, to handle and maintain Native American human remains and cultural items, and must comply with various requirements regarding the repatriation of Native American human and cultural items, in addition to requirements already established by the CalNAGPRA.

Aspects of SB 61 appear to be in conflict with some of the provisions contained in this measure.

As both measures move through the Legislative Process, the authors may wish to collaborate on future amendments in order to avoid any potential chaptering-out conflicts.

Prior legislation. AB 275 (Ramos), Chapter 167, Statutes of 2020, in part, revised the process for agencies to complete and review their inventories of collections of California Native American human remains and associated funerary objects for repatriation.

AB 1662 (Ramos and Gloria), Chapter 112, Statutes of 2019, added an additional member from a California Tribe to the UC NAGPRA Implementation and Oversight Committee.

AB 2836 (Gloria), Chapter 823, Statutes of 2018, in part, required the UC Regents to establish and support a systemwide UC NAGPRA Implementation and Oversight Committee, and for any campus subject to the federal NAGPRA, to establish a campus implementation committee.

AB 978 (Steinberg), Chapter 818, Statutes of 2001, in part, enacted the CalNAGPRA 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

GENup
Habematolel Pomo of Upper Lake
Morongo Band of Mission Indians
Santa Ynez Band of Chumash Indians

Opposition

None on file.

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