

Date of Hearing: September 14, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 389 (Ramos) – As Amended September 11, 2023

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

SUMMARY: Requires the California State University (CSU) to comply with various requirements related to the handling, maintenance, and repatriation of Native American human remains and cultural items under the California Native American Graves Protection and Repatriation Act of 2001 (CalNAGPRA). Specifically, **this bill:**

- 1) Establishes various requirements for the CSU to fully implement federal NAGPRA and CalNAGPRA, including, but not limited to, all of the following:
 - a) Facilitate the establishment, composition, and function of systemwide and campus-level committees with respect to reviewing and advising the university on matters related to the university's implementation of legal requirements to increase repatriation outcomes or dispositions of Native American human remains and cultural items to California Indian tribes;
 - b) Adopt and implement systemwide policies regarding the culturally appropriate treatment of Native American human remains and cultural items, including a policy that prohibits the use of Native American human remains or cultural items for the purposes of teaching or research at the CSU while in the possession of a CSU campus or museum, as specified;
 - c) Adopt and implement clear and transparent policies and procedures on the systemwide requirements for submitting, processing, and implementing claims for the repatriation of human remains and cultural items, demonstrating cultural affiliation, notification to tribes of human remains and cultural items deemed culturally affiliated and unidentifiable and from whose state aboriginal territory the items were removed, as specified;
 - d) Adopt or amend systemwide CSU museum collection management policies to explicitly provide for the deaccession of collections containing Native American human remains and cultural items to effect the timely and respectful return of those items pursuant to valid claims submitted by a California Indian tribe;
 - e) Adopt systemwide CSU policies and procedures for the identification and disposition of culturally unidentifiable human remains and cultural items, as required by the federal NAGPRA, as specified;
 - f) Submit an annual report by December 31, 2024, and annually thereafter to the Legislature, on the CSU's systemwide progress in reviewing its collections of Native American human remains and cultural items;

- g) Adopt supplemental policies if a campus determines that individual circumstances are not adequately addressed in the adopted and approved systemwide policies, in consultation with California Indian tribes;
 - h) Establish a systemwide NAGPRA Implementation and Oversight Committee, with at least a majority of the voting members from California Indian tribes, as specified;
 - i) Require each CSU campus to establish a campus-based NAGPRA Implementation Committee, with at least a majority of each campus membership to be from California Indian tribes, as specified; and,
 - j) To ensure that campuses have the funding necessary to comply:
 - i) Require each campus with Native American remains or cultural items collections to identify and estimate, by January 31, 2025, the funding and other resources it needs to complete repatriation under the CalNAGPRA in an appropriate and timely manner;
 - ii) Compile the estimates into a systemwide report, disaggregated by campus, and submit it to the Native American Heritage Commission and the Legislature; and,
 - iii) After evaluating the reasonableness of the campus estimate, identify and provide the required funding from existing systemwide or campus-based resources, or seek additional funding from the Legislature, to ensure that campuses have adequate funding to support their activities.
- 2) Makes clarifying and technical changes.

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 CSU system, made of 23 campuses, and bestows upon the CSU Trustees, through the Board of Trustees, the power, duties, and functions with respect to the management, administration, and control of the CSU system (Education Code Section 66606 and 89030, et seq.).
- 2) 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.).
- 3) Establishes the University of California (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: According to the Senate Committee on Appropriations:

The CSU Chancellor's Office estimates ongoing General Fund costs of \$4 - \$5 million to ensure appropriate staffing levels and implement the inventory controls necessary to comply with CalNAGPRA requirements.

COMMENTS: *Gut and amend.* The former version of this measure, in part, sought to exempt from the California Public Records Act genealogical records of tribal members and cultural affiliation records under specified conditions; and, exempt from the Bagley-Keene Open Meeting Act the Native American Heritage Commission (NAHC) when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by NAHC. However, on August 28, 2023, the aforementioned contents of this measure were stricken entirely, and, on September 11, 2023, the measure was significantly amended again.

This measure now, in part, requires the CSU to comply with various requirements related to the handling, maintenance, and repatriation of Native American human remains and cultural items under NAGPRA and CalNAGPRA.

Need for the measure. According to the author, "this bill is a continuation on the work I have done on the proper repatriation of Native American remains and cultural items – this time for the California State University (CSU) system. After reviewing the auditor's report released in June, I was upset at the lack of effort and respect from the CSUs. It has been over 30 years since the enactment of NAGPRA and CalNAGPRA, the fact that we are still dealing with this issue today is frustrating, and we must take action. This is an issue that I care deeply about and we must continue to hold institutions accountable so that we can allow for Native American tribes to finally have peace and closure on an issue that has been around for generations."

The author contends that, "currently, the CSU system is not compliant with the NAGPRA and CalNAGPRA. Just recently, the State Auditor released a report, which highlighted key issues of the CSU's compliance with NAGPRA and CalNAGPRA. It will take at least a decade of effort to repatriate all the items in the CSU's collection. It also found that over half of the campuses with collections have not finished their reviews and 16 have little to no activity."

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 specified information in facilitating the 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.

Recent California State Auditor (CSA) Audit. The CSA released its report on the CSU's compliance with federal NAGPRA and CalNAGPRA on June 29, 2023. The audit found that, although the CSU Chancellor's Office has recently taken some steps to support the CSU campuses' repatriation efforts, the CSU Chancellor's Office must take additional action to ensure that CSU campuses' prioritize complying with federal NAGPRA and CalNAGPRA.

The audit surveyed all 23 CSU campuses and conducted further on-site reviews at four campuses: CSU Chico, Sacramento, San Diego, and San José. The Auditor found that of the 21 campuses with NAGPRA collections, more than half have not repatriated any remains or cultural items to tribes, and that two campuses that returned remains or cultural items did not follow NAGPRA requirements when returning remains or cultural items. Further, the audit found that more than half of the 21 CSU campuses do not yet know the extent of their collections of remains and cultural items, despite federal law requiring them to do so by late 1995.

Additionally, the audit found that campuses generally lack the policies, funding, and staffing necessary to follow the law and repatriate their collections. The CSU system has repatriated only 6% of its collections to tribes to date. The audit also found that guidance or oversight has not been provided by the CSU Chancellor's Office to CSU campuses in order to ensure compliance with NAGPRA laws.

As a result of the aforementioned findings, the CSA issued recommendations to the Legislature and the CSU Chancellor's Office. The CSA calls on the Legislature to require annual reporting from the CSU Chancellor's Office on systemwide progress in reviewing its collections, consulting with tribes, and repatriating human remains and cultural items. The audit recommendations also directed the CSU Chancellor's Office to do all of the following, in summary:

- 1) Monitor campus efforts to review their collections and require the completion of their inventories by December 2024.
- 2) Ensure that campuses properly consult with tribes regarding protocols for handling and identifying remains and cultural items, and issue a systemwide NAGPRA policy establishing consistent repatriation processes and training requirements in consultation with California tribes and the Native American Heritage Commission.
- 3) Establish a systemwide NAGPRA oversight committee by December 2023.
- 4) Implement a process for campuses to periodically report their repatriation activity to the systemwide oversight committee.
- 5) Require that campuses with more than 100 remains and cultural items also establish NAGPRA committees and have full-time, experienced repatriation coordinators by June 2024.
- 6) Formalize its administrative structure by assigning a dedicated position to directly oversee the work of the systemwide CalNAGPRA project manager.
- 7) Require each campus with NAGPRA collections to identify and estimate, by January 2024, the funding and other resources they need to complete repatriation in an appropriate and timely manner.
- 8) Identify and provide the required funding from existing systemwide or campus resources or seek additional funding from the Legislature to ensure that campuses have adequate funding to support their federal NAGPRA and CalNAGPRA activities.

The CSU Interim Chancellor, Jolene Koester, responded to the audit findings, and stated in a letter, dated June 8, 2023, to the State Auditor, "the CSU intends to implement each recommendation made by your office as reflected in the audit report. Additionally, the Chancellor's Office will finalize and implement a systemwide NAGPRA/CalNAGPRA policy, which includes appropriate oversight, that will be vetted through Tribal consultation, require annual campus reporting of NAGPRA/CalNAGPRA activity and progress, and ensure adequate funding and resources for NAGPRA/CalNAGPRA efforts."

This measure, in part, seeks to codify recommendations by the CSA, including, but not limited to, requiring the CSU to report on the progress towards repatriation pursuant to NAGPRA and CalNAGPRA.

Committee comments. Committee Staff understands that this measure, in addition to addressing the CSA audit, seeks to align CSU's NAGPRA and CalNAGPRA to existing law for the UC.

The measure appears to accomplish said intent, however, due to the timing of this gut and amend and the subsequent additional substantive amendments, this measure was not heard by the Assembly Committee on Arts, Entertainment, Sports, and Tourism, which shares NAGPRA and CalNAGPRA jurisdiction with this Committee.

Further, while the CSU Chancellor's Office committed to implementing all of the CSA's audit recommendations, it is presently unclear if the CSU has the fiscal resources to fully implement the audit recommendations and the requirements contained in this measure.

Looking ahead to the second year of the 2023-24 Legislative Session, the author may wish to ask for a budget appropriation to ensure the CSU fully implements all the provisions contained in this measure.

Arguments in support. According to the San Manuel Band of Mission Indians (San Manuel), "the audit, released June 29, revealed that the CSU system has over 700,000 remains and cultural items in their possession yet to be returned and repatriated to Indian Tribes. Despite enactment of the federal NAGPRA more than 30 years ago, little to no progress has been made in repatriating items that are of historical and cultural significance to Tribes."

San Manuel further contends that, "this bill is aimed at holding the CSU accountable, and allowing for tribal families to have peace and closure on an issue that has been around for generations."

Arguments of concern. While the Federated Indians of Graton Rancheria (the Tribe) officially removed their opposition to the August 28, 2023 version of this measure, the Tribe, now neutral to this measure, expressed the following: "we stand firm in our repeated request that all tribal legislation – particularly legislation that goes to the very heart of tribal sovereignty, culture, and our ancestors – be developed transparently and with full tribal consultation. That did not occur here, but we expect and hope that the process will be honored going further."

The Tribe believes that while amendments taken, as reflected in the most recent version of this measure (as in print on September 11, 2023), "strengthen the bill and better align AB 389 with the existing framework for the UC system, we believe more must be done to strengthen our state's repatriation laws."

Related legislation. AB 226 (Ramos) of 2023, which, at the time of this analysis being released, is pending action on the Senate Floor, in part, requires additional audits in 2024 and 2026 by the CSA regarding UC's compliance with federal and state NAGPRA relating to Native American remains and cultural items. Further, this measure strongly urges, annually by June 30, 2024, and annually thereafter, on each UC campus' progress towards completing repatriation of Native American remains and cultural items. Additionally, this measure strongly urges the UC Office of the President to provide funding to support each UC Campus' efforts towards repatriation. Lastly, this bill strongly urges UC to prohibit use of any Native American human remains or cultural items for the purpose of teaching or research at UC.

SB 61 (Dodd) of 2023, which was held on the Suspense File in the Assembly Committee on Appropriations, in part, requires the UC Office of the President, 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.

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

ACLU California Action
Cahuilla Band of Indians
California Faculty Association
California Indian Legal Services
California Indian Nations College
California State University, Office of The Chancellor
California Tribal Families Coalition
Enterprise Rancheria
Generation Up
Indigenous Justice
International Indian Treaty Council
Morongo Band of Mission Indians
Pala Band of Mission Indians
Picayune Rancheria of the Chukchansi Indians
Redding Rancheria
Rincon San Luiseno Band of Indians
San Manuel Band of Mission Indians (Sponsor)
Santa Rosa Rancheria Tachi Yokut Tribe
Santa Ynez Band of Chumash Indians
Shingle Springs Band of Miwok Indians
Soboba Band of Luiseno Indians
Tachi Yokut Tribe
Wilton Rancheria
Yurok Tribe

Opposition

None on file based on the most recent version of this measure.

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