

Date of Hearing: June 27, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
SB 61 (Dodd) – As Amended May 18, 2023

SENATE VOTE: 40-0

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

SUMMARY: Requires the University of California (UC) Office of the President (UCOP) to comply with various requirements regarding the repatriation of Native American human and cultural items. Specifically, **this bill:**

- 1) Requires the UCOP, as a condition for using state funds to handle and maintain Native American human remains and cultural items, to comply with all of the following:
 - a) To ensure institutions identify all of the Native American human remains and cultural items in their collections under the California Native American Graves Protection and Repatriation Act of 2001 (CalNAGPRA), develop and implement a plan for completing a comprehensive search of all UC curation facilities, repositories, displays, laboratories, teaching facilities, faculty and departmental offices, and any other location where misidentified, mishandled, misfiled, miscatalogued, lost, or undocumented Native American human remains or cultural items may be used or stored;
 - b) To ensure that UC campuses appropriately respond to all Native American human remains and cultural items found in the future, by July 1, 2024, issue guidance on how institutions should proactively work with California Indian tribes to facilitate repatriation of Native American human remains and cultural items;
 - c) To ensure that institutions comply with CalNAGPRA and consult with California Indian tribes appropriately, establish a uniform process, by July 1, 2024, for UC campuses to follow when consulting with California Indian tribes about their Native American human remains and cultural items inventories;
 - d) To ensure that UC campuses provide appropriate resources and oversight to the administration of CalNAGPRA, by July 1, 2024, require UC campuses with Native American human remains representing a minimum number of at least 20 individuals, in whole or in part, to have full-time repatriation coordinators;
 - e) To ensure that UC campuses fully repatriate their collections in a timely and consistent manner, comply with both of the following:
 - i) Require UC campuses to complete and submit detailed repatriation plans by July 1, 2024, for review and approval by the campus-level Native American Graves Protection and Repatriation Act (NAGPRA) Implementation and Oversight Committee (Oversight Committee) and the systemwide Oversight Committee [the measure requires detailed budgets for repatriation plans]; and,

- ii) Prohibit UC campuses from accessing collections of Native American human remains and cultural items for any purpose, except as provided in this measure and the state and federal acts, until campuses complete and submit detailed repatriation plans, as specified.
 - f) Requires the UCOP provide funding to support institution-level repatriation efforts and ensure that institutions identify adequate funding sources in their detailed budgets for their repatriation plans.
- 2) States that the Legislature intends to ensure that all of the following occurs:
- a) The UC reports the progress of each UC campus toward completing repatriation pursuant to CalNAGPRA;
 - b) The UCOP provides available funding to sufficiently support the efforts of each UC campus towards completing repatriation pursuant to CalNAGPRA; and,
 - c) Membership of UC's systemwide and institution-level Oversight Committees that are established pursuant to current law have individuals with different types of educational backgrounds.
- 3) Defines all of the following terms for purposes of this measure:
- a) "Federal Act" means the federal NAGPRA;
 - b) "Institution" means a UC campus; and,
 - c) "State Act" means the CalNAGPRA of 2001.

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: According to the Senate Committee on Appropriations, “while the bill’s provisions are conditioned on the receipt of state funds to handle and maintain Native American human remains and cultural items, there could be unknown, but potentially significant costs for the UC to comply with the bill’s requirements. These activities include the issuance of guidance on how institutions should proactively work with partner entities to facilitate repatriation of Native American human remains and cultural items; ensuring that the institutions comply with existing law and appropriately consult with California Indian tribes; and developing and implementing a plan to comprehensively search all UC curation facilities repositories, displays, laboratories, teaching facilities, faculty and departmental offices, and any other location where misidentified, mishandled, misfiled, miscatalogued, lost or undocumented remains or items may be used or stored.”

COMMENTS: *Purpose of this measure.* According to the author, “although the UC is required to return Native American human remains and cultural items to Native American tribes, it has not always done so in a consistent and timely manner. This bill will help restore dignity to generations of indigenous Californians by ensuring campuses allocate the necessary funding to complete the repatriation process and by holding them accountable to get it done.”

The author contends that, “in addition to accelerating the UC’s repatriation of Native American human remains and cultural items to the respective Native American tribes, the bill would also ensure that the systemwide and campus NAGPRA Committees have members with diverse backgrounds by revising CalNAGPRA to allow individuals with more types of educational backgrounds to qualify for Committee membership.”

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 plus 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.

This measure adds new duties on the UC regarding the care, preservation and repatriation of Native American human remains and cultural items.

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, which can be 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 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.

Arguments in support. According to the California Faculty Association, “by setting clear conditions for the use of state funds in handling and maintaining these remains and items, your bill [SB 61] provides a necessary framework for institutions, like the UC, to ensure full compliance with this crucial act. Moreover, the additional provisions requiring a comprehensive search of all UC facilities for misidentified, mishandled, or lost Native American human remains or cultural items, along with the requirement for full-time repatriation coordinators at institutions with substantial collections, are noteworthy strides toward facilitating successful and timely repatriations.”

Related legislation. AB 226 (Ramos), which is currently on the Suspense File in the Senate Committee on Appropriations, in part, strongly 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 of 2001.

Aspects of AB 226 (Ramos) appear to be in conflict with some of the provisions contained in this measure.

As both measures continue to 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

California Faculty Association
Habematolel Pomo of Upper Lake

Opposition

None on file.

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