
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 2836 **Hearing Date:** June 20, 2018
Author: Gloria
Version: May 25, 2018
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: Native Americans: repatriation.

SUMMARY

This bill 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 approval by July 1, 2019.

BACKGROUND

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 University of California (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 ensure 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, § (9)(a) of the California Constitution).
- 2) Grants the UC Regents regulatory authority over the UC (Education Code (EC) § 92440, et seq.).
- 3) Creates the California Native American Graves Protection and Repatriation (NAGPRA), 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 § 8010, et seq.).

ANALYSIS

This bill:

- 1) Requires the University of California (UC) Regents to:
 - a) Establish a systemwide Native American Graves Protection and Repatriation Act (NAGPRA) Implementation and Oversight committee, with membership as specified.
 - b) Support the systemwide committee and each campus NAGPRA Implementation Committee.
 - c) In consultation with the California Indian Tribes, adopt and implement certain policies, procedures, and guidelines to better implement the federal NAGPRA and to timely submit the policies, procedures, and guidelines to the Native American Heritage Commission for review and approval by July 1, 2019.
 - d) Ensure that each campus committee utilizes the specified policies, procedures and guidelines adopted and approved by the Native American Heritage Commission.
 - e) Adopt procedures ensuring a right to appeal any determination by a campus committee.
- 2) Authorizes the UC regents to delegate responsibilities to the President of the UC or another person determined to be appropriate.
- 3) Authorizes a UC campus to adopt policies, procedures, or guidelines to supplement the systemwide policies adopted, under certain conditions and requires that any campus-specific policies, procedures, or guidelines be developed and submitted to the Native American Heritage commission for review and approval, as specified.
- 4) Requires each campus that is subject to the federal NAGPRA to establish a NAGPRA implementation committee, with membership as specified.
- 5) Provides that claims for repatriation or claims of any violation of the policies procedures, or guidelines adopted are to be submitted to the campus committee for determination.
- 6) Requires the California State Auditor to:
 - a) Commencing in the 2019 and again in 2021, the California State Auditor to

conduct an audit regarding the University of California's (UC's) compliance with the federal Act and the bill's provisions.

- b) Report its findings to the Legislature and to all other appropriate entities.
- 7) Requires the Native American Heritage Commission to do the following:
- a) Solicit, review and nominate persons for membership on the systemwide oversight committee and the campus implementation committees.
 - b) Review, provide comment and guidance on, and approve all policies procedures and guidelines adopted by the UC regents and its campuses relative to implementation of the federal Act, as prescribed by the bill.
- 8) States legislative finding and declarations relative to policies regarding protection and repatriation of Native American remains and associated grave artifacts and the UC.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "This bill is necessary, in order to bring consistent standards and best practices to the University of California system's compliance with the federal Native American Graves Protection and Repatriation Act (NAGPRA) passed in November 1990.

Despite both the federal and state laws governing the return of human remains and funerary objects, the application of these statutes has been inconsistent at best, and at worst, ignored, resulting in the failure to ensure compliance with federal law by all campuses and museums of the UC system. Seventeen years after the passage of AB 978 (the California Native American Graves Protection and Repatriation Act), California tribal governments are finding there are not system-wide standards and best practices in place from compliance with NAGPRA. Compliance and cooperation by the UCs vary widely from successful collaboration with schools like UCLA that have repatriated 90% of its human remains holding to UC Berkley, which has consistently obstructed tribal governmental efforts to repatriate and properly respect human remains and cultural items. As a result UC Berkeley houses on of the largest collections of Native American human remains outside the Smithsonian."

- 2) ***Existing UC Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items.*** To comply with NAGPRA, UC developed policy and procedures. 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). 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.

- 3) ***Native American Heritage Commission.*** According to the Native American Heritage Commission website, the Commission, created in statute in 1976, is a nine-member body, appointed by the Governor, to identify and catalog cultural resources (i.e., places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands) in California. The Commission is charged with the duty of preserving and ensuring accessibility of sacred sites and burials, the disposition of Native American human remains and burial items, maintain an inventory of Native American sacred sites located on public lands, and review current administrative and statutory protections related to these sacred sites.

This bill requires UC to develop and adopt policies in the manner specified for the repatriation of Native American artifacts and remains consistent with the federal NAGPRA (described in the background of this analysis). Additionally, the bill grants statutory authority to the state's Native American Heritage Commission over UC policy relative to NAGPRA. Staff understands that UC has expressed a concern regarding that authority. The UC believes it is in compliance with NAGPRA and according to the system NAGPRA directs that the University be ultimately responsible for making determinations on repatriating items based on the available evidence, and it has been at this stage that issues have developed. Staff understands that the author's office and UC are communicating and continue to have conversations attempting to resolve remaining differences.

SUPPORT

California Tribal Business Alliance
Morongo Band of Mission Indians
Pechanga Indian Reservation
Santa Rosa Band of Cahuilla Indians
Table Mountain Rancheria
Torres Martinez Desert Cahuilla Indians
Tribal Alliance of Sovereign Indian Nations
United Auburn Indian Community
Wilton Rancheria

OPPOSITION

None received

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