
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: AB 1662 **Hearing Date:** June 12, 2019
Author: Ramos
Version: March 28, 2019
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: Native Americans: repatriation.

SUMMARY

This bill expands the membership of the University of California's (UC) systemwide Native American Graves Protection and Repatriation Act Implementation, and Oversight Committee, from two to three voting members from a tribe located in California thereby increasing the committee's overall membership to eight individuals (one-nonvoting).

BACKGROUND

Existing law:

Federal law

- 1) Creates the Native American Graves Protection and Repatriation Act (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)
- 2) 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).

- 3) Grants the UC Regents regulatory authority over the UC. (EC § 92440, et seq.)
- 4) Creates the California Native American Graves Protection and Repatriation (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 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, 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 (HSC) § 8010, et seq.).
- 5) Establishes University of California (UC) Native American Graves Protection Act (UC NAPRA), 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 Native American Graves Protection and Repatriation Act (UC NAGPRA), a UC administrative oversight committee, with membership as follows:

- a) Two 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 § 8026).

ANALYSIS

This bill expands the membership of the UC NAGPRA Implementation, and Oversight Committee, from two to three voting members from a tribe located in California thereby increasing the committee's overall membership to eight individuals (one-nonvoting).

STAFF COMMENTS

- 1) ***Need for the bill.*** AB 2836 (Gloria, Chapter 823, Statutes of 2018) the University of California (UC) Regents, to establish and support a systemwide UC NAGPRA Implementation and Oversight Committee. According to the author, "as a follow-up to AB 2836, this bill updates this committee by adding an additional voting member from an Indian tribe to alleviate concerns related to repatriation delays." The author asserts that, this measure provides greater equity to Native American tribes within the UC Native American Graves Protection and Repatriation Act.

This bill increasing the number of voting tribal members on the committee that is equal to the number of members from the University of California.

- 2) ***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.

The Cal Native American Graves Protection and Repatriation Act (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 law, also requires the University of California to develop and adopt policies in the manner specified for the repatriation of Native American artifacts and human remains that are consistent with the federal NAGPRA (described in the background of this analysis). Additionally, current law authorizes the California Native American Heritage Commission to review, comment and provide guidance on UC policy relative to NAGPRA.

- 3) ***UC Policy and Procedures on Curation and Repatriation of Human Remains and Cultural items.*** 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.

SUPPORT

California Tribal Business Alliance
Morongo Band of Mission Indians
Tule River Tribal Council

OPPOSITION

None received