

Vice-Chair
Ochoa Bogh, Rosilicie

Members
Cortese, Dave
Glazer, Steven M.
McGuire, Mike
Smallwood-Cuevas, Lola
Wilk, Scott

California State Senate

EDUCATION



JOSH NEWMAN
CHAIR

Staff Director
Lynn Lorber

Principal Consultant
Olgallia Ramirez
Ian Johnson
Kordell Hampton

Committee Assistant
Maria Velez
Irma Kam

1021 O Street, Room 6740
(916) 651-4105
FAX: (916) 324-0917

AGENDA

Wednesday, September 6, 2023
9 a.m. -- 1021 O Street, Room 2100

MEASURES HEARD IN FILE ORDER

1. AB 389 Ramos Native American repatriation: California Native American Graves Protection and Repatriation Act of 2001: California State University.

SENATE COMMITTEE ON EDUCATION

Senator Josh Newman, Chair

2023 - 2024 Regular

Bill No: AB 389 **Hearing Date:** September 6, 2023
Author: Ramos
Version: August 28, 2023
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

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

NOTE: This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

SUMMARY

This bill prohibits the use of any Native American human remains or cultural items for purposes of teaching or research at the California State University (CSU). It further requires the CSU Chancellor's Office to comply with various requirements under the California Native American Graves Protection and Repatriation Act of 2001 (CalNAGPRA) related to the identification, treatment, and repatriation of Native American human remains and cultural items in its possession.

BACKGROUND

Existing law:

Federal law

- 1) Creates the Native American Graves Protection and Repatriation Act (federal NAGPRA) of 1990, which, in part:
 - a) Requires federal agencies, museums, and institutions, which include University of California (UC) campuses, 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:

- 2) Creates the California Native American Graves Protection and Repatriation Act (CalNAGPRA), which, in part:
 - a) States that it is the intent of the Legislature to, among other things, apply the state's repatriation policy consistently with the federal NAGPRA while considering the unique history of California towards California Indian tribes and facilitate the implementation of the federal NAGPRA with respect to publicly funded agencies and museums in California.
 - b) Requires any public agency or museum (include UC and CSU campuses) that has possession or control over collections of California Native American human remains or associated funerary objects to complete a review of their inventories of all these remains and associated funerary objects in accordance with the requirements specified in the act.
 - c) Requires agencies and museums to consult with affiliated California Indian tribes on any protocols to be used in the inventory process prior to new or additional inventory work being conducted.
 - d) Requires an agency or museum receiving a repatriation request for human remains and cultural items to follow the criteria specified in the act.
 - e) Further requires the UC (UC only), as a condition for using state funds for the handling or maintenance of Native American human remains and cultural items, to establish a systemwide NAGPRA Implementation and Oversight Committee, and for any campus subject to the federal NAGPRA to establish a campus implementation committee and:
 - i) Requires the UC Regents to establish a systemwide NAGPRA Implementation and Oversight Committee with membership as specified.
 - ii) Requires UC, in consultation with the California Native American Tribes, to adopt and implement certain policies and procedures to better implement the federal NAGPRA and to timely submit the policies and procedures to the Native American Heritage Commission for review and comment.
 - iii) Requires that UC ensure that each campus committee utilize the specified policies and procedures adopted and also adopt procedures to support appeals and dispute resolutions in cases where a tribe disagrees with a campus determination regarding repatriation or disposition of human remains or cultural items.

- iv) Authorizes a UC campus to adopt policies to supplement the systemwide policies adopted, under certain conditions and in consultation with California Native American tribes.
 - v) Requires each campus that is subject to the federal NAGPRA to establish a NAGPRA implementation committee, with membership as specified. The act provides that claims for repatriation or claims of any violation of the policies and procedures adopted are to be submitted to the campus committee for determination.
 - vi) Requires the California State Auditor (Auditor) to conduct an audit regarding the UC's compliance with the federal NAGPRA and the CalNAGPRA and report its findings to the Legislature commencing in 2019 and again in 2021. (Health and Safety Code § 8010 et.al. and § 8024 – 8028.5)
- 3) Establishes the CSU, under the administration of the CSU Trustees, as one of the segments of public postsecondary education in this state. The CSU comprises 23 institutions of higher education located throughout the state. (Education Code § 66600-66610)

ANALYSIS

This bill prohibits the use of any Native American human remains or cultural items for purposes of teaching or research at the CSU. It further requires the CSU Chancellor's Office to comply with various requirements under the CalNAGPRA related to the identification, treatment, and repatriation of Native American human remains and cultural items in its possession. Specifically, it:

- 1) Prohibits the use of any Native American human remains or cultural items for purposes of teaching or research at the CSU.
- 2) Requires that the CSU Chancellor's Office comply with all of the following requirements related to the CalNAGPRA:
 - a) Submit an annual report by December 31, 2024, and annually thereafter to the Legislature, on the CSU's systemwide progress in reviewing its collections, consulting with Native American tribes, and repatriating Native American human remains and cultural items.
 - b) To ensure campuses identify all of the Native American remains and cultural items in their collections, do both of the following:
 - i) Monitor campus efforts to review their collections and require the completion of their inventories by December 31, 2025.
 - ii) Ensure that campuses properly consult with Native American tribes, as specified regarding protocols for handling and identifying Native American remains and cultural items.

- c) Issue, in consultation with California Native American tribes and the Native American Heritage Commission, a systemwide policy establishing a consistent repatriation process and training requirements for campuses.
- d) Establish, by December 31, 2024, an oversight committee to ensure that it adequately oversees campus-based repatriation activities under the CalNAGPRA and implements a process for campuses to report those activities to the systemwide oversight committee.
- e) Require campuses with more than 100 Native American remains and cultural items to:
 - i) Establish campus-based NAGPRA committees.
 - ii) By June 30, 2025, have full-time, experienced repatriation coordinators.
- f) Formalize an administrative structure by December 31, 2024, that may include, but is not limited to, the Chancellor's Office assigning a position within the Chancellor's Office to directly oversee the work of the systemwide project manager established by CalNAGPRA.
- g) To ensure that campuses have the funding necessary to comply with the act, do both of the following:
 - 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) 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 under CalNAGPRA.
- h) Defines various terms for purposes of the bill.

STAFF COMMENTS

- 1) **Need for the bill.** 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."

- 2) **Audit Report.** The Auditor released its report on the CSU's compliance with federal NAGPRA and CalNAGPRA on June 29, 2023. It states that, although the CSU Chancellor's Office has taken steps recently to support the campuses' repatriation efforts, it must take additional action to ensure that campuses prioritize complying with federal NAGPRA and CalNAGPRA. The audit surveyed all 23 CSU campuses and conducted further on-site reviews at four: CSU Chico, Sacramento, San Diego, and San Jose. 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 doing so. More than half of these 21 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. The report notes that campuses generally lack the policies, funding, and staffing necessary to follow the law and repatriate their collections. The system has repatriated only 6% of its collections to tribes to date. The audit additionally found that guidance or oversight has not been provided by the Chancellor's Office to campuses in order to ensure compliance with NAGPRA laws.

As a result of these findings, the Auditor issued recommendations to the Legislature and the Chancellor's Office. It 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. Audit recommendations also directed the CSU Chancellor's Office to do all of the following, in summary:

- Monitor campus efforts to review their collections and require the completion of their inventories by December 2024.
- 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.
- Establish a systemwide NAGPRA oversight committee by December 2023.
- Implement a process for campuses to periodically report their repatriation activity to the systemwide oversight committee.
- 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.
- Formalize its administrative structure by assigning a dedicated position to directly oversee the work of the systemwide CalNAGPRA project manager.

- 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.
- 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.

This bill would codify all of the audit recommendations.

- 3) **CSU and NAGPRA.** As noted in the background of this analysis, the 1990 federal NAGPRA and CalNAPGRA establish requirements for the protection, identification, handling, and repatriation of Native American human remains and cultural items from government agencies and museums, including CSU. California NAPGRA establishes a process by which a lineal descendent or a California Indian tribe that meets certain criteria may claim a relationship with and request the return of human remains or cultural items held by an agency or museum with the Native American Heritage Commission. According to the Auditor's report, the university has historically maintained a significant collection of hundreds of thousands of remains and cultural items. It further notes that the CSU Chancellor's Office has delegated accountability and oversight of federal NAGPRA and CalNAGPRA activities to the individual campuses. In its response to the Auditor, the Chancellor states that it is the intent of the CSU to implement each recommendation reflected in the report. The chancellor's response further states, "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." By requiring similar accountability measures through statute, this bill attempts to ensure that NAGPRA laws are followed and that California native tribes are more fully consulted.

4) **Prior and Related Legislation**

AB 226 (Ramos, 2023), similar to the provisions in this bill but for UC, urges, by June 30, 3024, and annually thereafter, the UC to report each campus's progress towards completing repatriation of Native American remains and cultural items. AB 226 also strongly urges the UC Office of the President to provide funding to support each institution's efforts toward repatriation. Lastly, UC is strongly urged to prohibit the use of any Native American human remains or cultural items for purposes of teaching or research at UC. AB 226 was approved by this committee by a vote of 7 to 0 and is currently being considered by the Senate Appropriations Committee.

SB 61 (Dodd, 2023), similar to this bill, codifies portions of the audit recommendations related to NAGPRA compliance. Specifically, it requires, as a condition for the use of state funds to handle and maintain Native American human remains and cultural items, that the University of California Office of the President comply with various requirements regarding the repatriation of Native

American human and cultural items, including issue guidance on partner entities for item repatriation, establish a uniform process that campuses must adhere to when consulting with tribes regarding university inventories, have full-time repatriation coordinators, and submit detailed repatriation plans with budgets for review. SB 61 and this bill focus on different recommendations; as such, the bills do not appear to establish conflicting policies. SB 61 was passed by this committee by a vote of 7 to 0 and is currently being considered by the Assembly Appropriations Committee.

AB 1662 (Ramos, Chapter 112, Statutes 2019) expands the membership of the UC systemwide 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.

AB 2836 (Gloria, Chapter 823, Statutes of 2018) required the UC Regents to establish and support a system-wide 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) enacted the CalNAGPRA 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.

SUPPORT

San Manuel Band of Mission Indians

OPPOSITION

None received

-- END --