

Date of Hearing: April 10, 2019

**ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA**

Kansen Chu, Chair

AB 1662 (Ramos) – As Amended March 28, 2019

SUBJECT: Native Americans: repatriation.

SUMMARY: Would add an additional member from a California Tribe to the systemwide Native American Graves Protection and Repatriation Act Implementation and Oversight Committee, known as the U.C. NAGPRA Committee, with specified membership.

EXISTING LAW:

EXISTING 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 United States Code Sections 3001 to 3013).

EXISTING STATE LAW:

- 1) Creates the California Native American Graves Protection and Repatriation Act (NAGPRA), which, in relevant part, requires the University of California (UC) regents, or their designee, to establish and support a systemwide Native American Graves Protection and Repatriation Act (UC 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.

- 2) 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 (California Constitution Article IX, Section (9)(a)).
- 3) Grants the UC Regents regulatory authority over the UC (Education Code Section (EC) 92440, et seq.).

FISCAL EFFECT: Unknown. This measure has been keyed fiscal by the Legislative Council.

COMMENTS:

- 1) *Authors' statement.* According to the author, AB 1662 is a follow-up to AB 2836 (Gloria) of last session and is designed to provide California Native American tribes appropriate representation on the newly formed UC NAGPRA Campus Committee.
- 2) *Background:*
 - a) *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 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.

- b) *AB 2836 (Gloria), established UC NAGPRA Committee.* Last session AB 2836 (Gloria), Chapter 823, Statutes of 2018, established a structure for a systemwide campus-based NAGPRA process for repatriation for those UC campuses that have Native American cultural artifacts or remains. AB 2836 also provided for a UC administrative oversight committee, UC NAGPRA, with membership as follows:
 - i) Two voting members of a California Indian tribe as defined under the federal Native American Graves Protection and Repatriation Act that are either an elder, spiritual leader, tribal leader, tribal member, or designated by the governing body of the individual's tribe.

- ii) 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.
- iii) Four voting members from the University of California. Not fewer than two of these members shall be affiliated with an American Indian or Native American Studies program and each of these members shall meet the requirements of subdivision (d).
- iv) One nonvoting member from each campus of the University of California that is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). Each of these nonvoting members shall meet the requirements of subdivision (d).

At the time, the author stated that the goals of AB 2836 included, “to enhance tribal participation and recognize that California tribes have expertise with respect to their histories and practices and which should be taken into account for disposition of culturally unidentifiable remains/objects.”

- 3) *University of California's unique constitutional status.* The California Constitution 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 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)
- 4) *Prior related legislation.*
 - a) AB 2836 (Gloria), Chapter 823, Statutes of 2019, required the Regents of the University of California (UC) to establish and support a systemwide Native American Graves Protection and Repatriation Act (UC NAGPRA) Implementation and Oversight Committee, and for any campus subject to the federal NAGPRA to establish a campus implementation committee.
 - b) AB 978 (Steinberg), Chapter 818, Statutes of 2001, AB 978 enacted the California Native American Graves Protection and Repatriation Act of 2001 to established 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. The bill established a ten-member appointed Repatriation Commission with authority to order repatriation, to mediate disputes, to subpoena, and to impose civil penalties. The bill 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.

- 5) *Double referral.* Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Higher Education.

REGISTERED SUPPORT / OPPOSITION:

Support

There is no support on file.

Opposition

There is no opposition on file.

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