

Assembly Bill No. 389

CHAPTER 649

An act to add Article 3.5 (commencing with Section 8028.7) to Chapter 5 of Part 2 of Division 7 of the Health and Safety Code, and to amend Section 5097.94 of the Public Resources Code, relating to Native American repatriation.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law establishes the California State University, under the administration of the Trustees of the California State University, as one of the segments of public postsecondary education in this state. The California State University comprises 23 institutions of higher education located throughout the state.

The California Native American Graves Protection and Repatriation Act of 2001 requires all agencies and museums, which is defined to include higher education institutions, that receive state funding and have possession or control over collections of California Native American human remains and associated funerary objects to inventory those remains and objects for repatriation to the appropriate California Indian tribes, as specified.

This bill would require the California State University to comply with various requirements regarding the handling, maintenance, and repatriation of Native American human remains and cultural items under the California Native American Graves Protection and Repatriation Act of 2001, including adopting and implementing systemwide policies that, among other things, prohibit the use of any Native American human remains or cultural items for purposes of teaching or research at the California State University while in the possession of a California State University campus or museum. The bill would make its provisions severable.

The people of the State of California do enact as follows:

SECTION 1. Article 3.5 (commencing with Section 8028.7) is added to Chapter 5 of Part 2 of Division 7 of the Health and Safety Code, to read:

Article 3.5. Handling, Maintenance, and Repatriation of Native American Human Remains and Cultural Items at the California State University

8028.7. (a) In order to better implement the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) and this chapter, the California State University shall do all of the following:

(1) Facilitate the establishment, composition, and function of systemwide and campus-level committees, established pursuant to Section 8028.71, with respect to reviewing and advising the university on matters related to the university's implementation of legal requirements to increase repatriation outcomes or dispositions of Native American human remains and cultural items to California Indian tribes.

(2) (A) Adopt and implement systemwide policies regarding the culturally appropriate treatment of Native American human remains and cultural items, including a policy that prohibits the use of Native American human remains or cultural items for the purposes of teaching or research at the California State University while in the possession of a California State University campus or museum. The systemwide policies shall also include policies regarding tribal research and testing requests, California State University campus and museum reporting requirements to the CSU Systemwide NAGPRA Committee established pursuant to subdivision (a) of Section 8028.71, and culturally appropriate best practices and training concerning repatriation.

(B) Adopt and implement clear and transparent policies and procedures on the systemwide requirements for submitting, processing, and implementing claims for the repatriation of human remains and cultural items, demonstrating cultural affiliation, notification to tribes of human remains and cultural items deemed culturally affiliated and unidentifiable and from whose state aboriginal territory the items were removed, but that are not subject to a repatriation claim, dispute resolution regarding repatriation claims, and any other relevant subject governed by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), Part 10 (commencing with Section 10.1) of Subtitle A of Title 43 of the Code of Federal Regulations, and this chapter.

(C) Adopt or amend systemwide California State University museum collection management policies to explicitly provide for the deaccession of collections containing Native American human remains and cultural items to effect the timely and respectful return of those items pursuant to valid claims submitted by a California Indian tribe.

(D) Adopt systemwide California State University policies and procedures for the identification and disposition of culturally unidentifiable human remains and cultural items, as required by the federal Native American Graves Protection and Repatriation Regulations (43 C.F.R. Part 10). Those policies shall include updates to existing inventories in order to determine whether cultural affiliation can be determined, or to confirm that the human remains are "culturally unidentifiable" as defined in paragraph (2) of subsection (e) of Section 10.2 of Part 10 of Title 43 of the Code of Federal

Regulations. These policies also shall include updates to existing inventories or summaries to identify cultural items that may not have been identified in the original inventories or summaries because traditional tribal knowledge was not incorporated into the identification process.

(3) Develop all policies and procedures pursuant to paragraph (2) in consultation with California Indian tribes on the contact list maintained by the Native American Heritage Commission pursuant to Section 8013. Each California Indian tribe appearing on the contact list shall be invited to consult on any California State University proposed policies and procedures regarding repatriation. For purposes of this section, “consultation” has the same meaning as defined in Section 65352.4 of the Government Code.

(4) Timely submit the policies and procedures adopted pursuant to paragraph (2) to the commission, so they may review and comment upon them pursuant to subdivision (p) of Section 5097.94 of the Public Resources Code on or before July 1, 2024. The California State University shall make best efforts to adopt the commission’s recommendations.

(5) Implement the systemwide policies adopted pursuant to paragraph (2) on or before July 1, 2025, and implement any campus policies within one year after the adoption of the systemwide policies.

(6) Ensure that each campus Native American Graves Protection and Repatriation Act Implementation Committee implements the policies and procedures adopted pursuant to paragraph (2).

(7) Adopt procedures to support appeals and dispute resolution when a tribe disagrees with a campus determination regarding identification, repatriation, or disposition of human remains or cultural items directly to the CSU Systemwide NAGPRA Committee established pursuant to subdivision (a) of Section 8028.71.

(8) On or before July 1, 2024, to ensure that campuses pursue timely repatriation, require campuses with Native American remains and cultural items to have full-time, experienced repatriation coordinators, as well as a systemwide coordinator for the California State University.

(9) On or before December 31, 2024, and each December 31 thereafter, submit an annual report to the Legislature, pursuant to Section 9795 of the Government Code, on the California State University’s systemwide progress in reviewing its collections of Native American human remains and cultural items.

(b) A campus of the California State University may adopt policies to supplement the systemwide policies adopted pursuant to paragraph (2) of subdivision (a), if the campus determines that individual circumstances involving that campus are not adequately addressed in the adopted and approved systemwide policies, in consultation with California Indian tribes. A policy or procedure adopted by a campus pursuant to this subdivision shall not conflict with the approved systemwide policies adopted pursuant to paragraph (2) of subdivision (a).

8028.71. (a) (1) In order to better implement the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) and this chapter, the California State University shall establish a

systemwide Native American Graves Protection and Repatriation Act Implementation and Oversight Committee, which shall also be known as the CSU Systemwide NAGPRA Committee. At least a majority of the CSU Systemwide NAGPRA Committee's voting members shall be from California Indian tribes.

(2) The membership of the committee shall be as follows:

(A) Three voting members of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(B) One voting member of an Indian tribe as described in paragraph (2) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section, or, if none is available, a member of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(C) Three voting members from the California State University. At least 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).

(D) One nonvoting member from each campus of the California State University 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).

(3) The Chancellor of the California State University, or the chancellor's designee, shall appoint members to the committee upon nomination by the commission.

(4) The composition of the systemwide committee may be altered to include a greater number of qualified members of a California Indian tribe, to the extent that qualified California State University candidates cannot be located pursuant to paragraph (2).

(b) (1) In order to better implement the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) and this chapter, each California State University campus shall establish a campus-based Native American Graves Protection and Repatriation Act Implementation Committee, which shall also be known as the NAGPRA Committee for that campus. At least a majority of each campus NAGPRA Committee's membership shall be from California Indian tribes.

(2) The membership of the campus committee shall be as follows:

(A) Three voting members of an Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(B) One voting member of an Indian tribe as described in paragraph (2) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section, or, if none is available, a member of a California Indian tribe as described in paragraph (1) of subdivision (c) of Section 8012, meeting the requirements of subdivision (c) of this section.

(C) Three voting members from the California State University. At least one 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).

(3) The Chancellor of the California State University or the chancellor's designee shall appoint members to the campus-based committees upon nomination by the commission.

(4) All claims for repatriation or claims of any violation of the policies and procedures adopted pursuant to Section 8025 shall be submitted to the campus-based Native American Graves Protection and Repatriation Act Implementation Committee for determination.

(5) The composition of the campus-based committees may be altered to include a greater number of qualified members of a California Indian tribe, to the extent that qualified California State University candidates meeting the criteria in paragraph (1) of subdivision (d) cannot be located.

(c) (1) A voting member of a California Indian tribe shall be an elder, spiritual leader, tribal leader, or tribal member, as designated by the governing body of the individual's tribe, with a minimum of five years' prior experience in any of the following:

(A) Repatriation of human remains and cultural items pursuant to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(B) Cultural resources protection under tribal, state, and federal law.

(C) Consultation with state and federal entities and agencies.

(2) Preference shall be given to members of a California Indian tribe. If no members of a California Indian tribe meeting the qualifications of paragraph (1) are available, members of other tribes may serve.

(d) (1) A representative of the California State University shall meet both of the following criteria:

(A) (i) Have a graduate degree in archaeology, anthropology, Native American studies, ethnic studies, law, sociology, environmental studies, or history, with a focus in California.

(ii) If there are no candidates satisfying clause (i), candidates that have degrees and direct professional experience in fields relevant to repatriation or tribal cultural resources matters shall be deemed to meet the requirements of clause (i).

(B) Have a minimum of five years' prior experience working in the applicable field of study.

(2) Preference shall be given to members who have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management.

(3) In the event that candidates from the California State University are not available or do not meet the criteria of paragraph (1), the California State University representative positions may be filled by retired emeriti of the California State University who meet the criteria of paragraph (1).

8028.72. To ensure that each California State University campus has the funding necessary to comply with this chapter, the California State University shall do all of the following:

(a) Require each campus with Native American remains or cultural items to identify and estimate, on or before January 31, 2025, the funding and other resources it needs to complete repatriations under the act in an appropriate and timely manner.

(b) Compile the estimates described in subdivision (a) into a systemwide report, disaggregated by campus, and submit this report to the Native American Heritage Commission and the Legislature, pursuant to Section 9795 of the Government Code.

(c) Upon evaluation of the reasonableness of campus estimates under subdivision (a), identify and provide funding to campuses from existing systemwide or campus-based resources, or seek additional funding from the Legislature, to ensure that campuses have sufficient funding to support their activities under the act.

SEC. 2. Section 5097.94 of the Public Resources Code is amended to read:

5097.94. The commission shall have the following powers and duties:

(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloguing of known graves and cemeteries shall be completed on or before January 1, 1984. The commission shall notify landowners on whose property the graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

(b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.

(c) To make recommendations to the Legislature relative to procedures that will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter and the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).

(f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it

shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In an action to enforce this subdivision the commission shall introduce evidence showing that a cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

(h) To request and utilize the advice and service of all federal, state, local, and regional agencies, including for purposes of carrying out the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).

(i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.

(j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.

(k) (1) To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

(2) The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

(m) To provide each California Native American tribe, as defined in Section 21073, on or before July 1, 2016, with a list of all public agencies that may be a lead agency pursuant to Division 13 (commencing with Section 21000) within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation pursuant to Section 21080.3.1.

(n) (1) To assume the powers and duties of the former Repatriation Oversight Commission and meet, when necessary and at least quarterly, to perform the following duties:

(A) Order the repatriation of human remains and cultural items in accordance with the act.

(B) Establish mediation procedures and, upon the application of the parties involved, mediate disputes among tribes and museums and agencies relating to the disposition of human remains and cultural items. The commission shall have the power of subpoena for purposes of discovery and may impose civil penalties against any agency or museum that intentionally or willfully fails to comply with the act. Members of the commission and commission staff shall receive training in mediation for purposes of this subparagraph. The commission may delegate its responsibility to mediate disputes to a certified mediator or commission staff.

(C) Establish and maintain an internet website for communication among tribes and museums and agencies.

(D) Upon the request of tribes or museums and agencies, analyze and make decisions regarding providing financial assistance to aid in specific repatriation activities.

(E) Make recommendations to the Legislature to assist tribes in obtaining the dedication of appropriate state lands for the purposes of reinterment of human remains and cultural items.

(F) (i) Prepare and submit to the Legislature an annual report detailing commission activities, disbursement of funds, and dispute resolutions relating to the repatriation activities under the act.

(ii) A report submitted to the Legislature pursuant to this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(G) Refer any known noncompliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) to the United States Attorney General and the Secretary of the Interior.

(H) Impose administrative civil penalties pursuant to Section 8029 of the Health and Safety Code against an agency or museum that is determined by the commission to have violated the act.

(I) Establish those rules and regulations the commission determines to be necessary for the administration of the act.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) “Act” means the California Native American Graves Protection and Repatriation Act (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).

(B) “Tribe” means a “California Indian tribe” as that term is used in the act.

(o) (1) To establish and assess a fee on a person or public or private entity that is reasonably related to the cost of conducting a search of catalogs, described in subdivision (a), inventories, described in Section 5097.96, or lists, described in Section 21073, for that person or entity, which funds shall be available to the commission upon appropriation by the Legislature.

(2) The Legislature finds that, pursuant to subdivision (b) of Section 3 of Article XIII A of the California Constitution, the fees established pursuant to paragraph (1) are not taxes. To the extent that these fees are appropriated

through the Budget Act for the purposes for which they are collected to provide services to the people of the State of California, the Legislature finds that these fees are not subject to Article XIII B of the California Constitution.

(p) Review and provide comment and guidance on all policies and procedures proposed pursuant to Article 3 (commencing with Section 8025) and Article 3.5 (commencing with Section 8028.7) of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.