



AB-275 Native American cultural preservation. (2019-2020)

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Assembly Bill No. 275

CHAPTER 167

An act to add Section 8318 to the Government Code, and to amend Sections 8011, 8013, 8015, 8016, 8017, 8025, and 8026 of, to amend the heading of Article 3 (commencing with Section 8025) of Chapter 5 of Part 2 of Division 7 of, and to repeal and add Sections 8012 and 8014 of, the Health and Safety Code, relating to Native American cultural heritage.

[Approved by Governor September 25, 2020. Filed with Secretary of State September 25, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 275, Ramos. Native American cultural preservation.

Existing law establishes the Native American Heritage Commission and vests the commission with specified powers and duties. Existing law requires the commission to publish a document that lists the California Indian tribes as well as to consult in matters pertaining to repatriation under the act.

The California Native American Graves Protection and Repatriation Act of 2001 requires all agencies and museums 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. The act requires those entities to complete an inventory and summary of those objects, as specified, and to provide the inventories and summaries to the commission. The act provides a process by which a California Indian tribe can request the return of human remains and cultural items.

The act defines various terms, including "California Indian tribe" and "museum." The act defines "California Indian tribe" as a tribe that either meets the federal definition of Indian tribe or that is indigenous to California and is not reorganized by the federal government, is listed on the Bureau of Indian Affairs Branch Acknowledgment and Research petitioner list, and is determined by the commission to be a tribe that is eligible to participate in the repatriation process under the act. The act defines "museum" as an entity, including a higher educational institution, excluding school districts, that receives state funds.

This bill would revise various definitions, including, among others, the definition of "California Indian tribe" to include both a tribe that meets the federal definition of Indian tribe and a tribe that is not recognized by the federal government, but that is a native tribe located in California that is on the list maintained by the commission; the definition of "museum" to specify it receives state funds; the definition of "preponderance of the evidence" to specify that tribal traditional knowledge alone may be sufficient to meet this standard; and the definition of "reasonable" to specify that tribal traditional knowledge can and should be used to establish reasonable conclusions with respect to determining cultural affiliation and identifying cultural items.

This bill would revise and recast the process of creating the inventories and summaries by, among other things, requiring consultation with California Indian tribes during the creation of the preliminary inventories and summaries and after submission to the commission. The bill also would revise and recast the process by which a direct lineal descendent or a California Indian tribe can request the return of human remains or cultural items. The bill would make technical, nonsubstantive changes.

This bill would require every state agency, as defined, with significant interaction with tribal issues, peoples, or lands, and request the Regents of the University of California, to designate one or more liaisons for the purpose of engaging in consultation with California Native American tribes on the tribal contact list and educating the agency on topics relevant to the state's relationship with those tribes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) In recent years, the State of California has made great strides towards treating California Indian tribes with respect and dignity. In 2019, the Governor issued Executive Order No. N-15-19 that recognized that the state historically sanctioned over a century of depredations and prejudicial policies committed by state actors against California Native Americans and apologized, on behalf of the citizens of the State of California, for the many instances of violence, maltreatment, and neglect California inflicted on tribes.

(b) Indigenous California was unique and different from any other part of native North America. It encompassed hundreds of thousands of people, thousands of villages, and over one hundred separate languages, with many more dialects of those languages. California Indians lived in deserts, on mountains, along the coastline, in the great central valley, on lakeshores, beside rivers, and in the lush foothills.

(c) California Indian tribes have suffered a unique set of circumstances, including, but not limited to, unratified treaties, termination, Indian indenture laws, the California mission system, boarding schools, and other violent and destructive policies and systems on a larger scale than anywhere else in the United States.

(d) These systems and government-sanctioned extinction policies and actions dispossessing California Indian tribes from their lands validated, permeated, and sustained a culture of historical mistreatment of California Indian tribes that existed brutally from around the 16th century through the early 20th century, with the aftermath of these policies and mistreatment still visible and tangible today.

(e) These policies and actions resulted in the separation of the California Indian tribes from many of their cultural items and Native American human remains.

(f) Throughout the state's history, a key human rights violation has been that thousands of Native American human remains and items that are culturally affiliated with California Indian tribes are still not yet under the control of those tribes. Even though the tribal members are the legal decedents, these Native American human remains and cultural items remain under the control of private and state-funded institutions and museums.

(g) In 1990, the federal government enacted and implemented the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. Sec. 3001 et seq.) to address this nationwide human rights violation.

(h) In 2001, the State of California enacted Assembly Bill 978 (Chapter 818 of the Statutes of 2001), cited as 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), to address the specific concerns of the California Indian tribes. The California Native American Graves Protection and Repatriation Act of 2001 was never fully implemented because it was not adequately funded.

(i) Unfortunately, today there are still thousands of Native American human remains and cultural items under the control of state-funded institutions and museums. Despite those institutions being subject to both the federal and state laws ordering repatriation of these human remains and cultural items back to the present-day living ancestors, the California Indian tribes, the institutions and museums have not complied.

(j) The California Native American Graves Protection and Repatriation Act of 2001 was enacted almost 20 years ago. The federal NAGPRA has been amended since 1990, and the California Native American Graves Protection and Repatriation Act of 2001 is due to be updated to align it with federal law and to also address the California-specific issues that have come to light over the past 30 years.

(k) In view of these findings, it is the intent of the Legislature that this act do all of the following:

(1) Facilitate the proactive repatriation of Native American human remains and cultural items to California Indian tribes.

(2) Require active outreach and consultation by publicly funded agencies and museums in California with California Indian tribes and lineal descendants for the purposes of carrying out repatriation, in particular with those Native American human remains and cultural items that have been deemed by publicly funded agencies and museums as culturally unidentifiable.

(3) Provide a process whereby the Native American Heritage Commission assists publicly funded agencies and museums in the identification of California Indian tribes for the purposes of this measure.

(4) Provide a process whereby California Indian tribes, recognized and nonfederally recognized, may seek the assistance of the Native American Heritage Commission to resolve disputes.

(5) Recognize that California Indian tribes have expertise with regard to their tribal history and practices that concern the Native American human remains, cultural items, and tribal cultural resources with which they are traditionally and culturally affiliated and, because the federal and state repatriation processes call for a sufficient degree of analysis, include tribal traditional knowledge about the land and resources at issue in all decisions related to repatriation processes. This includes treating tribal traditional knowledge as the authority with respect to determining cultural affiliation and the identification of cultural items so that it is given deferential weight to other lines of evidence. Tribal traditional knowledge meets the "reasonable" standard that is identified in California Native American Graves Protection and Repatriation Act of 2001.

(6) Establish a meaningful consultation process between California Indian tribes, lineal decedents, and publicly funded agencies and museums respecting confidentiality, at the earliest possible point in the process, for the purposes of achieving the repatriation outcome of returning ancestors and their belongings to tribes.

SEC. 2. Section 8318 is added to the Government Code, to read:

8318. (a) For purposes of this section, "state agency" means a department or agency of the state, the California State University, the University of California, and the Judicial Council of California.

(b) The Regents, on behalf of the University of California, are requested to designate, and every other state agency with significant interaction with tribal issues, peoples, or lands shall designate, one or more liaisons for the purpose of engaging in consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission pursuant to paragraph (2) of subdivision (c) of Section 8012 of the Health and Safety Code and educating the agency on topics relevant to the state's relationship with those tribes.

SEC. 3. Section 8011 of the Health and Safety Code is amended to read:

8011. It is the intent of the Legislature to do all of the following:

(a) Provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect.

(b) Apply the state's repatriation policy consistently with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), which was enacted in 1990, as subsequently amended, while considering the unique history of California towards California Indian tribes and the canon of construction regarding federal Indian law with respect to laws must be interpreted as the Indians would have understood them, be construed liberally in favor of the Indians, resolve all ambiguities in the law in favor of the Indians, and preserve tribal property rights and sovereignty unless a contrary intent is clearly stated.

(c) Facilitate the implementation of the federal Native American Graves Protection and Repatriation Act with respect to publicly funded agencies and museums in California.

(d) Encourage voluntary disclosure and return of Native American human remains and cultural items by a private institution or museum.

(e) Provide a process whereby lineal descendants and culturally or geographically affiliated California Indian tribes that file repatriation claims for Native American human remains and cultural items under the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) or under this chapter with California state agencies and museums may request assistance from the commission in ensuring that state agencies and museums are responding to those claims in a timely manner and in facilitating the resolution of disputes regarding those claims.

(f) Provide a process whereby California Indian tribes that are not federally recognized may file claims with agencies and museums for repatriation of human remains and cultural items.

SEC. 4. Section 8012 of the Health and Safety Code is repealed.

SEC. 5. Section 8012 is added to the Health and Safety Code, to read:

8012. Terms used in this chapter have the same meaning as defined in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), and as interpreted by federal regulations, except that the following terms have the following meaning:

(a) "Agency" means a division, department, bureau, commission, board, council, city, county, city and county, district, or other political subdivision of the state.

(b) "Burial site" means, except for cemeteries and graveyards protected or recognized under another state law, a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were deposited as a part of the death rites or ceremonies of a culture.

(c) "California Indian tribe" means a tribe located in California to which either of the following applies:

(1) It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(2) It is not recognized by the federal government, but is a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Section 65352.3 of the Government Code.

(d) "Commission" means the Native American Heritage Commission established pursuant to Section 5097.91 of the Public Resources Code.

(e) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, achieving agreement. Consultation between agencies or museums and California Indian tribes shall be conducted in a manner that is respectful of tribal sovereignty. Consultation also shall recognize the tribes' potential need for confidentiality with respect to tribal traditional knowledge and all tribal information shared during the consultation.

(f) "Control" means having ownership of Native American human remains and cultural items sufficient to lawfully permit an agency or museum to treat the object as part of its collection for purposes of this chapter, whether or not the human remains and cultural items are in the physical custody of the agency or museum. Human remains and cultural items on loan to an agency or museum from another person, agency, or museum shall be deemed to be in the control of the lender.

(g) "Cultural items" shall have the same meaning as defined in Section 3001 of Title 25 of the United States Code, as it read on January 1, 2020, except that it shall mean only those items that originated in California and are subject to the definition of reasonable, as defined in subdivision (l). An item is not precluded from being a cultural item solely because of its age.

(h) "Inventory" means an itemized list that summarizes the collection of Native American human remains and associated funerary objects in the possession or control of an agency or museum. This itemized list may include the inventory list required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(i) "Museum" means an agency, museum, person, or entity, including a higher educational institution, that receives state funds. For purposes of this subdivision, "receives state funds" means that the museum has received funds after January 1, 2002, from a state agency through a grant, loan, or contract, other than a procurement contract, or other arrangement by which a state agency makes available aid in the form of funds. State funds provided for any purpose to a larger entity of which the museum is a part of are considered as the museum receiving those funds for the purposes of this subdivision.

(j) "Possession" means having physical custody of Native American human remains and cultural items with a sufficient legal interest to lawfully treat the human remains and cultural items as part of a collection. "Possession" does not include human remains and cultural items over which the agency has control but that are currently on loan to another person or entity.

(k) "Preponderance of the evidence" means that the party's evidence on a fact indicates that it is more likely than not that the fact is true. Tribal traditional knowledge alone may be sufficient to meet this standard. If there is conflicting evidence, tribal traditional knowledge shall be provided deference.

(l) "Reasonable" means fair, proper, rational, and suitable under the circumstances. Tribal traditional knowledge can and should be used to establish reasonable conclusions with respect to determining cultural affiliation and identifying cultural items.

(m) "State aboriginal territory" means lands identified as aboriginally occupied by one or more California Indian tribes. State aboriginal territory may be recognized by any of the following: consultation with California Indian tribes, treaties, including those agreed to but not ratified, a final judgment of the federal Indian Claims Commission or the United States Court of Claims, an act of the United States Congress, or an executive order.

(n) "State cultural affiliation" means that there is a reasonable relationship of shared group identity that can reasonably be traced historically or precontact between members of a present-day California Indian tribe and an identifiable earlier tribe or group. Cultural affiliation shall be established based on one or more of the following:

- (1) Geography.
- (2) Kinship.
- (3) Biology.
- (4) Archaeology.
- (5) Linguistics.
- (6) Folklore.
- (7) Oral tradition.
- (8) Historical evidence.
- (9) Tribal traditional knowledge.
- (10) Other information or expert opinion that reasonably leads to that conclusion.

(o) "Summary" means a document that summarizes the collection of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of an agency or museum. This document may include the summary prepared under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(p) "Tribal traditional knowledge" means knowledge systems embedded and often safeguarded in the traditional culture of California Indian tribes and lineal descendants, including, but not limited to, knowledge about ancestral territories, cultural affiliation, traditional cultural properties and landscapes, culturescapes, traditional ceremonial and funerary practices, lifeways, customs and traditions, climate, material culture, and subsistence. Tribal traditional knowledge is expert opinion.

SEC. 6. Section 8013 of the Health and Safety Code is amended to read:

8013. (a) On or before January 1, 2021, the commission shall develop a list of all California Indian tribes and their respective state aboriginal territories. The commission shall notify in writing all agencies, museums, and California Indian tribes that the commission maintains that list. This list is solely for the purpose of the repatriation of Native American tribal human remains and cultural items.

(b) (1) On or before January 1, 2022, each agency or museum that has possession or control of California Native American human remains and associated funerary objects shall complete an inventory, or update a preliminary inventory, of all these remains and associated funerary objects and, to the extent possible based on all information possessed by the agency or museum, do all of the following:

(A) Identify the geographical location, cultural affiliation, aboriginal territory, and the circumstances surrounding their acquisition.

(B) Consult, prior to new or additional inventory work being conducted, with affiliated California Indian tribes on any protocols to be used in the inventory process, including, but not limited to, all of the following:

(i) Minimizing handling.

(ii) Using a lot approach with a minimum number of individuals set at one.

(iii) Identifying human remains and associated funerary objects, burial site, or ceremonial items with tribal expertise receiving deference.

(C) (i) List in the preliminary inventory the human remains and associated funerary objects that are clearly identifiable as to state cultural affiliation with California Indian tribes. These human remains and cultural items shall be listed first to expedite the repatriation of these items.

(ii) Tribal traditional knowledge shall be used to establish state cultural affiliation and identify associated funerary objects. The museum also shall record any identifications of cultural items that are made by tribal representatives. The identifications may include broad categorical identifications, including, but not limited to, the identification of everything from a burial site as a funerary object.

(D) List the human remains and associated funerary objects that are not clearly identifiable by state cultural affiliation but that, given the totality of circumstances surrounding their acquisition and characteristics, including the unique circumstances of California history, are determined by a reasonable belief to be human remains and associated funerary objects with a state cultural affiliation with one or more California Indian tribes. Consult with California Indian tribes reasonably believed to

be culturally affiliated with the items, during the compilation of the preliminary inventory as part of the determination of affiliation. If the agency or museum cannot determine which California Indian tribes are believed to be culturally affiliated with the items, tribes that may be culturally affiliated with the items, in consultation with the commission, shall be consulted during the compilation of the preliminary inventory. The consultation shall be with California Indian tribes whose state aboriginal territory includes the area from which the human remains and associated funerary objects were removed.

(E) List the human remains and associated funerary objects that are not identifiable by state cultural affiliation, but, given the totality of the circumstances, including the unique circumstances of California history, are determined by a reasonable belief to have been removed from an area identified as the state aboriginal territory of one or more California Indian tribes.

(2) The museum or agency shall engage in consultation with California Indian tribes as part of the completion of the inventory required by this subdivision. The commission may assist with the identification of California Indian tribes, but the agency or museum bears the obligation to contact and consult with the California Indian tribes.

(F) Provide the original and any updated catalogues to the consulting California Indian tribes.

(c) (1) On or before January 1, 2022, an agency or museum that has possession or control over a California Indian tribe's unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written preliminary summary of the objects based upon available information held by the agency or museum. Because it may not be clear whether Native American objects are cultural items, all museum collections of Native American ethnographic or archaeological objects shall be included in the preliminary summary. The preliminary summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition, state cultural affiliation, and state aboriginal territory, where reasonably ascertainable. The preliminary summary shall be in lieu of an object-by-object inventory to limit unnecessary handling and damage to the items. Each agency or museum, following preparation of a preliminary summary pursuant to this subdivision, shall consult with California Indian tribes and tribally authorized government officials and tribally authorized traditional religious leaders.

(2) The agency or museum shall engage in consultation with California Indian tribes as part of the completion of the preliminary summary required pursuant to this subdivision and shall defer to tribal recommendations for appropriate handling and treatment. The agency or museum also shall record any identifications of cultural items that are made by tribal representatives. The identifications may include broad categorical identifications, including, but not limited to, the identification of regalia objects as sacred objects or the identification of everything from a specific site as a sacred object because that site is a sacred site. The commission may assist with the identification of California Indian tribes, but the agency or museum bears the obligation to contact and consult with California Indian tribes.

(d) Within 90 days of completing the preliminary inventory and summary specified in subdivisions (b) and (c), the agency or museum shall provide a copy of the preliminary inventory and summary to the commission. The commission shall, in turn, publish notices of completion of preliminary inventories and summaries on its internet website for 30 days, and make the preliminary inventories and summaries available to any requesting potentially culturally affiliated California Indian tribe.

(e) The inventory and summary specified in subdivisions (a) and (b) shall be completed by all agencies and museums that have possession or control of Native American human remains or cultural items, regardless of whether the agency or museum is also subject to the requirements of the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). Any inventory or summary, or any portion of an inventory or summary, that has been created to meet the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) may be used to meet the requirements of this chapter, if appropriate.

(f) An agency or museum that has completed an inventory and summary as required by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) shall be deemed to be in compliance with this section provided that the agency or museum provides the commission with both of the following:

(1) A copy of the inventory and summary.

(2) Preliminary inventories and summaries to comply with subdivisions (b) and (c).

(g) (1) Upon the request of a lineal descendent or California Indian tribe, an agency or museum shall supply additional available documentation to supplement the information required by subdivisions (b) and (c). This section does not authorize the initiation or completion of any academic, museum, or scientific study of human remains or cultural items.

(2) For purposes of this subdivision, "documentation" means a summary of agency or museum records, including inventories or catalogs, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and cultural items subject to this section.

(h) If the agency or museum determines that it does not have in its possession or control any human remains or cultural items, the agency or museum shall, in lieu of an inventory or summary, state that finding in a letter to the commission at the commission's request.

(i) Following completion of the preliminary inventory and summary specified in subdivisions (b) and (c), each agency or museum shall update its inventory and summary within 90 days of receiving possession or control of human remains or cultural items that were not included in the preliminary inventory and summary. Upon completion, the agency or museum shall provide a copy of its updated inventory and summary to the commission.

(j) Once an agency or museum has provided a copy of its preliminary inventory and summary to the commission, the agency or museum shall consult with California Indian tribes that may be culturally affiliated with the human remains and cultural items. The commission may assist with the identification of tribes, but the agency or museum bears the obligation to contact and consult with California Indian tribes. The consultation process shall include all of the following:

(1) Preliminary inventories and summaries shall be reviewed by culturally affiliated and potentially culturally affiliated California Indian tribes, who shall have the ability to concur or disagree with the information in the preliminary inventory or summary. Tribal concurrence, disagreement, or nonresponse shall be noted on the preliminary inventory or summary by the commission at the end of the 30-day review period. If a consulting California Indian tribe disagrees with the contents of the preliminary inventory or summary, the agency or museum shall either revise the preliminary inventory or summary to correct the disputed information or the commission shall offer to initiate dispute resolution as described in Section 8016.

(2) The status of the inventory or summary shall be changed from preliminary to final by the commission once all responding California Indian tribes listed in the inventory or summary concur with the information in the inventory or summary.

(3) An inventory or summary that has been finalized may be moved back to preliminary status at the request of a consulting California Indian tribe if inaccuracies are found in the finalized inventory or summary prior to repatriation.

(4) The designation of an inventory or summary as preliminary or final is intended to reflect whether consulting California Indian tribes agree with the decisions and identifications of the agencies and museums who are preparing these documents. An inventory or summary does not need to be marked as final for a California Indian tribe to place a claim. Nothing in this section shall be construed to mean that an agency or museum may delay the repatriation of items in a final inventory or summary.

(5) Commission staff shall note a summary of all claims and the claim status on the commission's internet website. The claim status may be pending, disputed, or accepted.

(6) Commission staff shall note the repatriation status on the commission's internet website. The repatriation status may be in process or completed.

(7) A claim may be submitted at any time and does not need to be resubmitted.

(8) A claim may be withdrawn at any time prior to transfer of control.

SEC. 7. Section 8014 of the Health and Safety Code is repealed.

SEC. 8. Section 8014 is added to the Health and Safety Code, to read:

8014. (a) A lineal descendent claiming a relationship with, and requesting return of, Native American human remains or cultural items listed in the inventory or summary of an agency or museum, or that requests the return of human remains or cultural items that are not listed in the inventory or summary of an agency or museum but that are believed to be in the possession or control of the agency or museum, shall do both of the following:

(1) File a claim for the human remains and cultural items with the commission and with the agency or museum believed to have possession or control.

(2) Demonstrate that the claimant can trace their ancestry directly and without interruption by means of the traditional kinship or village system of the appropriate California Indian tribe, or by the common law system of descendency, to a known individual whose human remains or cultural items are being claimed.

(b) A California Indian tribe claiming a relationship, state cultural affiliation, or state aboriginal territory with, and requesting return of, human remains or cultural items listed in the inventory or summary of an agency or museum, or that requests the return of human remains or cultural items that are not listed in the inventory or summary of an agency or museum but that are believed to be in the possession or control of the agency or museum, shall do both of the following:

(1) File a claim for the human remains and cultural items with the commission and with the agency or museum believed to have possession or control.

(2) Demonstrate one or both of the following:

(A) There is a relationship of shared group identity that can reasonably be traced historically or precontact with an earlier identifiable group from which the human remains or cultural items originated and the claiming California Indian tribe. Evidence of state cultural affiliation need not be provided when reasonably established by a finding published in the Federal Register, in compliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(B) The human remains or cultural items were removed from the state aboriginal territory of the claiming California Indian tribe.

SEC. 9. Section 8015 of the Health and Safety Code is amended to read:

8015. (a) Upon receiving a written request for repatriation of an item on the inventory, the commission shall forward a copy of the request to the agency or museum in possession of the item, if the criteria specified in subdivision (a) of Section 8016 have been met. At this time, the commission shall also publish the request for repatriation on its internet website.

(b) This section does not prohibit a requesting lineal descendent or California Indian tribe, an agency, or a museum from coordinating directly with each other on repatriation. The commission shall receive, for their records, copies of all repatriation agreements and shall have the power to enforce these agreements.

SEC. 10. Section 8016 of the Health and Safety Code is amended to read:

8016. (a) An agency or museum receiving a repatriation request pursuant to Section 8014 shall repatriate human remains and cultural items if all of the following criteria have been met:

(1) The requested human remains or cultural items meet the definitions of human remains or cultural items that are subject to inventory and summary requirements under subdivisions (b) and (c) of Section 8013.

(2) The lineal descendent, state aboriginal territory, or state cultural affiliation of the human remains or cultural items is established as required under this section.

(3) The agency or museum is unable to present evidence that, if standing alone before the introduction of evidence to the contrary, would support a finding that the agency or museum has a right of possession to the requested cultural items.

(4) None of the exemptions listed in Section 10.10(c) of Title 43 of the Federal Code of Regulations apply. Scientific research shall be concluded within a reasonable period of time.

(5) All other applicable requirements of regulations adopted under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), contained in Part 10 of Title 43 of the Code of Federal Regulations, have been met, including, but not limited to, the completion of a summary and inventory, consultation with California Indian tribes, publication of notices of inventory completion and notices of intent to repatriate in the Federal Register, and, prior to disposition of culturally unidentifiable human remains to a tribe not recognized by the federal government, obtainment of the concurrence of the United States Department of the Interior.

(b) If there are no other requests for particular human remains or cultural items and there is no unresolved objection pursuant to paragraph (2) of subdivision (d), the agency or museum shall repatriate the requested human remains or cultural items to the requesting California Indian tribe or group within 90 days after posting the request for repatriation on the commission's internet website, unless a notice of inventory completion or notice of intent to repatriate also is required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). If the federal notice period extends beyond the 90-day period, the agency or museum shall repatriate the requested human remains or cultural items to the requesting California Indian tribe or group within 30 days following the completion of the federal notice period. Repatriation deadlines specified in this subdivision may be waived upon agreement of all parties.

(c) Within 30 days after notice has been provided by the commission, the museum or agency shall have the right to file with the commission any objection to the requested repatriation, based on its good faith belief that the requested human remains or cultural items are not culturally affiliated with the requesting California Indian tribe, have not been removed from the California Indian tribe's state aboriginal territory, or are not subject to repatriation under this chapter.

(d) If there is more than one request for repatriation for the same item, if there is a dispute between the requesting party and the agency or museum, if there is a dispute as to the contents of an inventory or summary, or if a dispute arises in relation to the repatriation process, the commission shall notify the affected parties of this fact and the state cultural affiliation or state aboriginal territory of the item in question shall be determined in accordance with this subdivision.

(1) The disputing parties shall submit documentation describing the nature of the dispute, in accordance with standard mediation practices and the commission's procedures, to the commission, which shall, in turn, forward the documentation to the opposing party or parties. The disputing parties shall meet within 30 days of the date of the mailing of the documentation with the goal of settling the dispute.

(2) If, after meeting, the parties are unable to settle the dispute, the commission, or a certified mediator who has the qualifications and experience appropriate to the dispute's circumstances and has been designated by the commission, shall mediate the dispute. If the museum or agency is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), any party also may request the assistance of the federal Native American Graves Protection and Repatriation Review Committee in resolving the dispute.

(3) Each disputing party shall submit complaints and supporting evidence to the commission or designated mediator and the other opposing parties detailing their positions on the disputed issues in accordance with standard mediation practices and the commission's mediation procedures. Each party shall have 20 days from the date the complaint and supporting evidence were mailed to respond to the complaints. All responses shall be submitted to the opposing party or parties and the commission or designated mediator.

(4) The commission or designated mediator shall review all complaints, responses, and supporting evidence submitted. Within 20 days after the date of submission of responses, the commission or designated mediator shall hold a mediation session and the parties shall come to a resolution or the mediator shall render a written decision within 7 days of the mediation session.

(5) When the disposition of human remains or cultural items is disputed, the party in possession of the human remains or cultural items shall retain possession until the mediation process is completed. Transfer or loan of human remains or cultural items shall not occur until the dispute is resolved.

(6) Deference shall be provided to tribal traditional knowledge, oral histories, documentation, and testimonies relative to other relevant categories of evidence.

(7) If the parties are unable to resolve a dispute through mediation, the dispute shall be resolved by the commission. The determination of the commission shall be deemed to constitute a final administrative remedy. Any party to the dispute seeking a review of the determination of the commission is entitled to file an action in the superior court seeking an independent judgment on the record as to whether the commission's decision is reasonable. The independent review shall not constitute a de novo review of a decision by the commission, but shall be limited to a review of the evidence on the record. Petitions for review shall be filed with the court not later than 30 days after the final decision of the commission.

(8) No later than June 30, 2021, the commission shall develop and adopt mediation procedures that will recognize the need for mediators with qualifications and experience appropriate to a dispute's circumstances. Dispute procedures may incorporate aspects of restorative justice practices.

SEC. 11. Section 8017 of the Health and Safety Code is amended to read:

8017. If there is a committee or group of California Indian tribes authorized by their respective tribal governments to accept repatriation of human remains and cultural items originating from their state aboriginal territory or culturally affiliated with those tribal governments, the items may be repatriated to those groups.

SEC. 12. The heading of Article 3 (commencing with Section 8025) of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code is amended to read:

Article 3. Conditions on the Use of State Funds for the Handling or Maintenance of Native American Human Remains and Cultural Items

SEC. 13. Section 8025 of the Health and Safety Code is amended to read:

8025. (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 Regents of the University of California shall not use state funds for the handling or maintenance of Native American human remains and cultural items unless the regents do all the following:

(1) Facilitate the establishment, composition, and function of systemwide and campus-level committees, established pursuant to Section 8026, 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 respectful and culturally appropriate treatment of Native American human remains and cultural items while in the possession of a University of California campus or museum, including policies regarding research requests and testing of any identified or potential Native American human remains or cultural items.

(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, in consultation with California Indian tribes, systemwide University of California 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 University of California 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 the proposed policies and procedures. 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.

(5) Implement the systemwide policies adopted pursuant to paragraph (2) by January 1, 2021, 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 repatriation or disposition of human remains or cultural items directly to the Office of the President of the University of California or a different oversight committee.

(b) A campus of the University of California 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.

SEC. 14. Section 8026 of the Health and Safety Code is amended to read:

8026. (a) (1) As a condition for using state funds to handle and maintain Native American human remains and cultural items, the Regents of the University of California shall establish a systemwide Native American Graves Protection and Repatriation Act Implementation and Oversight Committee, which shall also be known as the U.C. NAGPRA Committee.

(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) 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).

(D) 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).

(3) The regents or the regents' designee shall appoint members to the committee upon nomination by the commission.

(b) (1) The Regents of the University of California shall not use state funds for the handling or maintenance of Native American human remains and cultural items unless 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.) establishes a campus Native American Graves Protection and Repatriation Act Implementation Committee, which shall also be known as the NAGPRA Committee for that campus.

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

(A) Two 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 University of California. 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 regents or the regents' designee shall appoint members to the 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 Native American Graves Protection and Repatriation Act Implementation Committee for determination.

(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 University of California shall meet the following criteria:

(A) Have a graduate degree in either Archaeology, Anthropology, Native American Studies, Ethnic Studies, Law, Sociology, Environmental Studies, or History, with a focus in California.

(B) Have a minimum of five years' 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 University of California are not available or do not meet the criteria of paragraph (1), the University of California representative positions may be filled by retired emeriti of the University of California who meet the criteria of paragraph (1).