

- **Board of Directors**
Communications, Outreach and Legislation Committee

August 20, 2001 Board Meeting

9-12

Subject

Express Support for AB 978, (Steinberg- Sacramento), Native American Graves Protection and Repatriation Act of 2001

Description

Assembly Bill No. 978 ([Attachment 1](#)) would create the California Native American Graves Protection and Repatriation Act (Act). The Act, patterned after the federal Native American Grave Repatriation Act, provides that agencies such as Metropolitan shall provide an inventory of Native American human remains and/or “cultural items” in its possession to a newly created Repatriation Oversight Commission (Commission). The inventory shall be updated whenever Metropolitan receives possession or control of Native American human remains and/or cultural items. Following completion of the initial inventory, a Tribe claim cultural affiliation with the items may file a written request, along with evidence of cultural affiliation, with the Commission. The Commission shall then facilitate repatriation of the items. The Act also provides that Agencies that repatriate items in good faith are immune from liability stemming from a breach of a fiduciary duty, the public trust or a violation of state law inconsistent with the Act.

It is recommend the Board support AB 978 for the following two reasons: First, current state law leaves undefined which items, other than Native American human remains, are subject to state law other than the artifact “associated” with a grave or cairn. This lack of clarity has led to friction between Metropolitan’s obligations to Tribes on the one hand, and its public trust responsibilities for cultural resources on the other. For instance, on the Diamond Valley Lake Project, Metropolitan is still negotiating with the tribes about which items are “sacred” and must therefore be repatriated. This dispute has lingered for many years and includes an attempted mediation with the State Historic Preservation Officer. The bill, by bringing a good measure of clarity to an area of state law that is uncertain, may help prevent these types of disputes in the future. This, combined with the immunity to liability provided in the Act, would significantly reduce Metropolitan’s liability exposure when it comes to the handling of Native American artifacts. Secondly, many Metropolitan capital projects hold the high risk of unearthing Native American artifacts. The bill would establish a useful framework for a cooperative process among the various parties.

Policy

None

CEQA

The proposed action is not defined as a project under the California Environmental Quality Act (CEQA) because the proposed action involves continuing administrative activities such as general policy and procedure making (section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA per Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize Metropolitan to support Assembly Bill No. 978.

Fiscal Impact: None

Option #2

Do not authorize support of Assembly Bill No. 978

Fiscal Impact: None

Staff Recommendation

Option #1



Adán Ortega, Jr.
Vice President & Group Manager,
External Affairs

8/3/2001
Date



Ronald R. Gastelum
Chief Executive Officer

8/3/2001
Date

Attachment 1 – Assembly Bill No. 978

BLA #1250

AMENDED IN SENATE JULY 17, 2001

AMENDED IN SENATE JULY 3, 2001

AMENDED IN ASSEMBLY MAY 22, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

ASSEMBLY BILL

No. 978

Introduced by Assembly Member Steinberg

(Coauthors: Assembly Members Aroner, Calderon, Chan, Corbett, Correa, Frommer, Hertzberg, Hollingsworth, Kelley, Koretz, Nation, Robert Pacheco, Pavley, Strickland, Strom-Martin, Vargas, Washington, Wesson, and Zettel)

(Coauthors: Senators Alpert, Battin, *Brulte*, Burton, Chesbro, Figueroa, Karnette, Kuehl, McClintock, and Vincent)

February 23, 2001

An act to add Chapter 5 (commencing with Section 8010) to Part 2 of Division 7 of the Health and Safety Code, relating to human remains.

LEGISLATIVE COUNSEL'S DIGEST

AB 978, as amended, Steinberg. Native American graves protection and repatriation.

Existing law contains provisions regarding the regulation of human remains disposal and burials.

This bill, the California Native American Graves Protection and Repatriation Act of 2001, would require all state agencies and museums that receive state funding and that have possession ~~and~~ or control over collections of human remains or cultural items, as defined, to complete



an inventory *or summary* of these remains and items on or before ~~July 1, 2002~~ *January 1, 2003, with certain exceptions*, would provide a process for the identification and repatriation of these items to the appropriate tribes, and would authorize the imposition of civil penalties for failure to comply with the requirements of this bill. The bill would also establish the Repatriation Oversight Commission, composed of 9 members, with specified duties relating to the repatriation process.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 5 (commencing with Section 8010) is
2 added to Part 2 of Division 7 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 5. CALIFORNIA NATIVE AMERICAN GRAVES
6 PROTECTION AND REPATRIATION

7
8 Article 1. General Provisions

9
10 8010. This chapter shall be known, and may be cited as the
11 California Native American Graves Protection and Repatriation
12 Act of 2001.

13 8011. It is the intent of the Legislature to do all of the
14 following:

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

18 (b) Apply the state's repatriation policy consistently with the
19 provisions of the Native American Graves Protection and
20 Repatriation Act (25 U.S.C. Sec. 3001 et seq.), which was enacted
21 in 1990.

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

26 (d) Encourage voluntary disclosure and return of remains and
27 cultural items by an agency or museum.



1 (e) Provide a mechanism whereby lineal descendants and
2 culturally affiliated California Indian tribes that file repatriation
3 claims for human remains and cultural items under the Native
4 American Graves Protection and Repatriation Act (25 U.S.C. Sec.
5 3001 et seq.) or under this chapter with California state agencies
6 and museums may request assistance from the commission in
7 ensuring that state agencies and museums are responding to those
8 claims in a timely manner and in facilitating the resolution of
9 disputes regarding those claims.

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

13

14 Article 2. State Cultural Affiliation and Repatriation

15

16 8012. As used in this chapter, terms shall have the same
17 meaning as in the federal Native American Graves Protection and
18 Repatriation Act (25 U.S.C. Sec. 3001, et seq.), as interpreted by
19 federal regulations, except that the following terms shall have the
20 following meaning:

21 (a) "Agency" means any division, department, bureau,
22 commission, board, council, city, county, city and county, district,
23 or other political subdivision of the state, but does not include any
24 school district.

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

30 (c) "Commission" means the Repatriation Oversight
31 Commission established pursuant to Article 3 (commencing with
32 Section 8025).

33 (d) "Cultural items" shall have the same meaning as defined
34 by Section 3001 of Title 25 of the United States Code, except that
35 it shall mean only those items that originated in California.

36 (e) "Control" means having ownership of human remains and
37 cultural items sufficient to lawfully permit a museum or agency to
38 treat the object as part of its collection for purposes of this chapter,
39 whether or not the human remains and cultural items are in the
40 physical custody of the museum or agency. Items on loan to a



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1 museum or agency from another person, museum, or agency shall
2 be deemed to be in the control of the lender, and not the borrowing
3 museum or agency.

4 (f) “State *cultural* affiliation” means that there is a
5 relationship of shared group identity that can reasonably be traced
6 historically or prehistorically between members of a present-day
7 California Indian Tribe, as defined in subdivision (i), and an
8 identifiable earlier tribe or group. Cultural affiliation is established
9 when the preponderance of the evidence, based on geography,
10 kinship, biology, archaeology, linguistics, folklore, oral tradition,
11 historical evidence, or other information or expert opinion,
12 reasonably leads to such a conclusion.

13 (g) “Inventory” means an itemized list that summarizes the
14 collection of human remains and ~~cultural items~~ *associated*
15 *funerary objects* in the possession or control of an agency or
16 museum. This itemized list may be the inventory list required
17 under the federal Native American Graves Protection and
18 Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

19 ~~(h) “Museum” means an entity or state or local government~~
20 ~~agency, including a higher educational institution, excluding~~
21 ~~school districts, that receives state funds.~~

22 ~~(i) “California Indian Tribe” means any tribe located in~~
23 ~~California that meets the definition of Indian Tribe under the~~
24 ~~Native American Graves Protection and Repatriation Act (25~~
25 ~~U.S.C. Sec. 3001 et seq.) or any tribe that is not recognized by the~~
26 ~~federal government that is petitioning for federal recognition and~~
27 ~~listed in the Bureau of Indian Affairs Branch of Acknowledgement~~
28 ~~and Research petitioner list pursuant to Section 82.1 and following~~
29 ~~of Title 25 of the Federal Code of Regulations.~~

30 ~~(j)–~~

31 (h) “Summary” means a document that summarizes the
32 collection of unassociated funerary objects, sacred objects, or
33 objects of cultural patrimony in the possession or control of an
34 agency or museum. This document may be the summary prepared
35 under the federal Native American Graves Protection and
36 Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

37 (i) “Museum” means an entity, including a higher educational
38 institution, excluding school districts, that receives state funds.

39 (j) “California Indian tribe” means any tribe located in
40 California to which any of the following applies:



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

4 (2) *It is not recognized by the federal government, but is*
5 *indigenous to the territory that is now known as the State of*
6 *California, and both of the following apply:*

7 (A) *It is listed in the Bureau of Indian Affairs Branch of*
8 *Acknowledgement and Research petitioner list pursuant to Section*
9 *82.1 of Title 25 of the Federal Code of Regulations.*

10 (B) *It is determined by the commission to be a tribe that is*
11 *eligible to participate in the repatriation process set forth in this*
12 *chapter. The commission shall publish a document that lists the*
13 *California tribes meeting these criteria, as well as authorized*
14 *representatives to act on behalf of the tribe in the consultations*
15 *required under paragraph (4) of subdivision (a) of Section 8013*
16 *and in matters pertaining to repatriation under this chapter.*
17 *Criteria that shall guide the commission in making the*
18 *determination of eligibility shall include, but not be limited to, the*
19 *following:*

20 (i) *A continuous identity as an autonomous and separate tribal*
21 *government.*

22 (ii) *Holding itself out as a tribe.*

23 (iii) *The tribe as a whole has demonstrated aboriginal ties to*
24 *the territory now known as the State of California and its members*
25 *can demonstrate lineal descent from the identifiable earlier groups*
26 *that inhabited a particular tribal territory.*

27 (iv) *Recognition by the Indian community and non-Indian*
28 *entities as a tribe.*

29 (v) *Demonstrated membership criteria.*

30 (k) *“Possession” means having physical custody of human*
31 *remains and cultural items with a sufficient legal interest to*
32 *lawfully treat the human remains and cultural items as part of a*
33 *collection. The term does not include human remains and cultural*
34 *items on loan to an agency or museum.*

35 ~~(k)~~

36 (l) *“Preponderance of the evidence” means that the party’s*
37 *evidence on a fact indicates that it is more likely than not that the*
38 *fact is true.*

39 8013. (a) ~~On or before July 1, 2002, any~~ *Any agency or*
40 *museum that has possession or control over collections of*



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1 *California Native American* human remains and ~~cultural items~~
2 *associated funerary objects* shall complete an inventory of all
3 these remains and ~~cultural items~~ *associated funerary objects* and,
4 to the extent possible based on all information possessed by the
5 agency or museum, do all of the following:

6 (1) Identify the geographical location, state cultural affiliation,
7 and the circumstances surrounding their acquisition.

8 (2) List in the inventory the human remains and cultural items
9 that are clearly identifiable as to state cultural affiliation with
10 *California Indian* tribes. These items shall be listed first in order
11 to expedite the repatriation of these items.

12 (3) List the human remains and cultural items that are not
13 clearly identifiable by cultural affiliation but that, given the
14 totality of circumstances surrounding their acquisition and
15 characteristics are determined by a reasonable belief to be human
16 remains and cultural items with a ~~Native American~~ *state* cultural
17 affiliation *with one or more California Indian tribes*.

18 ~~(4) Tribes~~ *Consult with California Indian tribes* believed by the
19 agency or museum to be affiliated with the items ~~shall be~~
20 ~~consulted~~, during the compilation of the inventory as part of the
21 determination of affiliation. If the agency or museum cannot
22 determine which *California Indian* tribes are believed to be
23 affiliated with the items, then tribes that may be affiliated with the
24 items shall be consulted during the compilation of the inventory.

25 ~~(5)~~

26 (b) *Any agency or museum that has possession or control over*
27 *collections of California Indian unassociated funerary objects,*
28 *sacred objects, or objects of cultural patrimony shall provide a*
29 *written summary of the objects based upon available information*
30 *held by the agency or museum. The summary shall describe the*
31 *scope of the collection, kinds of objects included, reference to*
32 *geographical location, means and period of acquisition, and state*
33 *cultural affiliation, where readily ascertainable. The summary*
34 *shall be in lieu of an object-by-object inventory. Each agency or*
35 *museum, following preparation of a summary pursuant to this*
36 *subdivision, shall consult with California Indian tribes and*
37 *tribally authorized government officials and traditional religious*
38 *leaders.*

39 (c) *Each agency or museum shall complete the inventories and*
40 *summaries required by subdivisions (a) and (b) by January 1,*



1 2003, or within one year of the date on which the commission
2 issues the list of California Indian tribes provided for under
3 paragraph (2) of subdivision (i) of Section 8012, whichever is
4 later.

5 (d) Upon request of a California Indian tribe, a museum or
6 agency shall supply additional available documentation to
7 supplement the information required by ~~subdivision (a)~~
8 ~~subdivisions (a) and (b)~~. For purposes of this paragraph,
9 “documentation” means a summary of existing museum or
10 agency records, including inventories or catalogs, relevant studies,
11 or other pertinent data for the limited purpose of determining the
12 geographical origin, cultural affiliation, and basic facts
13 surrounding the acquisition and accession of California Native
14 American human remains and ~~associated funerary objects~~ *cultural*
15 *items* subject to this section. This section shall not be construed to
16 authorize the completion or initiation of any scientific study of
17 human remains or cultural items.

18 ~~(b)~~

19 (e) Within 90 days of completing the inventory *and summary*
20 ~~specified in subdivision (a) subdivisions (a) and (b)~~, the agency or
21 museum shall provide a copy of the inventory *and summary* to the
22 commission. The commission shall, in turn, *publish notices of*
23 *completion of summaries and inventories on its Web site for 30*
24 *days, and make the inventory and summary available to any*
25 *requesting tribe or state affiliated tribe.*

26 ~~(e) The inventory~~

27 (f) *The inventory and summary* specified in ~~subdivision (a)~~
28 ~~subdivisions (a) and (b)~~ shall be completed by all agencies and
29 museums that have possession or control of Native American
30 human remains or cultural items, regardless of whether the agency
31 or museum is also subject to the requirements of the federal Native
32 American Graves Protection and Repatriation Act (25 U.S.C. Sec.
33 3001 et seq.). Any inventory *or summary*, or any portion of an
34 inventory *or summary*, that has been created to meet the
35 requirements of the Native American Graves Protection and
36 Repatriation Act (25 U.S.C. Sec. 3001 et seq.) may be used to meet
37 the requirements of this chapter, if appropriate.

38 ~~(d)~~

39 (g) *Any agency or museum that has completed inventories and*
40 *summaries on or before January 1, 2002, as required by the federal*



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1 *Native American Graves Protection and Repatriation Act (25*
2 *U.S.C. Sec. 3001 et seq.) shall be deemed to be in compliance with*
3 *this section provided that the agency or museum does both of the*
4 *following:*

5 (1) *Provide a copy of the inventories and summaries to the*
6 *commission by July 1, 2002, or within 30 days of the date on which*
7 *the commission is formed, whichever is later.*

8 (2) *Prepare supplementary inventories and summaries as*
9 *necessary to comply with subdivisions (a) and (b) for those*
10 *portions of their collections that originate from California and that*
11 *have not been determined to be culturally affiliated with federally*
12 *recognized tribes which, in the case of inventories, are those*
13 *portions of the collections of an agency or museum that have been*
14 *identified on their inventories under the federal Native American*
15 *Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et*
16 *seq.) as “culturally unidentifiable”, by January 1, 2003, or within*
17 *one year of the date on which the commission issues the list of*
18 *California Indian tribes provided for under paragraph (2) of*
19 *subdivision (j) of Section 8012, whichever is later.*

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

24 ~~(e)~~

25 (i) *Following completion of the initial ~~inventory~~ inventories*
26 *and summaries specified in ~~subdivision (a)~~ subdivisions (a) and*
27 *(b), each agency or museum shall update its ~~inventory~~ inventories*
28 *and summaries whenever the agency or museum receives*
29 *possession or control of human remains or cultural items that were*
30 *not included in the initial ~~inventory~~ inventories and summaries.*
31 *Upon completion, the agency or museum shall provide a copy of*
32 *its updated ~~inventory~~ inventories and summaries to the*
33 *commission. Nothing in this section shall be construed to mean*
34 *that a museum or agency may delay repatriation of items in the*
35 *initial inventory until the updating of all inventories and*
36 *summaries is completed.*

37 8014. *A tribe claiming state cultural affiliation and requesting*
38 *the return of human remains and cultural items listed in the*
39 *inventory or summary of an agency or museum or that requests the*
40 *return of human remains and cultural items that are not listed in the*



1 inventory but are believed to be in the possession or control of the
2 agency or museum in the state shall do both of the following:

3 (a) File a written request for the human remains and cultural
4 items with the commission and the agency or museum believed to
5 have possession or control.

6 (b) Provide evidence that would establish that items claimed
7 are ~~in the category~~ *cultural items* and are culturally affiliated with
8 *the California Indian tribe making the claim*. Evidence of cultural
9 affiliation need not be provided in cases where cultural affiliation
10 is reasonably established by the inventory *or summary*.

11 8015. (a) Upon receiving a written request for repatriation of
12 an item on the inventory, the commission shall forward a copy of
13 the request to the agency or museum in possession of the item, if
14 the criteria specified in subdivision (b) *of Section 8016* have been
15 met, and if that party has not already received the request. *At this*
16 *time, the commission shall also publish a notice of intent to*
17 *repatriate on its Web site for 30 days*. If there are no other requests
18 for a particular item *and there is not unresolved objection pursuant*
19 *to subdivision (c) of Section 8016* within 90 days of the date of
20 distribution *and publication* of the inventory *or summary* and
21 completion of any federal Native American Graves Protection and
22 Repatriation Act (25 U.S.C. Sec. 3001 et seq.) repatriation process
23 related to the item, the agency or museum in possession of the item
24 shall repatriate the requested item to the requesting party. This
25 repatriation shall occur within 30 days after the last day of the
26 90-day period, or on a date agreed upon by all parties.

27 (b) Nothing in this section shall be construed to prohibit any
28 requesting party, a tribe, an agency, or a museum from
29 coordinating directly with each other on repatriation, or to prohibit
30 the repatriation at any time of any undisputed items to the
31 requesting party prior to completion of any requirements set forth
32 in this chapter. The commission shall receive, for their records,
33 copies of all repatriation agreements and shall have the power to
34 enforce these agreements.

35 8016. (a) If there is more than one request for repatriation for
36 the same item, or there is a dispute between the requesting party
37 and the agency or museum, or if a dispute arises in relation to the
38 repatriation process, the commission shall notify the affected
39 parties of this fact and the cultural affiliation of the item in question
40 shall be determined in accordance with this section.



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1 (b) Any agency or museum receiving a repatriation request
2 pursuant to subdivision (a) shall repatriate human remains and
3 cultural items if all of the following criteria have been met:

4 (1) The requested human remains or cultural items meet the
5 definitions of human remains or cultural items that are subject to
6 inventory requirements under subdivision (a) of Section 8013.

7 (2) The state cultural affiliation of the human remains or
8 cultural items is established as required under subdivision (f) of
9 Section 8012.

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

14 (4) None of the exemptions listed in Section 10.10(c) of the
15 Title 43 of the Federal Code of Regulations apply.

16 (5) *All other applicable requirements of regulations adopted*
17 *under the federal Native American Graves Protection and*
18 *Repatriation Act (25 U.S.C. Sec. 3001 et seq.), contained in Part*
19 *10 of Title 43 of the Code of Federal Regulations, have been met.*

20 (c) Within 30 days after notice has been provided by the
21 commission, the museum or agency shall have the right to file with
22 the commission any objection to the requested repatriation, based
23 on its good faith belief that the requested human remains or
24 cultural item is not culturally affiliated with the requesting
25 California tribe or is not subject to repatriation under this chapter.

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

33 (e) If, after meeting pursuant to subdivision (b), the parties are
34 unable to settle the dispute, the commission, or a certified mediator
35 designated by the commission in accordance with subdivision (b)
36 of Section 8026, shall mediate the dispute.

37 (f) Each disputing party shall submit complaints and
38 supporting evidence to the commission or designated mediator
39 and the other opposing parties detailing their positions on the
40 disputed issues in accordance with standard mediation practices



1 and the commission's mediation procedures. Each party shall have
2 20 days from the date the complaint and supporting evidence were
3 mailed to respond to the complaints. All responses shall be
4 submitted to the opposing party or parties and the commission or
5 designated mediator.

6 (g) The commission or designated mediator shall review all
7 complaints, responses, and supporting evidence submitted. Within
8 20 days after the date of submission of responses, the commission
9 or designated mediator shall hold a mediation session and render
10 a decision within seven days of the date of the mediation session.

11 (h) When the disposition of any items are disputed, the party in
12 possession of the items shall retain possession until the mediation
13 process is completed. No transfer of items shall occur until the
14 dispute is resolved.

15 (i) Tribal oral histories, documentations, and testimonies shall
16 ~~be afforded the same evidentiary weight as archaeological studies~~
17 ~~and documentation.~~ *not be afforded less evidentiary weight than*
18 *other relevant categories of evidence on account of being in those*
19 *categories.*

20 (j) If the parties are unable to resolve a dispute through
21 mediation, the dispute shall be resolved by the commission. The
22 determination of the commission shall be deemed to constitute a
23 final administrative remedy. ~~A party to the dispute may commence~~
24 ~~an action in the superior court, seeking a review of the~~
25 ~~determination of the commission to determine whether it was~~
26 ~~supported by substantial evidence.~~ *Any party to the dispute seeking*
27 *a review of the determination of the commission is entitled to file*
28 *an action in the superior court seeking an independent judgement*
29 *on the record as to whether the commission's decision is supported*
30 *by a preponderance of the evidence. The independent review shall*
31 *not constitute a de novo review of a decision by the commission,*
32 *but shall be limited to a review of the evidence on the record.*
33 Petitions for review shall be filed with the court not later than 30
34 days after the final decision of the commission.

35 8017. If there is a committee or group of tribes authorized by
36 their respective tribal governments to accept repatriation of items
37 originating from their region and culturally affiliated with those
38 tribal governments, then the items may be repatriated to those
39 groups.



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1 8018. An agency or museum that repatriates human remains
2 and cultural items in good faith pursuant to this chapter is not liable
3 for claims by an aggrieved party or for claims of breach of a
4 fiduciary duty or the public trust or of violation of state law that
5 are inconsistent with this chapter. No action shall be brought on
6 behalf of the state or any other entity or person for damages or for
7 injunctive relief for a claim of improper disposition of human
8 remains or cultural items if the agency or museum has complied
9 with the provisions of this chapter.

10 8019. Nothing in this section shall be construed to prohibit the
11 governing body of a ~~Native American~~ *California Indian* tribe or
12 group *authorized by Section 8017* from expressly relinquishing
13 control over any human remains or control or title to any cultural
14 item.

15 8020. Notwithstanding any other provision of law, and upon
16 the request of any party or an intervenor, the commission or
17 designated mediator may close part of a mediation session to the
18 public if the commission or designated mediator finds that
19 information required at the mediation session may include
20 identification of the specific location of a burial site, human
21 remains and cultural items or that information necessary for a
22 determination regarding repatriation may compromise or interfere
23 with any religious practice or custom.

24 8021. The filing of an appeal by either party automatically
25 stays an order of the commission or a designated mediator on
26 repatriation of human remains and cultural items.

27

28 Article 3. Repatriation Oversight Commission

29

30 8025. (a) There is hereby established the Repatriation
31 Oversight Commission composed of ~~nine~~ 10 members as follows:

32 (1) ~~Three~~ Two voting members appointed by the Governor
33 from nominations made by federally recognized California tribes
34 within the state. One member each shall represent the ~~northern~~,
35 central, and southern areas of the state.

36 (2) Two voting members appointed by the Speaker of the
37 Assembly from nominations made by federally recognized
38 California tribes within the state. One member each shall represent
39 the northern and southern areas of the state.



1 (3) One voting member appointed by the President of the
2 Senate pro Tempore from nominations made by federally
3 recognized California tribes within the state. This member shall
4 represent the central area of the state.

5 ~~(4) Two voting members~~ *One voting member appointed by the*
6 *Senate Committee on Rules from nominations made by federally*
7 *recognized California tribes within the state. This member shall*
8 *represent the northern area of the state.*

9 (5) *One voting member* appointed by the Governor from
10 nominations submitted by state agencies or state-funded
11 universities and colleges ~~and museums.~~

12 ~~(b) One member selected by nonfederally recognized tribes~~
13 ~~shall be an ex officio nonvoting member of the commission.~~

14 ~~(c)~~

15 (6) *One voting member appointed by the Governor from*
16 *nominations submitted by the University of California.*

17 (7) *One voting member appointed by the Governor from*
18 *nominations submitted by the California Association of Museums.*

19 (8) *One voting member of a nonfederally recognized tribe*
20 *appointed by the Governor from nominations submitted by the*
21 *Native American Heritage Commission.*

22 (b) The executive secretary of the commission shall be
23 appointed by the Governor and shall be an ex officio nonvoting
24 member of the commission.

25 8026. The commission shall meet on a quarterly basis and
26 shall perform the duties specified in this section including, but not
27 limited to, the following:

28 (a) Order the repatriation of human remains and cultural items
29 in accordance with this chapter.

30 (b) Establish mediation procedures and, upon application of
31 the parties involved, mediate disputes between California tribes
32 and museums and agencies relating to the disposition of human
33 remains and cultural items. The commission shall have the power
34 of subpoena for purposes of discovery and may impose civil
35 penalties against any agency or museum that ~~denies or impedes the~~
36 ~~repatriation process~~ *intentionally or willfully fails to comply with*
37 *the provisions of this chapter.* Members of the commission shall
38 receive training in mediation for purposes of this subdivision. The
39 commission may delegate its responsibility to mediate disputes to
40 a certified mediator.



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1 (c) Administer the budget of the commission.

2 (d) Establish and maintain a website for communication
3 between tribes and museums and agencies.

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

7 (f) Accept grants or donations, real or in-kind, to carry out the
8 purposes of this chapter.

9 (g) By making recommendations to the Legislature, assist
10 California tribes in obtaining the dedication of appropriate state
11 lands for the purposes of reinterment of human remains and
12 cultural items.

13 (h) Request and utilize the advice and services of all federal,
14 state, and local agencies as necessary in carrying out the purposes
15 of this chapter.

16 (i) Prepare and submit to the Legislature an annual report
17 detailing commission activities, disbursement of funds, and
18 dispute resolutions relating to the repatriation activities under this
19 chapter.

20 (j) Refer any known noncompliance with the federal Native
21 American Graves Protection and Repatriation Act (25 U.S.C. Sec.
22 3001 et seq.) to the United States Attorney General *and the*
23 *Secretary of the Interior*.

24 (k) Impose administrative civil penalties against any agency or
25 museum that is determined by the commission to have violated any
26 provision of this chapter.

27 (l) Establish those rules and regulations the commission
28 determines to be necessary for the administration of this chapter.

29 8027. (a) Members of the commission shall not receive a
30 salary but shall be entitled to reimbursement for actual expenses
31 incurred in the performance of their duties.

32 (b) The chairperson of the commission shall be elected by the
33 members.

34 8028. (a) The term of any member of the commission shall
35 be for three years, and each member shall serve no more than two
36 ~~consecutive terms appointed from the same constituency as the~~
37 ~~constituency that was represented by the member whose~~
38 ~~membership is being replaced. Staggered terms shall be~~
39 *consecutive terms. Staggered terms shall be* established by the
40 drawing of lots at the first meeting of the commission so that a



1 simple majority of the members shall initially serve a three-year
2 term, and the remainder initially a two-year term.

3 (b) If a vacancy occurs, a replacement shall be named by the
4 ~~respective appointing authority~~ *same constituency as the*
5 *constituency that was represented by the member whose*
6 *membership is being replaced.* Replacements shall serve only for
7 the remainder of the vacant member's term.

8

9

Article 4. Penalties

10

11 8029. (a) Any agency or museum that fails to comply with
12 the requirements of this chapter may be assessed a civil penalty by
13 the commission, not to exceed twenty thousand dollars (\$20,000)
14 for each violation, pursuant to regulations adopted by the
15 commission. A penalty assessed under this section shall be
16 determined on the record after the opportunity for a hearing.

17 (b) In assessing a penalty under this section, the commission
18 shall consider the following factors, in addition to any other
19 relevant factors, in determining the amount of the penalty:

20 (1) The archaeological, historical, or commercial value of the
21 item involved.

22 (2) The cultural and spiritual significance of the item involved.

23 (3) The damages suffered, both economic and noneconomic,
24 by the aggrieved party.

25 (4) The number of violations that have occurred.

26 (c) If any agency or museum fails to pay a civil penalty
27 pursuant to a final order issued by the commission and the time for
28 judicial review has passed or the party subject to the civil penalty
29 has appealed the penalty or after a final judgment has been
30 rendered on appeal of the order, the Attorney General shall act on
31 behalf of the commission to institute a civil action in an
32 appropriate court to collect the penalty.

33 (d) *An agency or museum shall not be subject to civil penalties*
34 *for actions taken in good faith to comply with the federal Native*
35 *American Graves Protection and Repatriation Act (25 U.S.C. Sec.*
36 *3001 et seq.).*

37 8030. *The provisions of this chapter are severable. If any*
38 *provision of this chapter or its application is held invalid, that*



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- 1 *invalidity shall not affect other provisions or applications that can*
- 2 *be given effect without the invalid provision or application.*

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