

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

As part of the larger adoption of the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”), the Legislature created Health & Safety Code section 8029, to allow for the imposition of civil penalties up to the amount of \$20,000 for violations of CalNAGPRA. Health & Safety Code section 8029(a) requires that the imposition of a civil penalty be done in accordance with regulations adopted by the Native American Heritage Commission (“Commission”). While section 8029(b) establishes factors that the Commission must consider when determining the appropriate amount of a civil penalty, it does not provide for how investigations and Commission determinations are to be conducted. Rather, the statute leaves that to the discretion of the Commission.

BENEFITS

Benefits of the proposed regulation include allowing the Commission to impose civil penalties when an institution is in violation of both NAGPRA and CalNAGPRA. These regulations will establish a clear process and procedure by which the Commission may investigate and fine a non-complying institution. Additionally, the regulations will provide transparency to the public through quarterly reports, detailing complaints received by the Commission, the resolution, and amount of civil penalty imposed, if any.

PURPOSE

Section 31020: The purpose of this section is to ensure that section of CalNAGPRA found at Health and Safety Code section 8029 is consistent with the federal Native American Graves Protection and Repatriation Act.

Section 31021: The purpose of this section is to inform the public that the regulations apply to any Agency or Museum within the State of California that are in Possession or Control of California Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony.

Section 31022: The purpose of this section is to make clear that terms used in the regulations have the same meaning as those in section 8012 of the Health and Safety Code and to establish additional definitions for the purpose of these regulations.

Section 31023: The purpose of this section is to inform the regulated public that civil penalties of up to \$20,000 may be imposed for the violation of CalNAGPRA after notice and an opportunity to be heard before the Commission. Additionally, this section clarifies that an Institution is not subject to civil penalties for actions taken in good faith to comply with federal Native American Graves Protection and Repatriation Act.

Section 31024: The purpose of this section is to establish who may file a complaint alleging violations of CalNAGPRA, what a complaint must contain, how investigations of the complaint will be conducted, and possible outcomes.

Section 31025: The purpose of this section is to establish a public hearing process by which the Commission may impose a civil penalty.

Section 31026: The purpose of this section is to create a process for the Commission to deem any of its determinations a precedent decision.

Section 31027: The purpose of this section is to require the Commission to publish on its website quarterly reports, summarizing all complaints received, the parties to the dispute, and outcomes, including any civil penalty imposed.

NECESSITY

These regulations are necessary to implement Health & Safety Code section 8029, providing for the imposition of civil penalties up to the amount of \$20,000 for violations of CalNAGPRA, pursuant to regulations adopted by the Commission.

Section 31020: This section is necessary to inform the regulated public that this regulation carries out the enforcement provisions of CalNAGPRA in a way consistent with both state and federal repatriation law.

Section 31021: Because CalNAGPRA applies to any agency or museum within the State of California that are in possession or control of Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony, this section is necessary to establish that these regulations also apply in the same circumstances.

Section 31022: The first paragraph of this section is necessary to establish that all terms used in these regulations have the same meaning as defined in CalNAGPRA. Subsection (a) is necessary to make references to CalNAGPRA a defined shorthand term for ease of use by the regulated public. Subsection (b) is necessary to define the party initiating this regulatory process by filing a complaint, as this is not defined in CalNAGPRA. Subsection (c) is necessary to combine for ease of reference two terms that are used interchangeably in CalNAGPRA.

Section 31023: The first sentence of subsection (a) is set forth by statute; however, the remaining language in subsection (a) is necessary to specify what is not stated in the statute, that penalties will not be imposed without an opportunity for a public hearing. Additionally, subsection (a) is necessary to make specific the method of payment for penalties, which is not specified in statute. While CalNAGPRA establishes that an institution that is complying in good faith with federal law is exempt from civil penalties, it does not specify how that

compliance is determined. Subsection (b) is necessary to specify that Commission staff will consult with Federal NAGPRA program staff to make such a determination.

Section 31024: This section is necessary to establish how complaints are submitted and evaluated for the determination of a civil penalty. Subsection (a) is necessary to identify who may file a complaint, the acceptable format, and required substantive content. For the Commission to ensure accuracy and validity of enforcement actions it is necessary to receive information on the identity of the alleged violator, the alleged violation, and any additional facts and evidence of possession or control by an institution. It is necessary to clarify that information submitted in complaints that is explicitly protected from disclosure under the California Public Records Act will be maintained as confidential as a part of the Commission's enforcement process. Subsection (b) is necessary to ensure that the Commission inquires with the Federal NAGPRA program to determine whether an institution is in compliance with federal law. Furthermore, subsection (b) determines how coordination with the Federal NAGPRA program will be done and how the results will be communicated to the complaining party. Subsection (c) establishes prerequisites for moving forward with a complaint after consultation with Federal NAGPRA program staff. If a complaint does not contain sufficient information, subsection (c) is necessary to allow Commission staff to request additional information from the complaining party. If the Commission receives an unfounded complaint, subsection (c)(1) is necessary to specify that both parties will be notified. Subsection (c)(2)(A-B) is necessary to provide an institution with the option of either seeking informal resolution of the matter or to await the notice of assessment of civil penalty. Subsection (d) is necessary to allow the Commission to move forward in assessing a civil penalty if an institution fails to request informal discussions within 45 days of the mailing of a written notice. The Commission determined that 45 days was an adequate time for institutions to evaluate how they wished to respond while also respecting the need for expediency in resolving sensitive repatriation matters. The criteria for evaluation in subsection (d) are set forth by statute, and it is necessary to include it in these regulations. Subsection (e) is necessary to specify how and when the parties will be made aware of the proposed civil penalty. Additionally, subsection (e) (1-3) is necessary to establish that in response to a proposed civil penalty an institution may accept and pay the penalty; request informal discussions with Commission staff to attempt to resolve the matter; or request a public hearing.

Section 31025: The statute does not set forth a public hearing procedure for assessing and administering civil penalties and this section provides the regulated public with information about public hearing procedures. Subsection (a) is necessary to establish who is to act as the hearing officer for public hearings. Subsection (b) is necessary to establish the requisite number of Commissioners required for a hearing to move forward and protects against any potential conflicts of interest by a Commissioner. Furthermore, subsection (b) reiterates that evidence presented to the Commission in a public hearing that is otherwise confidential under California law will maintain its confidentiality. Subsection (c) is necessary to ensure that both parties are properly notified of a public hearing and its procedures at least 30 days prior to the hearing which was determined to be a reasonable time for the parties to prepare

while also recognizing the need urgency in repatriation matters. Additionally, it was necessary to note in subsection (c) that these public hearings are subject to the requirements set forth by the Bagley-Keene Open Meeting Act. Subsection (d)(1-7) is necessary to inform parties of the information and materials that Commissioners will consider at the public hearing, including the Commission staff evaluation and recommendation and written responses by the parties; testimony from the parties; comments by members of the public; additional evidence that was could not be previously submitted or was not previously reasonably available. Subsection (e) is necessary to ensure that Commissioners have all the information and time they need to make an objective and fair decision by permitting the Commission to request additional information and/or continue a hearing. Subsection (f) is necessary to advise the parties of the standard by which the Commission will weigh the evidence. Subsection (g) is necessary to clarify and specify the factors used by the Commission in determining the amount of civil penalty imposed. As provided in subsection (h), to ensure the Commission's decision is thorough, clear, and accurate it is necessary for the Commission to have 90 days after the hearing to provide the parties with a written decision. Further, it was necessary to prescribe that the written decision shall contain an explanation of the basis for the decision; facts considered; applicable law; tribal traditional knowledge; oral histories; documentation; and testimony.

Section 31026: Given the nature of the CalNAGPRA repatriation process, violations by one institution are likely to be substantively similar to violations by other institutions. To ensure consistency in decision making it is necessary for the Commission to designate precedent decisions. Subsection (a) is necessary to clarify that the Commission may choose to select any decision in part or whole as a precedent decision to ensure its applicability to future violations. Subsection (b) is necessary to clarify how a precedent decision may be used once it is designated. Subsection (c) is necessary to ensure that if the Commission for whatever reason determines a precedent decision is not effective, they may reverse in whole or in part the prior designation. If the Commission wishes to designate or withdraw the designation, subsection (d) is necessary to specify that the public will be notified and have the opportunity to provide comment as required by the Bagley Keene Open Meeting Act. If a precedent decision is challenged and invalidated by a court of competent jurisdiction subsection (e) is necessary to enable the Commission to modify the decision and supersede all prior precedent decisions as necessary. In the interest of transparency to the regulated public, subsection (f) is necessary to ensure precedent decisions are posted to the Commission website while still ensuring the protection of confidential information.

Section 31027: This section is necessary to create transparency by ensuring that each complaint and its disposition are accurately identified and summarized and publicly available. This includes identifying the parties involved, whether the complaint was founded, and the outcome and penalties assessed.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Commission relied on the following:

Colorado River Indian Tribes letter dated November 12, 2025

Lytton Rancheria email dated October 23, 2025

Modoc Nation email dated November 4, 2025

Rincon Band of Luiseno Indians letter dated August 11, 2025

United Auburn Indian Community letter dated August 8, 2025

Wilton Rancheria letter dated August 11, 2025

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulations will make specific the implementation of CalNAGPRA enforcement pursuant to Health and Safety Code section 8029 and do not impose a financial burden on institutions. The only potential cost to institutions would be if they are assessed a civil penalty after having been found to not be in good faith compliance with NAGPRA, if applicable, and are in violation of CalNAGPRA.

According to Commission records, as of January 6, 2026, there are 80 institutions in California that have reported that they hold collections of human remains, associated funerary objects, unassociated funerary objects, and objects of cultural patrimony. However, it is unknown to the Commission the number of institutions that may not be complying in good faith with the Federal Native American Graves and Repatriation Act and CalNAGPRA and are therefore subject to civil penalties.

Creation or Elimination of Jobs within the State of California

The regulations are designed to allow the Commission to assess civil penalties up to the amount of \$20,000 for violations of CalNAGPRA through the establishment of a clear process and procedure by which the Commission may investigate and fine a non-complying institution. These activities will be performed by existing state staff. Therefore, no jobs in California will be created or eliminated.

Creation of New or Elimination of Existing Businesses Within the State of California

The regulations are designed to allow the Commission to assess civil penalties up to the amount of \$20,000 for violations of CalNAGPRA through the establishment of a clear process and procedure by which the Commission may investigate and fine a non-complying institution. These activities will be performed by existing state staff. Therefore, no new businesses in California will be created or existing businesses eliminated.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

The regulations are designed to allow the Commission to assess civil penalties up to the amount of \$20,000 for violations of CalNAGPRA through the establishment of a clear process and procedure by which the Commission may investigate and fine a non-complying institution. These activities will be performed by existing state staff. Therefore, no existing businesses in California will be expanded or eliminated.

EVIDENCE SUPPORTING FINDING NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Although the proposed action may directly affect businesses statewide, including small businesses, the Commission concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

In addition to a civil penalty for non-compliance with CalNAGPRA, businesses may incur the expense of staff and possibly legal counsel. However, because only a small number of the collections subject to CalNAGPRA are held by anything other than colleges, universities, or large museums, the Commission has determined that it is unlikely that more than a few businesses in the state would be subject to these regulations. Therefore, the proposed regulations will not have a significant statewide adverse economic impact directly on California businesses, including small businesses.

ALTERNATIVES DETERMINATION

No reasonable alternatives were proposed or considered, and these regulations are not prescriptive.