

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1331 (Bradford)  
Version: April 3, 2024  
Hearing Date: April 16, 2024  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

The Fund for Reparations and Reparative Justice

**DIGEST**

This bill establishes the Fund for Reparations and Reparative Justice in the State Treasury for the purpose of funding policies approved by the Legislature and the Governor that indemnify descendants of an African American chattel enslaved person in the United States or descendants of a free Black person living in the United States prior to the end of the 19th century.

**EXECUTIVE SUMMARY**

In 2020, the Legislature passed, and the Governor signed, SB 3121 (Weber, Ch. 319, Stats. 2020), which established the first-in-the nation Task Force to study and develop reparations proposals for California's role in accommodating and facilitating slavery, perpetuating the vestiges of enslavement, enforcing state-sanctioned discrimination, and permitting pervasive, systematic structures of discrimination against African Americans. The Task Force completed its work and issued its final report in 2023. The report contains a number of recommended remedies the state could implement in order to atone for its decades of state-sanctioned white supremacy.

This bill establishes the Fund for Reparations and Reparative Justice (Fund) in the State Treasury. Upon appropriation by the Legislature, the funds may be expended for the purpose of funding policies approved by the Legislature and the Governor that indemnify descendants of an African American chattel enslaved person in the United States or descendants of a free Black person living in the United States prior to the end of the 19th century. The bill requires the Controller to transfer from the Special Fund for Economic Uncertainties a specified amount, as specified in the annual budget, and permits the Fund to receive money from any other federal, state, or local grant, or from any private donation or grant.

This bill is sponsored by the author and is supported by over 20 organizations and three individuals. The Committee has not received timely opposition to this bill.

### **PROPOSED CHANGES TO THE LAW**

Existing constitutional law:

- 1) Provides for equal protection under the law as follows:
  - a) Under the United States Constitution, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th Amend., § 1.)
  - b) Under the California Constitution, provides that a person may not be denied the equal protection of the laws, and that a citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. (Cal. Const., art. I, § 7.)
- 2) Provides that the State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (Cal. Const., art. I, § 31.)

Existing federal law:

- 1) Acknowledges that a grave injustice was done to U.S. citizens and permanent residents of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II, which were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership; and that the interned individuals of Japanese ancestry suffered enormous, both material and intangible, as a result of the fundamental violations of their basic civil liberties and constitutional rights. (50 U.S.C. § 4202(a).)
- 2) Provided, as restitution for 1), a payment of \$20,000 to each individual of Japanese ancestry who was a U.S. citizen or permanent resident and was subjected to internment during World War II, as specified; or, if the person is deceased, to their surviving spouse, child, or parent. (50 U.S.C. §§ 4215, 4218.)
- 3) Established the Civil Liberties Public Education Fund within the U.S. treasury, which expired ten years after its creation, for the purpose of distributing the funds under 2). (50 U.S.C. § 4214.)
- 4) Acknowledges that the United States forcibly relocated Aleut civilian residents of the Pribilof Islands and the Aleutian Islands west of Unimak Island during World War II to temporary camps in isolated regions of Southeast Alaska, where the United States failed to provide reasonable care for the Aleuts, resulting in

widespread illness, disease, and death; and that the United States failed to protect Aleut personal and community property while the property was under its protection or control. (50 U.S.C. § 4202(b).)

- 5) Provided, as restitution for 4), the value of land taken from the Aleut; the establishment of a trust from which to pay for destroyed and damaged property; and \$12,000 to each eligible Aleut, subject to the availability of funds, as specified. (50 U.S.C. §§ 4233, 4235, 4236.)
- 6) Establishes the Aleutian and Pribilof Islands Restitution Fund to fund 5). (50 U.S.C. § 4233.)

Existing state law:

- 1) Establishes, contingent on an appropriation, the Forced or Involuntary Sterilization Compensation Program, administered by the California Victim Compensation Board (CalVCB), which is intended to provide compensation to individuals who are the survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979 or of coercive sterilization performed on an individual in the custody and control of the Department of Corrections and Rehabilitation after 1979. (Health & Saf. Code, div. 20, ch. 1.6, §§ 24210 et seq.)
- 2) Establishes the Forced or Involuntary Sterilization Compensation Account in the State Treasury, which is administered by the CalVCB; funds appropriated for the Account must be used for the purpose of providing payment to persons determined eligible under 1). (Health & Saf. Code, §§ 24212, 24213.)

Former state law:

- 1) Established the Task Force to develop reparations proposals for African Americans, with special consideration for African Americans who are descended from persons enslaved in the United States, and provided that the Task Force statutes would remain in effect until July 1, 2023, and as of that date be repealed. (former Gov. Code, §§ 8301-8301.7, repealed by Gov. Code § 8301.7.)

This bill:

- 1) States that the Legislature finds and declares all of the following:
  - a) California has begun the process of addressing its role in accommodating and facilitating slavery, perpetuating the vestiges of enslavement, propagating state-sanctioned discrimination, and tolerating persistent, systemic structures of discrimination against living African Americans across its systems of government at the local and state level.

- b) As a result of this historic and continued discrimination, African Americans in California, especially those whose lineage can be traced to an enslaved person, continue to suffer economic, educational, and health hardships that have prevented them as a people from achieving equality.
  - c) In order to maintain slavery, government actors adopted white supremacist beliefs and passed laws to create a racial hierarchy and control enslaved and free African Americans.
  - d) After the end of slavery, although the Federal Constitution recognized African Americans as citizens on paper, the government failed to give them the full rights of citizenship and failed to protect them from widespread terror and violence.
  - e) Along with a dereliction of the United States' duty to protect its African American citizens, direct federal, state, and local government actions continued to enforce the racist lies created to justify slavery. These laws and government-supported cultural beliefs have since formed the foundation of innumerable modern laws, policies, and practices across the nation.
  - f) Even after the abolition of slavery, its badges and incidents remain embedded in the political, legal, health, financial, educational, cultural, environmental, social, and economic systems of the United States of America. Racist, casteist, untrue, and harmful stereotypes created to support slavery continue to physically and mentally harm African Americans today.
  - g) Without a remedy specifically targeted to dismantle our country's racist foundations and heal the injuries inflicted by colonial and American governments, the "badges and incidents of slavery" will continue to harm African Americans in almost all aspects of American life.
  - h) The Legislature recognizes and accepts responsibility for all of the harms and atrocities committed by representatives of the state who promoted, facilitated, enforced, and permitted the institution of chattel slavery and its legacy of ongoing badges and incidents of slavery that form the systemic structures of discrimination.
  - i) The Legislature intends that the benefits issued under this chapter be dedicated to policies or programs that indemnify African American descendants of a chattel enslaved person or descendants of a free Black person living in the United States prior to the end of the 19th century.
- 2) Establishes in the State Treasury the Fund for Reparations and Reparative Justice for the purpose of funding policies that indemnify descendants of an African American chattel enslaved person in the United States or descendants of a free Black person living in the United States prior to the end of the 19th century.
  - 3) Requires the Controller to transfer from the Special Fund for Economic Uncertainties to the Fund for Reparations and Reparative Justice an amount, as determined by the Department of Finance, equal to six percent of the transfers from the General Fund to the Special Fund for Economic Uncertainties, as specified in the annual Budget

Act. Upon appropriation by the Legislature, the monies in the fund shall be expended for the purpose described in 2).

- 4) Permits the Fund for Reparations and Reparative Justice to receive monies from any other federal, state, or local grant, or from any private donation or grant, to effect its purpose.

### COMMENTS

#### 1. Author's comment

According to the author:

Over the last two years, I served as a member of the Task Force to Develop Reparations Proposals for African Americans (Task Force). Through a lot of study and testimony from experts and individual Californian's, my Task Force colleagues and I documented the history of slavery in California and patterns of systemic racial injustice that continued long after slavery ended.

We documented the racially- motivated taking of land owned by blacks through eminent domain, over-policing and mass incarceration and the denial of home ownership through practices like red-lining that have created generational harm - harm that still exist to this very day.

When slavery ended in this country in 1863, a promise was made - a promise of land that was never paid.

SB 1331 establishes a fund - the Fund for Reparations and Reparative Justice that would be available to begin paying that debt.

People might say - "Why California? California was a free state!" It was a Free State in name only. California practiced everything that a slave state did.

People may also say, "I didn't own slaves, why should I have to pay?" I say to them, if you can inherit generational wealth, then you can inherit generational debt.

Reparations are a debt owed to the descendants of slavery. They are not a gift. They are not a hand-out or charity. They are what was promised, owed and overdue.

SB 1331 is written to recognize the financial challenges and budget deficit that the state currently faces. It does not take funding away from any program. But it creates a fund that would be funded through a percentage of the general fund that would be set aside in the state fund for Economic Uncertainties (the budget

reserve). SB 1331 represents a commitment from the state to fund the Reparations policies approved by the Legislature and the Governor.

## 2. The Task Force's reports and recommendations

In 2020, the Legislature enacted AB 3121 (Weber, Ch. 319, Stats. 2020), which created the first-in-the-nation Task Force to explore options for providing reparations to African Americans, and particularly the descendants of enslaved persons, in recognition of California's role in the heinous institution of slavery and the post-abolition perpetuation of racist institutions.<sup>1</sup> The Task Force released an interim report on June 1, 2022, which provided the Task Force's preliminary findings regarding the ongoing and compounding harms caused by federal, state, and local governments from slavery and the "'badges and incidents of slavery'" that continued to be imposed on African Americans long after slavery was formally abolished.<sup>2</sup> The report notes that, because "the effects of slavery infected every aspect of American society over the last 400 years...it is nearly impossible to identify every 'badge and incident of slavery,' to include every piece of evidence, or describe every harm done to African Americans."<sup>3</sup>

On June 29, 2023, the Task Force issued its final report to the California Legislature.<sup>4</sup> The final report incorporates and updates the interim report and recommends appropriate remedies, including compensation, for African Americans as recompense for the State's gross human rights violations against African Americans and their descendants.<sup>5</sup> The final report explains:

[T]he harms inflicted upon African Americans have not been incidental or accidental—they have been by design. They are the result of an all-encompassing web of discriminatory laws, regulations, and policies enacted by government. These laws and policies have enabled government officials and private individuals and entities to perpetuate the legacy of slavery by subjecting African Americans as a group to discrimination, exclusion, neglect, and violence in every facet of American life. And there has been no comprehensive effort to disrupt and dismantle

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<sup>1</sup> HR 40 (Lee, 118th Cong., 2023-2024), a federal bill to create a federal commission to study the effects of slavery and discrimination on African Americans and devise reparations proposals, is pending before the House Committee on Judiciary. The bill has been introduced every year since 1989.

<sup>2</sup> California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report (June 1, 2022).

<sup>3</sup> *Id.* at p. 5.

<sup>4</sup> See generally California Task Force to Study and Develop Reparation Proposals for African Americans, Final Report (Jun. 29, 2023), available at <https://oag.ca.gov/system/files/media/full-ca-reparations.pdf> (Final Report) (link current as of April 11, 2024).

<sup>5</sup> *Id.* at p. 4.

institutionalized racism, stop the harm, and redress the specific injuries caused to descendants and the larger African American community.<sup>6</sup>

The Task Force developed its recommendations for reparations taking into account this willful infliction of harm and applying international standards and principles for the remedy of wrongs and injuries caused by a government.<sup>7</sup>

### 3. This bill establishes the Fund for Reparations and Reporative Justice

In order to effectuate any of the Task Force's recommendations that the Legislature may choose to adopt, this bill establishes the Fund for Reparations and Reporative Justice in the State Treasury. The bill requires the Controller to transfer from the Special Fund for Economic Uncertainties a specified amount, as specified in the annual budget. The bill also permits the Fund to receive money from any other federal, state, or local grant, or from any private donation or grant. Upon appropriation by the Legislature, the funds may be expended for the purpose of funding policies approved by the Legislature and the Governor that indemnify descendants of an African American chattel enslaved person in the United States or descendants of a free Black person living in the United States prior to the end of the 19th century.

### 4. The creation of the Fund for Reparations and Reporative Justice does not appear to violate equal protection guarantees or Proposition 209

The U.S. and California Constitutions guarantee equal protection under the law,<sup>8</sup> and Section 31 of Article I of the California Constitution (better known as Proposition 209) prohibits discrimination or preferential treatment "on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."<sup>9</sup> This bill does not appear to run afoul of these provisions. Most straightforwardly, this bill only establishes the Fund for Reparations and Reporative Justice; it does not simultaneously fund any particular programs to be paid out. The mere existence of a fund which could, in the future, carry out reparations measures which could, theoretically, be subject to court scrutiny does not render the mere creation of the Fund problematic.<sup>10</sup>

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<sup>6</sup> *Id.* at p. 48.

<sup>7</sup> *Id.* at p. 512.

<sup>8</sup> U.S. Const., 14th amend., § 1; Cal. Const., art I, § 7.

<sup>9</sup> Cal. Const. art. I, § 31 (added by initiative measure (Prop. 209, approved Nov. 5, 1996), eff. Nov. 6, 1996). ACA 7 (Jackson, 2024) would ask the voters to repeal Proposition 209; the amendment is pending in the Senate Rules Committee.

<sup>10</sup> *Cf. Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 ("To support a determination of facial constitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute. Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (cleaned up).)

Moreover, because the Legislature retains control over the policies paid out through the Fund for Reparations and Reparative Justice, the Legislature can continue to ensure that all of those policies meet constitutional muster. Thus, as long as the Legislature adopts constitutionally vetted measures for funding, the Fund itself will not find itself paying for constitutionally prohibited programs. Pending legislation with programs to be paid from the Fund – for example, SB 1050 (Bradford, 2024), pending before this Committee, which provides compensation for property taken without just compensation due to racially discriminatory motives on a race-neutral basis – illustrate how the Fund may be used to pay for restitution programs without implicating equal protection protections or Proposition 209 at all.

Additionally, the purpose of the Fund for Reparations and Reparative Justice is, facially, a fund to pay for reparations programs for the harms of chattel enslavement; eligibility is not tied to the race of the recipient. Instead, these programs would be implemented on the basis of whether a person is descended from an African American chattel enslaved person or a free Black person living in the U.S. prior to the end of the 19th century – persons descended from the individuals subjected to the horrors of American chattel slavery and the worst of the post-Reconstruction state-sponsored discrimination. Under these criteria, the race of the claimant would not be at issue; the sole question would be whether they are descended from the people whom the State subjected to the abuses for which it now seeks to make restitution.

Finally, to the extent the specific reparations program in question is for the harms caused by America’s project of the chattel enslavement of Africans and African Americans, precedent suggests that granting reparations to persons for an injury that was inflicted on the basis of their race or national origin is acceptable under the guarantees of equal protection provided that it is targeted. For example, awarding reparations for America’s policy of internment during World War II might have been a problem if it sought to award reparations to all Japanese Americans, but because the reparations was targeted to the individuals and their descendants who were actually victims of internment, there were no concerns about the program.<sup>11</sup> For the same reasons, this analysis would be different if California’s reparations project was intended to provide compensation to all persons of a particular race, regardless of how long their ancestors had been in the country or whether those ancestors suffered the harms for which the state intended to make reparations. And with respect to Proposition 209, Committee staff did not find any case law addressing Proposition 209’s application to reparations programs; but given that this bill does not establish any preference or unequal treatment in “public employment, public education, or public contracting,” or

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<sup>11</sup> See 42 U.S.C. §§ 4211-4220. Going a step further, the Supreme Court’s most recent case discussing the Equal Protection clause affirms that “remediating specific, identified instances of past discrimination that violated the Constitution or a statute” justifies a wholly race-based classification that does not violate the Fourteenth Amendment (*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023) 600 U.S. 181, 207.)



make any awards of any kind, it does not appear that this bill falls within Proposition 209's ambit.<sup>12</sup>

5. Arguments in support

According to a coalition of the bill's supporters:

We call for the California legislature to lead the nation by enacting SB 1331. While our government has made strides towards health and racial equity, now is the time to prioritize focused investment in the infrastructure for Black health and wealth and pay the debts that are owed to Black communities from generations of harmful policies.

**SUPPORT**

ACLU California Action  
Alliance for Reparations, Reconciliation, and Truth  
Africatown Coalition  
American Redress Coalition of California – Sacramento  
BAMBD CDC  
Bay Area Regional Health Inequities Initiative  
Black Reparations Project  
California African American Chamber of Commerce  
California Black Health Network  
CFT – A Union of Educators & Classified Professionals, AFT, AFL-CIO  
Coalition for a Just and Equitable California  
Collaborising  
Greater Sacramento Urban League  
Lineage Equity and Advancement Project  
National Volunteer Council on Freedman Affairs  
PRC | Black Leadership Council  
Prevention Institute  
Reparation Generation  
Rising Communities  
The Greenlining Institute  
Western Center on law and Poverty  
Three individuals

**OPPOSITION**

None received

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<sup>12</sup> See Cal. Const., art. I, § 31.

## RELATED LEGISLATION

### Pending Legislation:

SB 1403 (Bradford, 2024) establishes the California American Freedman Affairs Agency, which would implement the recommendations of the Task Force, as approved by the Legislature and the Governor. SB 1403 is pending in the Senate Governmental Organization Committee.

SB 1050 (Bradford, 2024) requires the Office of the Chief Financial Officer within the California American Freedmen Affairs Agency to collect and investigate claims of racially motivated eminent domain, as defined, and to distribute, upon appropriation by the Legislature, just compensation to the rightful owner of the property. SB 1050 is pending before this Committee and is set to be heard on the same date as this bill.

SB 490 (Bradford, 2024) establishes the California Freedmen Affairs Agency which would, among other things, implement and oversee the implementation of the recommendations of the Task Force, including establishing specific offices within the Agency that are not present in SB 1403. SB 490 is pending before the Assembly Judiciary Committee.

ACA 7 (Jackson, 2024) proposes an amendment to the California Constitution's prohibition on the State granting preferential treatment to any group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting, to permit the state to use state monies to fund research-based, or research-informed, and culturally specific programs in any industry, including, but not limited to, public employment, public education, and public contracting, if those programs are established or otherwise implemented by the State for purposes of increasing the life expectancy of, improving educational outcomes for, or lifting out of poverty specific groups based on race, color, ethnicity, national origin, or marginalized genders, sexes, or sexual orientations, subject to approval by the Governor. ACA 7 is pending before the Senate Rules Committee.

### Prior Legislation:

AB 2296 (Jones-Sawyer, 2022), would have made it easier for members of the Task Force to be removed, allowed officers of the Task Force to be removed by a majority vote of the members, and extended the July 1, 2023, sunset on the Task Force to July 1, 2024. The bill was passed by the Legislature but vetoed by Governor Newsom, whose veto message stated that he was vetoing the bill at the request of the author of the original legislation that created the Task force.

SB 796 (Bradford, Ch. 435, Stats. 2021) required the Director of Parks and Recreation, by December 31, 2021, to execute a deed amendment to exclude Bruce's Beach, a portion of

land within Manhattan State Beach, from the requirement to use the property for recreational purposes only; and authorized Los Angeles County to sell, transfer, or encumber Bruce's Beach, upon terms and conditions determined by the county board of supervisors to be in the best interest of the county and the general public.

AB 3121 (Weber, Ch. 319, Stats. 2020) established the Task Force and its mission, with a sunset date of July 1, 2023.

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