

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

SB 1403 (Bradford)
Version: April 3, 2024
Hearing Date: April 9, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

California American Freedmen Affairs Agency

DIGEST

This bill establishes the California American Freedman Affairs Agency, which would implement the recommendations of the Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States (Task Force), as approved by the Legislature and the Governor.

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 implements one of the Task Force's recommendations by establishing the California American Freedman Affairs Agency (Agency) to implement any of the reparations programs that the Legislature and Governor adopt. The bill also establishes, within the Agency, a Genealogy Office and an Office of Legal Affairs to carry out certain tasks, including determining how to establish eligibility for programs which may be adopted to provide restitution specifically to the descendants of chattel enslaved persons and free Black persons living in the United States prior to the end of the 19th century. The author has proposed amendments to the bill's definition of "descendants," which are set forth in Part 5 of this analysis.

This bill is sponsored by the author and is supported by ACLU California Action, the Africatown Coalition, the American Redress Coalition of California – Sacramento , BAMBD CDC, the Bay Area Regional Health Inequities Initiative, the Black Reparations Project, the California Black Health Network, the California Black Lineage Society, the Coalition for a Just and Equitable California, Collaborising, the Lineage Equity and Advancement Project, the National Volunteer Council on Freedman Affairs, Reparation Generation, and the Western Center on Law and Poverty. The Committee has not received timely opposition to this bill. If this Committee passes this bill, it will then be heard by the Senate Governmental Organization Committee.

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 damages, 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) Defines the following terms:
 - a) "Agency" means the California American Freedman Affairs Agency.
 - b) "Descendants" means 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.¹
 - c) "Secretary" means the Secretary of the California American Freedman Affairs Agency.
 - d) "Task Force" means the Task Force to Study and Develop Reparations Proposals for African Americans, with a Special Consideration for African Americans Who are Descendants of Persons Enslaved in the United States, as established under former Government Code section 8301.1.

- 2) Provides that the California American Freedman Affairs Agency is hereby established in state government, under the direct control of a secretary who is responsible to the Governor.
 - a) The Governor shall appoint the secretary of the agency who shall perform all duties, exercise all powers, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the office.
 - b) The salary of the secretary shall be fixed pursuant to Government Code section 12001.

- 3) Provides that the California Freedman Affairs Agency shall implement the recommendations of the Task Force, as approved by the Legislature and the Governor.
 - a) As part of its duties, the Agency shall determine how an individual's status as a descendant shall be confirmed.
 - b) Proof of an individual's descendant status shall be a qualifying criterion for benefits authorized by the state for descendants.

- 4) Provides that, to accomplish the goals and obligations in 3), the California Freedman Affairs Agency shall include both of the following offices:
 - a) A Genealogy Office, to support potential reparations claimants by providing access to expert genealogical research to confirm reparations eligibility and expedited assistance with the reparations claims process.
 - b) An Office of Legal Affairs to provide legal advice, counsel, and services to the Agency and its officials, and to ensure that the Agency's programs are administered in accordance with applicable legislative authority. The office shall also advise the head of the Agency on legislative, legal, and regulatory initiatives and serve as an external liaison on legal matters with other state agencies and other entities.

¹ The author has proposed amendments to this definition, which are set forth in Part 5 of this analysis.

- 5) Provides that the California American Freedman Affairs Agency shall oversee and monitor existing state agencies and departments tasked with engaging in direct implementation of the policies that fall within the scope of the existing state agencies and departments' authority, including policies related to reparations.

COMMENTS

1. Author's comment

According to the author:

SB 1403 would create the California American Freedman Affairs Agency for the purpose of implementing and overseeing the policies and laws enacted relating to reparations. This bill is foundational to California's successful implementation of Reparations Task Force's final recommendations. The creation of a state level agency is one of the task force's key recommendations and essential in administering policies that do not fit in to an already existing department or agency.

2. The Task Force and its 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.² 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.³ 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."⁴

On June 29, 2023, the Task Force issued its final report to the California Legislature.⁵ The final report incorporates and updates the interim report and recommends

² 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.

³ California Task Force to Study and Develop Reparation Proposals for African Americans, Interim Report (June 1, 2022). All links in this analysis are current as of April 4, 2024.

⁴ *Id.* at p. 5.

⁵ 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/ab3121/report> (Final Report). All links in this analysis are current as of April 4, 2024.

appropriate remedies, including compensation, for African Americans as recompense for the State's gross human rights violations against African Americans and their descendants.⁶ 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 institutionalized racism, stop the harm, and redress the specific injuries caused to descendants and the larger African American community.⁷

The Task Force developed its recommendations for reparations taking into account this willful infliction of harm and by applying international standards and principles for the remedy of wrongs and injuries caused by a government.⁸

One of the Task Force's primary recommendations is the creation and funding of the California American Freedman Affairs Agency (the Agency).⁹ The Task Force recommends that the Agency be "dedicated to the implementation and success of the recommendations" of the Task Force, as well as be given "an oversight role to ensure that existing state agencies properly implement the legislative enactments resulting from the Task Force's recommendations."¹⁰

3. This bill establishes the California American Freedman Affairs Agency to carry out Legislatively adopted recommendations of the Task Force

This bill establishes the California American Freedman Affairs Agency (Agency) as a cabinet-level agency to implement any of the Task Force's recommendations that are enacted by the Legislature and signed by the Governor. The bill does not give the Agency the independent authority to adopt and implement Task Force recommendations; it is limited to those measures adopted through the legislative process. The establishment of the Agency does not obligate the Agency or the State to adopt any such recommendations of the Task Force, nor does it create a right to reparations outside of any measures the Legislature and the Governor may adopt.

The bill also establishes, within the Agency, a Genealogy Office. The Genealogy Office would have the important tasks of determining how a person could qualify as a

⁶ *Id.* at p. 4.

⁷ *Id.* at p. 48.

⁸ *Id.* at p. 512.

⁹ *Id.* at p. 635.

¹⁰ *Id.* at p. 636.

“descendant,” to the extent that status is necessary for eligibility for programs adopted by the Legislature, and to provide access to genealogical records that may be relevant to establishing descendant status. As the author proposes to amend it, a “descendant” is a person who is descended from an African American chattel enslaved person in the U.S., or from a free Black person who lived in the U.S. prior to the end of the 19th century (or both, as the case will often be). Thus, to the extent future reparations programs enacted by the Legislature and signed by the Governor have eligibility that is conditioned on a person’s status as a descendent, the Genealogy Office will be tasked with both establishing how eligibility may be proven, as well as providing assistance to potentially eligible individuals whose personal records might not date back far enough to prove eligibility.

Finally, the bill establishes within the Agency an Office of Legal Affairs. The Office of Legal Affairs would provide the Agency with legal advice and counsel and to serve as an external liaison on legal matters.

4. The creation of the California American Freedman Affairs Agency does not appear to violate equal protection guarantees or Proposition 209

The U.S. and California Constitutions guarantee equal protection under the law,¹¹ 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.”¹² This bill does not appear to run afoul of these provisions.

Most straightforwardly, this bill only establishes the Agency; it does not simultaneously enact any Task Force recommendations for the Agency to carry out. The mere existence of an Agency 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 Agency problematic.¹³

Moreover, because the Legislature retains control over which Task Force recommendations to approve, the Legislature can continue to ensure that all of the reparations projects sent to the Agency for implementation meet constitutional muster. Thus, as long as the Legislature sends the Agency constitutionally vetted measures for implementation, the Agency itself will not find itself implementing constitutionally

¹¹ U.S. Const., 14th amend., § 1; Cal. Const., art I, § 7.

¹² 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.

¹³ 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).)

prohibited programs. Pending legislation with programs for the Agency to implement – for example, SB 1050 (Bradford, 2023), 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 Agency may be called on to implement restitution programs without implicating equal protection protections or Proposition 209 at all.

Additionally, as the author’s proposed amendments to the definition of “descendant” make clear, to the extent the Agency would be called on to implement reparations programs to correct the State’s involvement in chattel slavery, the intent is not to provide those reparations on the basis of race. 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. As explained by the author’s office, this definition was chosen to ensure eligibility is tied to the acts for which the State wishes to atone. Under this test, 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, the fact that the State is not moving forward to provide restitution for *all* harms caused by the State throughout history does not prohibit the State from moving forward with its project to provide reparations for chattel enslavement. Reparations programs – such as the provision of restitution to persons of Japanese descent and Aleuts interned during World War II,¹⁴ or to victims of the Holocaust,¹⁵ or to victims of forced sterilization¹⁶ – have never been expected to resolve every injury caused by the state for which restitution might be appropriate. To hold a state to this standard – no one can be made whole before everyone can be – would effectively prevent any group from ever receiving restitution. So while it may be appropriate for the State, going forward, to consider whether to establish reparations programs for other groups who suffered at the hands of the State, the existence of other, different potential claimants need not stop the State from moving forward with plans to provide restitution for its role in the harms caused by chattel enslavement.

5. Author’s amendments

The author proposes the following amendments to the bill’s definition of “descendants,” which will harmonize the definition with the one in SB 1331 (Bradford,

¹⁴ See 50 U.S.C., ch. 52, §§ 4201 et seq.

¹⁵ See United States Department of State, Office of the Special Envoy for Holocaust Issues, The JUST Act Report: Germany (Mar. 2020), available at <https://www.state.gov/reports/just-act-report-to-congress/germany/>.

¹⁶ See Health & Saf. Code, §§ 24210 et seq.

2024). Deletions are in strikethrough and additions are in bold/underline, and the changes are subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment

At page 2, in lines 12-14, modify as follows:

(b) "Descendants" means ~~African American~~ descendants of a **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.

6. Arguments in support

According to the American Redress Coalition of California – Sacramento:

One of the key advantages of the proposed California American Freedmen Affairs Agency is its ability to centralize efforts and expertise in navigating the complexities of Reparations policy. By consolidating responsibilities under a single entity, California can ensure a coordinated and coherent approach to implementing Reparations programs, thereby maximizing their impact and effectiveness.

Furthermore, the creation of this agency underscores our state's commitment to confronting its past and working towards a more equitable future. It sends a powerful message that we are willing to confront uncomfortable truths and take meaningful action to address the lingering effects of historical injustices.

Moreover, the establishment of a state Reparations agency presents an opportunity to engage directly with residents who are descendants of persons enslaved in the U.S. in the design and implementation of Reparations programs. By prioritizing community input and participation, the agency can ensure that Reparations initiatives are tailored to the specific needs and preferences of those they seek to benefit.

SUPPORT

ACLU California Action

Africatown Coalition

American Redress Coalition of California – Sacramento

BAMBD CDC

Bay Area Regional Health Inequities Initiative

Black Reparations Project

California Black Health Network

California Black Lineage Society
Coalition for a Just and Equitable California
Collaborising
Lineage Equity and Advancement Project
National Volunteer Council on Freedman Affairs
Reparation Generation
Western Center on Law and Poverty

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation:

SB 1331 (Bradford, 2024) establishes the Fund for Reparations and Reparative Justice in the State Treasury with the purpose of funding policies 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, and provides for its funding as specified. SB 1331 is pending before this 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) is similar to this bill, in that it establishes the California Freedmen Affairs Agency, but includes a greater number of specified offices within the Agency. SB 490 is pending before the Assembly Judiciary Committee.

AB 3089 (Jones-Sawyer, 2024) provides that the State of California recognizes and accepts responsibility for all of the harms and atrocities committed by the state, its representatives thereof, and entities under its jurisdiction who promoted, facilitated, enforced, and permitted the institution of chattel slavery and the enduring legacy of ongoing badges and incidents from which the systemic structures of discrimination have come to exist; and that the State of California accepts this responsibility with a formal apology for the harms perpetrated by the state, and orders this apology to be memorialized in the form of a proclamation to be publicly and conspicuously displayed permanently in the California State Capitol building. AB 3089 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.
