

Government Administration and Elections Committee

JOINT FAVORABLE REPORT

Bill No.: HB-6203

AN ACT EXEMPTING CERTAIN RECORDS CONCERNING NATIVE
AMERICAN CULTURAL KNOWLEDGE FROM PUBLIC DISCLOSURE UNDER

Title: THE FREEDOM OF INFORMATION ACT.

Vote Date: 3/30/2021

Vote Action: Joint Favorable

PH Date: 3/24/2021

File No.: 468

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SPONSORS OF BILL:

The Government Administration and Elections Committee

REASONS FOR BILL:

This bill would prevent public access to records or information pertaining to the repatriation of Native American artifacts and remains. In accordance with the standards set by the Native American Graves Protection and Repatriation Act (NAGPRA), this bill would provide privacy to tribes by exempting records of traditional cultural knowledge from disclosure under the Freedom of Information Act.

RESPONSE FROM ADMINISTRATION/AGENCY:

Katie S. Dykes, Commissioner, Connecticut Department of Energy & Environmental Protection (DEEP): DEEP expressed support for this bill because it will help to facilitate the safe repatriation of Native American remains and artifacts. DEEP contends that public access to records pertaining to burial grounds and other cultural sites would result in increased foot traffic, desecration and looting. DEEP urges the committee to ensure that historical information is still accessible to the public. However, DEEP emphasized the need to protect any information that jeopardizes the sanctity of Native American religious sites, artifacts or cultural heritage.

Freedom of Information Commission (FOIC): Acknowledging the narrowly tailored language in the current form of the bill, FOIC did not express opposition to the bill as it is currently written. Recognizing the Native American Graves and Repatriation Act (NAGPRA), which requires tribes to prove "cultural affiliation" by disclosing sacred tribal information, FOIC is not opposed to exempting sacred records from disclosure under the Freedom of

Information Act. FOIC put strong emphasis on the need for disclosure of any non-sacred correspondence or records maintained by a public agency in relation to the repatriation process. In particular, if any correspondence or records show how a public agency is making decisions and fulfilling the repatriation process, FOIC believes that full disclosure is required.

Catherine Labadia, Staff Archaeologist, State Historic Preservation Office at the Department of Economic and Community Development: Ms. Labadia described the role of the State Historic Preservation Office in terms of the identification and protection of Native American cultural sites. Under current processes, cultural tribal traditions are recorded by the government if a tribe wants to protect land, or if they wish to regain land, artifacts or remains that were wrongfully taken. Ms. Labadia stated that the current process has resulted in sacred knowledge being disclosed as a result of FOI requests. Public exposure of such sacred information diminishes the relationships between indigenous communities and offices like the State Historic Preservation Office. Ultimately, Ms. Labadia highlighted the need for laws protecting information that might put artifacts, cultural heritage or native sights at risk.

NATURE AND SOURCES OF SUPPORT:

Brenda Geer, Vice Chairwoman, Eastern Pequot Tribal Nation (EPTN): Citing the need to protect the identity of their ancestors, the sacredness of their cultural items and the sanctity of Native American religion, Eastern Pequot Tribal Nation submitted testimony in support of the bill. EPTN believes that Native Americans have been oppressed by the imposition of Eurocentric and American systems of values, ideals and knowledge. Under the current guidelines of NAGPRA, which require tribes to disclose sacred information to prove “cultural affiliation,” Native Americans are put into a position that violates their human rights. If sacred tribal information is subject to disclosure under the Freedom of Information Act, EPTN contends that Native Americans will be at risk for cultural erasure.

Glenn Mitoma, Director, Dodd Human Rights Impact at UConn: Mr. Mitoma describes the Native American Graves Protection and Repatriation Act (NAGPRA) as an essential mechanism for addressing the injustices that Native Americans have faced for generations. Mitoma expressed his support for the Freedom of Information Act and the quest for transparency and accountability in government. However, Mitoma believes that FOIA requests that expose traditional tribal knowledge, ceremonial practices and the locations of sacred sites ultimately violate the human rights of Native Americans.

Mike Savino, President, Connecticut Council on Freedom of Information (CCFOI): CCFOI understands why tribes would want to protect sacred information from being disclosed. That being said, CCFOI expressed support for the bill, but emphasized the need for the bill to be narrowly tailored to with a sole focus on preventing the disclosure of sacred information. If the legislation is overly broad, CCFOI contends that the exemption could be applied to the entire repatriation process, which would ultimately prevent any reasonable oversight from taking place.

Schaghticoke Tribal Nation, Connecticut: The Schaghticoke Tribal Nation believes that exempting sacred tribal information from disclosure under the Freedom of Information Act would help to remedy the various human rights and freedom of religion violations that indigenous people have suffered.

Sarah Sportman, Connecticut State Archeologist: Ms. Sportman testified that allowing the public to access information pertaining to the location of indigenous sites would take away from the sacred nature of these sights and might expose the location to looters. In the past, FOIA requests in Connecticut have resulted in the release of the geographic location of culturally significant events, tribal rosters that included personal information of indigenous members, and the geographic location of tribal spiritual centers. Releasing this information risks the identity of ancestors, the sacredness of cultural items and the sanctity of indigenous religion and rituals.

Melissa Tantaquidgeon Zobel, Director, Mohegan Cultural Department: The Mohegan Cultural Department is supportive of transparency in government, however, they believe that it is imperative to protect cultural knowledge records that relate to the repatriation of ancestral remains and artifacts. The Mohegan Cultural Department discussed our country's expansive history of treating Native Americans and their cultural heritage as relics and museum artifacts. While museums are important centers for cultural preservation, the Mohegan Cultural Department believes that museums must respect tribal culture, repatriate items that don't belong to them, and ultimately protect any information that could pose harm to indigenous culture.

Marissa Turnbull, Tribal Historic Preservation Officer, Mashantucket Pequot Tribal Nation: The Mashantucket Pequot Tribal Nation conveyed their gratitude for the committee's bipartisan action on this bill. In effect, this bill would help repatriate Native American human remains, funerary objects, and other sacred artifacts without fear of any public access to the confidential tribal information.

Jacqueline Veninger-Robert, Ph. D, Native American Graves Protection and Repatriation Act (NAGPRA) Coordinator, Office of State Archaeology: Ms. Veninger-Robert's testimony focused on the intricacies of NAGPRA and its significance in terms of advancing human rights for Native Americans. In terms of NAGPRA's regulatory procedure, tribes must prove cultural affiliation in order to have artifacts and remains repatriated to them. Fulfilling this burden of proof is very invasive for tribes, as it requires them to disclose their tribal identity, religious rituals and their culture. Because NAGPRA and its provisions are carried out by the government, any information that a tribe shares when trying to establish cultural affiliation can be accessed by a FOI request. Ms. Veninger-Robert emphasized the role that this bill would have in ensuring that confidential cultural knowledge records are exempted from public disclosure.

NATURE AND SOURCES OF OPPOSITION:

None expressed.

Reported by: Trevor Hoffman

Date: 3-30-21