

ASSEMBLY THIRD READING
AB 3121 (Weber)
As Introduced February 21, 2020
Majority vote

SUMMARY:

Establishes an eight-member task force to do the following: study the issue of reparations for African Americans; propose ways to educate the California public about its findings; make recommendations on the forms that reparations might take; and submit a report of its findings to the Legislature, as specified.

Major Provisions

- 1) Makes findings and declarations relating to the practice and scope of slavery in the United States (and the colonies that became the United States) between 1619 and 1865, as well as evidence of slavery's legacy of structural discrimination against living African Americans in the United States. Finds and declares that, following the abolition of slavery, governments at all levels continued to enforce laws or condone practices that disadvantaged African Americans, including sharecropping, convict leasing, mandatory segregation, redlining, unequal education, and disproportionate treatment at the hands of the criminal justice system.
- 2) Establishes the Task Force to Study and Develop Reparations Proposals for African Americans and requires it to do the following:
 - a) Identify, compile, and synthesize the documentary record on a range of subjects relating to the institution of slavery as it existed in the United States, and the colonies that became the United States, from 1619 to 1865.
 - b) Recommend appropriate ways to educate Californians on the Task Force's findings.
 - c) Recommend appropriate remedies that consider, among other things, how any form of compensation should be awarded, through what instrumentalities, and who should be eligible for such compensation.
- 3) Requires the Task Force to submit a report of its findings and recommendations to the Legislature no later than one year from the date of its first meeting.
- 4) Specifies that the Task Force shall consist of eight members appointed as follows: two by the Governor, three by the pro Tempore of the Senate, and three by the Speaker of the Assembly. Specifies that each appointing authority shall appoint not more than two members of the same political party, and specifies that non-Legislative members of the Task Force shall have diverse backgrounds and be drawn from organizations that have historically championed the cause of reparatory justice. Specifies that members shall serve for the life of the Task Force and provides for the filling of any vacancy.
- 5) Specifies further that the Governor shall call the first meeting of the Task Force to occur no later than June 1, 2021; that five members shall constitute a quorum; that the Task Force shall select a chair and vice chair from among its members; and that Task Force members are entitled to per diem compensation and reimbursement of expenses, as specified and upon appropriation of the Legislature.

COMMENTS:

Fifty-two years ago the late historian John Hope Franklin, a distinguished pioneer in the field of African American History and adviser to two U.S. Presidents, wrote the following: "If the house is to be set in order, one cannot begin with the present; he must begin with the past." (John Hope Franklin, "Rediscovering Black America," *New York Times*, September 8, 1968). This bill proposes a small but important step towards setting the house in order by confronting our collective past as a nation and as a state. Specifically, AB 3121 would establish an eight-member task force to, among other things, gather and synthesize documentary evidence on the institution of slavery and its continuing legacy; recommend appropriate ways to educate the California public about its findings; and recommend appropriate remedies in light of the task force findings, including recommendations on the form compensation would take and who would be eligible for compensation. The bill requires the Governor to call the first meeting no later than June 1, 2021, and it requires the task force to submit a written report to the Legislature no later than one year after the date of the first meeting. At the latest, therefore, the report will be submitted no later than June 1, 2022, or earlier if the Governor calls the first meeting earlier.

Task Force Composition. The bill anticipates a Task Force consisting of both Legislators and non-legislators with special interest or expertise in reparations proposals. Of the Task Force's eight members, two will be appointed by the Governor, three by the President pro Tempore of the Senate, and three by the Speaker of the Assembly. The bill seeks a Task Force with at least a degree of bi-partisanship by prohibiting each appointing authority from appointing more than two members of the same party. (This would ensure that no more than six of the eight members could be from the same party.) At least four members must come from outside of the Legislature, and specifically from organizations that have "historically championed the cause of reparatory justice." In addition, members should represent the state's demographic and geographic diversity. Finally, the bill entitles task force members to per diem compensation and reimbursement of expenses for not more than ten meetings, but only upon appropriation by the Legislature. Any legislators on the Task Force would only be reimbursed for meetings attended during adjournment.

AB 3121 does not offer any conclusions about the form that reparations should take or who would be eligible to receive them. Moreover, the bill does not speak solely in terms of reparations for "slavery." Rather, it asks the Task Force to also consider slavery's ongoing legacy of discriminatory policies and practices that, in some cases, continue to the present day.

Background: Although movements for reparations have a long history, recent attention to reparations is largely attributable to Ta-Nehisi Coates compelling article, "The Case for Reparations," in the June, 2014, issue of the *Atlantic*. Not surprisingly, Coates was the first witness to testify in hearings that the House Judiciary Committee held in June of 2019, on the fifth-year anniversary of the article. Although Coates' article certainly did not ignore the era of slavery and Jim Crow, the bulk of his article focused on Chicago in the years following World War II, when the policies of private lenders, insurance companies, and the federal government frustrated the efforts of African Americans to obtain the primary means of middle class wealth accumulation and the inter-generational transfer of wealth: home ownership. In addition, these policies perpetuated the problems of "white flight," which carried sources of revenue to white suburbs while allowing the increasingly African American cities to suffer from want of municipal services. Coates relates the stories of several African Americans who through hope, faith, hard work, and perseverance managed to become home owners against all odds. Behind

the handful of success stories, however, were many more who lost their home, as well as any equity that they would have earned if they had been able to obtain a mortgage. Coates highlights many of themes outlined in the history described above: that the legacy of slavery is not merely a matter of oppression but of "theft;" that the theft did not end with emancipation but continued well into the 20th century and even into our own times; and that it will be difficult to heal the wounds of the past without some form of acknowledgement and restorative justice.

H.R. 40: The Commission to Study and Develop Reparations Proposals for African Americans Act: First introduced in 1989 by U.S. Representative John Conyers, H.R. 40 provides for the establishment of a commission "to *study* and *consider* a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African Americans." (Since 1997, the resolution has carried the number "40" in reference to the broken post-Civil War promises of "forty acres and a mule.") Based upon its study and findings, the Commission would then make recommendations to Congress "on appropriate remedies." Although the popular conception of reparations is that it will result in some form of direct payments to African Americans – which would create a number of practical questions about just who would fund and receive payments – H.R. 40, like many calls for reparations over the years, recognizes that reparations and reconciliation could take many forms. Indeed, the purpose of the study is not only to document slavery and its legacy, but also consider the appropriate means and forms any recompense might take.

Perhaps because of the renewed attention attributable to the Coates' article, Congress held hearings on H.R. 40 for the first time since 2007, and it appears that the measure may, at long last, reach the floor of the House for a vote. If it does, its fate may hinge on the outcome of the 2020 election. It is possible that a window of opportunity for H.R. 40 has finally opened, as most of the candidates in the Democratic primary expressed support for some form of reparations. Also, the number of co-sponsors for H.R. 40 has increased, from 35 co-sponsors of the 2016-2017 version authored by the late John Conyers, to 114 co-sponsors for the current version authored by Representative Barbara Lee. On the other hand, regardless of the outcome of the 2020 election, attention to the issue may once again dissipate, as it has in every session since 1989.

This bill, therefore, comes at an opportune time, when there is an apparently increased willingness to undertake a thoughtful and informed discussion of the issue of reparations. Assuming, however, that a divided Congress will once again fail to take action on H.R. 40 – a fair assumption given its long history – AB 3121 gives California the opportunity take the lead in fostering a critically important and long overdue official discussion.

According to the Author:

According to the author, people who "suffer injuries and losses through the malicious or culpably negligent conduct of others have a right to redress. Reparations – making amends to right the wrongs of social injustice or war – have a long history in California and can take many forms. Apology is important. So are an accurate and public account of the violations along with commemoration and redress to those harmed. AB 3121 would require an in depth examination of the impacts of slavery and its afterlives in California and provide the framework to develop guidelines on how to begin to address the disparities born of a shameful history."

Arguments in Support:

The Western Center on Law and Poverty (WCLP), in its letter of support, provides a well-documented analysis of the ongoing disadvantages that African Americans still face in terms of poverty and homelessness, unemployment, the racial wealth gap, and other indicators of economic and educational opportunity. WCLP concludes, that "California has been a national leader in the movement for rights of Black Americans, but this work is incomplete if it does not include a conversation about Reparations. AB 3121 will also to advance the conversation of Reparations and develop ideas for how to overcome logistical implementation challenges. This bill will make a significant contribution to a timely and important policy dialogue."

Impact Brands, Inc., contends that "discriminatory policies and practices endured by African Americans for hundreds of years in the United States have left many African Americans economically disadvantaged. While most Americans are aware of this disadvantage no political or policy solution has been presented to atone for this dark and discriminatory history. AB 3121 provides the opportunity for a discussion to take place regarding possible solutions." Impact Brands concludes: "Humanity must be prioritized in the year 2020 and beyond. There is nothing more humane than a government 'righting' wrongs of actions it has committed towards its own citizens. Hundreds of years of politics and policies have left many African Americans living in deplorable conditions in California. AB 3121 seeks to address the politics and policies needed to change this reality."

Arguments in Opposition:

None on file

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, unknown, however possible costs could be in the hundreds of thousands of dollars to low millions of dollars in administrative, technical and legal staff as well as infrastructure and travel costs. This bill states assistance shall be provided to the Task Force by the state agency responsible for investigating unlawful discrimination complaints. That will most likely be either the Department of Justice (DOJ) or the Department of Fair Employment and Housing.

As a comparison, the California Alliance to Combat Trafficking and Slavery (CA ACTS) established through legislation last year, will cost the DOJ \$849,000 in FY 2019-20, \$1.9 million dollars in FY 2020-21, \$1.7 million dollars in FY 2021-22, \$1.5 million dollars in FY 2022-23 and \$783,000 in FY 2023-24 for additional staff and resources. Although this bill does not identify an agency responsible for overseeing the Task Force, costs may be similar in that the CA ACTS Task Force was assigned similar data collection and analysis duties.

VOTES:**ASM JUDICIARY: 8-3-0**

YES: Mark Stone, Chau, Chiu, Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Gallagher, Kiley, Obernolte

ASM APPROPRIATIONS: 13-4-1

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas

NO: Bigelow, Megan Dahle, Diep, Voepel

ABS, ABST OR NV: Fong

UPDATED:

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CONSULTANT: Thomas Clark / JUD. / (916) 319-2334

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