

AMENDED IN ASSEMBLY JUNE 30, 2002

AMENDED IN SENATE APRIL 30, 2002

AMENDED IN SENATE APRIL 2, 2002

SENATE BILL

No. 1816

Introduced by Senator Chesbro
(Coauthor: Assembly Member Strom-Martin)

February 22, 2002

An act to add Chapter 1.76 (commencing with Section 5097.995) to Division 5 of the Public Resources Code, relating to historical resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1816, as amended, Chesbro. Historical resources: Native American sacred sites: violations.

(1) Existing law prohibits a public agency, or a private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, from in any manner interfering with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution, or from causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

This bill would establish the Native American Historic Resource Protection Act, which would provide that any person who *unlawfully and maliciously* excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site, including any

historic or prehistoric ruins, burial ground, archaeological site, any inscriptions made by Native Americans at ~~such a~~ *the* site, any Native American rock art, or any archaeological or historic feature situated on private land or within any public park or place, is guilty of a misdemeanor, if the person knew or should have known that the site, art object, inscription, or feature was a Native American site, art object, inscription, or feature. The bill would subject a person found guilty of ~~such a~~ *the* violation to imprisonment in the county jail for up to one year,⁷ by a fine not to exceed \$10,000, or by both that fine and imprisonment. By creating a new crime, the bill would impose a state-mandated local program. The bill would also subject a person found guilty of ~~such a~~ violation of those provisions to a civil penalty in an amount not to exceed \$50,000 per violation.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Cultural resources and burial sites have always been, and
- 4 will continue to be, considered sacred to California Native
- 5 Americans.
- 6 (b) California Native American sacred cultural resources and
- 7 burial sites have been continuously looted and destroyed by grave
- 8 robbers and people wanting to sell sacred and cultural artifacts.
- 9 (c) California Native American sacred sites are nonrenewable
- 10 and need immediate protection.
- 11 (d) California Native American tribes have demonstrated
- 12 ancestral affiliation to historical and cultural resources.
- 13 (e) The United States Government and many western states
- 14 have realized the need for protection of this limited resource and
- 15 have enacted laws to reflect this awareness with more stringent



1 legal enforcement and penalties for desecration of Native
2 American sacred sites.

3 (f) Legislation is needed to provide the necessary legal
4 protection for historical and cultural sites, art, and other cultural
5 artifacts found at those sites.

6 SEC. 2. Chapter 1.76 (commencing with Section 5097.995)
7 is added to Division 5 of the Public Resources Code, to read:

8

9 CHAPTER 1.76. NATIVE AMERICAN HISTORIC RESOURCE
10 PROTECTION ACT

11

12 5097.995. (a) Any person who *unlawfully and maliciously*
13 excavates upon, removes, destroys, injures, or defaces a Native
14 American historic, cultural, or sacred site, including any historic
15 or prehistoric ruins, burial ground, archaeological site, any
16 inscriptions made by Native Americans at such a site, any Native
17 American rock art, or any archaeological or historic feature of a
18 Native American historic, cultural, or sacred site, whether situated
19 on private land or within any public park or place, is guilty of a
20 misdemeanor if the person knew or should have known that the
21 site, art object, inscription, or feature was a Native American
22 historic, cultural, or sacred site, art object, inscription, or feature.
23 A violation of this section is punishable by imprisonment in the
24 county jail for up to one year, by a fine not to exceed ten thousand
25 dollars (\$10,000), or by both that fine and imprisonment.

26 (b) This section does not apply to any agreement entered into
27 pursuant to subdivision (l) of Section 5097.94, to any action taken
28 pursuant to Section 5097.98, to any act taken in accordance with
29 the California Environmental Quality Act (Division 13
30 (commencing with Section 21000) or the National Environmental
31 Policy Act of 1989 (42 U.S.C. Sec. 4321 et seq.), or to any act
32 authorized under the Z'berg-Negedly Forest Practice Act of 1973
33 (Chapter 8 (commencing with Section 4511) of Part 2 of Division
34 4).

35 5097.996. (a) Each person who violates subdivision (a) of
36 Section 5097.995 is subject to a civil penalty not to exceed fifty
37 thousand dollars (\$50,000) per violation.

38 (b) A civil penalty may be imposed for each separate violation
39 of subdivision (a) in addition to any other civil penalty imposed for
40 a separate violation of any other provision of law.



1 (c) In determining the amount of any civil penalty imposed
2 pursuant to this section, the court shall take into account the extent
3 of the damage to the resource. In making the determination of
4 damage, the court may consider the commercial or archaeological
5 value of the resource involved and the cost to restore and repair the
6 resource.

7 (d) Every civil action brought under this section shall be
8 brought by the district attorney or the city attorney, or by the
9 Attorney General upon a complaint by the Native American
10 Heritage Commission.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

