

AMENDED IN ASSEMBLY AUGUST 24, 2002

AMENDED IN ASSEMBLY AUGUST 16, 2002

AMENDED IN ASSEMBLY JUNE 30, 2002

AMENDED IN SENATE APRIL 30, 2002

AMENDED IN SENATE APRIL 2, 2002

**SENATE BILL**

**No. 1816**

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**Introduced by Senator Chesbro**

~~(Coauthor: Assembly Member~~ *(Coauthors: Assembly Members  
Alquist, Nation, and Strom-Martin)*

February 22, 2002

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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 that is listed or may be listed in the California Register of Historic Resources, including any historic or prehistoric ruins, burial ground, any archaeological or historical site, any inscriptions made by Native Americans at the site, any archaeological or historic Native American rock art, or any archaeological or historic feature is guilty of a misdemeanor if the act was committed with the specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American art object, inscription, or feature, or site and the act occurs on public land or, if on private land, is committed by a person other than the landowner, *as described*. The bill would subject a person found guilty of the violation to imprisonment in the county jail for up to one year, 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 a violation of those provisions to a civil penalty in an amount not to exceed \$50,000 per violation. The bill would require that all civil penalties collected pursuant to this provision *as a result of an enforcement action brought by a city or county* be distributed to the city or county treasurer of the city or county that ~~prosecutes brought the action or, in the case of an action brought by the Attorney General, that those penalties be distributed to the Native American Heritage Commission. The bill would require the funds to be used to repair and restore damage done to Native American cultural resources and to be available to cover the costs of prosecuting violations of these provisions.~~ *The bill would require the moneys to be utilized first to repair or restore the damaged site and would require the remaining moneys to be available to the city or county to offset enforcement costs.*

*The bill would require all civil penalties collected as a result of an action by the Attorney General to be first distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site. The bill would require the remaining moneys to be available to the Attorney General to offset enforcement costs.*

(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) Native American burial sites and Native American cultural  
4 resources have always been, and will continue to be, considered  
5 sacred to California Native 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 additional protection.
- 11 (d) California Native American tribes have demonstrated  
12 ancestral affiliation to Native American burial sites and historical  
13 and cultural resources.
- 14 (e) The United States Government and many western states,  
15 including California, have realized the need for protection of  
16 Native American burial sites and cultural resources and have  
17 enacted laws to reflect this awareness with more stringent legal  
18 enforcement and penalties for desecration of Native American  
19 sacred sites.
- 20 (f) Legislation is needed to provide the additional legal  
21 protection for Native American burial and cultural sites, art, and  
22 other cultural artifacts found at those sites.
- 23 (g) Legislation is needed to provide additional legal protection  
24 for Native American historical and cultural sites, art, and other  
25 cultural artifacts found at those sites, if that protection for Native  
26 American cultural resources found on private lands is consistent  
27 with constitutionally protected property rights of the persons who  
28 own the land on which they are found.
- 29 (h) Consistent with Sections 5020.7 and 5097.94 of the Public  
30 Resources Code, in order to encourage collaborative relationships  
31 for the protection of Native American cultural resources between



1 Native Americans and landowners, funding and other state  
2 assistance should be encouraged for support of voluntary  
3 agreements to conserve, maintain, and provide physical access for  
4 Native Americans to these cultural resources.

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

7

8 CHAPTER 1.76. NATIVE AMERICAN HISTORIC RESOURCE  
9 PROTECTION ACT

10

11 5097.995. (a) (1) Any person who unlawfully and  
12 maliciously excavates upon, removes, destroys, injures, or defaces  
13 a Native American historic, cultural, or sacred site, that is listed or  
14 may be eligible for listing in the California Register of Historic  
15 Resources pursuant to Section 5024.1, including any historic or  
16 prehistoric ruins, any burial ground, any archaeological or historic  
17 site, any inscriptions made by Native Americans at such a site, any  
18 archaeological or historic Native American rock art, or any  
19 archaeological or historic feature of a Native American historic,  
20 cultural, or sacred site is guilty of a misdemeanor if the act was  
21 committed with specific intent to vandalize, deface, destroy, steal,  
22 convert, possess, collect, or sell a Native American historic,  
23 cultural, or sacred artifact, art object, inscription, or feature, or site  
24 and the act was committed as follows:

25 (A) On public land.

26 (B) On private land, by a person, other than the landowner, as  
27 described in subdivision (b).

28 (2) A violation of this section is punishable by imprisonment  
29 in the county jail for up to one year, by a fine not to exceed ten  
30 thousand dollars (\$10,000), or by both that fine and imprisonment.

31 (b) This section does not apply to any of the following:

32 (1) Any act taken in accordance with, or pursuant to, an  
33 agreement entered into pursuant to subdivision (l) of Section  
34 5097.94.

35 (2) Any action taken pursuant to Section 5097.98.

36 (3) Any act taken in accordance with the California  
37 Environmental Quality Act (Division 13 (commencing with  
38 Section 21000)).

39 (4) Any act taken in accordance with the National  
40 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).



1 (5) Any act authorized under the Z'berg-Nejedly Forest  
2 Practice Act of 1973 (Chapter 8 (commencing with Section 4511)  
3 of Part 2 of Division 4).

4 (6) Any action taken with respect to a conservation easement  
5 in accordance with Chapter 4 (commencing with Section 815) of  
6 Division 2 of the Civil Code, or any similar nonperpetual  
7 enforceable restriction that has as its purpose the conservation,  
8 maintenance, or provision of physical access of Native Americans  
9 to one or more Native American historic, cultural, or sacred sites,  
10 or pursuant to a contractual agreement for that purpose to which  
11 most likely descendants of historic Native American inhabitants  
12 are signatories.

13 (7) Any otherwise lawful act undertaken by the owner, *or an*  
14 *employee or authorized agent of the owner acting at the direction*  
15 *of the owner*, of land on which artifacts, sites, or other Native  
16 American resources covered by this section are found, including,  
17 but not limited to, farming, ranching, forestry, improvements  
18 ~~made in compliance with applicable law, and~~, investigations into  
19 the characteristics of the property conducted in a manner that  
20 minimizes adverse impacts unnecessary to that purpose, *and the*  
21 *sale, lease, exchange, or financing of real property.*

22 ~~(e) This section does not apply to research~~

23 (8) *Research* conducted under the auspices of an accredited  
24 postsecondary educational institution or other legitimate research  
25 institution on public land in accordance with applicable permitting  
26 requirements or on private land in accordance with otherwise  
27 applicable law.

28 5097.996. (a) Each person who violates subdivision (a) of  
29 Section 5097.995 is subject to a civil penalty not to exceed fifty  
30 thousand dollars (\$50,000) per violation.

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

34 (c) In determining the amount of any civil penalty imposed  
35 pursuant to this section, the court shall take into account the extent  
36 of the damage to the resource. In making the determination of  
37 damage, the court may consider the commercial or archaeological  
38 value of the resource involved and the cost to restore and repair the  
39 resource.



1 ~~(d) Every civil action brought under this section shall be~~  
2 ~~brought~~

3 (d) A civil action may be brought pursuant to this section by the  
4 district attorney, the city attorney, or the Attorney General, or by  
5 the Attorney General upon a complaint by the Native American  
6 Heritage Commission.

7 ~~(e) All civil penalties collected pursuant to this section shall be~~  
8 ~~distributed to the city or county treasurer of the city or county that~~  
9 ~~prosecutes the action. In the case of actions brought by the~~  
10 ~~Attorney General, the funds shall be distributed to the Native~~  
11 ~~American Heritage Commission. Funds collected under this~~  
12 ~~section shall be used to repair or restore damage done to Native~~  
13 ~~American cultural resources. Funds collected under this section~~  
14 ~~shall also be available to cover the costs of legal and enforcement~~  
15 ~~actions taken to prosecute violations of Sections 5097.995 and~~  
16 ~~5097.996.~~

17 (e) (1) All moneys collected from civil penalties imposed  
18 pursuant to this section as a result of an enforcement action  
19 brought by a city or county shall be distributed to the city or county  
20 treasurer of the city or county that brought the action. These  
21 moneys shall be first utilized to repair or restore the damaged site,  
22 and the remaining moneys shall be available to that city or county  
23 to offset costs incurred in enforcing this chapter.

24 (2) All moneys collected from civil penalties imposed pursuant  
25 to this section as a result of an enforcement action brought by the  
26 Attorney General shall be first distributed to, and utilized by, the  
27 Native American Heritage Commission to repair or restore the  
28 damaged site, and the remaining moneys shall be available to the  
29 Attorney General to offset costs incurred in enforcing this chapter.

30 SEC. 3. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.



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2 CORRECTIONS  
3 Text — Page 6.  
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