

AMENDED IN ASSEMBLY APRIL 20, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2641

Introduced by Assembly Member Coto
(Coauthor: Assembly Member Baca)
(Coauthor: Senator Ducheny)

February 24, 2006

An act to amend Section 7003 of, and to add Section 7003.5 to, the Health and Safety Code, and to amend Sections 5097.91 and 5097.98 of the Public Resources Code, relating to cemeteries *burial grounds*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2641, as amended, Coto. Native American ~~grave sites~~ *burial grounds*.

Existing law provides a system for the regulation of cemeteries and defines a cemetery to include, among others, a place where 6 or more human bodies are buried. Violations of provisions relating to the protection of cemeteries is a crime.

This bill would include within the definition of a cemetery, a Native American burial ground, as defined, and would make conforming and technical, nonsubstantive changes. By expanding the definition of a cemetery and related crimes, this bill would impose a state-mandated local program.

Existing law establishes the Native American Heritage Commission ("*commission*") and authorizes the commission to bring an action to prevent damage to Native American ~~cemeteries~~ *burial grounds* or

places of worship. Existing law, the California Native American Grave Protection and Repatriation Act of 2001, requires all state agencies and all museums that receive state funding to inventory Native American human remains and cultural items in their possession for return to the appropriate tribes.

This bill would require a landowner to consult with the most likely ~~descendents~~ *descendents*, as determined by the commission, regarding the preservation of any Native American burial ground, *as defined*, discovered on the property owner’s land and would require the landowner to ensure that a site is not further disturbed until prescribed conditions are met.

~~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.~~

The bill would also require that the determination whether a burial ground exists be based upon specified evidence and information, and in case of dispute, a final determination made by the commission.

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

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

1 ~~SECTION 1. Section 7003 of the Health and Safety Code is~~
 2 ~~amended to read:~~
 3 ~~7003. “Cemetery” means any of the following:~~
 4 ~~(a) Any of the following that is used or intended to be used~~
 5 ~~and dedicated for cemetery purposes:~~
 6 ~~(1) A burial park, for earth interments.~~
 7 ~~(2) A mausoleum, for crypt or vault interments.~~
 8 ~~(3) A crematory and columbarium, for cinerary interments.~~
 9 ~~(b) A place where six or more human bodies are buried.~~
 10 ~~(c) A Native American burial ground.~~
 11 ~~SEC. 2. Section 7003.5 is added to the Health and Safety~~
 12 ~~Code, to read:~~
 13 ~~7003.5. (a) For the purposes of subdivision (c) of Section~~
 14 ~~7003, “Native American burial ground” means a place containing~~
 15 ~~six or more Native American graves. The physical relationship of~~

1 the graves shall be such that it may be reasonably concluded that
2 the site constitutes, or constituted in the past, a contiguous burial
3 ground. Prior human or other disturbances of the site that may
4 have moved human remains or items associated with the human
5 remains from their original context shall not disqualify the site
6 from classification as a cemetery under Section 7003. The
7 determination shall be based upon archaeological evidence and
8 information obtained from acknowledged traditional adherents of
9 a culturally affiliated Native American tribe, the most likely
10 descendants designated by the Native American Heritage
11 Commission pursuant to subdivision (a) of Section 5097.98 of
12 the Public Resources Code, and other expert opinion.

13 (b) For the purposes of this section, a “Native American
14 grave” means a place, whether originally below, on, or above the
15 surface of the earth, where human remains, in any state of
16 decomposition or skeletal completeness, of a Native American,
17 as identified pursuant to subdivision (c) of Section 7050.5, were
18 intentionally placed after death whether by inhumation,
19 cremation, or other method.

20 *SECTION 1. Section 5097.91 of the Public Resources Code is*
21 *amended to read:*

22 5097.91. There is in state government a Native American
23 Heritage Commission, consisting of nine members appointed by
24 the Governor with the advice and consent of the Senate. *For*
25 *purposes of this chapter, “commission” means the Native*
26 *American Heritage Commission.*

27 ~~SEC. 3.~~

28 *SEC. 2.* Section 5097.98 of the Public Resources Code is
29 amended to read:

30 5097.98. (a) Whenever the commission receives notification
31 of a discovery of Native American human remains from a county
32 coroner pursuant to subdivision (c) of Section 7050.5 of the
33 Health and Safety Code, it shall immediately notify those persons
34 it believes to be most likely descended from the deceased Native
35 American. The descendants may, with the permission of the
36 owner of the land, or his or her authorized representative, inspect
37 the site of the discovery of the Native American remains and may
38 recommend to the owner or the person responsible for the
39 excavation work means for treatment or disposition, with
40 appropriate dignity, of the human remains and any associated

1 grave goods. The descendants shall complete their inspection and
2 make their recommendation within 24 hours of their notification
3 by the Native American Heritage Commission. The
4 recommendation may include the nondestructive removal and
5 analysis of human remains and items associated with Native
6 American burials, *preservation of Native American human*
7 *remains and associated items in place, relinquishment of Native*
8 *American human remains and associated items to the*
9 *descendants for treatment, or other culturally appropriate*
10 *treatment. The landowner shall consult with the descendants*
11 *concerning the descendants' recommendation.*

12 (b) Whenever the commission is unable to identify a
13 descendent, or the ~~deseendent~~ *descendants* identified ~~fails~~ *fail* to
14 make a recommendation, or the landowner or his or her
15 authorized representative rejects the recommendation of the
16 ~~deseendent~~ *descendants* and the mediation provided for in
17 subdivision (k) of Section 5097.94 fails to provide measures
18 acceptable to the landowner, the landowner or his or her
19 authorized representative shall reinter the human remains and
20 items associated with Native American burials with appropriate
21 dignity on the property in a location not subject to further
22 subsurface disturbance.

23 (c) (1) The ~~inadvertent~~ discovery of a Native American burial
24 ground, ~~as defined in subdivision (a) of Section 7003.5 of the~~
25 ~~Health and Safety Code~~, during a ground disturbing land
26 development activity, is a significant unanticipated discovery
27 requiring additional consultation.

28 (2) *For purposes of this section, consultation means the*
29 *meaningful and timely process of seeking, discussing, and*
30 *considering carefully the views of others, in a manner that is*
31 *cognizant of all parties' cultural values, and where feasible,*
32 *seeking agreement. Consultation includes recognizing the tribes'*
33 *potential needs for confidentiality.*

34 (3) The landowner or his or her authorized representative shall
35 consult with the most likely ~~deseendent~~ *descendants*, as
36 designated by the commission and shall address every feasible
37 option for the preservation of the ~~emetery, in situ~~ *burial ground*
38 *in place*, including, but not limited to, any items associated with
39 a Native American grave, *and only then may the human remains*
40 *and items associated with Native American burials be reintered*

1 *with appropriate dignity, pursuant to subdivision (b).* Upon the
2 discovery of possible Native American remains, the landowner
3 shall ensure that the site is not damaged or disturbed by further
4 development activity until a determination is made whether the
5 site is a ~~cemetery pursuant to Section 7003 of the Health and~~
6 ~~Safety Code~~ *burial ground*, and the process set forth in this
7 section is completed.

8 *(d) (1) For purposes of this section, “Native American burial*
9 *ground” means a place containing multiple Native American*
10 *graves. A “Native American grave” means a place, whether*
11 *originally below, on, or above the surface of the earth, where the*
12 *remains of a Native American, whether an inhumation or*
13 *cremation, and in any state of decomposition or skeletal*
14 *completeness, are located.*

15 *(2) The physical relationship of the graves shall be such that it*
16 *may be reasonably concluded that the site constitutes, or*
17 *constituted in the past, a contiguous Native American burial*
18 *ground. Disturbances to the site that may have moved human*
19 *remains and items associated with the human remains from their*
20 *original context, prior to the time of discovery, shall not*
21 *disqualify the site from classification as a Native American*
22 *burial ground.*

23 *(3) The determination whether a burial ground exists shall be*
24 *based upon archaeological, ethnographical, and historical*
25 *evidence and information obtained from a culturally affiliated*
26 *Native American tribe, the descendents, and other expert*
27 *opinion. In case of dispute, the final determination whether a*
28 *burial ground is present shall be made by the commission.*

29 ~~(d)~~

30 *(e) Notwithstanding the provisions of Section 5097.9, this*
31 *section, including those actions taken by the landowner or his or*
32 *her authorized representative to implement this section and any*
33 *action taken to implement an agreement developed pursuant to*
34 *subdivision (l) of Section 5097.94, shall be exempt from the*
35 *requirements of the California Environmental Quality Act*
36 *(Division 13 (commencing with Section 21000)).*

37 ~~(e)~~

38 *(f) Notwithstanding Section 30244, this section, including*
39 *those actions taken by the landowner or his or her authorized*
40 *representative to implement this section, and any action taken to*

1 implement an agreement developed pursuant to subdivision (l) of
2 Section 5097.94, shall be exempt from the requirements of the
3 California Coastal Act of 1976 (Division 20 (commencing with
4 Section 30000)).

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