

AMENDED IN SENATE AUGUST 16, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 742

Introduced by Assembly Member ~~Nestande~~ Bonnie Lowenthal
(Principal coauthor: Assembly Member Roger Hernández)
(Principal coauthor: Senator Wyland)
(Coauthors: Assembly Members Allen, Atkins, Beall, Block, Bonilla,
Bradford, Brownley, Butler, Carter, Davis, Eng, Beth Gaines, Gatto,
Hagman, Hill, Hueso, Lara, Ma, Mitchell, V. Manuel Pérez, Silva,
Skinner, Smyth, Solorio, Torres, Wieckowski, Williams, and
Yamada)
(Coauthors: Senators Harman, Lieu, Padilla, Price, Runner, Strickland,
Vargas, and Wolk)

February 17, 2011

~~An act to amend Section 12715 of the Government Code, relating to tribal gaming.~~
~~An act to amend Section 2773.3 of the Public Resources Code, relating to mining, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 742, as amended, ~~Nestande~~ Bonnie Lowenthal. ~~Tribal gaming: local agencies.~~ Surface mining: Indian reservations and Native American sacred sites.

(1) *The Surface Mining and Reclamation Act of 1975 prohibits a person, with exceptions, from conducting surface mining operations unless a permit is obtained from, a reclamation plan is submitted to and approved by, and financial assurances for reclamation have been*

approved by, the lead agency for the operation. Existing law prohibits a lead agency from approving a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation if the operation is located on, or within one mile of, a Native American sacred site and is located in an area of special concern, unless certain criteria are met.

This bill would also prohibit a lead agency from approving a reclamation plan for an aggregate products operation if the operation is located on or within 2,000 yards of the external boundaries of an Indian reservation and is on or within 5,000 yards of a Native American sacred site, and is on or within 4,000 yards of the Santa Margarita River or an aquifer that is hydrologically connected to the river, unless the tribe whose reservation is nearest the operation consents to the operation.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law creates in the State Treasury the Indian Gaming Special Distribution Fund for the receipt and deposit of moneys received by the state from certain Indian tribes pursuant to the terms of gaming compacts entered into with the state. Existing law authorizes moneys in that fund to be used for specified purposes, including for grants for the support of state and local government agencies impacted by tribal government gaming.~~

~~Existing law, until January 1, 2021, creates a County Tribal Casino Account in the treasury of each county that contains a tribal casino. Existing law requires the Controller to divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account, known as an Individual Tribal Casino Account, for each tribe that operates a casino within the county. Each Individual Tribal Casino Account is required to be funded in proportion to the amount that each individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund, and used for grants to local agencies impacted by tribal casinos, as specified.~~

~~Existing law establishes an Indian Gaming Local Community Benefit Committee in each county in which gaming is conducted, specifies the composition and responsibilities of that committee, and requires that committee to make the selection of grants from the casino accounts. Among other things, the committee is responsible for establishing all application policies and procedures for grants from the casino accounts.~~

~~This bill would require each grant application to clearly show how the grant will mitigate the impact of the casino on the grant applicant.~~

~~Existing law requires every state agency and local government agency to adopt and promulgate a Conflict of Interest Code applicable to enumerated positions within the agency and designated employees, as specified.~~

~~This bill would require each Indian Gaming Local Community Benefit Committee to adopt and approve a Conflict of Interest Code pursuant to these provisions. The bill would require any existing Conflict of Interest Code to be reviewed and amended as necessary to bring it into compliance with these requirements.~~

~~By increasing the duties of local government entities, this bill would impose a state-mandated local program.~~

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority ²/₃. 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 2773.3 of the Public Resources Code is
2 amended to read:

3 2773.3. (a) In addition to other reclamation plan requirements
4 of this chapter and regulations adopted by the board pursuant to
5 this chapter, a lead agency may not approve a reclamation plan
6 for a surface mining operation for gold, silver, copper, or other
7 metallic minerals or financial assurances for the operation; if the
8 operation is located on, or within one mile of, any Native American
9 sacred site and is located in an area of special concern, unless both
10 of the following criteria are met:

11 (1) The reclamation plan requires that all excavations be
12 backfilled and graded to do both of the following:

13 (A) Achieve the approximate original contours of the mined
14 lands prior to mining.

1 (B) Grade all mined materials that are in excess of the materials
 2 that can be placed back into excavated areas, including, but not
 3 limited to, all overburden, spoil piles, and heap leach piles, over
 4 the project site to achieve the approximate original contours of the
 5 mined lands prior to mining.

6 (2) The financial assurances are sufficient in amount to provide
 7 for the backfilling and grading required by paragraph (1).

8 *(b) In addition to other reclamation plan requirements of this*
 9 *chapter and regulations adopted by the board pursuant to this*
 10 *chapter, a lead agency may not approve a reclamation plan for*
 11 *an aggregate products operation if the operation is located on or*
 12 *within 2,000 yards of the external boundaries of an Indian*
 13 *reservation and is on or within 5,000 yards of a site that is a Native*
 14 *American sacred site and is on or within 4,000 yards of the Santa*
 15 *Margarita River or an aquifer that is hydrologically connected to*
 16 *that river, unless the tribe whose reservation is nearest the*
 17 *operation consents to the operation.*

18 ~~(b)~~

19 (c) For purposes of this section, the following terms have the
 20 following ~~meaning~~ meanings:

21 (1) “Native American sacred site” means a specific area that is
 22 identified by a federally recognized Indian Tribe, Rancheria or
 23 Mission Band of Indians, or by the Native American Heritage
 24 Commission, as sacred by virtue of its established historical or
 25 cultural significance to, or ceremonial use by, a Native American
 26 group, including, but not limited to, ~~any~~ an area containing a prayer
 27 circle, shrine, petroglyph, or spirit break, or a path or area linking
 28 the circle, shrine, petroglyph, or spirit break with another circle,
 29 shrine, petroglyph, or spirit break.

30 (2) “Area of special concern” means ~~any~~ an area in the
 31 California desert that is designated as Class C or Class L lands or
 32 as an Area of Critical Environmental Concern under the California
 33 Desert Conservation Area Plan of 1980, as amended, by the United
 34 States Department of the Interior, Bureau of Land Management,
 35 pursuant to Section 1781 of Title 43 of the United States Code.

36 *SEC. 2. This act is an urgency statute necessary for the*
 37 *immediate preservation of the public peace, health, or safety within*
 38 *the meaning of Article IV of the Constitution and shall go into*
 39 *immediate effect. The facts constituting the necessity are:*

1 *To protect from imminent destruction Native American*
2 *reservations and sacred sites threatened by proposed aggregate*
3 *products mining operations, it is necessary for this measure to*
4 *take effective immediately.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, March 31, 2011. (JR11)**

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