

AMENDED IN ASSEMBLY APRIL 8, 2013  
AMENDED IN ASSEMBLY MARCH 19, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 52**

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**Introduced by Assembly Member Gatto**  
*(Principal coauthor: Assembly Member Alejo)*

December 21, 2012

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An act to amend Section 21083 of, and to add Sections 21073, 21074, 21083.09, 21084.2, 21084.3, and 21097 to, the Public Resources Code, relating to Native Americans.

LEGISLATIVE COUNSEL'S DIGEST

AB 52, as amended, Gatto. Native Americans: California Environmental Quality Act.

Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial

evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. CEQA requires the Office of Planning and Research, referred to as OPR, to prepare *and develop*, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to following in determining whether or not a proposed project may have a significant effect on the environment.

The bill would *specify that a project having a potential to cause a substantial adverse change in the significance of a tribal resource, as defined, to be a project that may have a significant effect on the environment. The bill would require a lead agency to make best efforts to avoid, preserve, and protect specified Native American resources. The bill would require the lead agency to undertake specified actions if a project may adversely affect tribal cultural resources, or a tribal reservation or rancheria. The bill would require OPR the office to revise the guidelines to include criteria for determining whether a proposed project has a significant effect on the environment to include effects on Native American tribal cultural resources, including sacred sites places, or a tribal reservation or rancheria community. The bill would require the office to prepare and develop, and the secretary to certify and adopt, revisions to the guidelines relating to the identification and treatment of tribal cultural resources.* By requiring the lead agency to consider these effects relative to Native Americans, 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 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) California had the largest aboriginal population in North*
- 4 *America before contact with non-Native Americans. Yet, California*

1 *Native American tribes suffered the greatest losses from*  
2 *termination, removal, and assimilation policies, including the loss*  
3 *of a majority of their lands and tribal cultural resources, including*  
4 *sacred places. This devastation debilitated tribal religious practices*  
5 *and cultural identity, and threatened the survival of California*  
6 *Native Americans.*

7 *(b) Spiritual integrity, community identity, political sovereignty,*  
8 *and governance processes are intertwined in the lifeways and*  
9 *identity of the California Native American tribes.*

10 *(c) California Native American tribes possess original natural*  
11 *rights, from time immemorial, recognized in over 200 years of*  
12 *federal jurisprudence, the federal Constitution, federal and state*  
13 *laws and administrative policies, and state actions, including,*  
14 *tribal-state agreements.*

15 *(d) Included in these original natural rights is the right of tribal*  
16 *governments to enact their own laws and be governed by them and*  
17 *to engage in their own cultural and spiritual practices. It is a*  
18 *fundamental obligation of each generation of California Native*  
19 *Americans to cherish and protect these rights for their children*  
20 *and for generations to come.*

21 *(e) California Native Americans have used, and continue to use,*  
22 *natural settings in the conduct of spiritual practices, religious*  
23 *observances, ceremonies, and cultural uses and beliefs that are*  
24 *essential elements in tribal communities. Tribes consider these*  
25 *sacred and cultural places, used by generations, as vital to their*  
26 *existence, well-being, and identity.*

27 *(f) In addition to the lingering effects of historic termination,*  
28 *removal, and assimilation policies, the continued loss of tribal*  
29 *cultural resources, including sacred places and tribal lands in the*  
30 *past 200 years has caused further debilitating impacts on the*  
31 *religious practices, cultural traditions, tribal identity, and*  
32 *self-governance rights of California Native American tribes.*

33 *(g) To uphold California Native American tribes' original*  
34 *natural rights with regard to religious practices, cultural traditions,*  
35 *tribal identity, and self-governance, it is essential that the natural*  
36 *setting and essential integrity of these tribal cultural resources be*  
37 *protected and the sacred places be preserved.*

38 *(h) Traditional tribal lands were diminished to reservations*  
39 *and rancherias that exist today in California with local*  
40 *governments, state lands, federal lands, and privately owned lands*

1 located adjacent to, and in the vicinity of, tribal government  
2 reservations and rancherias. The land use decisions concerning  
3 lands adjacent to, and in the vicinity of, California Native American  
4 reservations and rancherias affect those tribal communities in  
5 terms of environmental impacts and tribal self-governance rights.

6 (i) The California Environmental Quality Act does not readily  
7 or directly solicit, include, or accommodate California Native  
8 American tribes' concerns and issues, which has resulted in  
9 significant environmental impacts to tribal cultural resources,  
10 including sacred places and tribal government reservations and  
11 rancherias, leaving them unanalyzed and unmitigated. The result  
12 has been significant and unmitigated cumulative impacts to those  
13 resources and California Native American reservations and  
14 rancherias to the detriment of those communities and California's  
15 environment.

16 (j) California Native American tribes are experts concerning  
17 their culturally affiliated resources, tribal history, and practices  
18 concerning those resources. Tribal knowledge about the land and  
19 the resources should be included in environmental assessments  
20 pursuant to state environmental laws for projects that have a  
21 potentially significant impact or effect on those resources.

22 (k) State environmental law should not only take into account  
23 the scientific or archaeological value of cultural resources, but  
24 also the tribal cultural values, tribal interpretations, and culturally  
25 appropriate treatment when decisions are made concerning  
26 whether or how to approve a project that may significantly impact  
27 or effect those places and resources.

28 SEC. 2. Section 21073 is added to the Public Resources Code,  
29 to read:

30 21073. "Native American tribe" means a federally recognized  
31 Indian tribe located in California.

32 SEC. 3. Section 21074 is added to the Public Resources Code,  
33 to read:

34 21074. (a) "Tribal cultural resource" means a resource that  
35 is any of the following:

36 (1) A resource listed in, or determined to be eligible for listing  
37 in, the California Register of Historical Resources, a local register  
38 of historical resources, as defined in subdivision (k) of Section  
39 5020.1, or a tribal register of historic resources.

1 (2) A resource deemed to be significant pursuant to subdivision  
2 (g) of Section 5024.1.

3 (3) A resource deemed by the lead agency to be a tribal cultural  
4 resource.

5 (b) Tribal cultural resources include, but are not limited to,  
6 sites, features, places, or objects with cultural value to descendant  
7 communities, traditional culture properties, or tribal cultural  
8 landscapes consistent with the guidance of the federal National  
9 Park Services' Advisory Council on Historic Preservation.

10 (c) A tribal cultural resource may also be a historic resource  
11 or a unique archaeological resource.

12 (d) A tribal cultural resource does not include a resource  
13 demonstrated by clear and convincing evidence to be historically  
14 or culturally not significant.

15 **SECTION 4.**

16 *SEC. 4.* Section 21083 of the Public Resources Code is  
17 amended to read:

18 21083. (a) The Office of Planning and Research shall prepare  
19 and develop proposed guidelines for the implementation of this  
20 division by public agencies. The guidelines shall include objectives  
21 and criteria for the orderly evaluation of projects and the  
22 preparation of environmental impact reports and negative  
23 declarations in a manner consistent with this division.

24 (b) The guidelines shall specifically include criteria for public  
25 agencies to follow in determining whether or not a proposed project  
26 may have a "significant effect on the environment." The criteria  
27 shall require a finding that a project may have a "significant effect  
28 on the environment" if one or more of the following conditions  
29 exist:

30 (1) A proposed project has the potential to degrade the quality  
31 of the environment, curtail the range of the environment, or to  
32 achieve short-term, to the disadvantage of long-term, environmental  
33 goals.

34 (2) The possible effects of a project are individually limited but  
35 cumulatively considerable. As used in this paragraph,  
36 "cumulatively considerable" means that the incremental effects of  
37 an individual project are considerable when viewed in connection  
38 with the effects of past projects, the effects of other current projects,  
39 and the effects of probable future projects.

1 (3) The environmental effects of a project will cause substantial  
2 adverse effects on human beings, either directly or indirectly.

3 (4) A proposed project may have a significant effect on a ~~Native~~  
4 ~~American tribal~~ cultural resource or resource, including a sacred  
5 place, or a tribal reservation or rancheria community.

6 (c) The guidelines shall include procedures for determining the  
7 lead agency pursuant to Section 21165.

8 (d) The guidelines shall include criteria for public agencies to  
9 use in determining when a proposed project is of sufficient  
10 statewide, regional, or areawide environmental significance that  
11 a draft environmental impact report, a proposed negative  
12 declaration, or a proposed mitigated negative declaration shall be  
13 submitted to appropriate state agencies, through the State  
14 Clearinghouse, for review and comment prior to completion of the  
15 environmental impact report, negative declaration, or mitigated  
16 negative declaration.

17 (e) The Office of Planning and Research shall develop and  
18 prepare the proposed guidelines as soon as possible and shall  
19 transmit them immediately to the Secretary of the Natural  
20 Resources Agency. The Secretary of the Natural Resources Agency  
21 shall certify and adopt the guidelines pursuant to Chapter 3.5  
22 (commencing with Section 11340) of Part 1 of Division 3 of Title  
23 2 of the Government Code, which shall become effective upon the  
24 filing of the adopted guidelines. However, the guidelines shall not  
25 be adopted without compliance with Sections 11346.4, 11346.5,  
26 and 11346.8 of the Government Code.

27 (f) The Office of Planning and Research shall, at least once  
28 every two years, review the guidelines adopted pursuant to this  
29 section and shall recommend proposed changes or amendments  
30 to the Secretary of the Natural Resources Agency. The Secretary  
31 of the Natural Resources Agency shall certify and adopt guidelines,  
32 and any amendments to the guidelines, at least once every two  
33 years, pursuant to Chapter 3.5 (commencing with Section 11340)  
34 of Part 1 of Division 3 of Title 2 of the Government Code, which  
35 shall become effective upon the filing of the adopted guidelines  
36 and any amendments to the guidelines. However, guidelines may  
37 not be adopted or amended without compliance with Sections  
38 11346.4, 11346.5, and 11346.8 of the Government Code.

39 *SEC. 5. Section 21083.09 is added to the Public Resources*  
40 *Code, to read:*

1 21083.09. *On or before January 1, 2015, the Office of Planning*  
2 *and Research shall prepare and develop, and the Secretary of the*  
3 *Natural Resources Agency shall certify and adopt, revisions to the*  
4 *guidelines that do all of the following:*

5 (a) *Provide guidance on the implementation of Sections 21084.2*  
6 *and 21084.3.*

7 (b) *Provide advice developed in consultation with the Native*  
8 *American Heritage Commission, Native American tribes, related*  
9 *to tribal cultural resources, including sacred places, for all of the*  
10 *following:*

11 (1) *The preservation and protection of, or culturally appropriate*  
12 *mitigation to impacts to, tribal cultural resources.*

13 (2) *Procedures for the protection of the confidentiality of*  
14 *information concerning the specific identity, location, character,*  
15 *and use of tribal cultural resources.*

16 (3) *Procedures to facilitate the voluntary participation of*  
17 *landowners to preserve and protect the specific identity, location,*  
18 *character, and use of tribal cultural resources.*

19 (4) *Procedures to facilitate the identification of, and culturally*  
20 *appropriate treatment of, tribal cultural resources.*

21 (c) *Revising Appendix G of Chapter 3 (commencing with Section*  
22 *15000) of Division 6 of Title 14 of the California Code of*  
23 *Regulations to separate the consideration of paleontological*  
24 *resources from cultural resources and updating the relevant sample*  
25 *questions.*

26 SEC. 6. *Section 21084.2 is added to the Public Resources Code,*  
27 *to read:*

28 21084.2. (a) *A project may have a significant effect on the*  
29 *environment if the project has the potential of causing a substantial*  
30 *adverse change in the significance of a tribal cultural resource.*

31 (b) *Because Native American tribes may have expertise in*  
32 *identifying, interpreting, and determining significance of tribal*  
33 *cultural resources and whether an impact of a proposed project*  
34 *to a tribal cultural resource is significant, the lead agency shall*  
35 *consult with the relevant Native American tribes in making a*  
36 *determination pursuant to subdivision (a).*

37 SEC. 7. *Section 21084.3 is added to the Public Resources Code,*  
38 *to read:*

39 21084.3. *If the lead agency determines that a project will have*  
40 *a significant effect on places, features, and objects described in*

1 Section 5097.9 or 5097.995 and listed in the California Native  
2 American Heritage Commission Sacred Lands File pursuant to  
3 Section 5097.993 or 5097.994, the lead agency shall make its best  
4 effort to ensure that these resources be avoided, preserved, and  
5 protected in place or left in an undisturbed state.

6 SEC. 8. Section 21097 is added to the Public Resources Code,  
7 to read:

8 21097. (a) If a Native American tribe notifies a lead agency  
9 prior to the commencement of the public review period established  
10 by Section 21091, or if the lead agency determines pursuant to  
11 Section 21084.3, that a project may adversely affect a tribal  
12 cultural resource, including a sacred place, or a tribal reservation  
13 or rancheria and that the tribe wishes to consult to resolve the  
14 potentially adverse impacts, the lead agency shall engage in early  
15 consultation with the affected tribe before or during the  
16 environmental review process. The lead agency shall provide to  
17 the affected tribe copies of any environmental document and its  
18 technical reports. The affected tribe may request the Native  
19 American Heritage Commission, the State Office of Historic  
20 Preservation, and other relevant agencies or entities to participate  
21 in the consultation process and to seek mutually agreeable methods  
22 of avoiding or otherwise resolving the potential adverse effects.  
23 As part of the consultation process, the parties may propose  
24 mitigation measures capable of avoiding or substantially lessening  
25 potential impacts to a tribal cultural resource, including a sacred  
26 place, or a tribal reservation or rancheria. Any binding agreement  
27 reached in this consultation shall be incorporated as mitigation  
28 measures in the final environmental document.

29 (b) If no agreement is reached pursuant to subdivision (a), or  
30 if an affected tribe identifies significant effects on a tribal cultural  
31 resource, including a sacred place, or the affected tribe's  
32 reservation or rancheria during the public comment period, the  
33 environmental document shall include both of the following  
34 analyses:

35 (1) Whether the proposed project has a significant impact on  
36 an identified tribal cultural resource, including a sacred place, or  
37 a tribal reservation or rancheria.

38 (2) Whether the alternatives or mitigation measures proposed  
39 by the parties pursuant to subdivision (a) or during the public  
40 comment period avoid or substantially lessen the impact to the

1 *identified cultural resource, including a sacred place, or a tribal*  
2 *reservation or rancheria.*

3 *(c) Any information, including, but not limited to, the location,*  
4 *nature, and use of the place, feature, site, or object that is submitted*  
5 *by an affected tribe regarding a tribal cultural resource, including*  
6 *a sacred place, may not be included in the environmental impact*  
7 *report or otherwise disclosed by the lead agency or any other*  
8 *public agency to the public without the prior consent of the tribe*  
9 *that provided the information. The submitted information shall be*  
10 *published in a confidential appendix to the environmental*  
11 *document. This subdivision is not intended, and may not be*  
12 *construed, to prohibit the confidential exchange of the submitted*  
13 *information between public agencies that have lawful jurisdiction*  
14 *over the preparation of the environmental document.*

15 *(d) The lead agency and any responsible agency for the*  
16 *proposed project may issue a permit for a project with a significant*  
17 *impact on an identified tribal cultural resource, including a sacred*  
18 *place, or a tribal reservation or rancheria only if one of the*  
19 *following occurs:*

20 *(1) Mitigation measures agreed to pursuant to subdivision (a)*  
21 *have been incorporated into the final environmental document.*

22 *(2) The affected tribe accepts the mitigation measures proposed*  
23 *in the draft or final environmental document.*

24 *(3) The affected tribe has received notice of, and has failed to*  
25 *comment on, the proposed mitigation measures during the comment*  
26 *period established in Section 21091 and any public hearing*  
27 *required by or held pursuant to this division.*

28 *(4) The lead agency determines that there is no legal or feasible*  
29 *way to accomplish the projects purpose without causing a*  
30 *significant effect upon the sacred place, that all feasible mitigation*  
31 *or avoidance measures have been incorporated, and that there is*  
32 *an overriding environmental, public health, or safety reason based*  
33 *on substantial evidence presented by the lead agency that the*  
34 *project should be approved. These findings may be made only after*  
35 *the lead agency provides 30 days' notice of hearing to the affected*  
36 *tribe and an opportunity for the affected tribe to review and*  
37 *comment on the proposed finding.*

38 *(e) If an agreement is not reached pursuant to subdivision (a)*  
39 *and if it can be demonstrated that a project will cause significant*  
40 *effect to a tribal cultural resource, including a sacred place, or a*

1 *tribal reservation or rancheria, the lead agency may require all*  
2 *reasonable efforts to be made to treat the tribal cultural resource,*  
3 *including a sacred place, or a tribal reservation or rancheria in*  
4 *a culturally sensitive manner. Examples of culturally sensitive*  
5 *treatment include, but are not limited to, the following:*

6 *(1) Planning construction to avoid those resources or places.*  
7 *(2) Deeding resources or places into permanent conservation*  
8 *easements.*

9 *(3) Planning parks, greenspace, or other open space to*  
10 *incorporate those resources or places.*

11 *(4) Adopting culturally appropriate mitigation measures that*  
12 *take into account the tribal value and meaning of the resource or*  
13 *place.*

14 *(f) In determining the presence of tribal cultural resources,*  
15 *including sacred places, or a tribal reservation or rancheria*  
16 *community, the lead agency shall use the most current and*  
17 *up-to-date technology, research, and resources including, but not*  
18 *limited to, tribal, local, state, and national registers, the Native*  
19 *American Heritage Commission Sacred Lands File, mapping and*  
20 *Geographic Information System data, current cultural resources*  
21 *reports, foot surveys, ethnographic assessment, noninvasive study*  
22 *techniques, and information submitted by an affected tribe. The*  
23 *lead agency shall make all reasonable efforts and complete the*  
24 *research and identification efforts prior to the release of the draft*  
25 *environmental document and, in any case, no later than the*  
26 *finalization of the environmental document.*

27 *(g) This section is not intended, and may not be construed, to*  
28 *do either of the following:*

29 *(1) Prohibit any person or entity from seeking any damages or*  
30 *injunction authorized by law.*

31 *(2) Limit consultation between the state and tribal governments,*  
32 *existing confidentiality provisions, or the protection of religious*  
33 *exercise to the fullest extent permitted under state and federal law.*

34 ~~SEC. 2.~~

35 *SEC. 9.* No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 a local agency or school district has the authority to levy service  
38 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O