

ASSEMBLY BILL

No. 52

Introduced by Assembly Member Aguiar-Curry

December 2, 2024

An act to amend Section 5097.94 of the Public Resources Code, relating to Native American tribes.

LEGISLATIVE COUNSEL'S DIGEST

AB 52, as introduced, Aguiar-Curry. Native American Heritage Commission: powers and duties.

Existing law establishes the Native American Heritage Commission and vests the commission with specified powers and duties relative to Native American cultural resources.

This bill would make a nonsubstantive change to that provision.

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

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

1 SECTION 1. Section 5097.94 of the Public Resources Code
2 is amended to read:
3 5097.94. The commission shall have the following powers and
4 duties:
5 (a) To identify and catalog places of special religious or social
6 significance to Native Americans, and known graves and
7 cemeteries of Native Americans on private lands. The identification
8 and cataloguing of known graves and cemeteries shall be completed
9 on or before January 1, 1984. The commission shall notify
10 landowners on whose property the graves and cemeteries are

1 determined to exist, and shall identify the Native American group
2 most likely descended from those Native Americans who may be
3 interred on the property.

4 (b) To make recommendations relative to Native American
5 sacred places that are located on private lands, are inaccessible to
6 Native Americans, and have cultural significance to Native
7 Americans for acquisition by the state or other public agencies for
8 the purpose of facilitating or assuring access to those sacred places
9 by Native Americans.

10 (c) To make recommendations to the Legislature relative to
11 procedures that will voluntarily encourage private property owners
12 to preserve and protect sacred places in a natural state and to allow
13 appropriate access to Native American religionists for ceremonial
14 or spiritual activities.

15 (d) To appoint necessary clerical staff.

16 (e) To accept grants or donations, real or in kind, to carry out
17 the purposes of this chapter and the California Native American
18 Graves Protection and Repatriation Act of 2001 (Chapter 5
19 commencing with Section 8010) of Part 2 of Division 7 of the
20 Health and Safety Code).

21 (f) To make recommendations to the Director of Parks and
22 Recreation and the California Arts Council relative to the California
23 State Indian Museum and other Indian matters touched upon by
24 department programs.

25 (g) To bring an action to prevent severe and irreparable damage
26 to, or assure appropriate access for Native Americans to, a Native
27 American sanctified cemetery, place of worship, religious or
28 ceremonial site, or sacred shrine located on public property,
29 pursuant to Section 5097.97. If the court finds that severe and
30 irreparable damage will occur or that appropriate access will be
31 denied, and appropriate mitigation measures are not available, it
32 shall issue an injunction, unless it finds, on clear and convincing
33 evidence, that the public interest and necessity require otherwise.
34 The Attorney General shall represent the commission and the state
35 in litigation concerning affairs of the commission, unless the
36 Attorney General has determined to represent the agency against
37 whom the commission's action is directed, in which case the
38 commission shall be authorized to employ other counsel. In an
39 action to enforce this ~~subdivision~~ *subdivision*, the commission
40 shall introduce evidence showing that a cemetery, place, site, or

1 shrine has been historically regarded as a sacred or sanctified place
2 by Native American people and represents a place of unique
3 historical and cultural significance to an Indian tribe or community.

4 (h) To request and use the advice and service of all federal,
5 state, local, and regional agencies, including for purposes of
6 carrying out the California Native American Graves Protection
7 and Repatriation Act of 2001 (Chapter 5 (commencing with Section
8 8010) of Part 2 of Division 7 of the Health and Safety Code).

9 (i) To assist Native Americans in obtaining appropriate access
10 to sacred places that are located on public lands for ceremonial or
11 spiritual activities.

12 (j) To assist state agencies in any negotiations with agencies of
13 the federal government for the protection of Native American
14 sacred places that are located on federal lands.

15 (k) (1) To mediate, upon application of either of the parties,
16 disputes arising between landowners and known descendants
17 relating to the treatment and disposition of Native American human
18 burials, skeletal remains, and items associated with Native
19 American burials.

20 (2) The agreements shall provide protection to Native American
21 human burials and skeletal remains from vandalism and inadvertent
22 destruction and provide for sensitive treatment and disposition of
23 Native American burials, skeletal remains, and associated grave
24 goods consistent with the planned use of, or the approved project
25 on, the land.

26 (l) To assist interested landowners in developing agreements
27 with appropriate Native American groups for treating or disposing,
28 with appropriate dignity, of the human remains and any items
29 associated with Native American burials.

30 (m) To provide each California Native American tribe, as
31 defined in Section 21073, on or before July 1, 2016, with a list of
32 all public agencies that may be a lead agency pursuant to Division
33 13 (commencing with Section 21000) within the geographic area
34 with which the tribe is traditionally and culturally affiliated, the
35 contact information of those public agencies, and information on
36 how the tribe may request the public agency to notify the tribe of
37 projects within the jurisdiction of those public agencies for the
38 purposes of requesting consultation pursuant to Section 21080.3.1.

1 (n) (1) To assume the powers and duties of the former
2 Repatriation Oversight Commission and meet, when necessary
3 and at least quarterly, to perform all of the following duties:

4 (A) Order the repatriation of human remains and cultural items
5 in accordance with the act.

6 (B) Establish mediation procedures and, upon the application
7 of the parties involved, mediate disputes among tribes and
8 museums and agencies relating to the disposition of human remains
9 and cultural items. The commission shall have the power of
10 subpoena for purposes of discovery and may impose civil penalties
11 against any agency or museum that intentionally or willfully fails
12 to comply with the act. Members of the commission and
13 commission staff shall receive training in mediation for purposes
14 of this subparagraph. The commission may delegate its
15 responsibility to mediate disputes to a certified mediator or
16 commission staff.

17 (C) Establish and maintain an internet website for
18 communication among tribes and museums and agencies.

19 (D) Upon the request of tribes or museums and agencies, analyze
20 and make decisions regarding providing financial assistance to aid
21 in specific repatriation activities.

22 (E) Make recommendations to the Legislature to assist tribes
23 in obtaining the dedication of appropriate state lands for the
24 purposes of reinterment of human remains and cultural items.

25 (F) (i) Prepare and submit to the Legislature an annual report
26 detailing commission activities, disbursement of funds, and dispute
27 resolutions relating to the repatriation activities under the act.

28 (ii) A report submitted to the Legislature pursuant to this
29 subparagraph shall be submitted in compliance with Section 9795
30 of the Government Code.

31 (G) Refer any known noncompliance with the federal Native
32 American Graves Protection and Repatriation Act (25 U.S.C. Sec.
33 3001 et seq.) to the United States Attorney General and the
34 Secretary of the Interior.

35 (H) Impose administrative civil penalties pursuant to Section
36 8029 of the Health and Safety Code against an agency or museum
37 that is determined by the commission to have violated the act.

38 (I) Establish those rules and regulations the commission
39 determines to be necessary for the administration of the act.

1 (2) For purposes of this subdivision, the following terms have
2 the following meanings:

3 (A) “Act” means the California Native American Graves
4 Protection and Repatriation Act (Chapter 5 (commencing with
5 Section 8010) of Part 2 of Division 7 of the Health and Safety
6 Code).

7 (B) “Tribe” means a “California Indian tribe” as that term is
8 used in the act.

9 (o) (1) To establish and assess a fee on a person or public or
10 private entity that is reasonably related to the cost of conducting
11 a search of catalogs, described in subdivision (a), inventories,
12 described in Section 5097.96, or lists, described in Section 21073,
13 for that person or entity, which funds shall be available to the
14 commission upon appropriation by the Legislature.

15 (2) The Legislature finds that, pursuant to subdivision (b) of
16 Section 3 of Article XIII A of the California Constitution, the fees
17 established pursuant to paragraph (1) are not taxes. To the extent
18 that these fees are appropriated through the Budget Act for the
19 purposes for which they are collected to provide services to the
20 people of the State of California, the Legislature finds that these
21 fees are not subject to Article XIII B of the California Constitution.

22 (p) Review and provide comment and guidance on all policies
23 and procedures proposed pursuant to Article 3 (commencing with
24 Section 8025) and Article 3.5 (commencing with Section 8028.7)
25 of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code.