

Introduced by Senator Chesbro
(Coauthor: Assembly Member Strom-Martin)

February 22, 2002

An act to add Sections 5097.992 and 5097.993 to the Public Resources Code, relating to historical resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1816, as introduced, 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 prohibit a person from knowingly and willfully excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, including any historic or prehistoric ruins, burial ground, archaeological site, any inscriptions made by Native Americans at such a site, any Native American rock art, or any archaeological or historic feature situated on private land or within any public park or place, and, upon conviction, would subject a person found guilty of such a violation, to imprisonment in the county jail for not more than one year, or in state prison for a period not to exceed 2 years. By creating a new crime, the bill would impose a



state-mandated local program. The bill would also subject a person found guilty of such a violation of those provisions to a civil penalty in an amount not to exceed \$50,000 per violation.

(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) Cultural resources and burial sites have always been, and
4 will continue to be, considered sacred to California Native
5 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 immediate protection.

11 (d) California Native American tribes have demonstrated
12 ancestral affiliation to historical and cultural resources.

13 (e) The United States Government and many western states
14 have realized the need for protection of this limited resource and
15 have enacted laws to reflect this awareness with more stringent
16 legal enforcement and penalties for desecration of Native
17 American sacred sites.

18 (f) Legislation is needed to provide the necessary legal
19 protection for historical and cultural sites, art, and other cultural
20 artifacts found at those sites.

21 SEC. 2. Section 5097.992 is added to the Public Resources
22 Code, to read:

23 5097.992. (a) No person shall knowingly and willfully
24 excavate upon, remove, destroy, injure, or deface a Native
25 American historic, cultural, or sacred site, including any historic
26 or prehistoric ruins, burial ground, archaeological site, any



1 inscriptions made by Native Americans at such a site, any Native
2 American rock art, or any archaeological or historic feature
3 situated on private land or within any public park or place.

4 (b) Any person convicted of violating subdivision (a) shall,
5 upon conviction, be subject to imprisonment in the county jail for
6 not more than one year or in state prison for a period not exceeding
7 two years. In addition, the court may impose a fine in an amount
8 not to exceed ten thousand dollars (\$10,000) upon any person
9 found guilty of a violation of subdivision (a) for each violation.

10 SEC. 3. Section 5097.993 is added to the Public Resources
11 Code, to read:

12 5097.993. (a) Each person who violates subdivision (a) of
13 Section 5097.992 is subject to a civil penalty not to exceed fifty
14 thousand dollars (\$50,000) per violation.

15 (b) A civil penalty may be imposed for each separate violation
16 of subdivision (a) of Section 5097.993 and in addition to any other
17 civil penalty imposed for a separate violation of any other
18 provision of law.

19 (c) In determining the amount of any civil penalty imposed
20 pursuant to this section, the court shall take into account the extent
21 of the damage to the resource. In making the determination of
22 damage, the court may consider the commercial or archaeological
23 value of the resource involved and the cost to restore and repair the
24 resource.

25 (d) Every civil action brought under this section shall be
26 brought by the Attorney General or by the district attorney or city
27 attorney, upon a complaint by the Native American Heritage
28 Commission.

29 SEC. 4. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

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