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AMENDED IN ASSEMBLY JUNE 20, 2002
AMENDED IN SENATE MAY 28, 2002
AMENDED IN SENATE MAY 21, 2002
AMENDED IN SENATE MAY 1, 2002
AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 1828

Introduced by Senators Burton and Chesbro
(Principal coauthor: Assembly Member Cardoza)
(Coauthors: Assembly Members Alquist, Chu, Pavley, and
Strom-Martin)

February 22, 2002

An act to amend Section 21083 of, and to add Sections 21067.5 and 21097 to, the Public Resources Code, relating to historical resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1828, as amended, Burton. Historical resources: affected Native American sacred sites: California Environmental Quality Act.

(1) Existing law provides for the preservation, restoration, and protection of historical sites in the state. The existing California Environmental Quality Act (CEQA) requires the lead agency, as defined, to prepare an environmental impact report on a project, as defined, that it intends to carry out or approve and that it finds may have a significant effect on the environment, as defined. CEQA requires the Office of Planning and Research to prepare and develop proposed guidelines for the implementation of the act by public agencies,

including objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations. Existing law also requires a public agency that receives an application for a development project, to determine, within a specified period of time, whether that application is complete.

This bill would specify that the criteria developed by the office shall require a finding that a project may have a significant effect on the environment if the proposed project may adversely affect a Native American sacred site, as defined. By imposing this requirement on local agencies that are lead agencies, the bill would impose a state-mandated local program.

The bill would require a lead agency to notify any affected tribe and the Native American Heritage Commission when determining whether a negative declaration or an environmental impact report is required for a project that is within one mile of the exterior boundary of a Native American reservation or sacred site, if an application for a development project has been determined to be complete for the project. The bill would also require a lead agency to consult with all affected tribes to seek mutually agreeable mitigation measures.

The bill would prohibit a public agency from issuing a permit for a project if an affected Native American tribe declares that the project will have an adverse impact on a sacred site, as specified, if the site is certified to be a sacred site by the tribal government or its designated representative if the affected tribe is a federally recognized Indian tribe, or by the commission if the affected tribe is not a federally recognized Indian tribe, and if the tribe identifies the adverse impact and recommends mitigation measures, if any, that would mitigate the adverse impact. The bill would, notwithstanding that prohibition, authorize a public agency to issue a permit for a project if the affected tribe accepts mitigation measures or if the Native American Heritage Commission, after consultation with all affected tribes, determines that the mitigation measures are adequate to protect the traditional culture, religious significance, and ceremonial use of the site.

The bill would exempt from its provisions the issuance of a permit by any ~~state~~ *public* agency for an existing or proposed project that is subject to an amendment to a general plan or zoning ordinance approved by the electors of a city or county pursuant to an initiative measure prior to January 1, 1995.

(2) The bill would make legislative findings and declarations regarding the need to protect and preserve Native American cultural and



religious sites, and would declare that it is the policy of the state to protect the ability of Native Americans to freely practice their religion in a traditional and meaningful way, in natural areas, and at sacred sites associated with those religious practices.

(3) 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) Native American cultural and religious sites are central to
4 their religious beliefs and practices. In order to preserve the
5 religious nature of the sites and to ensure that individual
6 practitioners can use the areas for personal spiritual development,
7 the privacy, silence, and undisturbed natural setting of those sites
8 needs to be preserved.

9 (b) Native Americans have historically used natural settings in
10 the conduct of spiritual rituals and religious ceremonies, and they
11 consider the sites for those rituals and ceremonies to be sacred.

12 (c) It is the policy of the state to protect the ability of Native
13 Americans to freely practice their religion in a traditional and
14 meaningful way in natural areas, and at sacred sites associated with
15 those religious practices. To accomplish this goal of preserving
16 and protecting Native American cultural and religious sites, and in
17 recognition of Native American tribal sovereignty and the
18 relationship between the California state government and Native
19 American tribal entities, it is the intent of the Legislature that the
20 California state government should accommodate Native
21 American tribal religious rights, and take action to ensure that
22 Native Americans have the opportunity to practice their religion
23 freely. It is also the intent of the Legislature that the California state
24 government should examine and study the use of Native American
25 sacred sites, and related lands and facilities within the state to



1 determine the best ways of ensuring the continued protection and
2 preservation of those sites.

3 SEC. 2. Section 21067.5 is added to the Public Resources
4 Code, to read:

5 21067.5. “Sacred site” means, notwithstanding Chapter 1.75
6 (commencing with Section 5097.9) of Division 5, any geophysical
7 or geographical area or feature that is sacred by virtue of its
8 traditional cultural or religious significance or ceremonial use, or
9 by virtue of a ceremonial or cultural requirement, including a
10 religious requirement that a natural substance or product for use
11 in Native American tribal ceremonies be gathered from that
12 particular location.

13 SEC. 3. Section 21083 of the Public Resources Code is
14 amended to read:

15 21083. The Office of Planning and Research shall prepare and
16 develop proposed guidelines for the implementation of this
17 division by public agencies. The guidelines shall include
18 objectives and criteria for the orderly evaluation of projects and the
19 preparation of environmental impact reports and negative
20 declarations in a manner consistent with this division.

21 The guidelines shall specifically include criteria for public
22 agencies to follow in determining whether or not a proposed
23 project may have a “significant effect on the environment.” The
24 criteria shall require a finding that a project may have a
25 “significant effect on the environment” if any of the following
26 conditions exist:

27 (a) A proposed project has the potential to degrade the quality
28 of the environment, curtail the range of the environment, or to
29 achieve short-term, to the disadvantage of long-term,
30 environmental goals.

31 (b) The possible effects of a project are individually limited but
32 cumulatively considerable. As used in this subdivision,
33 “cumulatively considerable” means that the incremental effects
34 of an individual project are considerable when viewed in
35 connection with the effects of past projects, the effects of other
36 current projects, and the effects of probable future projects.

37 (c) The environmental effects of a project will cause substantial
38 adverse effects on human beings, either directly or indirectly.

39 (d) A proposed project may adversely affect a Native American
40 sacred site, as defined in Section 21067.5.



1 The guidelines shall also include procedures for determining the
2 lead agency pursuant to Section 21165.

3 The guidelines shall also include criteria for public agencies to
4 use in determining when a proposed project is of sufficient
5 statewide, regional, or areawide environmental significance that
6 it should be submitted to appropriate state agencies for review and
7 comment prior to completion of an environmental impact report
8 or negative declaration thereon.

9 The Office of Planning and Research shall develop and prepare
10 the proposed guidelines as soon as possible and shall transmit them
11 immediately to the Secretary of the Resources Agency. The
12 Secretary of the Resources Agency shall certify and adopt the
13 guidelines pursuant to Chapter 3.5 (commencing with Section
14 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
15 which shall become effective upon the filing thereof. However, the
16 guidelines shall not be adopted without compliance with Sections
17 11346.4, 11346.5, and 11346.8 of the Government Code.

18 SEC. 4. Section 21097 is added to the Public Resources Code,
19 to read:

20 21097. (a) A lead agency shall notify any affected tribe and
21 the Native American Heritage Commission when determining
22 whether a negative declaration or an environmental impact report
23 is required for a project pursuant to Section 21080.3, if an
24 application for the project has been deemed complete pursuant to
25 Section 65943 of the Government Code and the project is within
26 one mile of the exterior boundary of a Native American
27 reservation or sacred site, including, but not limited to, a site
28 included in an inventory by the Native American Heritage
29 Commission.

30 (b) A permit may not be issued by any public agency for a
31 project if all of the following criteria are met:

32 (1) An affected Native American tribe declares, and notifies the
33 lead agency, that the project will have an adverse impact on a
34 sacred site if the tribe is notified pursuant to subdivision (a), or if
35 the tribe was not notified or required to be notified pursuant to
36 subdivision (a), during the public review period described in
37 Section 21091.

38 (2) The site is certified to be a sacred site, based on evidence,
39 including, but not limited to, oral histories, by either of the
40 following, as applicable:



1 (A) If the tribe is a federally recognized Indian tribe, the tribal
2 government or its designated representative.

3 (B) If the tribe is not a federally recognized Indian tribe, the
4 Native American Heritage Commission, as described in Section
5 5097.91.

6 (3) The Native American tribe identifies the adverse impact
7 and recommends mitigation measures, if any, that would mitigate
8 the adverse impact.

9 (c) (1) A lead agency shall consult with all affected tribes to
10 seek mutually agreeable mitigation measures to avoid or mitigate
11 the adverse impacts of the project.

12 (2) The lead agency, any responsible agency, or any public
13 agency having jurisdiction over a natural resource affected by the
14 project may propose mitigation measures to mitigate any adverse
15 impacts declared to exist by the affected tribe pursuant to
16 paragraph (1) of subdivision (b). The affected tribe may accept
17 those proposed mitigation measures at its discretion and withdraw
18 its declaration of adverse impact.

19 (3) Notwithstanding subdivision (b), a public agency may issue
20 a permit for a project that otherwise meets the criteria of that
21 subdivision if either of the following occur:

22 (A) The affected tribe accepts mitigation measures proposed
23 pursuant to paragraph (2).

24 (B) The Native American Heritage Commission, after
25 consultation with all affected tribes, determines that the mitigation
26 measures are adequate to protect the traditional culture, religious
27 significance, and ceremonial use of the site.

28 (d) This section does not apply to the issuance of a permit by
29 any *state public* agency on any existing or proposed project that
30 is subject to an amendment to a general plan or zoning ordinance
31 approved by the electors of a city or county pursuant to an initiative
32 measure prior to January 1, 1995.

33 SEC. 5. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 a local agency or school district has the authority to levy service
36 charges, fees, or assessments sufficient to pay for the program or
37 level of service mandated by this act, within the meaning of
38 Section 17556 of the Government Code.

