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AMENDED IN ASSEMBLY MARCH 23, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

**ASSEMBLY BILL****NO. 389****Introduced by Assembly Member Ramos****February 02, 2023**

An act *to amend Sections 7927.000 and 11126 of the Government Code, to amend Section 7050.5 of the Health and Safety Code, and to amend Sections 5097.94 and 5097.98 of the Public Resources Code*, relating to public resources.

## LEGISLATIVE COUNSEL'S DIGEST

AB 389, as amended, Ramos. Public resources: Native American Heritage Commission: *human remains notifications*: tribal contact list: public records: open meetings.

(1) Existing law establishes the Native American Heritage Commission and empowers the commission to do certain things, including to identify and catalog places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands. Existing law, the California Public Records Act, requires that public records, as defined, be available to the public for inspection and made promptly available to any person, with specified exceptions, including an exception for records of Native American graves, cemeteries, and sacred places, among other things. The Bagley-Keene Open Meeting Act requires, with specified exceptions for authorized closed sessions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body.

*This bill would provide, as an exception to the California Public Records Act, genealogical records of tribal members and cultural affiliation records received during a consultation by the commission relating to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the commission, among other records relating to the commission. The bill would provide, as an exception to the Bagley-Keene Open Meeting Act, that nothing in the act shall be construed to prevent the commission from holding closed sessions when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the commission, among other matters.*

(2) Existing law requires a county coroner to notify the commission by telephone within 24 hours if the coroner determines that discovered human remains are not subject to their authority and recognizes, or has reason to believe, the remains are those of a Native American, as specified. Existing law requires the commission, whenever it receives notification of a discovery of Native American human remains from a county coroner, to immediately notify those persons it believes to be most likely descended from the deceased Native American.

*This bill would also require a county sheriff to notify the commission when it has determined that discovered human remains are not subject to the sheriff's authority and the sheriff recognizes, or has reason to believe, the remains are those of a Native American. By requiring a higher level of service from county sheriffs, this bill would impose a state-mandated local program.*

*This bill would require the commission to make recommendations to a county sheriff or coroner on human remains notification and repatriation procedures.*

*(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

*This bill would make legislative findings to that effect.*

*(4) 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 the statutory provisions noted above.*

~~*This bill would state the intent of the Legislature to enact subsequent legislation to provide, as an exception to the California Public Records Act, genealogical records of tribal members and cultural affiliation records received during a consultation by the commission relating to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the commission, among other records relating to the commission. The bill would further state the intent of the Legislature to enact subsequent legislation to provide, as an exception to the Bagley-Keene Open Meeting Act, that nothing in the act shall be construed to prevent the commission from holding closed sessions when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the commission, among other matters.*~~

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: ~~no~~yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *Section 7927.000 of the Government Code is amended to read:*

**7927.000.** Except as provided in Sections 7924.510, 7924.700, and 7929.610, this division does not require disclosure of any of the following:

(a) Records of Native American graves, cemeteries, and sacred places.

(b) Records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code, which are maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

*(c) Genealogical records of tribal members and cultural affiliation records received during a consultation by the Native American Heritage Commission relating to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Native American Heritage Commission, consideration of the persons most likely descended from Native American human remains pursuant to subdivision (a) of Section 5097.98 of the Public Resources Code, or a claim or dispute under Section 8014 or 8016 of the Health and Safety Code.*

**SEC. 2.** *Section 11126 of the Government Code is amended to read:*

**11126.** (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of their right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted

invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs ~~prior to~~ before the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board or the Cannabis Control Appeals Panel from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator ~~prior to~~ before the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, ~~prior to~~ before the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a

state body shall also be exempt from ~~the provisions of~~ paragraph (7) relating to the identification of real properties ~~prior to~~ *before* the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session ~~prior to~~ *before* adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d) (1) Notwithstanding any other law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(3) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subparagraph (A) of paragraph (2), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (B) or (C) of paragraph (2), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body ~~prior to~~ *before* the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 7927.205.

(4) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(5) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester ~~prior to~~ before the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant ~~prior to~~ before the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), former Part 6.3 (commencing with Section 12695), former Part 6.4 (commencing with Section 12699.50), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

*(l) Nothing in this article shall be construed to prevent the Native American Heritage Commission from holding closed sessions when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the Native American Heritage Commission, consideration of the persons most likely descended from Native American human remains pursuant to subdivision (a) of Section 5097.98 of the Public Resources Code, or a claim or dispute under Section 8014 or 8016 of the Health and Safety Code. Action taken on agenda items considered in closed session pursuant to this subdivision shall be taken in open session so as to inform the public of the evidence, findings, and basis of the Native American Heritage Commission's decision, consistent with Sections 7927.000 and 7927.005.*

**SEC. 3.** *Section 7050.5 of the Health and Safety Code is amended to read:*

**7050.5.** (a) Every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law is guilty of a misdemeanor, except as provided in Section 5097.99 of the Public Resources Code. ~~The provisions of this~~ *This* subdivision shall not apply to any person carrying out an agreement developed pursuant to subdivision ( l) of Section 5097.94 of the Public Resources Code or to any person authorized to implement Section 5097.98 of the Public Resources Code.

(b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the *sheriff or* coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to ~~the provisions of~~ Section 27491 of the Government Code or any other related ~~provisions of~~ law concerning investigation of the circumstances, ~~manner~~ *manner*, and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to ~~his or her~~ *their* authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The *sheriff or* coroner shall make ~~his or her~~ *their* determination within two working days from the time the person responsible for the excavation, or ~~his or her~~ *their* authorized representative, notifies the *sheriff or* coroner of the discovery or recognition of the human remains.

(c) If the *sheriff or* coroner determines that the remains are not subject to ~~his or her~~ *their* authority and if the *sheriff or* coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, ~~he or she~~ *the sheriff or coroner* shall contact, by telephone within 24 hours, the Native American Heritage Commission.

**SEC. 4.** *Section 5097.94 of the Public Resources Code is amended to read:*

**5097.94.** The commission shall have the following powers and duties:

(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloging of known graves and cemeteries shall be completed on or before January 1, 1984. The commission shall notify landowners on whose property the graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

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

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

(d) To appoint necessary clerical staff.

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

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

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In an action to enforce this subdivision the commission shall introduce evidence showing that a cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

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

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

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

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

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

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

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

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

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

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

(C) Establish and maintain an ~~Internet Web site~~ [internet website](#) for communication among tribes and museums and agencies.

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

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

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

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

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

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

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

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

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

(B) "Tribe" means a "California Indian tribe" as that term is used in the act.

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

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

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

*(q) To make recommendations to a county sheriff or coroner on human remains notification and repatriation procedures.*

**SEC. 5. Section 5097.98 of the Public Resources Code is amended to read:**

**5097.98.** (a) Whenever the commission receives notification of a discovery of Native American human remains from a county *sheriff or* coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, ~~it~~ *the commission* shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the ~~owner of the land, landowner or his or her~~ *the landowner's* authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the ~~owner~~ *landowner* or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.

(b) Upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section, with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.

(1) The descendants' preferences for treatment may include the following:

(A) The nondestructive removal and analysis of human remains and items associated with Native American human remains.

(B) Preservation of Native American human remains and associated items in place.

(C) Relinquishment of Native American human remains and associated items to the descendants for treatment.

(D) Other culturally appropriate treatment.

(2) The parties may also mutually agree to extend discussions, taking into account the possibility that additional or multiple Native American human remains, as defined in this section, are located in the project area, providing a basis for additional treatment measures.

(c) ~~For the~~ purposes of this section, "conferral" or "discuss and confer" means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties' cultural values, and where feasible, seeking agreement. Each party shall recognize the other's needs and concerns for confidentiality of information provided to the other.

(d) (1) Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness.

(2) Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains.

(e) Whenever the commission is unable to identify a descendant, or the descendants identified fail to make a recommendation, or the landowner or ~~his or her~~ *the landowner's* authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or ~~his or her~~ *the landowner's* authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, the landowner shall do one or more of the following:

(1) Record the site with the commission or the appropriate Information Center.

(2) ~~Utilize-Use~~ an open-space or conservation zoning designation or easement.



(3) Record a document with the county in which the property is located. The document shall be titled "Notice of Reinterment of Native American Remains" and shall include a legal description of the property, the name of the owner of the property, and the owner's acknowledged signature, in addition to any other information required by this section. The document shall be indexed as a notice under the name of the owner.

(f) Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with the descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of the discovery may be ascertained from a review of the site ~~utilizing~~ *using* cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to subdivision (e).

(g) Notwithstanding Section 5097.9, this section, including those actions taken by the landowner or ~~his or her~~ *the landowner's* authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(h) Notwithstanding Section 30244, this section, including those actions taken by the landowner or ~~his or her~~ *the landowner's* authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

**SEC. 6.** *The Legislature finds and declares that Section 1 of this act, which amends Section 7927.000 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

*To protect the sovereignty of tribal nations, the internal workings and sensitive cultural and historical information of Native American tribes, and to protect sensitive and private information of Native American tribal membership of Native American tribes, it is necessary that this act limit the public's access to that information.*

**SEC. 7.** *The Legislature finds and declares that Section 2 of this act, which amends Section 11126 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

*To protect the sovereignty of tribal nations, the internal workings and sensitive cultural and historical information of Native American tribes, and to protect sensitive and private information of Native American tribal membership of Native American tribes, it is necessary that this act limit the public access to that information.*

**SEC. 8.** *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

~~SECTION 1. It is the intent of the Legislature to enact subsequent legislation to provide, as an exception to the California Public Records Act, genealogical records of tribal members and cultural affiliation records received during a consultation by the Native American Heritage Commission relating to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the commission, among other records relating to the commission. It is further the intent of the Legislature to enact subsequent legislation to provide, as an exception to the Bagley Keene Open Meeting Act, that nothing in the act shall be construed to prevent the commission from holding closed sessions when considering matters related to the inclusion or removal of a Native American tribe, person, or entity on the tribal contact list maintained by the commission, among other matters.~~