SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1881 (Ramos)
Version: May 19, 2026
Hearing Date: June 30, 2026
Fiscal: Yes
Urgency: No
AWM

SUBJECT

California Indian Freedom Act of 2026

DIGEST

This bill establishes a framework for California Native American tribes to exercise their religious beliefs or spiritual practices on state lands, and requires a governmental agency to obtain free, prior, and informed consent of any affected tribe before undertaking any project action on state lands that may pose a risk to sacred sites, as specified.

EXECUTIVE SUMMARY

California has the highest population of Native Americans in the United States. California's over 100 Native Nations are an essential part of California, each with their own religions, spiritual traditions, and ceremonies that predate statehood. Unfortunately, colonization and California's early policies toward Native Americans disrupted centuries-old religious practices for many California Native American tribes. Many sacred sites and other locations of religious significance are located on what is now state-owned lands, and current law does not reliably protect California Native American tribes' ability to practice their spiritual and cultural practices free from state interference.

This bill establishes the California Indian Freedom Act of 2026 to ensure that California Native Americans have access to traditional sacred sites and are not unduly denied the right to exercise their religious beliefs and engage in spiritual practices on state public lands. The bill specifically prohibits state agencies from substantially burdening California Native American tribal religious practices, as defined, on state lands unless the burden is the least restrictive means of achieving a compelling state interest, also known as the "strict scrutiny" standard. The bill also requires a state agency to seek free, prior, and informed consent from any California Native American tribe whose sacred sites will be affected by an agency's project on state lands, provided that the

agency has actual knowledge of the site. The author has agreed to continue working with stakeholders and state agencies to ensure that the bill's processes do not interfere with the provision of vital services, including water, throughout the state.

This bill is sponsored by Indigenous Justice, and is supported by the Indian Health Center of Santa Clara Valley, Indigenous Justice, Sacramento Native American Health Center, Inc., the Santa Ynez Band of Chumash Indians, Yuhaaviatam of San Manuel Nation, and the Wilton Rancheria. This bill is opposed by a number of organizations, including municipal and regional water agencies and authorities and the California Chamber of Commerce.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

1) Provides that Indian tribes are domestic independent nations that exercise inherent sovereign authority which can be modified only through Congressional action. (*E.g.*, *Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788-789.)

2) Provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. (U.S. Const., 1st amend.)

3) Provides that free exercise and enjoyment of religion without discrimination or preference are guaranteed, and that the Legislature shall make no law respecting an establishment of religion. (Cal. Const., art. 1, § 4.)

4) Provides for equal protection under the law as follows:
    a) Under the United States Constitution, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const., 14th amend., § 1.)
    b) Under the California Constitution, provides that a person may not be denied the equal protection of the laws, and that a citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. (Cal. Const., art. I, § 7.)

Existing federal law:

1) Provides that, on and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiian peoples, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. (42 U.S.C. § 1996.)

2) Provides, notwithstanding any other law, that the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any state, and that no Indian shall be penalized or discriminated against on the basis of such use, possession, or transportation. (42 U.S.C. § 1996a.)

3) Establishes the Religious Freedom Restoration Act (RFRA), which provides that a government shall not substantially burden a person's exercise of religion even if the burden results form a rule of general applicability, unless the government demonstrates that the burden is both:
    a) In furtherance of a compelling government interest.
    b) The least restrictive means of furthering that compelling governmental interest. (42 U.S.C. § 2000bb-1.)

4) Provides that 3) cannot be enforced against state and local laws. (*City of Boerne v. Flores* (1997) 521 U.S. 507, 532-536.)

5) Establishes the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibits a government agency from implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of that person, assembly, or institution is both:
    a) In furtherance of a compelling governmental interest.
    b) The least restrictive means of furthering that compelling governmental interest. (42 U.S.C. § 2000cc.)

6) Provides that 5) applies in any case in which:
    a) The substantial burden is imposed in a program or activity that receives federal financial assistance, even if the burden results from a rule of general applicability.
    b) The substantial burden affects, or removal of that financial burden would affect, commerce with foreign nations, among the several states, or with Indian tribes, even if the burden results from a rule of general applicability.
    c) The substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved. (42 U.S.C. § 2000cc.)

Existing state law:

1) Gives a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission certain rights with respect to land use, including:
    a) The right to receive notice, on request, of public hearings for plans or projects. (Gov. Code, § 65092.)
    b) The right to be involved in, and receive notice of, the preparation or amendment of a general plan. (Gov. Code, §§ 65351, 65352.)
    c) The right to be consulted prior to the adoption or amendment of a city or county's general plan, for purposes of preserving or mitigating impacts to tribal cultural resources that are located within the city or county's jurisdiction. (Gov. Code, § 65352.3.)
    d) The right to be consulted if land designated, or proposed to be designated, as an open space contains tribal cultural resources for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the resource, and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan. (Gov. Code, § 65562.5.)

2) Prohibits a public agency, or a private property using or operating public property under a public license, permit, lease, or contract made on or after July 1, 1977, from 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 and necessity so require. (Pub. Resources Code, § 5097.9.)

3) Provides that 2) shall not be construed to limit the requirements of the Environmental Quality Act of 1970 (CEQA) and does not apply to the public property of all cities, counties, and city and county located within the limits of the city, county, and city and county, except for all parklands in excess of 100 acres. (Pub. Resources Code, § 5097.9.)

4) Establishes the Native American Heritage Commission (Commission) within the state government. (Pub. Resources Code, § 5097.91.)

5) Establishes the powers and obligations of the Commission, which include:
    a) Identifying and cataloguing places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands.
    b) Making places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands.

c) Bringing an action to prevent severe and irreparable damage, 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, as specified.
d) Assisting Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.
e) Providing each California Native American tribe with a list of all public agencies that may be a lead agency within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those 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. (Pub. Resources Code, § 5097.94.)

6) Requires every state and local agency to cooperate with the Commission in carrying out its duties, as specified. (Pub. Resources Code, § 5097.95.)

7) Permits the Commission, in the event that any Native American organization, tribe, group, or individual advises the Commission that a proposed action by a public agency may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans, to conduct an investigation into the effect of the proposed action and, if the Commission finds that the proposed action would result in such damage or interference, to recommend mitigation measures to the agency; if the agency fails to accept the mitigation action, the Commission may ask the Attorney General to take appropriate legal action. (Pub. Resources Code, § 5097.97.)

8) Provides, within CEQA, that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources, and requires the lead agency, prior to the release of a declaration or environmental impact report, to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if both of the following conditions are met:
    a) The California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe.
    b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification and requests the consultation. (Pub. Resources Code, § 21080.3.1.)

This bill:

1) Establishes the California Indian Freedom Act of 2026 (the Act).

2) Makes findings and declarations relating to the long history of Native Nations within California, the history of government policies in California intended to exterminate or culturally erase Indigenous groups, including through the suppression of religious and spiritual practices, and the lack of state laws protecting Indigenous religious freedom.

3) Exempts, from the disclosure requirements of the CPRA, information identifying sacred sites, cultural landscapes, or religious practices of California Native American Tribes.

4) Defines the following terms:
    a) "California Indian" means a Native American who is a member or citizen of a California Native American tribe.
    b) "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission.
    c) "Capitol Protective Services" means the division of the Department of California Highway Patrol that provides law enforcement and safety services for the State Capitol Building and grounds, and for the State Capitol Building Annex and grounds.
    d) "Consultation" has the same meaning as in CEQA.
    e) "Cultural landscape" means a geographical area on state lands that includes cultural and natural resources associated with the spiritual and cultural practices of a California Native American Tribe.
    f) "Exercise of religious beliefs or spiritual practices" means any tribal practice undertaken as part of California Indian religious, spiritual, or sacred observance, whether or not compelled by, or central to, a system of religious beliefs, and includes:
        i. California Indian spiritual and religious practices tied to land, water, cultural landscapes, and sacred sites on state lands, and the use, building, or conversion of real property for religious or sacred purposes.
        ii. Actions and efforts associated with the preparation in the exercise of California Indian religious or spiritual practices, such as the gathering and collecting of California Indian traditional foods and plants for ceremonial purposes.
    g) "Governmental agency" means any state agency, department, board, or commission.
    h) "Least restrictive means" shall be interpreted consistent with strict judicial scrutiny jurisprudence of California.
    i) "Native Nation" or "tribe" means any federally recognized or nonfederally recognized California Native American tribe.
    j) "Sacred site" means any specific location, landscape, landform, waterbody, or area on state lands that is both of the following:

i. Historically, culturally, or spiritually significant to a California Indian or tribe.
ii. Used, or has historically been used, for religious, ceremonial, or cultural purposes.

k) "State lands" means lands owned by the state or any state agency, excluding lands owned by, or under the jurisdiction of, any city, county, or district; but does not include private lands or lands used for public infrastructure or services, or authorized for private use or development.

l) "Substantial burden" mans any government action or policy that occurs on or after January 1, 2027, excluding routine administrative procedures, minor restrictions, or actions that do not materially prevent or significantly interfere with a California Indian or tribe's exercise of religious beliefs or spiritual practices, that does any of the following:
i. Significantly restricts, denies, or unreasonably interferes with gathering or collecting traditional foods and plants used in ceremonies, including funerals, feasts, and celebrations on state lands.
ii. Denies or unreasonably restricts access to sacred sites, ceremonial grounds, or other locations of religious or spiritual significance on state lands.
iii. Destroys, desecrates, materially alters, or otherwise interferes with sacred sites, cultural landscapes, or ceremonial items on state lands in a manner that prevents or substantially impedes the practice of sincerely held religious or spiritual beliefs.
iv. Screens or restricts items of cultural, sacred, or religious significance, including, but not limited to, regalia, headdresses, eagle feathers, traditional medicines, gourd rattles, or other ceremonial items, when entering state government buildings; these items shall be permitted and may be inspected only by hand or through other nontechnological means, and shall not be inspected by technological screening.

5) Provides that a governmental agency shall not substantially burden a California Indian or California Native American tribe's exercise of religious beliefs or spiritual practices on state lands, including their access to, and use of, sacred sites or objects, and their ability to perform religious ceremonies and rites, even if the burden results from a rule of general applicability, unless the governmental agency demonstrates that the application of the burden is both of the following:
a) In furtherance of a compelling governmental interest.
b) The least restrictive means of furthering that interest.

6) Provides that a California Indian or tribe shall have standing and may assert a violation of 5) as a claim or defense in any judicial or administrative proceeding, and may obtain declaratory or injunctive relief.

7) Provides that a prevailing party asserting a claim under the Act is entitled to reasonable attorney's fees and costs, and any other equitable remedies determined by the court.

8) Requires a governmental agency to allow California Indians access to sacred sites on state lands for Native American religious, ceremonial, or cultural activities, except where public safety or resource protection makes access impossible.

9) Requires, consistent with Articles 11, 12, 25, and 32 of the UNDRIP, a governmental agency to seek and document free, prior, and informed consent of any affected tribe before undertaking any project action on state lands that may pose a risk to sacred sites of which the agency has actual knowledge or has been formally notified that may result in any of the following:
    a) Physical destruction or alteration of a sacred site.
    b) Loss of access, privacy, or quiet use.
    c) Long-term environmental degradation affecting religious and spiritual practices.

10) Requires the affirmative consent required under 9) to be in writing from the governing body of the affected tribe, subject to the following:
    a) If a tribe does not respond within a reasonable timeframe designated in the request, then the governmental agency may interpret the lack of response as a grant of request.
    b) If a tribe responds to a request for consent by objecting to the undertaking, the governmental agency may request consultation with the tribe to see if issues raised by the tribe can be addressed.

11) Provides that information identifying sacred sites, cultural landscapes, or religious practices obtained by a governmental agency for the purposes of the Act shall be confidential and exempt from public records laws, including the CPRA.

12) Requires the Department of General Services (DGS), in coordination with the Capitol Protective Section, to the greatest extent possible, to uphold the religious freedom, ceremonial practices, sacred sites, cultural patrimony, and cultural landscapes of tribes when accessing the State Capitol Building Annex and grounds.

13) Requires the Capitol Protective Section, to the greatest extent possible, to avoid undue harm when handling tribal instruments and regalia.

14) Provides that nothing in the Act shall be construed to limit or restrict the authority of the state or any state agency to enter into an agreement, memorandum of understanding (MOU), or other arrangement with any tribe to allow access to any state lands for the purpose of conducting religious, cultural, or ceremonial practices.

15) Provides the following with respect to the Act:

a) The application of the Act is strictly limited to a governmental agency's management actions that involve only state lands, regardless of whether this limitation is specified in any provision in the Act.
b) The Act has no application to any actions or direct or indirect effects arising out of, pertaining to, or relating to, lands that are not state lands.
c) To the extent there is a conflict between these provisions and any other provision of the Act, these provisions shall control.

16) Includes a severability clause.

COMMENTS

1. Author's comment

According to the author:

> California is home to hundreds of tribes, each with its own distinct religious and spiritual practices. Yet diversity of these traditions is often overlooked. Instead, broad assumptions are made about what 'Native spirituality' is. For Native people, these lands are not simply 'parks' but their ancestral homelands. These lands are the settings of their creation stories and the landscapes where their communities have lived, gathered, and prayed for thousands of years until colonization disrupted that relationship.
>
> Tribes were forcibly removed from these sacred places through violence, coercion, and government policies of dispossession. To this day, access to ceremonial sites, burial grounds, and traditional gatherings places continues to be restricted. AB 1881 intends to restore and protect Native peoples' ability to practice their religions on their ancestral lands. The bill aims to reduce the bureaucratic barriers that have long prevented tribal communities from exercising their spiritual traditions and to ensure that Native voices are included whenever decisions are made that could affect their sacred sites.

2. California's long, shameful history of violence, enslavement, family separation, and deliberate cultural suppression of California Native Americans

The findings and declarations in this bill set forth some of the most egregious offenses committed by the California government, or condoned by the California government, against California Native Americans, from before the state's admission into the United States through the 1970s. This Committee has already considered and passed AB 2115 (Ramos, 2026), which would issue an apology on behalf of the Legislature for its role in these policies. This Committee's analysis of AB 2115 contains a more thorough discussion of these issues, and is incorporated herein by reference. A few matters, however, bear reiterating here:

- Enslavement. Although California ostensibly joined the United States as a free state, the 1850 Act for the Government and Protection of Indians effectively permitted white Californians to enslave Native Americans as a punishment for "vagrancy," which could mean simply existing in public.[1] Both children and adults were forced into indentured servitude.[2]
- Genocidal violence. After California joined the Union, California's first governor, Peter H. Burnett, believed it was "inevitable" that "a war of extinction [would] continue to be waged between the races, until the Indian race becomes extinct."[3] To that end, Burnett and subsequent California governors repeatedly used the State Militia to attack Native Americans in California; while "it is impossible to determine exactly" the total number of attacks, records indicate that campaigns took place all over the state.[4] Overall, "US occupation and settlement exterminated more than one hundred thousand California Native people…reducing the population to thirty thousand by 1870—quite possibly the most extreme demographic disaster of all time."[5]
- Land theft. The 1850 Act for the Government and Protection of Indians "facilitated removing California Indians from their traditional lands, separating at least a generation of children and adults from their families, languages, and cultures."[6] Many of the California Native Americans who were removed from their lands were transported to reservations in Oregon and Oklahoma against their will.[7]
- Boarding schools and family separation. By the latter half of the nineteenth century, eradicating Indian culture by removing children from their homes, families, and tribes was official American policy.[8] The "boarding school" model gained prominence after Congress enacted federal legislation to compel Indian parents to send their children to government schools.[9] Indian children were removed from their families against their will—often for years at a time—forced to speak English and punished for speaking their native languages, and housed in deplorable conditions, with the goal of forcing them to reject their culture and embrace "whiteness."[10] Thirteen Federal Indian Boarding Schools (FIBS) were

---

[1] Johnston-Dodds, *Early California Laws and Policies Related to California Native Americans* (Sept. 2002) California Research Bureau, CRB-02-2014, p. 8, *available at* https://courts.ca.gov/sites/default/files/courts/default/2024-08/module1-resources.pdf. All links in this analysis are current as of June 26, 2026.
[2] *Ibid.*
[3] *Id.* at p. 15.
[4] *Id.* at pp. 15-16.
[5] Dunbar-Ortiz, An Indigenous Peoples' History of the United States (2104) p. 129.
[6] Johnston-Dodds, *supra*, at p. 5.
[7] Dunbar-Ortiz, *supra*, at p. 130.
[8] Lacey, The White Man's Law and the American Indian Family in the Assimilation Era, 40 Ark. L. Rev. 327, 356–357 (1986) (internal quotation marks omitted).
[9] United States Department of the Interior, Federal Indian Boarding School Initiative: Investigative Report, Vol. 1 (May 2022) p. 35.
[10] Lacey, *supra*, at pp. 356-358.

> located in California.[11] FIBS practiced "systematic identity-alteration methods" to alienate Indian children from their families and tribes, including forcing them to adopt Christianity, cutting their hair, and "renaming Indian children from Indian names to different English names."[12] In the twentieth century, the project of forced assimilation changed its methods, but not its goal. As state governments developed child welfare programs, "[m]any states began to systematically remove Indian children from their homes in the mid-twentieth century to 'save' them from reservation life, intentionally placing the children in non-Indian homes as far away from their families as possible."[13] It was estimated that state governments removed between 25 [percent] and 30 [percent] of all Indian children nationwide from their families, placing about 90 [percent] of those removed children in non-Indian homes. No one will ever know the exact numbers; far too many removals were paperless and lacked even rudimentary process.[14]

3. Efforts to atone for, and correct, state and federal approaches to Native Americans

Native American activism in the 1960s and 1970s resulted in new, albeit flawed, legal protections for Native Americans. In 1976, the Legislature created the Native American Heritage Commission.[15] The Commission is tasked with identifying and cataloguing places of special religious or social significance to Native Americans and, if it appears that a project would irreparably harm such a place located on public lands, take action to prevent the harm, including through legal action if necessary.[16] The Legislature also prohibited the interference with the free expression or exercise of Native American religion on state, and certain local, property, and prohibited 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 unless it was established, by clear and convincing evidence, that the public interest and necessity requires the action.[17] California Native American tribes do not have the right to enforce these prohibitions, however—only the Commission can determine whether action is necessary to stop a project.[18]

---

[11] Bureau of Indian Affairs, List of Federal Indian Boarding Schools, Appendix A to the Federal Indian Boarding School Initiative: Investigative Report, Vol. 2 (2024) pp. 1-2, *available at* https://www.bia.gov/sites/default/files/media_document/vol_ii_appendix_a_list_of_federal_indian_boarding_schools_public_508_final%5B1%5D.pdf.

[12] Federal Indian Boarding School Initiative: Investigative Report, *supra*, at p. 53. The full list of horrors experienced by Indian children is too long to list in this analysis; as the Department of the Interior notes, "[r]ampant physical, sexual, and emotional abuse; disease; malnourishment; overcrowding; and lack of health care" at the boarding schools are all well-documented. (*Id.* at p. 56.)

[13] Fletcher & Stengel, *supra*, at p. 952.

[14] *Id.* at pp. 954-955.

[15] AB 4239 (Knox, Ch. 1332, Stats. 1976).

[16] Pub. Resources Code, §§ 5097.94, 5097.97.

[17] *Id.*, § 5097.9.

[18] *Ibid.*

At the federal level, the 1970s saw a number of measures intended to prevent the continued destruction of Indigenous families and culture. The Indian Child Welfare Act of 1978 (ICWA) was intended to end states' use of the dependency system to remove Native American children from tribes and place them with non-Indigenous families.[19] ICWA does this by establishing a number of actions that a state court or state welfare agency must take in any proceeding involving the custody and placement of a child who is, or may be, an Indian child, as defined.[20] Also in 1978, federal legislation was enacted to formally declare the United States' policy toward Indigenous religious practices:

> On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.[21]

In the 1990s, following a United States Supreme Court decision holding that the State of Oregon could withhold benefits from two individuals because of their peyote use, even though the use was for religious purposes,[22] Congress passed a law specifically permitting the use, possession, and transportation of peyote by a Native American for traditional ceremonial purposes in connection with the practice of a traditional Indian religion.[23]

4. <u>This bill establishes a framework to ensure that California Native American tribes can exercise their religious and spiritual practices on state lands and are consulted before projects are undertaken at their sacred sites</u>

This bill establishes the California Indian Freedom Act of 2026 and provides three main protections for California Native Americans whose religious and spiritual traditions involve accessing sites on state lands.

First, the bill prohibits a state agency from substantially burdening a California Indian or California Native American tribe's exercise of religious or spiritual practices on state lands, even if the burden results from a rule of general applicability, unless the agency demonstrates that the burden both (1) furthers a compelling state interest and (2) is the least restrictive means of furthering that interest. An action "substantially burdens" religious exercise if it significantly restricts, denies, or otherwise interferes with access to locations of spiritual significance or the ability to gather and collect materials used for

---

[19] *See* 25 U.S.C. §§ 1901 et seq.
[20] *Ibid.*
[21] 42 U.S.C. § 1996.
[22] *Employment Division v. Smith* (1990) 494 U.S. 872,
[23] 42 U.S.C. § 1996a.

traditional ceremonies on state lands; destroys, desecrates, or materially alters, cultural landscapes or ceremonial items on state lands in a way that prevents or substantially impedes the practice of sincerely held religious or spiritual beliefs; or destroys, desecrates, or materially alters sacred sites, cultural landscapes, or ceremonial items on state lands. "Substantial burden" also includes technological screening items of cultural, sacred, or religious significance when entering government buildings; nontechnological screenings are permitted.[24] The bill authorizes a California Indian or California Native American tribe to assert a violation of these requirements through a civil action for injunctive or declaratory relief, and may recover reasonable attorney's fees and costs if they prevail. There is no action for damages.

Second, this bill requires a government agency to allow California Indians access to sacred sites on state lands for Native American religious, ceremonial, or cultural activities, except where public safety or resource protection makes access impossible. This builds on existing law, which already prohibits interference with the free expression or exercise of Native American religion on state and certain local properties.[25]

Third, this bill establishes a process through which a state agency must obtain free, prior, and informed consent from a California Native American tribe before it undertakes a project on state lands that may pose a risk to the tribe's sacred sites, provided that the agency has actual knowledge of the site (either through prior awareness or through a formal notice provided by the tribe in connection with the project). An action poses a risk to a site if it may result in physical destruction or alteration of the site; loss of access, privacy, or quiet use; or long-term environmental degradation that will affect religious and spiritual practices. If a tribe fails to respond to the agency's request for consent after a reasonable timeframe set forth in the request, the agency may interpret the lack of response as assent. If the tribe objects to the project, the governmental agency may request to consult with the tribe to determine whether a resolution is possible.

In addition to the above, the bill establishes a California Public Records Act[26] exemption for information identifying sacred sites, cultural landscapes, or religious practices provided to a governmental agency pursuant to the Act. This exemption appears reasonable to prevent intrusion or disruption by the public of California Native American tribal religious and spiritual practices, including the potential destruction of sites and plants needed for religious observances.

---

[24] This is consistent with the Transportation Security Administration's (TSA) policy of permitting tribal and Indigenous cultural, sacred, or religious significance to be inspected by hand only. (TSA, Tribal and Indigenous, http://www.tsa.gov/travel/tsa-cares/tribal-and-indigenous.)
[25] Pub. Resources Code, § 5097.9.
[26] *See* Gov. Code, tit. 1, div. 10, §§ 7920.000 et seq.

A number of the bill's opponents express concerns that the bill raises significant implementation difficulties, and may be inadvertently broader in scope than the author intended. In particular, they argue that the bill's definition of "public lands" may include certain tidelands, navigable waterways, and submerged lands, which are treated as public lands under the "public trust" doctrine. They also express concern that the bill's grant of privileges to California Native American tribes, such as requiring a strict scrutiny standard to be applied to impediments to tribal religious expressions, or the free, prior, and written consent requirement, will create implementation difficulties for state agencies. For example, according to a coalition of the bill's opponents:

> We are particularly concerned about the bill's implications for water management. AB 1881 expressly defines waterbodies as potential sacred sites and cultural landscapes subject to its FPIC requirements and private right of action. The scope of "state lands" under the bill would likely encompass waterways, as well. The public trust doctrine establishes that the state holds certain natural resources—including tidelands, navigable waterways, and submerged lands—in trust for the benefit of all Californians. These public trust resources are, by definition, state-owned lands, and would therefore fall squarely within AB 1881's coverage. The result is that the agencies entrusted with managing California's most critical water resources would be subject to a private right of action when undertaking regulatory actions involving waterways. These agencies would also be required to obtain tribal consent before undertaking project actions on the very waterways they are legally obligated to manage in the public interest—with no timeline, no override, and, again, a private right of action available to enforce compliance.

The author has committed to continue working with stakeholders and the relevant state agencies to ensure that this bill is appropriately tailored to protect Indigenous rights without interfering with vital state operations.

5. Constitutional issues

The state and federal constitutions protect the right to practice one's religion, prohibit the government from establishing a religion, and guarantee equal protection under the laws.[27] This bill is clearly consistent with the constitutional provisions protecting the free exercise of religion. To the extent that this bill grants California Native American tribes rights relating to their religious and spiritual practices not granted to other persons, it's possible that these provisions could be challenged as impermissibly preferencing certain religions or cultures.[28] But because this bill relates to the religious practices of California Native American tribes, a straightforward First Amendment or equal protection challenge is not the right approach.

[27] U.S. Const., 1st & 14th amends.; Cal. Const., art. 1, §§ 4, 7.
[28] U.S. Const., 1st amend.; Cal. Const., art. 1, § 4.

Indigenous tribes have a "unique legal status" under federal law, "based on a history of treaties and the assumption of a 'guardian-ward' status" by the federal government over tribes.[29] Statutes addressing Native Americans specifically have generally been understood to treat Indians as members of quasi-sovereign tribal entities.[30] "Congress's power in this field is muscular, superseding both tribal and state authority."[31] Consistent with that authority, Congress has enacted numerous measures specifically granting privileges to Native Americans as a political class that it likely would not be able to grant on the basis of racial or ethnic classifications.[32] Two acts of Congress are of particular relevance here: Congress's statement of policy regarding the practice of Indigenous religion, and Congress's authorization of peyote use in connection with traditional Native American religious ceremonies, notwithstanding the general prohibition on the possession, cultivation, and transportation of peyote.

In the first instance, the statement of policy, set forth in full in Comment 3, above, indicates Congress's clear intent to protect the rights of Indigenous peoples to exercise their traditional religions, including through access to sites and the use and possession of sacred objects.[33] By establishing provisions to allow California Native American tribes greater freedom to practice their religious and spiritual beliefs, and to have more say in the treatment of their traditional lands and sites, this bill is furthering Congress's stated policy.

The appropriateness of this policy is confirmed by other measures similarly protecting Indigenous religious and spiritual practices. Congress's peyote usage exception, enacted as the American Indian Religious Freedom Act Amendments of 1994, demonstrates that classifications involving Indigenous religious practices should not be analyzed under the same framework as other religious, ethnic, or racial classifications. The United States Court of Appeals for the Fifth Circuit rejected First Amendment and equal protection challenges to the peyote exemption for precisely this reason.[34]

Because the statutes and case law establish (1) clear Congressional intent to permit Indigenous religious practices, and (2) the constitutionality of laws singling out Indigenous religious practices for special treatment, it does not appear appropriate to apply the frameworks for analyzing non-Indigenous Establishment clause or equal protection claims.[35] To the extent the state does require an added justification for this

---

[29] *Morton v. Mancari* (1974) 417 U.S. 535, 551.
[30] *Id.* at p. 554.
[31] *Haaland v. Brakeen* (2023) 599 U.S. 255, 273.
[32] *See, e.g.*, 25 U.S.C. §§ 1901 et seq. (Indian Child Welfare Act).
[33] 42 U.S.C. § 1996.
[34] *Peyote Way Church of God, Inc. v. Thornburgh* (1991) 922 F.2d 1210, 1214-1219.
[35] The Religious Land Use and Institutionalized Persons Act of 2000 (Pub. L. 106-274 (Sept. 22, 2000) 114 Stat. 803) (RLUIPA) applies the same compelling interest/least restrictive means standard to burdens on religious exercise as this bill, when the burden arises in cases involving federal financial assistance, interstate commerce, or federal lands. Because RLUIPA applies to all religious activities, it is more

bill, the state has a strong reparatory interest in remedying the disruption to California Native American tribal religious practices that was caused by the state's violent policies directed specifically at Native Americans.[36]

6. Arguments in support

According to Indigenous Justice:

> AB 1881 strengthens protections for Tribes' religious and spiritual practices by ensuring that the state cannot interfere with their ability to practice their traditions. This bill recognizes tribes' deep connections to the land and natural resources, which are central to tribal identity and community, and affirms that these connections are inseparable from their spiritual and religious practices.
>
> These protections must include the ability of tribal members to access their sacred sites without unnecessary barriers. These places are not simply historic locations, but living spaces where prayer, teaching, and responsibilities to the land continue every day. When access is restricted, it disrupts the continuation of these practices and harms the cultural and spiritual wellbeing of tribal communities.
>
> Equally important is the freedom to gather the traditional materials needed for ceremonies. Many require certain plants, foods, water sources, and other natural elements that cannot simply be replaced or collected elsewhere. Protecting the right to gather these materials freely is essential to keeping these traditions alive.
>
> AB 1881 also affirms the right of tribal members to carry traditional instruments, regalia, and sacred items without being questioned or stopped. These items are part of spiritual practices, and the ability to transport them safely and without interference is an important component of religious freedom.

7. Arguments in opposition

According to a coalition of the bill's opponents:

> The California Environmental Quality Act (CEQA) provides a framework for the assessment of environmental impacts from projects that require discretionary action and provides for public disclosure of those environmental impacts, including proposed mitigation measures and project alternatives as part of the overall project analysis. Lead agencies must follow a formal process for early government-to-

---

appropriately viewed as a measure protecting the free exercise of religion and does not provide guidance on the Establishment Clause question potentially raised by this bill.

[36] *Cf. Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023) 600 U.S. 181, 207 ("remediating specific, identified instances of past discrimination that violated the Constitution or a statute" justifies a wholly race-based classification that does not violate the Fourteenth Amendment).

government consultation with California Native American tribes traditionally and culturally affiliated with the geographic area of a proposed project as part of the environmental review process under CEQA.

The bill would create a duplicative path for tribal consultation outside of the CEQA process and set standards that could result in projects not moving forward. Such provisions like requiring a government agency to "seek and document free, prior, and informed consent from an affected tribe for any project" could drastically constrain projects, including those necessary to modernize water infrastructure in the face of a changing climate. This shift from consultation to mandating consent marks a fundamental change in California land use law and could effectively grant a single tribe the power to halt or indefinitely delay any project—including projects that have already undergone extensive environmental review and received all other required approvals.

Additionally, Government Code §7927.000 already requires that records of Native American graves, cemeteries, and sacred places, including those records that are maintained by the Native American Heritage Commission, another state agency, or a local agency are exempt from mandatory public disclosure under the California Public Records Act due to being of historical and cultural significance.

Based on these existing laws, AB 1881 would introduce far-reaching and unworkable changes that inhibit government decision-making and conflict with existing law, including tribal consultation processes and confidentiality measures.

SUPPORT

Indigenous Justice (sponsor)
Indian Health Center of Santa Clara Valley
Sacramento Native American Health Center, Inc.
Santa Ynez Band of Chumash Indians
Yuhaaviatam of San Manuel Nation
Wilton Rancheria

OPPOSITION

Agricultural Council of California
Association of California Water Agencies
California Chamber of Commerce
California Municipalities Association
California Special Districts Association
California State Association of Counties
El Dorado Immigration District
League of California Cities
Northern California Water Association

Solano County Water Agency
Regional Water Authority
Valley Ag Water Coalition
Water Blueprint for San Joaquin Valley Advocacy Fund
Western Growers Association

RELATED LEGISLATION

Pending legislation: AB 2115 (Ramos, 2026) provides that the State of California recognizes and accepts responsibility for all of the harms and atrocities perpetrated against Native Americans, and requires a plaque memorializing the apology to be publicly and conspicuously installed and maintained in the State Capitol Building. AB 2115 is pending before the Senate Appropriations Committee.

Prior legislation: AB 52 (Aguiar-Curry, 2025) would have established specified processes for consultation with federally recognized tribes and non-federally recognized tribes under specified state laws that require consultation with California Native American tribes. AB 52 was never heard in the Assembly Natural Resources Committee and was subsequently gutted and amended to address an unrelated topic.

PRIOR VOTES

Assembly Floor (Ayes 65, Noes 0)
Assembly Appropriations Committee (Ayes 11, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)

****