

Date of Hearing: April 14, 2026

ASSEMBLY COMMITTEE ON JUDICIARY  
Ash Kalra, Chair  
AB 1881 (Ramos) – As Amended April 8, 2026

As Proposed to be Amended

**SUBJECT:** CALIFORNIA INDIAN FREEDOM ACT OF 2026

**KEY ISSUE:** SHOULD GOVERNMENT AGENCIES BE REQUIRED TO TAKE CERTAIN STEPS TO PROTECT THE RELIGIOUS FREEDOM OF CALIFORNIA NATIVE AMERICANS, AND SHOULD THEY MEET A HEIGHTENED BURDEN IF THEIR POLICIES DENY CALIFORNIA NATIVE AMERICANS ACCESS TO RELIGIOUS SITES ON STATE PUBLIC LANDS?

**SYNOPSIS**

*This bill creates the California Indian Freedom Act of 2026 in order 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. Although existing constitutional law protects religious exercise from government action that is arbitrary, intentionally discriminatory, or serves no legitimate government purpose, this bill would hold government actions that infringe upon religious exercise to a heightened standard of review, or “strict scrutiny,” even when the government action stems from a law of general applicability.*

*In addition to applying strict scrutiny to government actions that block Native Americans’ access to state public lands, the bill contains other provisions that attempt to make it easier for Native Californians to access traditional sacred sites. For example, the bill seeks to strengthen existing laws that require government agencies to consult with California tribes, giving deference to tribal knowledge, before undertaking a public project that may pose a risk to sacred sites. In addition, the bill requires a government agency to obtain the consent of the affected California tribe before undertaking any project that may pose a risk to sacred sites on state public land.*

*The bill is sponsored by Indigenous Justice and is supported by several other organizations representing Indigenous Californians. Several organizations representing local governments, water agencies, and the building industry oppose this bill or oppose it unless substantially amended. However, most opposition letters refer to a prior version of the bill, and do not necessarily reflect the most recently amended version of the bill. Nonetheless, these groups have indicated to the Committee that they continue to have concerns with the present version of the bill as well. The author will take clarifying amendments in this Committee. The amendments are reflected in the bill summary and discussed in the analysis.*

**SUMMARY:** Enacts the California Indian Freedom Act of 2026 which prohibits a governmental agency from substantially burdening a California Native American tribe from exercising religious beliefs or spiritual practices on state public lands unless it is in furtherance of a compelling government interest by the least restrictive means. Specifically, **this bill:**

- 1) Makes findings and declarations relating to the history of government policies in California that have harmed California's indigenous people, including efforts to suppress Native American cultural and religious practices.
- 2) Exempts from disclosure under the Public Records Act information identifying sacred sites, cultural landscapes, or religious practices that are obtained by a governmental agency, as specified. Makes required findings justifying limiting the right to access public records.
- 3) Prohibits a governmental agency from substantially burdening a California Indian or California Native American tribe's exercise of religious or spiritual practices on state public lands, including anything that burdens access to and use of sacred sites and objects, or perform religious ceremonies and rites, even if the burden results from a rule of general applicability, unless the governmental agency demonstrates that application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest.
- 4) Authorizes a California Indian or tribe to assert a violation of the above provisions as a claim or defense in any judicial or administrative proceeding, as specified.
- 5) Requires a governmental agency to allow California Indians access to sacred sites on state public lands, as specified.
- 6) Requires a governmental agency to seek and document free, prior, informed, and written consent from affected tribes before undertaking any project that may pose a risk to sacred sites on state public land, as specified.
- 7) Requires the Department of General Services, 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. The bill would require the Capitol Protective Section, to the greatest extent possible, to avoid undue harm when handling tribal instruments and regalia.

**EXISTING LAW:**

- 1) Prohibits a public agency or private party using or occupying public property or operating on public property from interfering with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution, and court decisions interpreting those constitutional provisions. (Public Resources Code Section 5097.9.)
- 2) Requires a local government to consult with any California tribe traditionally affiliated with a project site and requires that local government, during the consultation, to give deference to the tribal information, tribal knowledge and customs, and the significance of the resource to the California Native American tribe. Species that the consultation shall be deemed complete when the parties agree to measures to mitigate or avoid a significant effect on tribal resources, or one party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be obtained. (Public Resources Code Sections 21080.3.1 and 28180.3.2.)

- 3) Provides that any mitigation effort agreed upon in the consultation process described in 2) above shall be recommended for inclusion in the environmental document, as specified; however, any information relating to the location, description, and use of tribal cultural resources that is submitted by the tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed without the prior consent of the tribe that provided the information. (Public Resources Code 21082.3.)
- 4) Requires a state or local agency, under the Public Records Act, to make its records open to public inspection, unless the disclosure is specifically exempted by statute. (Government Code Sections 7920.000 *et seq.*)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** 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 driven away from the places they held most sacred. 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.

***This bill*** creates the California Indian Freedom Act of 2026 in order to ensure that California Native Americans have access to traditional sacred sites and are permitted to exercise their religious beliefs and spiritual practices on state public lands. Although existing constitutional law protects religious exercise from government action that is arbitrary, intentionally discriminatory, or serves no legitimate government purpose, this bill would hold government actions that infringe upon religious exercise to a heightened standard of review, or “strict scrutiny,” even when the government action stems from a law of general applicability.

In addition to requiring government agencies to meet a strict scrutiny standard, this bill makes several other changes to existing law in order to better protect California Native American access to state public lands, including state parks, and to protect the integrity of tribal cultural resources. For example, the bill does all of the following: (1) exempts information identifying sacred sites, cultural landscapes, or religious practices obtained by a government agency from disclosure under the Public Records Act; (2) grants a California Indian or tribe standing to assert a violation of the provisions of this bill as a claim or defense; (3) requires government agencies to allow California Indians access to sacred sites on state public lands; (4) requires a government agency to seek and document free, prior, informed, and written consent of any affected tribe before undertaking any project action that may pose a risk to sacred sites; and (5) requires the Department of General Services, to the greatest extent possible, to uphold religious freedoms of tribes accessing the State Capitol Building and grounds, and avoid harm when handling tribal instruments and regalia.

***Existing Protections for Native American religious practice and access to sacred sites.*** Federal law, and in particular the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), prohibits government agencies from adopting land use regulations that impose a “substantial burden” on the religious exercise of a person, including a religious assembly or institution, unless it is demonstrated that the imposition of the burden is in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. (As discussed below, the U.S. Supreme Court upheld RLUIPA, notwithstanding prior decisions that prohibited Congress from requiring courts to impose strict scrutiny in other free exercise contexts.)

State law also generally prohibits a public or private entity from using public property in a way that interferes with the free exercise of Native American religion. (U.S. Constitution, Amendment I and California Constitution Article I, Section 4.) Both public and private entities are prohibited from causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require. In addition, the California Environmental Quality Act (CEQA), as amended by AB 52 (Chap. 532, Stats. 2014), requires governmental agencies to consult with impacted California Native American tribes, as specified, before undertaking a project that could impact “tribal cultural resources,” which are defined to include cultural landscapes, sacred sites, and objects of cultural value to California Native Americans. Existing law also requires that any information about these cultural resources that are submitted by a tribe during the consultation process cannot be included in the environmental document or otherwise disclosed without the prior consent of the tribe. (Public Resources Code Sections 21080.3.1 *et seq.*)

Notwithstanding the protections noted above, the author maintains that there are “no enforceable legal protections to prevent government agencies from approving actions that damage Native American sacred sites or impede religious practices,” thus leaving California Native Americans “with little to no meaningful legal recourse to prevent irreversible harm.” To say that there are “no enforceable legal protections” and “no meaningful legal recourse” may be an overstatement, but it is certainly true that this bill would enhance existing protections in numerous ways, not least of which by requiring government actions to survive strict scrutiny and granting broad standing to assert a claim or defense based on a violation of the bill’s provision. The bill also appears to considerably strengthen the AB 52 “consultation” process by not only requiring an agency to engage in good faith negotiations, but also by requiring a government agency to seek the “consent” of an affected tribe before undertaking any project that poses a risk to sacred sites on state public lands. However, as the groups who oppose the bill (or oppose unless amended) point out, it is not entirely clear how the new provisions added by this bill relate to the AB 52 “consultation” process. That process, which amended CEQA, applies not so much to “access” to “state public lands” as it does to any government “project” that impacts tribal cultural resources. While the AB 52 process requires good faith consultation and deference to tribal knowledge before undertaking a project, it does not require a tribe to “consent” to the project before it can be undertaken. It is possible under existing law that, after a project is initiated, a tribe could challenge the project based on various causes of action, whether on constitutional grounds or upon the government agency’s failure to comply with CEQA or AB 52 requirements. But nothing in existing law requires prior consent.

***Constitutionality of imposing heightened standard of review in free exercise cases.*** As noted above, the bill prohibits a government agency from taking any action that restricts the right of a

California Native American or a California tribe to access sacred sites or freely exercise their religion on state public lands, unless the government demonstrates (1) the restriction is in furtherance of a compelling governmental interest and (2) is the least restrictive means of furthering that interest. In short, the bill requires the government to meet the demands of “strict scrutiny.” Moreover, the bill states that the government must meet this heightened level of judicial review even if the government action is the result of a “rule of general applicability.”

Requiring a government, when faced with a free exercise challenge, to meet the requirements of “strict scrutiny” raises constitutional questions, especially when the interference stems from “a law of general applicability.” The First Amendment’s “free exercise” clause, and a parallel provision in the California Constitution, prohibit governments from making any law that prohibits “the free exercise [of religion].” As interpreted by the courts, the First Amendment not only prevents laws that “prohibit” free exercise, but it also prevents laws that “substantially burden” the exercise of religion. Although older case law, such as *Sherbert v. Verner* (1963) 374 U.S. 398, held that any action that burdened religious freedom could only be upheld if it met the requirements of strict scrutiny, in *Employment Division v. Smith* (1990) 494 U.S. 872, the U.S. Supreme Court held that the free exercise clause does not exempt individuals from complying with “laws of general applicability” and, most notably, held that such laws, even if they burden religious exercise, do not need to meet the requirements of strict scrutiny. In other words, for laws of general applicability (that is, laws that are neutral toward religion), the government need only show that the law serves a legitimate government interest and that the means employed were rationally related to the achievement of that interest.

The *Smith* decision created a strong response from the proponents of religious liberty, and in 1993 Congress responded by enacting the Religious Freedom and Restoration Act (RFRA). The RFRA purported to overturn the *Smith* decision by requiring a strict scrutiny review of any government action – including laws of general applicability – that “substantially burdened” the free exercise of religion. To enforce its provisions, RFRA created a private right of action for any person whose religious freedom has been substantially burdened. However, in *City of Boerne v. Flores* (1997) 521 U.S. 507, the Court held that RFRA’s application to state and local governments exceeded Congressional authority. The Court also held that by requiring strict scrutiny, Congress had exceeded its authority by substantially changing the meaning of the First Amendment. In short, Congress cannot dictate to the courts the level of review that they must use in carrying out their duty to interpret the Constitution. In response to *Boerne*, Congress passed the more limited Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), which provided that state and local governments could not implement land use regulations that burdened free exercise unless the government could demonstrate that the action served a compelling government interest and used the least restrictive means to achieve the interest. The law required strict scrutiny for actions that interfered with the religious freedom of institutionalized persons. The U.S. Supreme Court upheld RLUIPA, holding that a state law that prohibited prisoners from growing longer than half-inch beards substantially burdened Muslim inmates sincerely held religious beliefs. [*Holt v. Hobbs* (2015) 574 U.S. 352.]

Whether the bill before the Committee would be interpreted as exceeding legislative authority by trying to dictate the standard of review that courts must use in free exercise cases, or whether its narrow focus on religious exercise by California Native Americans on state public lands would pass constitutional muster, will be for the courts to decide. However, it is worth considering the arguments made in the letter of opposition submitted by the American Atheists, who contend that this bill could set a dangerous precedent by suggesting that people can ignore laws of general

applicability by invoking religious liberty. In recent years, religious groups in other states have pushed for RFRA-type laws that allow employers to violate anti-discrimination laws on the grounds that compliance burdens religious exercise or compels them to support practices that they find religiously objectionable. To be sure, this narrowly focused bill does not raise that prospect, but it may provide a precedent for those who wish to invoke religious liberty to challenge other laws of general applicability.

**Opposition concerns.** As introduced, this bill had a much broader and even uncertain application. Most of the letters opposing this bill (or opposing unless amended) reference the introduced version rather than the bill as amended on April 8. The most recent amendments address some, but not all, of the opposition concerns. For example, the California Chamber of Commerce, along with several groups representing cities, counties, special districts, and water agencies, among others, oppose the original bill unless amended, and still have concerns with the April 8 version. Overall, they contend that the scope of the bill is still unclear, for while the proponents of the bill contend that they are mainly interested in access to state public lands, including state parks, some provisions of the bill seem to go beyond that. Opponents also contend that many of the provisions in AB 1881 duplicate and potentially conflict with existing state and federal laws. It is not clear, opponents contend, what specific deficiencies in existing law the bill is attempting to address. Moreover, it is not clear to the opposition how this bill will interact with AB 52 “consultation” amendments to CEQA (discussed above). Opponents point out that AB 52 created a framework for public agencies to consult with impacted California tribes on development projects, but that this bill appears to create a “duplicative path” for tribal consultation, and it now apparently includes a requirement that the agency obtain tribal consent for the project. As proposed to be amended, the bill will clarify that the consent requirements in the bill only apply to policies that limit *access to state public lands*, not to all development projects undertaken by a government agency. Opponents also cite other features of the bill that, unless amended, would make the bill “unimplementable.” Finally, opponents point to the private right of action that grants standing, not only to tribes, but to any individual California Native American to assert of violation of the bill’s provision “as a claim or defense in any judicial or administrative proceeding.” Opponents claim that this permissive standing will lead to litigation, which could be used strategically to delay or block projects.

**Access to “state public lands.”** One point of contention between the supporters and opponents of this measure concerns the scope of the bill and the meaning of “access” to “state public lands.” Based on the Committee’s communications with the sponsor and author’s office, the primary purpose of the bill is not so much to hold up projects that impact tribal cultural sources as it is to ensure that California Native Americans may access state public lands, including state parks, in order to engage in certain practices that are spiritually connected to specific landscapes and sacred sites. For example, a state park may prohibit access to certain areas or limit collection of certain plants or animals that are central to Indigenous religious practices. In short, the supporters seek reasonable exceptions to these restrictions insofar as they substantially burden religious exercise. Apparently, the state parks have reached working agreements with certain California tribes. For example, according to the California State Park’s (CSP) website, CSP has developed Memoranda of Understanding (MOUs) with California tribes to co-manage, protect, and restore access to ancestral lands. For example, some of these MOUs allow tribal members to use tribal IDs to access otherwise restricted areas or gather traditional plants and other resources without a permit. (See e.g. “California State Parks Tribal Affairs Program,” available at [www.parks.ca.gov](http://www.parks.ca.gov).) According to the author and sponsor, however, these MOUs are limited in time and scope. The MOUs are usually reached with a single tribe, whereas this bill codifies

those rights and guarantees them to all California Native Americans with an historical and cultural connection to places within the park or other restricted public lands.

***What are “state public lands” – and do they include waterways?*** While the bill as recently amended restricts the right of access to “state public lands” in most provisions of the bill, it does not define “state public lands.” This lack of definition is not unusual. A search for “state public lands” across all California codes does not produce a definition. Where the term is used in a handful of code sections, the Legislature apparently assumed that the definition of “state public lands” was self-evident. But does this self-evidence definition mean any “public lands” within the state, or does it mean only public land that is owned by, or under the jurisdiction of, a state entity? Some of the opponents asked the Committee whether “state public lands” would include a waterway that crossed state public land. Would access to a waterway on public lands mean that a California Native American could enter the waterway, or would it mean that a California Native American could divert water from the stream, so long as doing so was linked to a religious purpose? If it included the latter, the bill could disrupt established water rights. *Therefore, if the bill moves out of the Committee the author may wish to consider providing a definition of “state public lands” and, if it is the author’s intent, to clarify that access to state public lands would not include access to water that passes over or rests within state public lands.*

***In sum***, this bill appears to be a work in progress. While recent amendments have considerably narrowed the scope of the bill – especially by restricting right of access to state public lands – the opponents (and those who oppose unless amended) have raised significant and legitimate questions that the author may wish to consider if the bill moves forward.

***Proposed author amendments.*** As noted above, the April 8 amendments, among other things, sought to limit to access rights to “state public lands.” While the author apparently intended to add this limitation to all of the relevant provisions of the bill, the phrase was unintentionally omitted from several sections where it should have appeared. Therefore, the author will take the following amendments in this Committee:

- On page 9, line 6, after “area” insert: *state public lands*
- On page 9, line 15, after “sites” insert: *state public lands*
- On page 10, line 3, after “celebrations” insert: *state public lands*
- On page 10, line 6, after “significance” insert: *state public lands*
- On page 10, line 9, after “items” insert: *state public lands*
- On page 10, line 24, after “area” insert: *state public lands*

***ARGUMENTS IN SUPPORT:*** Indigenous Justice, the sponsor of this bill, writes in support:

We believe this bill is essential to protecting the religious freedom of California Tribal Nations and ensuring that Native cultural and ceremonial practices are respected and protected by state and local agencies.

AB 1881 reflects California's growing commitment to international human rights standards, including the principles of Free, Prior, and Informed Consent (FPIC) recognized under UNDRIP and reinforced in CEDAW General Recommendation No. 39 on the Rights of Indigenous Women and Girls. FPIC affirms that Indigenous Peoples must have the right to meaningful consultation and consent regarding actions that impact their lands, sacred places, cultural practices, and ways of life.

For Indigenous Peoples, spiritual practice is inseparable from land. Sacred sites, gathering places, waters, plants, and ceremonial materials are not merely resources; they are relatives and responsibilities that sustain Indigenous cultural identity and community wellbeing.

***ARGUMENTS IN OPPOSITION:*** The California Building Industry Association (CBIA), writing in response to the bill as introduced, fears that "AB 1881 would create significant, far-reaching, unpredictable, and unnecessary obstacles to housing production and critical infrastructure at a time when California faces a severe housing and affordability crisis that demands urgent action." In particular CBIA believes that the bill elevates tribal interests above all other interests; changes the existing CEQA requirement that agencies "consult" with tribes before initiating a project to a requirement that tribes "consent" to the project, and apparently extends the requirement beyond CEQA to encompass any government action; contains confidentiality and public record exemption provisions that will undermine project planning; and creates a private right of action that will create significant new litigation exposure.

Several other groups oppose this bill for the same reasons articulated by CBIA. However, most of these letters were submitted before the April 8 amendments were publicly accessible. While it is unclear if the amendments will change the position of these opponents, it appears that many of these concerns are still relevant.

The American Atheists also oppose this bill, but for reasons more focused on the requirement to apply strict scrutiny to free exercise challenges. They write:

Although this bill is framed as protecting religious freedom for Indigenous communities, the practical effect of this dangerous legislation would be to undermine religious equality in California just as it has done in other states that have passed similar legislation. Because AB 1881 would interfere with the constitutional rights of all Californians, we strongly urge you to oppose this bill.

AB 1881 is an example of a "Religious Freedom Restoration Act," or RFRA, a bill that provides that government action may only burden religious exercise if it meets a stringent legal test. . . While RFRA laws were originally introduced at the federal and state level to protect religious exercise, in recent years RFRA language has been used in increasingly broad ways that its original supporters and sponsors would never have imagined, such as trumping nondiscrimination, public health, and safety laws. Despite AB 1881's protective framing, its language would open the door to creating a two-tiered legal system that would undermine the rights of all — just as has occurred in every other state that has passed a similar bill.

AB 1881 would, under the guise of religious freedom, create special exemptions to a range of neutral laws to privilege religious organizations at the expense of everyone else. For example, this bill would potentially allow individuals and organizations to

evade nondiscrimination laws enacted to protect vulnerable Americans, such as the efforts in Virginia to weaponize the state’s RFRA against the Virginia Values Act, a state LGBTQ nondiscrimination law. The rule of law is important, and we cannot simply create sweeping exemptions that allow people to pick and choose which laws they wish to follow. We should all be held to and protected by the same laws.

***ARGUMENTS IN OPPOSITION, UNLESS AMENDED:*** Several groups, including the California Chamber of Commerce and associations representing cities, counties, special districts, and water agencies, among others (Chamber coalition) oppose this bill unless amended. As with the others, their letter does not address the bill as recently amended. However, they have communicated to the Committee they continue to have serious concerns about the bill as amended. Overall, they contend that the scope of the bill is still unclear. They contend that many of the provisions in AB 1881 duplicate and potentially conflict with existing state and federal laws. It is not clear, opponents contend, what specific deficiencies in existing law the bill is attempting to address. Moreover, it is not clear to the Chamber coalition how this bill, even as recently amended, will interact with AB 52 “consultation” amendments to CEQA. The Chamber coalition also cites other features of the bill that, unless amended, would make the bill “unimplementable.” Finally, the Chamber coalition points to the private right of action that grants standing, not only to tribes, but to any individual California Native American to assert “a claim or defense in any judicial or administrative proceeding.” They claim that this permissive standing will lead to litigation, which could be used to strategically delay or block projects.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Indigenous Justice (sponsor)  
 Coalition of California State Tribes  
 Dunlap Band Mono Indians Cultural Association  
 Freedom 4 Youth  
 International Indian Treaty Council  
 Kaweah Yokuts Circle  
 Milpa Collective  
 Nor El Muk Band of Wintu Indians of Northern California

### **Opposition**

American Atheists  
 Boma California  
 Building Industry Association of Southern California  
 Building Industry Association of Tulare/kings County, INC.  
 California Association of Realtors  
 California Building Industry Association  
 California Business Properties Association  
 California Municipal Utilities Association  
 NAIOP of California  
 Orange County Business Council  
 Southern California Leadership Council

**Opposition (unless amended)**

Association of California Water Agencies (ACWA)  
California Chamber of Commerce  
California Farm Bureau Federation  
California Special Districts Association  
California State Association of Counties (CSAC)  
El Dorado Irrigation District  
League of California Cities  
Rural County Representatives of California (RCRC)  
Valley Ag Water Coalition

**Analysis Prepared by:** Tom Clark / JUD. / (916) 319-2334