

Date of Hearing: March 20, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Christopher M. Ward, Chair

AB 1878 (Garcia) – As Introduced January 22, 2024

SUBJECT: Housing programs: tribal housing program

SUMMARY: Creates the Tribal Housing Advisory Committee (committee) within the Business, Consumer Services, and Housing Agency (BCSH), upon appropriation, and makes changes to tribal liaison and technical assistance requirements that apply to the Department of Housing and Community Development (HCD). Specifically, **this bill**:

- 1) Creates the committee within BCSH, upon appropriation by the Legislature, and requires the following:
 - a) The membership of the committee must be composed of members who are tribal representatives and who have knowledge, experience, and expertise in tribal housing, tribal land, tribal government, tribal policy, and tribal law to close the gap of inconsistencies and barriers for tribes to successfully access state-funded grant programs. The members must consist of at least three members from Central California, three from Northern California, and three from Southern California;
 - b) The committee must be co-chaired by the Secretary of BCSH or a designee, and by a tribal representative voted on by committee members;
 - c) BCSH must appoint members to the committee, and members must serve on a volunteer basis with four-year terms with no term limits so long as the member is active and does not miss three consecutive meetings;
 - d) When appointing members to the committee, BCSH must take into account geographic diversity and proven qualifying experience and expertise in tribal housing; and
 - e) An individual may apply to be a member on the committee by submitting an application to BCSH that includes a letter of nomination and support from their respective tribal chairperson, a portfolio of qualifying experience, and a defined region of representation.
- 2) Requires the committee to do all of the following:
 - a) Identify and report to BCSH tribal housing issues that require waivers to receive state financing, as proposed by the bill; inconsistencies within state housing program streamlined regulations; and barriers that exist for tribes when applying for BCSH funds;
 - b) Provide input and guidance to any agency with a tribal housing grant program regarding existing and new housing programs for federally recognized tribes to ensure the programs are designed with tribes in mind;
 - c) Create a standard grant agreement to be used by state agencies for tribal housing grant programs;
 - d) Identify tribal targets and set-asides in state and federally funded housing programs;

- e) Provide recommendations to HCD for minimum job requirements of advisors and attorneys providing technical assistance as part of the G. David Singleton California Indian Assistance Program (CIAP); and
 - f) Create a tribal management information system to collect client-level data and data on the provisions of housing and services to tribes and tribal members.
- 3) Modifies CIAP as follows:
- a) Adds tribes, designated tribal housing entities, tribal housing departments, housing sponsors, and tribes that want to participate in tribal housing grant programs on fee simple lands to the existing requirement for HCD to provide comprehensive technical assistance to various entities to facilitate the planning and orderly development of suitable, decent, safe, and sanitary housing for American Indians residing in those areas or within a tribe's designated service area, as defined by the tribe.
 - b) Deletes the authorization for HCD, upon request of the governing body of a reservation or rancheria, to act on behalf of the tribal housing authority and perform the functions of the housing authority.
 - c) Requires HCD to provide assistance with waivers by doing all of the following:
 - i) Assign each waiver with a reference number;
 - ii) Post on its website a waiver submitted to HCD, including the nature of the waiver and the waiver reference number;
 - iii) Post on its website whether a waiver is accepted and denied. If the waiver is denied, post the reason HCD denied the waiver; and
 - iv) Allow a tribe that did not submit an approved waiver to be subject to an approved waiver.
 - d) Requires HCD to provide outreach, education, and comprehensive technical assistance to tribes, tribal housing authorities, a tribally designated housing entity, housing departments of a tribe, housing sponsors, and governmental agencies on reservations, rancherias, and on public domain in the development of tribal housing grant programs, and before, during, and after the grant application process.
- 4) Revises existing HCD authority to modify financing requirements of programs where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure would cause a violation or not satisfy requirements of any state financing being provided by HCD, as follows:
- a) Strikes the restriction on HCD to waive target population percentage requirements or affordability levels and unit mix requirements, not to exceed a change of more than 5 percent of any amount expressly set forth in statute, such that HCD may instead waive or modify target population percentage or affordability levels and unit mix requirements without a 5 percent cap;

- b) Adds timeline requirements, service area requirements, fund matching requirements, shovel-ready project requirements, requirements related to housing elements and housing plans, and income limits to the list of matters that HCD may waive or modify.
- 5) Requires HCD, if it requires a tribe that is an eligible recipient of state funding to waive tribal sovereignty in order to access the funds, to draft the waiver narrowly to serve both the individual needs of the tribe and make the funding agreement enforceable.
- 6) Requires HCD to include its designated tribal liaison or their designee in all discussions with tribes that are eligible recipients of state funds, unless those eligible recipients give permission for the tribal liaison or their designee to be absent.
- 7) Requires data collected under this bill for CIAP to be kept confidential and not subject to public disclosure, including, but not limited to, any person or entity that provides technical assistance.

EXISTING LAW:

- 1) Authorizes HCD to modify the requirements of financing that it provides to ensure program compatibility where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure would cause a violation or not satisfy the requirements of any state financing being provided to a housing development by HCD. Where inconsistencies exist, HCD may waive the requirements of financing that it provides, as deemed necessary, to avoid an unnecessary administrative burden. (Health and Safety Code (HSC) Section 50406(p)(1))
- 2) Matters that may be waived or modified pursuant to 1) include, but are not limited to, all of the following:
 - a) Instrument recordation requirements;
 - b) Security requirements for state financing provided pursuant to HCD programs;
 - c) Title insurance requirements;
 - d) Target population percentage requirements, affordability levels, and unit mix requirements, not to exceed a change of more than five percent of any amount expressly set forth in statute; and
 - e) Any matter not expressly or objectively set forth in statute, but is set forth with specificity in guidelines or regulations promulgated by HCD. (HSC 50406(p)(2))
- 3) Requires HCD, under the G. David Singleton CIAP, to provide comprehensive technical assistance to tribal housing authorities, housing sponsors, and governmental agencies on reservations, rancherias, and on public domain to facilitate the planning and orderly development of suitable, decent, safe, and sanitary housing for American Indians residing in those areas. (HSC 50513)
- 4) Includes a tribally-designated housing entity or a duly constituted governing body of an Indian reservation or rancheria as a qualifying applicant to a variety of housing programs. (HSC 50077, 50079, 50091, etc.)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "California, along with the rest of the nation, has a long history of neglect and abuse of tribal communities, leaving many with limited resources and little support to improve their socio-economic situation. Existing state programs were not designed with Tribes in mind. They are often too restrictive for Tribes to meet threshold and compliance requirements. For new tribal applicants, HCD program applications can be onerous and opaque. Only a few tribes are willing and able to commit limited time and resources to learn these programs and prepare applications for tribal set-asides that will fund only a handful of applicants."

Tribes need a flexible, dedicated funding source fitted to Tribal conditions that will provide grants, as well as low-interest forgivable loans, for affordable housing projects and programs. A housing grant program by tribes for tribes will enable the State to live up to its commitments to redress historic wrongs and help tribes achieve sustainable, safe, and affordable homes while reconstituting on ancestral lands where they can prosper and preserve their cultural heritage. Tribal communities and families are underserved and the housing problem will continue to rise amongst Native Americans if restrictions and barriers are not removed."

Background on Tribal Access to State Housing Programs: California has the largest Native American/American Indian population in the nation with nearly 360,500 Californians identifying in whole or part as "American Indian." California has 109 federally recognized tribes, which include nearly 100 small reservations and rancherias spread across the state. Additionally, the rate of tribal poverty is more than twice that of the rest of California's population and one-third of tribal residents live below the federal poverty line.¹

California also differs from other states in that only a small percentage of California tribes' land is held in trust by the U.S. government – often on reservations and rancherias – as compared to fee land, under complete control of its tribal owner or individual tribal member, or restricted fee land, which is owned by a tribe or tribal member but cannot be sold or encumbered. Trust or restricted fee lands may also be allotted, in that these were formerly communal lands that have since been broken up into individual allotments redistributed among individual tribal members. As a result, there are a variety of complex tribal property ownership and land designation statuses that require specialized knowledge to navigate for purposes of developing tribal housing.²

In September of 2011, Governor Brown issued Executive Order B-10-11, which reflected a significant administrative change to encourage communication and consultation with California tribes. In line with this directive, HCD adopted a Tribal Consultation Policy in 2015, which sought to "foster and promote consultation and collaboration between HCD and federally-recognized California Indian Tribes and non-federally recognized tribes." While California Indian tribes have not been eligible for and competitive for most state housing and community development program grants in the past, the California Tax Credit Allocation Committee

¹ California Coalition for Rural Housing and Rural Community Assistance Corporation, "California Tribal Housing Needs and Opportunities: A Vision Forward" (2019)

² Congressional Research Service, "Tribal Lands: An Overview" (2021)

(TCAC) changed this in 2014 with their first round of awards for tribal housing within its rural set-aside. Twelve tribal housing projects were funded from 2014-2021.³

Additionally, in 2016, HCD proposed regulation changes addressing tribal access to the Home Investment Partnerships program (HOME). The State HOME program then became eligible to tribes and awarded the first-ever grant for a tribal project in Mendocino County. While tribes had been made explicitly eligible for some state housing programs like those mentioned, before the passage of AB 1010 (E. Garcia, Chapter 667, Statutes of 2019), the terminology used to refer to tribes was inconsistent and confusing. Other programs omitted tribes and tribal entities as eligible applicants altogether.

AB 1010 (E. Garcia) made the governing board of an Indian reservation or rancheria eligible to receive funding from various affordable housing programs, including the Joe Serna, Jr. Farmworker Housing Program, the Predevelopment Loan Program, the Local Housing Trust Fund Program, the CalHOME program, and the Special User Housing Rehabilitation Program. These programs had received new funding from housing bonds approved by the voters through Proposition 1 in 2018.

In addition, for approximately 30 years the state operated a program – the CIAP – to provide technical assistance to Indian reservations and rancherias in planning for affordable housing and to help them access local, state, and federal housing and community development resources. However, the program was shuttered in 2008. AB 1010 (E. Garcia) required HCD to reconstitute the CIAP, renamed the program, and appropriated funding for one full-time program position.

This bill would revise the CIAP to require HCD to consult with additional types of tribal housing entities or departments and expand the technical assistance requirement to tribes and providers who are interested in planning and developing housing within a tribe's designated service area, rather than just within reservation or rancheria lands. The bill also requires HCD to provide outreach, education, and comprehensive technical assistance to tribes and the various tribal housing entities listed in the bill during the development of tribal housing grant programs, and before, during, and after the grant application process.

Challenges Continue with Accessing Some Housing Funds: The sponsor and author of this bill point out that while some state housing and homelessness programs are working well for tribal entities – in particular they point to the success of the tribal set-aside in the Homeless Housing, Assistance, and Prevention Program – there are a variety of other challenges that continue to make it difficult for tribes to access other housing funds. Those challenges include:

- Existing state programs often were not designed with tribes in mind, meaning they have restrictive threshold and compliance requirements that are too difficult for tribes to meet, or are mismatched to the opportunities that exist on tribal trust and fee land;
- Due to conflicts with tribal sovereignty and laws, tribes must often appeal for time-consuming program waivers, which depend on HCD staff to have knowledge of tribal needs and awareness of their specific legal and cultural circumstances;
- Because HCD program applications can be onerous and opaque, only a few tribes with resources are willing and able to expend the time and money to learn program

³ <https://tribalbusinessnews.com/sections/real-estate/13605-belatedly-a-housing-program-starts-to-work-for-california-tribes>

requirements and prepare applications for tribal set-asides that will fund only a handful of applicants, if they are successful at all;

- Tribal technical assistance, which HCD is required to provide under AB 1010 (E. Garcia), is a competency-based skill that not many housing providers or developers have, and tribal housing knowledge and experience also varies between communities, reservations, rancherias, and even across state lines. Inadequate provision of technical assistance is negatively impacting tribes' ability to apply for programs, resulting in missed opportunities, small numbers of applicants, and failed set-asides;
- There are inconsistencies between federal housing programs, state-administered federal housing programs, and state housing programs. Federal regulations allow tribes to have leniency on certain aspects of housing requirements, such as allowing locally higher area median income (AMI) in determining eligibility of applicants for certain income-restricted homeownership programs; and
- Decades of oppression and disinvestment – including outright taking of tribal lands and forced displacement of indigenous communities – have left many tribes lacking basic or quality infrastructure, including failing water and sewer systems or other basic infrastructure required to support housing developments.

To address these challenges, the bill proposes to create a Tribal Housing Advisory Committee within BCSH, which would be made up of tribal representatives with specialized experience of relevance to accessing state-funded grant programs. The committee would be charged with identifying and reporting tribal housing issues that require waivers to receive state financing, inconsistencies within state housing program regulations, barriers to applying for BCSH funds, and would provide input and guidance to any agency with tribal housing grant programs and for newly created housing programs for tribes. Furthermore, the committee would create a standard grant agreement to be used by state agencies who have tribal housing grant programs, provide recommendations to HCD for minimum job requirements for CIAP technical assistance staff and contractors, and create a tribal management information system to collect data on the provision of housing and services to tribes and tribal members.

The bill further proposes to address inconsistencies and inflexibility in HCD's waiver authority to allow for more leniency on aspects of program requirements, specifically target population percentage and affordability levels (for example, AMI requirements) and unit mix requirements. The bill adds timeline requirements, service area requirements, fund matching requirements, shovel-ready project requirements, requirements related to housing elements and housing plans, and program income limits to the list of matters that HCD can waive or modify in order to address conflicts between tribal law or tribal sovereignty and HCD program requirements. If a waiver is required, the bill directs HCD to draft the waiver narrowly to serve both the individual needs of the tribe and to make the funding agreement enforceable, and requires HCD to include its dedicated tribal liaison or their designee in all discussions with tribes that are eligible recipients of state funds.

Arguments in Support: According to the Pala Band of Mission Indians, the bill's sponsor, "California, along with the rest of the nation, has a long history of neglect and abuse of tribal communities, leaving many with limited resources and little support to improve their socio-economic situation. Tribes need a flexible, dedicated funding source fitted to Tribal conditions that will provide grants, as well as low-interest forgivable loans, for affordable housing projects and programs. A housing grant program by tribes for tribes will enable the State to live up to its commitments to redress historic wrongs and help tribes achieve sustainable, safe, and affordable

homes while reconstituting on ancestral lands where they can prosper and preserve their cultural heritage. Tribal communities and families are underserved and the housing problem will continue to rise amongst Native Americans if restrictions and barriers are not removed.”

Arguments in Opposition: None on file.

Related Legislation:

AB 371 (E. Garcia) of 2023 was nearly identical to this bill. The bill was vetoed by the Governor, with the following message:

SB 18 would create the Tribal Housing Grant Program Trust Fund to provide grant funds to tribal entities, and AB 371 would change the current waiver process utilized to assist tribal entities in applying for various housing financing programs administered by the Department.

I want to thank the authors and their supporters for their commitment to providing more safe and affordable housing for California's tribal residents. These legislative efforts are well-intentioned, and I share the desire to further remove barriers and increase tribal access to housing and homelessness programs.

I signed legislation in 2019 to make tribes eligible for most State housing programs, and I remain committed to doing more. My Administration has provided tribal set asides in a variety of new programs we created, including: \$30 million in the Behavioral Health Infrastructure Bond Act of 2023; \$29 million through the first round of the Multifamily Super Notice of Funding Availability, which combines funding for four affordable housing funding programs; \$20 million recently awarded through the Homeless, Housing Assistance and Prevention program (HHAP); and a forthcoming Homekey Tribal Entity Notice of Funding Availability of approximately \$75 million, to name a few.

But system overhauls such as those included in these two bills need to be made through the budget process where a dedicated grant program to address tribal housing needs - using either new general fund and/or reappropriation of existing tribal set-asides - can be established, along with appropriate program rules to streamline application processes, with more flexible uses to better meet the unique housing needs of tribal governments.

I am committed to addressing these important issues in next year's budget and look forward to working with the Legislature and our tribal partners to help deliver these critical dollars to tribal communities where - and how- they are needed.

AB 1010 (E. Garcia), Chapter 660, Statutes of 2019: Made tribes eligible for various affordable housing grant programs and recreated the CIAP at HCD.

REGISTERED SUPPORT / OPPOSITION:

Support

Pala Band of Mission Indians (Sponsor)
AIDS Healthcare Foundation
California Tribal Business Alliance

Habematolel Pomo of Upper Lake
YIMBY Action

Opposition

None on file.

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