
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 371 **Hearing Date:** 7/10/2023
Author: Garcia
Version: 7/3/2023 Amended
Urgency: No **Fiscal:** Yes
Consultant: Aiyana Cortez

SUBJECT: Housing programs: tribal housing program

DIGEST: This bill 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).

ANALYSIS:

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. The matters that may be waived or modified include, but are not limited to:
 - 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.

- 2) Requires HCD, under the G. David Singleton California Indian Assistance Program (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.
- 3) 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.

This bill:

- 1) Creates the Committee within BCSH, upon appropriation by the Legislature, and requires the membership to be composed of tribal representatives who have the knowledge, experience, and expertise in tribal housing, tribal land, tribal government, tribal policy, and tribal law.
- 2) Requires a minimum of 3 members each from tribes in Northern, Central, and Southern California to serve on the Committee. Members shall serve 4-year terms with no term limits as volunteers and must not miss three consecutive meetings.
- 3) Requires the Committee to be co-chaired by the Secretary of BCSH or a designee and a tribal representative to be voted upon by the Committee members.
- 4) Requires BCSH to take into account geographic diversity and proven qualifying experience and expertise in tribal housing when appointing members to the Committee.
- 5) Requires an individual to 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.
- 6) 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, inconsistencies within state housing program 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) Identify tribal targets and set-asides in state and federally funded housing programs and create a standard grant agreement to be used by state agencies;
 - d) Provide recommendations to HCD for minimum job requirements of advisors and attorneys providing technical assistance as part of CIAP; and
 - e) 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.
- 7) Requires that tribal data submitted to the state be confidential and not subject to public disclosure, including entities that provide technical assistance.
- 8) Modifies CIAP as follows:
- a) Adds tribes, designated tribal housing entities, tribal housing departments, 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 development of tribal housing.
 - b) Requires HCD to provide assistance with waivers by assigning each waiver with a reference number, posting all waivers on its website and whether waivers were approved or denied, and allowing a tribe that did not submit an approved waiver to be subject to an approved waiver.
 - c) Requires HCD to provide outreach, education, and comprehensive technical assistance in the development of tribal housing grant programs, and before, during, and after the grant application process.
- 9) Revises current 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) Eliminate 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% 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% cap;
 - b) Add timeline requirements, service area requirements, fund matching requirements, shovel-ready project requirements, and requirements related to

housing elements and housing plans to the list of matters that HCD may waive or modify.

- 10) 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.
- 11) 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.

COMMENTS:

- 1) *Author's statement.* "Despite passage of AB 1010 in 2019, which made tribes eligible for most State housing programs and recreated the California Indian Assistance Program (CIAP) at HCD, Tribes still face serious structural and inequitable obstacles to accessing and competing in these programs. Tribes need a flexible and dedicated funding source fitted to Tribal conditions that will provide grants, as well as low-interest forgivable loans, for affordable housing projects and programs. Existing state programs were not designed with Tribes in mind. They are often too restrictive for Tribes to meet threshold and compliance requirements. AB 371 ensures that programs are designed with tribes in mind. As well as creating a Tribal specific database as a support system and information mechanism for Tribes and Tribal related programs."
- 2) *Tribal communities in California.* 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. According to a 2019 report on California tribal housing needs, 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.

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.

- 3) *Tribal access to state housing programs.* 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 (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.

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 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 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.

- 4) *Ongoing barriers.* 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 HHAP – there are a variety of other challenges that continue to make it difficult for tribes to access other housing funds. Among others, those challenges include:
- a) 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;
 - b) 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;
 - c) 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 requirements and prepare applications for tribal set-asides that will fund only a handful of applicants, if they are successful at all;
 - d) Tribal technical assistance 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;
 - e) 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
 - f) 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.

- 5) *Reducing barriers through consultation and flexibility.* To address these challenges, this 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. For the purpose of protecting the privacy of tribes, this bill requires any tribal information submitted to the state to be confidential and not be subject public disclosure, including entities that provide technical assistance. **Due to time constraints and at the request of the author, the committee may wish to remove these confidentiality provisions, to allow the author time to discuss with relevant stakeholders.**

This 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. This bill adds timeline requirements, service area requirements, fund matching requirements, shovel-ready project requirements, and requirements related to housing elements and housing plans 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.

RELATED LEGISLATION:

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

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, July 5, 2023.)

SUPPORT:

AIDS Healthcare Foundation
California Housing Partnership Corporation
California Tribal Business Alliance
Iipay Nation of Santa Ysabel
Livable California
Pala Housing Resource Center
Rincon Band of Luiseño Indians

OPPOSITION:

None received.

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