

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 1878 (Garcia)  
Version: June 17, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Housing programs: tribal housing program

**DIGEST**

This bill establishes 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), as provided. The bill provides that the data collected for specified purposes under the bill are confidential and not subject to public disclosure, including, but not limited to, any person or entity that provides technical assistance.

**EXECUTIVE SUMMARY**

AB 1010 (E. Garcia, Ch. 660, Stats. 2019) expanded the law to make the governing board of an Indian reservation or rancheria eligible to receive funding from various affordable housing programs and also reconstituted a defunct program 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. This bill seeks to bolster these provisions by, among other things, requiring 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. The principal policy matter drawing this bill into the purview of the Senate Judiciary Committee is the inclusion of a provision that restricts access to certain public records. This bill is a reintroduction of AB 371 (Garcia, 2023), which was vetoed by Governor Newsom (*see* Comment 4), below). This bill passed the Senate Housing Committee on a vote of 10 to 0. The bill is author sponsored by the Pala Band of Mission Indians and supported by several organizations, including California Housing Partnership Corporation and the California Primary Care Association. No timely opposition was received by this Committee.

**PROPOSED CHANGES TO THE LAW**

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 & Saf. Code § 50406(p)(1).)
- 2) Matters that may be waived or modified pursuant to 1), above, 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. (Health & Saf. Code § 50406(p)(2).)
- 3) 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. (Health & Saf. Code § 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. (*see e.g.* Health & Saf. Code §§ 50077, 50079, & 50091.)
- 5) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
  - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)

- b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 6) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code § 7920.000 et seq.)
- a) States that the Legislature, mindful of the individual right to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)
  - b) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
  - c) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 7922.530.)

This bill:

- 1) Establishes the Committee within BCSH, upon appropriation by the Legislature, composed of members who are representatives of federally recognized tribal governments and have knowledge, experience, and expertise in the area of 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.
- a) The Committee is to have three members from central California, three from northern California, and three from southern California.
  - b) The Committee is cochaired by the Secretary of BCSH, or a designee, and a tribal representative voted upon by the committee members.
  - c) The BCSH is to appoint members to the Committee, and members are to serve on a volunteer basis for four-year terms with no term limits so long as the member is active and does not miss three consecutive meetings.
- 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 or HCD funds;
  - b) provide input and guidance to any agency or department with a tribal housing grant program for federally recognized tribes to ensure the programs are designed or enhanced with tribes in mind;
  - c) create a standard grant agreement to be used by state agencies for tribal housing grant programs;

- d) identify tribal set-asides in state-funded housing programs;
  - e) provide recommendations to HCD for minimum job requirements of advisors and attorneys providing technical assistance as part of the 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) Makes the following modifications to CIAP:
- 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) deletes 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; and
  - b) adds timeline requirements, service area requirements, fund matching requirements, shovel-ready project requirements, requirements related to

housing elements and housing plans, income limits, threshold experience requirements, and ranking and rating requirements to the list of matters that HCD may waive or modify.

- 5) Requires HCD to draft any waiver of sovereign immunity narrowly, if it requires a tribe that is an eligible recipient of state funding to waive tribal sovereignty in order to access the funds, in order 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 for CIAP pursuant to the above provisions to be kept confidential and not subject to public disclosure, including, but not limited to, any person or entity that provides technical assistance.
  - a) Authorizes the data collected by HCD and other departments with funding programs to be shared and made available to tribes.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

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.

## 2. Background

The sponsor and author of the bill contend that, while some state housing and homelessness programs are working well for tribal entities, there are several challenges that remain and that is why this bill is needed. These challenges include, among others:

- 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.
- 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 even successful at all, because HCD program applications can be onerous and opaque.
- Tribal technical assistance, which HCD is required to provide under AB 1010, 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 in determining eligibility of applicants for certain income-restricted homeownership programs.
- 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.

In light of the above, this bill seeks to establish a Tribal Housing Advisory Committee (Committee) within BCSH, which would be made up of tribal representatives with experience related to accessing state-funded grant programs. Among other things, the Committee is responsible for 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 is authorized to provide input and guidance to any agency with tribal housing grant programs and for any newly created housing programs for tribes. Additionally, the bill addresses inconsistencies and rigidity in HCD's waiver authority to allow for more leniency on aspects of program requirements, and expands 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 requires HCD to draft the waiver narrowly to serve both the individual needs of the tribe and to make the funding agreement enforceable. Under the bill, HCD would be required to include its dedicated tribal liaison or their designee in all discussions with tribes that are eligible recipients of state funds.

### 3. CPRA and access to public records

The bill provides that data collected pursuant to the provision of the bill related to technical assistance is to be kept confidential and is not subject to public disclosure, including, but not limited to, any person or entity that provides technical assistance. California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right. At the same time, the state recognizes that this right must be balanced against the right to privacy. The general right of access to public records may, therefore, be limited where records include personal information or information of a sensitive nature. The bill provides that this limitation is necessary in order to protect the privacy of California residents, while also collecting useful data on housing and services to tribes and tribal members.

### 4. This bill is a reintroduction of AB 371 (Garcia, 2023)

This bill is substantially similar to AB 371 (Garcia, 2023), which was vetoed by Governor Newsom:

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.

**SUPPORT**

Aids Healthcare Foundation  
American Planning Association California Chapter  
California Housing Partnership Corporation  
California Primary Care Association  
California State Association of Counties  
Smart Justice California

**OPPOSITION**

None received

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 371 (Garcia, 2023) was nearly identical to this bill, but was vetoed by Governor Newsom (*see* Comment 4), above, for veto message).

AB 1010 (E. Garcia, Ch. 660, Stats. 2019) *see* Executive Summary.

**PRIOR VOTES**

Senate Housing Committee (Ayes 10, Noes 0)  
Assembly Floor (Ayes 72, Noes 0)  
Assembly Appropriations Committee (Ayes 15, Noes 0)  
Assembly Housing and Community Development Committee (Ayes 9, Noes 0)

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