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SB-1187 Housing programs: Tribal Housing Reconstitution and Resiliency Act. (2023-2024)

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Senate Bill No. 1187

CHAPTER 295

An act to add Chapter 6.4 (commencing with Section 50651) to Part 2 of Division 31 of the Health and Safety Code, relating to housing.

[Approved by Governor September 19, 2024. Filed with Secretary of State September 19, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1187, McGuire. Housing programs: Tribal Housing Reconstitution and Resiliency Act.

Existing law establishes the Department of Housing and Community Development in the Business, Consumer Services, and Housing Agency and makes the department responsible for administering various housing programs throughout the state, including, among others, the Multifamily Housing Program, the CalHome Program, and the California Emergency Solutions Grants Program.

This bill would enact the Tribal Housing Reconstitution and Resiliency Act and would create the Tribal Housing Grant Program Trust Fund to be administered by the department. The bill would require any moneys appropriated and made available by the Legislature through the annual Budget Act for purposes of the fund and 10% of any moneys that will be appropriated and made available by the Legislature to the department through the annual Budget Act for specified housing programs to be paid and deposited in the fund. The bill would require the department to monitor the balance of the fund and when the department determines that sufficient moneys are available in the fund, the bill would require the moneys in the fund to be allocated in accordance with a specified formula, as provided.

This bill would authorize the funds to be allocated for specific purposes, including, among others, housing and housing-related program services for affordable housing, housing and community development project costs, and management services for affordable housing. The bill would require the funds to be allocated only for the benefit of eligible beneficiaries, including, among others, Indian and essential families and individuals residing in an Indian area, as specified.

This bill would require recipients of the funds to expend all funds allocated to programs and services within 5 years from the date of execution of a funding agreement with the department, and to expend all funds allocated to projects within 7 years from the date of execution of a funding agreement with the department, unless granted an extension by the department, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Tribal Housing Reconstitution and Resiliency Act.

SEC. 2. The Legislature finds and declares all of the following:

- (a) The legacy of state- and federal-sponsored genocide, land theft, displacement, and discrimination is directly related to the isolation, marginalization, disenfranchisement, and underdevelopment of the state's first nations to this day.
- (b) For decades, tribes were shut out of state housing programs and totally reliant on federal housing programs. Federal programs are still critical but insufficient to cover all housing and community development needs that have grown over generations of neglect.
- (c) Despite the passage of AB 1010 in 2019, which made tribes eligible for most state housing programs and recreated the G. David Singleton California Indian Assistance Program (CIAP) in the Department of Housing and Community Development, tribes still face serious structural and inequitable obstacles to accessing and competing in these programs.
- (d) Existing state programs were not designed with tribes in mind. They are often too restrictive for tribes to meet threshold and compliance requirements or mismatched to the opportunities and needs that exist on tribal trust and fee land.
- (e) State housing program requirements conflict with tribal sovereignty and the concept of sovereign immunity. As a result, tribes must often appeal for time-consuming program waivers, which depend on the good will and understanding of nontribal staff about tribal laws, culture, and practices.
- (f) For the overwhelming majority of tribes, 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 small tribal set-asides that will fund only a handful of applicants.
- (g) There is a lack of consistency between federal Indian housing programs and state housing programs. Federal programs incorporate conditions and requirements that are a better fit and often more flexible than conventional state housing programs.
- (h) There are currently 109 federally recognized tribes in California. They vary greatly in terms of land, resources, and capacity.
- (i) The housing conditions of tribal members living in California reservations and rancherias have not changed for many years. According to the 2019 study "California Tribal Housing Needs and Opportunities," tribes have much higher rates of poverty, overcrowding, substandard housing, and homelessness than other Californians.
- (j) About 25 of the state's federally recognized tribes either have no land base, a land base but no resident population, or no housing units reported. Tribes with a land base often have limited developable sites because of topography, soil and drainage problems, and fire hazards. Sites that are developable have low-capacity, failing, or nonexistent water, sewer, and electrical systems. These tribes must compete in the private market for decent sites to house their members.
- (k) Tribes typically do not have the staff capacity of other units of local government. They have insufficient financial resources to attract and retain long-term housing program and project staff with experience accessing the state's system of housing finance and cannot afford external consultants.
- (l) Therefore, in furtherance of Governor Gavin Newsom's Executive Order No. N-15-19 formally apologizing to California's Native Americans for historical mistreatment, violence, and neglect, a dedicated, flexible, and comprehensive state program, designed by and for tribes, is needed to finance housing and housing-related activities that will enable tribes to rebuild and reconstitute their communities.

SEC. 3. Chapter 6.4 (commencing with Section 50651) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 6.4. Tribal Housing Reconstitution and Resiliency Act

50651. For purposes of this chapter, all of the following definitions apply:

- (a) "Department" means the Department of Housing and Community Development.
- (b) "Eligible applicant" means all of, or a combination of, the following:
- (1) The duly constituted governing body of a California-based federally recognized Indian reservation or rancheria.
 - (2) A tribally designated housing entity delegated by a California-based federally recognized Indian reservation or rancheria to perform housing and housing-related activities on behalf of one or more Indian tribes.
 - (3) A consortium of one or more of the following:
 - (A) California-based federally recognized Indian reservations or rancherias.
 - (B) Tribally designated housing entities.

(4) An eligible development partnership between the duly constituted governing body of a California-based federally recognized Indian reservation or rancheria or tribally designated housing entity with a nonnative nonprofit housing sponsor.

(c) "Eligible development partnership" means the partnership of a duly constituted governing body of a California-based federally recognized Indian reservation or rancheria or tribally designated housing entity with a nonnative nonprofit housing sponsor, evinced by a development agreement, joint venture agreement, or other type of agreement with equitable and fair terms to the tribal entity. The agreement must specify the development, ownership, and management responsibilities between the parties and the tribal entity shall receive no less than 50 percent of the developer fee, including upfront developer fee and deferred developer fee, and hold a controlling or at least equivalent interest in the ownership entity or if the owner is a low-income housing tax credit limited partnership for the purposes of syndicating tax credits, have a first option to acquire the property at the end of the tax credit compliance period.

(d) "Essential families" means families or individuals whose presence is determined to be essential to the well-being of the reservation or rancheria, as defined in Section 201(b)(3) of NAHASDA.

(e) "Federally recognized tribe" means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (Public Law 93-638).

(f) "Housing" means home ownership housing and rental housing that may be single-family units, attached units such as duplexes and triplexes, multifamily housing projects, permanent supportive housing for the homeless, single room occupancy units, mobile or manufactured homes, group homes for persons with special needs such as the elderly and disabled, congregate housing, transitional housing, halfway housing, domestic violence shelters, and homeless emergency shelters.

(g) "Indian" means any person who is a member of an Indian tribe.

(h) "Indian area" means the area within which an Indian tribe operates affordable housing programs or the area in which a tribally designated housing entity, as authorized by one or more Indian tribes, operates affordable housing programs. Whenever the term is used in this chapter, it shall mean the Indian area of a California-based Indian reservation or rancheria.

(i) "Indian tribe" means a tribe that is a federally recognized tribe.

(j) "NAHASDA" means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. Sec. 4101 et seq.).

(k) "Nonprofit housing sponsor" means a nonprofit corporation incorporated pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(l) "Median income for the area" means for purposes of this chapter, the greater of the following:

(1) The median income of the county or counties in which the Indian area is located.

(2) The median income for the United States.

(m) "Rancheria" means a small tract of California Indian land under federal trust.

(n) "Tribally designated housing entity" means an entity as that term is defined in Section 50104.6.5.

(o) "Tribal housing grant program trust fund advisory committee" means a state advisory body established pursuant to Section 15990 of the Government Code to represent tribal interests in state housing programs, including providing guidance to the department on proposed guidelines and making recommendations. Committee composition shall consist of at least 51 percent tribal housing staff, tribal leaders, and a tribal attorney and shall include diverse representation from tribes in terms of geographic location, size of tribe, and revenue from sources other than NAHASDA.

50651.1. There is hereby created in the State Treasury the Tribal Housing Grant Program Trust Fund to be administered by the department. All interest or other increments resulting from the investment of moneys in the fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code.

(a) Moneys in the Tribal Housing Grant Program Trust Fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except to the Surplus Money Investment Fund.

(b) Both of the following shall be paid and deposited in the fund:

(1) Any moneys appropriated and made available by the Legislature through the annual Budget Act for purposes of the fund.

(2) Ten percent of any moneys that will be appropriated and made available by the Legislature to the department through the annual Budget Act for the Multifamily Housing Program (Chapter 6.7 (commencing with Section 50675)), Infill Infrastructure Grant Program of 2019 (Part 12.5 (commencing with Section 53559)), Veterans Housing and Homeless Prevention Act of 2014 (Article 3.2 (commencing with Section 987.001) of Chapter 6 of Division 4 of the Military and Veterans Code), and Joe Serna, Jr. Farmworker Housing Grant Program (Chapter 3.2 (commencing with Section 50515.2)). The use of moneys deposited into the fund pursuant to this subdivision shall only be subject to this chapter, regardless of any other law governing the use of the balance of the funds appropriated to programs governed by this division.

(c) Separate from the fund, and subject to appropriation by the Legislature, moneys made available to the department through voter-approved bonds for the Multifamily Housing Program, Infill Infrastructure Grant Program of 2019, Veterans Housing and Homelessness Prevention Program, and Joe Serna, Jr. Farmworker Housing Grant Program may be made available as tribal set-asides in alignment with the eligible uses of those funds.

(d) The department shall monitor the balance of the fund. When the department determines that sufficient moneys are available in the fund to allocate, the department shall allocate the moneys as follows:

(1) Ninety-five percent of deposits into the fund pursuant to subdivision (b) shall be made available on an entitlement basis to the duly constituted governing body of a California-based federally recognized Indian reservation or rancheria in accordance with a formula allocation to be determined by the department. The formula shall be based on input and guidance from Indian tribes and the tribal housing grant program trust fund advisory committee, which may include, but not be limited to, a specific formula or factors to be used in a formula for allocation. Funds shall be provided in the form of multipurpose block grants for eligible uses in support of housing and housing-related planning, program, project predevelopment, operating subsidies, staffing, and administrative activities as specified in this chapter.

(2) Five percent of deposits into the fund shall be available for technical assistance to eligible tribes and tribally designated housing entities to build their capacity to independently plan, design, apply for, implement, and operate affordable housing programs and projects.

(e) Recipients that receive an allocation pursuant to paragraph (1) of subdivision (d) shall use no more than 20 percent of that allocation for costs related to the administration of funds received on an entitlement basis, unless the recipient receives approval by the department.

(f) To receive moneys pursuant to this section, tribal governments shall do both of the following:

(1) Annually submit a plan to the department detailing the way allocated funds will be used by the tribe in a manner consistent with this section.

(2) Submit an annual report to the department that provides ongoing tracking of the uses and expenditures of any allocated funds.

(g) The department shall ensure geographic equity in the distribution and expenditure of funds allocated pursuant to this section.

(h) In close consultation with California tribes and a tribal housing grant program trust fund advisory committee, the department shall adopt guidelines to implement this section, including determining allocation methodologies. Thereafter, the department may adopt, amend, or repeal guidelines for the administration and implementation of this chapter, in consultation with California tribes and a tribal housing grant program trust fund advisory committee.

50651.2. The moneys in the fund allocated in accordance with Section 50651.1 to eligible applicants may be expended for all of the following purposes:

(a) Housing and housing-related program services for affordable housing that include, but are not limited to, all of the following:

(1) Home buyer assistance, such as first-time home buyer loans, downpayment assistance, closing costs, and mortgage subsidies.

(2) Owner-occupied home rehabilitation loans and grants.

(3) Homeowner, home buyer, and renter counseling, including credit counseling.

(4) Rental assistance, student rental assistance, emergency rental assistance, move-in and utility expenses, and rental subsidies, including tenant-based rental assistance to individual tribal members, or similar assistance.

(5) Energy audits, retrofits to achieve greater energy efficiencies, water conservation measures, resident training, and other activities related to climate resilience, fire protection, and sustainability, or similar activities.

(6) Improvements to remediate lead-based paint, mold, and other hazards.

(7) Improvements to increase physical accessibility for elderly and disabled persons, including universal design.

(8) Wrap-around services, including childcare, after school programs, and job training for tribal members living in affordable housing.

(9) Community outreach to tribal members experiencing homelessness.

(10) Model activities that provide creative approaches to solving affordable housing activities.

(11) Other affordable housing program services permissible under NAHASDA.

(b) Housing and community development project costs including, but not limited to, all of the following:

(1) The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable multifamily and single-family housing projects for rent or ownership, including real property acquisition, demolition, and relocation.

(2) The conversion of nonresidential buildings into affordable housing.

(3) Site preparation, including grading and drainage improvements, development and rehabilitation of utilities, including sewer, water, and electrical systems, and other necessary infrastructure.

(4) Site amenities, including recreational areas, playgrounds, and on-site streets and sidewalks for affordable housing units.

(5) The construction or rehabilitation of community-serving amenities, including childcare centers, health services, supportive services space, or other activities and services that are colocated with an affordable housing project.

(6) The construction or rehabilitation of commercial uses that create job or economic development opportunities for tribal members that is colocated with an affordable housing project.

(7) Other predevelopment costs including, but not limited to, administration and planning of affordable housing projects, market studies, soils, engineering, and architectural plans, grant writers contracted to work on project funding applications, and finance professionals to assist with financial packaging of state and nonstate housing assistance programs.

(8) Other affordable housing project development costs permissible under NAHASDA.

(c) Management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, the costs of operation and maintenance of units developed with funds provided under this chapter, all activities related to maintaining compliance with housing loan or grant sources, and management of affordable housing projects.

(d) Allowable administrative costs shall include, but not be limited to, all of the following:

(1) Comprehensive housing and community development activities.

(2) Overhead subject to a federally negotiated indirect cost rate and the salaries and benefits of individuals engaged in overall program administration and management of affordable housing activities assisted with funds allocated under this chapter.

(3) Grant writers contracted to work on program applications to prospective funders.

(4) Monitoring, data collection, evaluation, and preparation of annual performance reports to the department.

(5) A recipient may request the department's approval for use of more than 20 percent of entitlement funds allocated under Section 50651.1 to help cover administrative costs.

50651.3. The moneys in the fund allocated to eligible applicants in accordance with Section 50651.1 shall only be expended for the benefit of one or more of the following eligible beneficiaries:

(a) Indian and essential families and individuals residing in an Indian area.

(b) Households residing in an Indian area with annual incomes up to 80 percent of the median income for the area for rental housing programs and projects and up to 120 percent of median income for the area for home ownership programs and projects.

(c) In high-cost areas, tribes may provide financial assistance to households with incomes up to 150 percent of median income for the area for home ownership programs and projects provided the total dollar amount of assistance does not exceed more than 10 percent of total funds allocated.

50651.4. (a) (1) Recipients shall have five years from the date of execution of a funding agreement with the department to expend all funds allocated to programs and services.

(2) Recipients shall have seven years from the date of execution of a funding agreement with the department to expend all funds allocated to projects.

(3) An extension to expend funds may be approved by the department when the recipient demonstrates significant progress toward completing the approved activities and a reasonable plan to complete them within the extension period.

(b) If it is determined, on the basis of a review of the recipient's annual reports, that the eligible activities have not been completed or are unlikely to be completed in the required timeframes, the award may be reallocated to another eligible activity, reduced, or withdrawn except that funds already expended on eligible activities shall not be recaptured. A reallocation of an award will not be made until the recipient has submitted an explanation as to why the original eligible activity will not proceed and has requested reallocation to another eligible activity. A reduction or withdrawal of an award will not be made until the recipient has been provided notice, and only then if the recipient has not made an appropriate and timely response which may include submittal of revised implementation schedules and plans to achieve the eligible activities.