

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 712 (Hueso) – As Amended May 4, 2021

**SENATE VOTE:** 30-0

**SUBJECT:** Local government: California tribes: federal fee-to-trust applications to regain ancestral lands.

**SUMMARY:** Prohibits a local government from adopting or enforcing a resolution or ordinance that would prevent the local government from conducting a fair evaluation of a fee-to-trust application, and requires a local government to take specified actions when it opposes a fee-to-trust application. Specifically, **this bill**:

- 1) Provides that state and local governments are encouraged to work cooperatively with California federally recognized tribes in their fee-to-trust applications for purposes of regaining ancestral lands.
- 2) Provides that state and local governments are encouraged to support California federally recognized tribes in their nongaming fee-to-trust applications.
- 3) Prohibits a local government from adopting or enforcing a resolution or ordinance that would prevent the local government from conducting a fair evaluation of a fee-to-trust application based on the merits of the application.
- 4) Requires a local government that opposes a fee-to-trust application to do both of the following:
  - a) Request, by certified mail to the applicant tribe, within five days of receiving the notice from the federal government, information from the tribe on the economic benefits to the county from both the project that is the subject of the application and the tribe's contribution to the local jurisdiction in the last five years.
  - b) If the local government receives information on economic benefits from the applicant tribe within five days of the local government's request to the tribe, include the information on economic benefits, as described in a) above in any opposition letter or other document submitted to the federal government, either in its response or as an attachment to its response.
- 5) Provides that, if the applicant tribe does not provide information on economic benefits within five days of the request, the local government shall not be required to submit information on economic benefits in its response to the federal government.
- 6) Provides the following definitions for the purposes of this bill:
  - a) "Economic benefits" may include, but are not limited to the following: employment growth; housing development; infrastructure and environmental improvements;

assistance to schools and education; assistance to public safety agencies and departments; and, assistance to nonprofit organizations.

- b) “Fair evaluation of a fee-to-trust application” means consideration by a local government of a specific, individual fee-to-trust application on a case-by-case basis.
  - c) “Fee-to-trust” refers to the land acquisition procedures described in Part 151 of Title 25 of the Code of Federal Regulations (25 C.F.R. 151).
  - d) “Local government” as used in this article refers to a county, a city, a city and county, and a special district.
- 7) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.
- 8) Contains a number of findings and declarations regarding its purposes.

#### **EXISTING LAW:**

- 1) Establishes, under federal regulations, the process for taking land that a tribe owns in fee simple (full ownership of the property) into trust, pursuant to 25 C.F.R. Section 151, known as a fee-to-trust application.
- 2) Requires the Secretary of the Interior (Secretary) to approve all fee-to-trust applications.
- 3) Allows land to be acquired in trust status for a tribe under the following circumstances:
  - a) When the property is located within or adjacent to the boundaries of the tribe's reservation.
  - b) When the property is within a tribal consolidation area, which is an area of land where a tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust for the tribe.
  - c) When the tribe already owns an interest in the land.
  - d) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.
- 4) Requires a tribe to submit a written application (fee-to-trust application) specifically requesting that the Secretary take land into trust for the benefit of the applicant, including the identity of the parties, a description of the land to be acquired, the specific reason the applicant is requesting the trust land acquisition, certain title information, and information that allows the Secretary to comply with the National Environmental Policy Act (NEPA) and other federal laws.

- 5) Requires the Secretary to notify the state and local governments that have regulatory jurisdiction over the land that is the subject of a fee-to-trust application.
- 6) Grants state and local governments 30 days to provide written comments on the acquisitions potential impacts on their regulatory jurisdiction, real property taxes, and special assessments.
- 7) Allows the tribe requesting the acquisition to respond or ask the Secretary to issue a decision on the application. If approved, the Secretary must notify the applicant, publish a notice in the federal register, and immediately acquire the land in trust.
- 8) States that it is the policy of the State of California to encourage all state entities to seek opportunities to support California tribes' co-management of, and access to, natural lands that are within a California tribe's ancestral land and under the ownership or control of the State of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of state needs.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill prohibits a local government from adopting or enforcing a resolution or ordinance that would prevent the local government from conducting a fair evaluation of a fee-to-trust application based on the merits of the application. If a local government opposes a fee-to-trust application, it must do the following:
  - a) Within five days of receiving notice of the fee-to-trust application from the federal government, request information from the tribe on the economic benefits to the county from both the project that is the subject of the application and the tribe's contribution to the local jurisdiction in the last five years.
  - b) If the local government receives this information within five days of the local government's request to the tribe, it must include the information on economic benefits in any opposition letter or other document submitted to the federal government. If the applicant tribe does not provide the information within the specified time frame, the local government is not required to submit economic benefit information in its response to the federal government.

This bill also encourages state and local governments to work cooperatively with California federally recognized tribes in their fee-to-trust applications for purposes of regaining ancestral lands, and to support California federally recognized tribes in their nongaming fee-to-trust applications.

According to the author, "This bill will rectify years of long-standing discriminatory practices by local governments that have deprived Native Americans from a fair process in their attempts to acquire ancestral lands."

This bill is sponsored by the Rincon Band of Luiseño Indians.

- 2) **Fee-to-Trust Applications.** The United States government recognizes 574 Indian tribes as sovereign governments. Federally recognized tribes are not subject to state and local laws and regulations, except for those required under compacts negotiated with the State of California that provide for authority to conduct gaming activity on Indian lands.

Federal regulations govern the process for the federal government to take land that a tribe or Indian individual owns in fee simple (full ownership of the property) into trust, pursuant to 25 C.F.R. 151. All fee-to-trust applications must be approved by the Secretary or a designee.

According to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), “taking land into trust is one of the most important functions Interior undertakes on behalf of the tribes. Acquisition of land in trust is essential to tribal self-determination. Tribes are sovereign governments and trust lands are a primary locus of tribal authority. Indeed, many federal programs and services are available only on reservations or trust lands. The current federal policy of tribal self-determination is built upon the principles Congress set forth in the Indian Reorganization Act and reaffirmed in the Indian Self-Determination and Education Assistance Act.”

Fee-to-trust regulations allow land to be acquired in trust status for a tribe under the following circumstances:

- a) When the property is located within or adjacent to the boundaries of the tribe's reservation.
- b) When the property is within a tribal consolidation area, which is an area of land where a tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust for the tribe.
- c) When the tribe already owns an interest in the land.
- d) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

An individual Indian may also submit a fee-to-trust application if the land is located within or adjacent to an Indian reservation or if the land is already held in trust, subject to additional specifications.

A tribe that wishes to pursue a fee-to-trust land acquisition must submit a written application requesting the Secretary to take land into trust for the benefit of the applicant. The tribe must submit the application to the BIA office that has jurisdiction over the lands contained in the application, which must include the identity of the parties, a description of the land to be acquired, the specific reason the applicant is requesting the trust land acquisition, certain title information, and information that allows the Secretary to comply with NEPA and other federal laws.

When the Secretary receives a fee-to-trust application, a notification is sent to the state and local governments that have regulatory jurisdiction over the land. State and local governments have 30 days to provide written comments on the acquisition's potential impacts on their regulatory jurisdiction, real property taxes, and special assessments. The

tribe requesting the acquisition can respond or ask the Secretary to issue a decision on the application.

When evaluating an application, the Secretary must consider the following factors:

- a) The existence of statutory authority for the acquisition and any limitations contained in such authority.
- b) The need of the individual Indian or the tribe for additional land.
- c) The purposes for which the land will be used.
- d) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.
- e) Jurisdictional problems and potential conflicts of land use that may arise.
- f) If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.
- g) The extent to which the applicant has provided information that allows the Secretary to comply with NEPA.

Fee-to-trust applications for off-reservation land must also specify the location of the land relative to state boundaries and the boundaries of the tribe's reservation. The further the land is from the tribe's reservation, the greater the weight the Secretary must give to any concerns about potential land use conflicts and lost tax revenue. If the tribe is proposing off-reservation land for trust status and the land is being acquired for business purposes, the tribe must provide a plan that specifies the anticipated economic benefits associated with the proposed use.

The Secretary must review each application and can request additional information as needed. If approved, the Secretary must notify the applicant, publish a notice in the federal register, and immediately acquire the land in trust. Fee-to-trust land acquisitions are rarely denied, but can be delayed for years or decades, principally due to NEPA lawsuits. Once taken into trust for a tribe, fee-to-trust land is no longer subject to state and local taxation or zoning, planning, and other regulatory controls.

- 3) **Statement of Administration Policy.** On June 18, 2019, Governor Gavin Newsom issued Executive Order N-15-19, which acknowledges and apologizes on behalf of the State for the historical "violence, exploitation, dispossession and the attempted destruction of tribal communities" which dislocated California Native Americans from their ancestral land and sacred practices. Governor Newsom subsequently issued a Statement of Administration Policy, which encourages all state entities to seek opportunities to support California tribes' co-management of and access to natural lands that are within a California tribe's ancestral land and under the ownership or control of the State of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of state needs. Any action undertaken to further the policy must comply with all applicable laws and regulations, occur in consultation with California tribes, and not conflict with other stated

policy priorities, such as housing, homelessness, and climate action. The policy also lists certain purposes for the policy, including to support tribal self-determination and self-government.

- 4) **San Diego County Resolution.** On March 29, 1994, the San Diego County Board of Supervisors (Board) adopted a resolution stating that the Board opposes the taking of new land into trust. The county continued to reference this standing policy in comment letters on fee-to-trust applications as recently as March 12, 2014. However, the Board repealed this resolution earlier this year.
- 5) **Technical and Clarifying Amendments.** In order to maintain internal consistency in the language of this bill, and account for any fee-to-trust application that does not include a “project,” the Committee may wish to consider the following technical and clarifying amendments:

54262. (d) (1) (A) A local government that opposes a fee-to-trust application shall do both of the following:

(A) Request, by certified mail to the applicant tribe, within five days of receiving the notice from the federal government, information from the tribe on the economic benefits to the **county local government** from both the project that is the subject of the application, **if applicable**, and the tribe’s **economic** contribution to the local jurisdiction in the last five years.

- 6) **Arguments in Support.** The Rincon Band of Luiseño Indians, sponsor of this measure, writes, “Historically, the relationship between the State of California and California Native Americans has been fraught with violence, exploitation, dispossession, and attempted destruction of tribal communities. On June 18, 2019, Governor Gavin Newsom signed Executive Order N-15-19 formally apologizing to California’s Native Americans for historical mistreatment, violence, and neglect; and acknowledged and affirmed that, while we cannot undo these wrongs, we can work together to improve the lives of California Native peoples. One of the most devastating impacts to Native peoples came from the General Allotment Act of 1887, which broke up reservation lands resulting in a loss of 90 million acres nationwide. On September 25, 2020, the Governor issued a Policy which encouraged every state agency, department, board, and commission to seek opportunities to provide access and inclusion of ancestral lands to Native peoples.

“An important way in which eligible Native peoples can recover ancestral lands and rebuild self-determination is by applying for a fee-to-trust acquisition with the Federal Bureau of Indian Affairs within the United States Department of Interior. A fee-to-trust acquisition is a transfer of land from an eligible tribe to the United States, in trust, for the benefit of the eligible tribe. Trust lands are synonymous with tribal authority and many federal programs and services are available only on these lands. For example, trust acquisitions provide tribes the ability to enhance housing and educational opportunities for their citizens, as well as protections for many who still rely on subsistence hunting and agriculture, which are essential elements of their culture. The fee-to-trust acquisition process allows local governments that have jurisdiction over the subject lands to submit comments over any potential impacts on regulatory jurisdiction, real property taxes, and special assessments. Unfortunately, it is uncommon for a local government to support such an application, even if

the impacts or losses are minimal and the benefits to Native peoples and surrounding communities are substantial. SB 712 addresses this issue by ensuring that local governments carefully consider the benefits of fee-to-trust acquisitions.”

- 7) **Arguments in Opposition.** The California State Association of Counties writes, “The federal regulations from the Bureau of Indian Affairs that govern the fee-to-trust application process offer state and local governments 30 days to provide written comments on a fee-to-trust application’s potential impacts on regulatory jurisdiction, real property taxes and special assessments. These issues can be significant depending on the scope of the individual proposed acquisition and whether significant changes in land use are proposed as part of the application. Further, the fee-to-trust regulations require the Secretary of the Interior to consider the need for the land to be acquired in trust status, as well as the anticipated economic benefits if an acquisition is proposed for economic development purposes.

“SB 712 would require a local agency that opposes a fee-to-trust to also incorporate within its comments specified economic benefit information received from the tribe, whether or not this information is included in the subject application. While the aforementioned regulations already require the federal government to consider benefits of the acquisition, including applicable economic benefits, we object to amending state law to mandate that local agencies include specific economic benefit information from the applicant tribe in their comments – especially information that is either beyond the scope of the application or not included in the application materials. In consideration of the already brief comment period set out under in federal regulations, a better approach to this issue would be to require counties to address in their comments the economic benefits outlined in the fee to trust application.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Rincon Band of Luiseño Indians [SPONSOR]  
 Agua Caliente Band of Cahuilla Indians  
 Cloverdale Rancheria of Pomo Indians of California  
 Dry Creek Rancheria Band of Pomo Indians  
 Habematolel Pomo of Upper Lake  
 San Pasqual Band of Mission Indians  
 Yocha Dehe Wintun Nation

### **Opposition**

California State Association of Counties (unless amended)

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958