

CONCURRENCE IN SENATE AMENDMENTS

AB 2261 (Garcia)

As Amended May 21, 2024

2/3 vote. Urgency

SUMMARY

Allows a federally recognized Native American tribe to be eligible for federal funding for a transportation project and authorizes the tribe to be the lead agency for a transportation project that receives federal funding, to the extent permitted by state and federal law.

Senate Amendments

- 1) Establishes this measure is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect.
- 2) Establishes the facts constituting the necessity are: Twenty-Nine Palms Band of Mission Indians is embarking on a series of transportation improvement projects, including safety projects. Providing opportunity for federally recognized tribes to receive independent transportation funding is essential to the success of critical projects and will help ensure the timely delivery of transportation safety projects.

COMMENTS

A federally recognized Native American tribe (federally recognized tribe) is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

Federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States.

California is home to more people of Native American/ Alaska Native heritage than any other state in the Country. There are currently 109 federally recognized Indian tribes in California and several non-federally recognized tribes petitioning for federal recognition through the Bureau of Indian Affairs-Office of Federal Acknowledgement (OFA).

State law vests the Department of Transportation (Caltrans) with full possession and control of all state highways and all property and rights in property acquired for state highway purposes. Acting on this charge, Caltrans awards federal and state monies to regional and local entities for the repair and maintenance of portions of the state highway system.

State law explicitly authorizes Caltrans to enter into contracts with federally recognized Indian tribes and entities owned by those tribes. However, state law is silent regarding whether a tribe may receive federal funding through Caltrans for a transportation project or from acting as a lead agency on a transportation project that receives such funding.

Federally recognized tribes are currently eligible direct recipients and sub-recipients for numerous Federal Transit Administration (FTA) programs. Eligible programs include; Tribal Transit Formula Program Tribal Transit Competitive Program Rural Areas Formula Program Bus and Bus Facilities Competitive Program Pilot program for innovative coordinated access and mobility Bus and Bus Facilities LoNo Program. Eligible uses for this funding include capital investment (e.g., start-ups, replacement, or expansion), operating expenses, and public transportation planning projects.

In 2021, President Biden signed the Bipartisan Infrastructure Law, which specifies tribal eligibility for various programs, including; rail infrastructure, electric vehicle charging, funding to increase safety, mobility, and access for Tribal communities and funding for planning, designing, engineering, replacing, improving, or constructing bridges on Tribal lands, among others.

This bill clarifies that federally recognized Native American tribes are eligible to receive federal funding, to the extent permitted by state and federal law.

California tribal consultation. California is home to 110 federally recognized tribes and approximately 80 non-recognized tribes. Both federally recognized and non-federally recognized tribes have distinct organizational structures and cultures. Federally recognized tribes have the right and authority to regulate activities on their respective lands. Non-federal tribal governments may, however, be consulted under state historic preservation law during environmental reviews of individual projects that have the potential to affect cultural resources of tribal significance within the state highway system (SHS). Of the 58 counties in the state, 32 have at least one federally recognized tribe within their boundaries. Of the 12 Caltrans districts, 10 have at least one federally recognized tribe within their boundaries. The SHS transects, abuts, or is near most tribal lands in California.

Federally recognized tribal tribes in California are eligible applicants for certain transportation programs and have received funds from the Active Transportation Program, the Highway Safety Improvement Program, and Caltrans' Planning Grants program.

The California State Transportation Agency (CalSTA) adopted an agency policy on tribal consultation in 2014 to guide CalSTA and its departments on strengthening and sustaining relationships between tribes and the state. Secretary Toks Omishakin is committed to establishing direct communication and positive relationships with California tribes on issues that affect the state and tribal communities.

Federally recognized tribes are independent sovereignties and, generally, are not subject to state law. Caltrans is granted broad authority to protect and maintain the SHS, consistent with state laws, policies and procedures. However, tribal projects with the potential to impact the SHS may be subject to state and federal laws, requirements, and/or standards for the portion of the project affecting the SHS. Increasingly, tribes are undertaking economic development and their requisite transportation requirements, both on and off tribal land.

This bill seeks to clarify any ambiguity related to federal recognized Native American tribes applying for federal funding independently, as state and federal laws allow.

According to the Author

"AB 2261 seeks to clarify that a federally recognized Native American Tribe is eligible to receive state and federal funding transportation funding as a local agency. AB 2261 ensures there in no statutory ambiguity when defining local agencies for the purposes of Native American Tribes being eligible recipients as well as local project managers.

Arguments in Support

The Twenty-nine Palms Band of Mission Indians writes, "Several tribes within the state of California have aging and dilapidated infrastructure...Under AB 2261, Tribal governments will be able to directly apply and receive funding under their own assigned local assistance code, which will empower tribes to address at-risk infrastructure."

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Senate Committee on Appropriations, this bill will have negligible state costs pursuant to Senate Rule 28.8.

VOTES:**ASM TRANSPORTATION: 15-0-0**

YES: Wilson, Davies, Aguiar-Curry, Berman, Juan Carrillo, Hart, Hoover, Jackson, Lowenthal, Papan, Sanchez, Ting, Wallis, Ward, Wicks

ASM APPROPRIATIONS: 14-0-1

YES: Wicks, Sanchez, Arambula, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Grayson, Haney, Hart, Jim Patterson, Pellerin, Ta

ABS, ABST OR NV: Villapudua

ASSEMBLY FLOOR: 73-0-7

YES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Dixon, Essayli, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Wicks, Wilson, Wood, Zbur

ABS, ABST OR NV: Calderon, Megan Dahle, Flora, Low, Mathis, Weber, Robert Rivas

SENATE FLOOR: 37-0-3

YES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Umberg, Wahab, Wiener, Wilk

ABS, ABST OR NV: Alvarado-Gil, Limón, Stern

UPDATED

VERSION: May 21, 2024

CONSULTANT: Julia Kingsley / TRANS. / (916) 319-2093

FN: 0003527