

ASSEMBLY THIRD READING  
AB 653 (Ridley-Thomas)  
As Amended May 30, 2017  
Majority vote. Tax Levy

Committee	Votes	Ayes	Noes
Revenue & Taxation	9-0	Ridley-Thomas, Brough, Travis Allen, Bocanegra, Burke, Chen, Dababneh, Mullin, Quirk	
Appropriations	17-0	Gonzalez Fletcher, Bigelow, Bloom, Levine, Bonta, Brough, Calderon, Quirk, Eggman, Fong, Thurmond, Gallagher, Eduardo Garcia, Gray, Muratsuchi, Obernolte, Reyes	

**SUMMARY:** Exempts property from taxation that is owned by a federally recognized Native American tribe during the fee-to-trust application process with the United States (U.S) Department of Interior (DOI), as specified. Specifically, **this bill:**

- 1) Exempts from taxation, commencing with lien date 2018-19, property owned by a federally recognized Native American tribe if the following conditions are met:
  - a) The tribe has submitted an initial written request or trust application and DOI has issued a notice of decision accepting the land into federal trust; and,
  - b) The tribe has submitted documents establishing the tribe as being federally recognized and that the initial written request or trust application is under consideration by the DOI.
- 2) Provides that the exemption shall cease to apply on the earliest of any of the following dates:
  - a) The lien date that occurs five years from the date of the initial grant of the property tax exemption;
  - b) The date the property is placed into trust by the Federal Government;
  - c) The date a final decision by a court of competent jurisdiction overturns the notice of decision approving the trust application; or,
  - d) The date the tribe withdraws the trust application from the DOI.
- 3) Requires the tribe to notify the assessor if a court of competent jurisdiction overturns the notice of decision approving the trust application or if the tribe withdraws the trust application from the DOI.
- 4) 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.

- 5) Provides that no appropriation is made by this bill and the state shall not reimburse any local agency for any property tax revenues lost.
- 6) Takes effect immediately as a tax levy.

**EXISTING FEDERAL LAW** provides that land taken in trust for a Native American tribe or individual Native American shall be exempt from State and local taxation. (United States Code (USC), Title 25, Section 5108.).

**EXISTING STATE LAW:**

- 1) Provides that all property is taxable, unless otherwise provided by the California Constitution or federal laws (California Constitution Section 1(a), Article XIII).
- 2) Limits ad valorem taxes on real property to 1% of the full cash value of that property (California Constitution Section 1(a), Article XIII A, (Proposition 13)).
- 3) Requires real property to be reassessed to its current fair market value whenever a "change in ownership" occurs. (California Constitution, Article XIII A, Section 2; Revenue and Taxation Code Sections 60 – 69.5).
- 4) Exempts, in general, property held in trust by the U.S. Government for Native American tribes and tribal members from property tax. However, property owned in fee by a Native American tribe or individual member, even within the boundaries of the reservation, is subject to property tax (*County of Yakima v Confederated Tribes and Bands of Yakima Nation* 502 U.S. 251 (1992))<sup>1</sup>.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, unknown annual local revenue loss in the hundreds of thousands of dollars. Had this bill been in effect beginning in 2001-02, local property tax revenues would have declined on average by \$133,000 each year for 15 years, resulting in annual General Fund costs of \$66,000 as a result of the Proposition 98 guarantee.

**COMMENTS:**

- 1) The author has provided the following statement in support of this bill:

There is a serious need to build affordable housing for tribal members. In order to make housing more affordable, Native American tribes have asked the Department of Interior to put the lands into trust, because lands that are held in trust are not subject to local property taxes. However, the administrative process can take several years, and in some cases, over a decade. It is unfair that Native American tribes attempting to provide affordable housing to their members have to pay property taxes on property that otherwise would not be subject to property taxes but for a lengthy application process. This bill would provide some tax relief as Native American tribes work toward solving their own housing crisis.

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<sup>1</sup> Fee, also called a fee simple or fee simple absolute, is an estate of land, or other property, over which a person has absolute ownership.

2) Supporters of this bill state that "not only is there a chronic shortage of housing in California; there is also a chronic shortage of tribal housing for California Native American Tribes. Tribes are stepping up for tribal member housing by adding land to the Reservation for tribal housing projects." Unfortunately, the process of taking land into trust can take several years during which time the Tribe must pay to continue the fee-to-trust process and also pay property taxes. "AB 653 makes the property subject to a fee-to-trust appeal exempt from property taxes for a maximum of five years. This supports Tribal housing projects on Native American Reservations throughout California."

3) Committee staff comments:

a) Application Process: If land is taken in the name of the U.S. in trust for a Native American tribe or an individual Native American, the land and rights are exempt from state and local taxation<sup>2</sup>. The [Native American] Reorganization Act<sup>3</sup> provides the Secretary of the Interior (Secretary) with discretion to acquire trust title land or interest in land. The decisions are based on criteria set forth in the Code of Federal Regulations Title 25 Part 151. The process is generally divided between on-reservation and off-reservation discretionary acquisitions.

The fee-to-trust process is initiated by filing an application with the Bureau of Indian Affairs (BIA), which must be accompanied by a duly enacted tribal resolution that requests secretarial action, and must cite the statutory authority for the land acquisition. Once an application is received, a hazardous materials survey is conducted, usually by BIA environmental specialist. Parallel to the environmental review process, BIA also reviews the application and makes a determination as to whether it is complete. If it is not complete, the BIA will request further information and documentation. Once completed, notice can be provided to local and state governmental agencies, which starts a 30-day public comment period. Once the comment period is closed, a Notice of Decision can be issued by BIA. Interested parties have 30 days to file an appeal of the Notice of Decision with the Interior Board of Indian Appeals (Board). A final decision of the Board can then be appealed to the federal District Court. If none is filed, the decision of the Board is final.

b) On-Reservation Acquisition: The Secretary will consider the following criteria when the land is located within or contiguous to a Native American reservation, and the acquisition is not mandated:

- i) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- ii) The need of the individual Native American or the tribe for additional land;
- iii) The purposes for which the land will be used;

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<sup>2</sup> Courts have stressed that the reason for exempting Native American property from state taxation is that the power and duty of governing and protecting tribal Native Americans is primarily a Federal function and that a state cannot impose a tax which will substantially impede or burden the functioning of the Federal Government. (BOE Legal Opinion, April 14, 1981)

<sup>3</sup> 25 U.S. Code Section 461

- iv) The amount of trust or restricted land already owned by or for an individual and the degree to which the individual needs assistance in handling his affairs;
  - v) The impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
  - vi) Jurisdictional problems and potential conflicts of land use that may arise; and,
  - vii) 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.
- c) Off-Reservation Acquisition: In addition to most of the criteria outlined in "on-reservation acquisition,"<sup>4</sup> the Secretary will also consider the following criteria when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:
- i) The Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits and give greater weight to the concerns raised by the state and local governments as the distance between the tribe's reservation and the land to be acquired increases;
  - ii) A plan specifying the economic benefits associated with the proposed use if the land is being acquired for business purposes; and,
  - iii) Comments expressed by the state and the local government with respect to impacts on regulatory jurisdiction, real property taxes, and special assessments.
- d) Length of application time varies: According to the BOE's staff analysis, the length of time to complete a fee-to-trust application varies greatly. Of the 86 completed fee-to-trust applications filed in 2001, 36 were completed within one year or less, 39 took between one to five years, and 11 applications required more than five years to complete. The longest application took 13 years to complete.
- e) Implementation concerns: This bill also provides that the property tax exemption shall cease on the lien date that occurs five years from the initial exemption. However, as noted above, not all properties are accepted into trust within five years. If a property is accepted into trust on a date beyond five years from the initial application, it would appear, under the provisions in this bill, that the Native American tribe would pay property taxes for the period of time after the fifth lien date until the time the land is taken into trust.

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<sup>4</sup> The Secretary will not consider the amount of trust or restricted land already owned by or for an individual and the degree to which the individual needs assistance in handling his affairs.