

SENATE LOCAL GOVERNMENT COMMITTEE
Senator Patricia Wiggins, Chair

BILL NO: SB 170

AUTHOR: Florez

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FISCAL: No

CONSULTANT: Detwiler

WILLIAMSON ACT CONTRACTS

Existing Law

Under the Williamson Act, landowners can sign contracts with counties, agreeing to restrict the use of their property to agriculture, open space, or compatible uses for the next 10 years. These contracts automatically renew each year; the termination date is always a decade away. In return for the landowner's agreement to not develop the land, county officials must assess the property based on its use, not its market value. The use-value assessment method lowers the landowner's property tax bills.

There are several ways to end Williamson Act contracts, including nonrenewal, cancellation, rescission, and eminent domain.

The preferred method is *nonrenewal* in which either the landowner or the county decides to not renew the contract, which then runs out in nine years. After nonrenewal, county officials increase the property's assessed value to its market value by the end of the contract period when the land use restrictions also end.

County officials can *cancel* a Williamson Act contract at the landowner's request, immediately ending the contract and allowing the landowner to use the property for another specified use. To cancel a contract, the county supervisors must find that the cancellation is either consistent with the Act's purposes or in the public interest. To be consistent with the Act's purposes, the county supervisors must find that:

- The contract is already in nonrenewal.
- The cancellation won't result in removing nearby land from ag use.
- The proposed new use is consistent with the county's general plan.
- The cancellation won't result in discontinuous urban development.
- There is no nearby noncontracted land which is both available and suitable for the proposed new use (or that development would result in more contiguous urban development).

To be in the public interest, the county supervisors must find that:

- Other public concerns substantially outweigh the Act's objectives.
- There is no nearby noncontracted land which is both available and suitable for the proposed new use (or that development would result in more contiguous urban development).

The landowner must pay a cancellation fee equal to 12½% of the property's non-restricted value; the revenues go into the State General Fund.

Rescission occurs when the county supervisors cancel a Williamson Act contract, but the landowner simultaneously puts an agricultural conservation easement on other land of equal or greater value.

When a public agency uses its power of *eminent domain* to take private land that is subject to a Williamson Act contract for a public improvement, the contract becomes null and void.

Background

The Santa Ynez Band of Chumash Indians, which has a 135-acre reservation in Santa Barbara County, wants to build a cultural center, more infrastructure, and more housing. The Chumash Reservation is mostly developed, except for property which includes wetlands along a creek. Rather than develop the wetlands, the Chumash tribe wants to expand its reservation.

Through the tribal fee-to-trust process, a federally recognized tribe can buy more land and then apply to the federal Bureau of Indian Affairs to take that property into trust for the tribe. Federal officials are generally reluctant to accept land into trust status if there are encumbrances on the property's title. Williamson Act contracts are among the encumbrances that may concern federal officials who review these situations on a case-by-case basis.

The privately owned agricultural properties which are contiguous to the Chumash Reservation are subject to Williamson Act contracts with Santa Barbara County. The tribe could buy contiguous contracted land, give notice of nonrenewal, and wait nine years for the contracts to end. Instead, the tribe wants the Legislature to make it easier for tribal governments to cancel Williamson Act contracts.

Proposed Law

Senate Bill 170 creates a rebuttable presumption that tribal cultural centers, infrastructure, and housing are alternative uses that are public concerns that substantially outweigh the Williamson Act's objectives when a federally recognized Indian tribe petitions to cancel a Williamson Act contract.

SB 170 creates a rebuttable presumption that for tribal cultural centers, infrastructure, and housing, land contiguous to an existing Indian reservation would provide more contiguous patterns of urban development than development of

nearby noncontracted land when a federally recognized Indian tribe petitions to cancel a Williamson Act contract.

The bill declares that it shall not be interpreted to narrow the circumstances under which a county board of supervisors or a city council can approve the cancellation of a Williamson Act contract where other grounds for approval exist where one or both these presumptions don't apply or have been rebutted.

Comments

1. Self-sufficiency. The long-term sustainability of Indian tribes depends on having a land base that's sufficient to support economic development, housing, and other tribal activities. The federal fee-to-trust process allows tribes to expand their reservations by buying more land and bringing it under tribal control. Because Williamson Act contracts encumber the title to private property, those contracts can be an obstacle to tribal self-sufficiency. By creating rebuttable presumptions to buttress local officials' decisions, SB 170 makes it easier to cancel Williamson Act contracts and expand Indian reservations. With larger reservations, tribal governments can continue their efforts to promote economic self-sufficiency and long-term sustainability.

2. Already within reach. The Williamson Act already allows tribal governments to end contracts on land they want to add to their reservations. Although it requires a decade to unwind the contractual restrictions on development, nonrenewing a Williamson Act contract is the preferred method because it results in an orderly transition from agricultural use to the potential for development. The Committee may wish to consider whether a tribal government that wants to end a Williamson Act contract should be treated differently than other property owners who want to develop agricultural land that is subject to Williamson Act contracts.

3. Beyond the county's reach. Once the federal government takes land into trust status for an Indian reservation, state and local land use laws no longer apply. Although SB 170 makes it easier to cancel a Williamson Act contract to permit alternative uses such as tribal cultural centers, infrastructure, or housing, current state law can't require a tribal government to restrict the property to those land uses. As economic conditions or reservation policies change, a tribal government may want to use that former Williamson Act contracted land for other purposes.

4. Not Willits. In 2002, the First District Court of Appeals explored a controversy in which the Sherwood Valley Rancheria wanted to build low-income homes for tribal members and Willits Valley residents wanted to preserve open space for agricultural use. The Mendocino County Board of Supervisors made the statutorily required findings and approved the cancellation of the Williamson Act contract. The tribe signed a land use agreement with the County, voluntarily agree-

ing to comply with the terms of the former Williamson Act contract on the property where it would not build houses. In the Willits situation, the federal Bureau of Indian Affairs accepted the property into trust for the tribe.

5. Variation on a theme? If legislators want to make it easier for county supervisors to cancel Williamson Act contracts and expand Indian reservations to accommodate tribal cultural centers, infrastructure, and housing, they might consider an approach that blends SB 170 with the current law on contract rescissions and the Sherwood Valley Rancheria's experience. The Committee may wish to consider an amendment that applies the bill's statutory rebuttable presumption to the rescission of a Williamson Act contract on land owned by a tribal government on the condition that the tribe imposes a covenant on the former contracted land, restricting its use to the stated alternative purpose (e.g., cultural centers, infrastructure, housing). As a contract rescission, the tribal government would put an agricultural conservation easement on other, noncontracted land of equal or greater value.

6. Shifting the burden of proof. Before they can cancel a Williamson Act contract, county supervisors must make documented findings. The Legislature created these high standards to protect the Act's constitutional integrity by discouraging easy cancellations. SB 170 shifts the burden of proof by assigning rebuttable presumptions in favor of tribal cultural centers, infrastructure, and housing. By declaring that those land uses substantially outweigh the Williamson Act's objectives, the bill makes it easier to cancel a contract. The bill also makes it easier to cancel Williamson Act contracts by declaring that those land uses provide better urban development patterns. Because the bill shifts the burden of proof, the Senate Rules Committee has ordered a double-referral for SB 170; first to the Senate Local Government Committee and then to the Senate Judiciary Committee.

7. Legislative history. SB 170 is similar to AB 2860 (Mendoza, 2008) which died in the Assembly Agriculture Committee.

Support and Opposition (3/26/09)

Support: Santa Ynez Band of Chumash Indians, California Association of Tribal Governments, Tule River Indian Tribe.

Opposition: California Farm Bureau Federation, California State Association of Counties, Regional Council of Rural Counties, Santa Ynez Valley Concerned Citizens.