Stand Up For California!

"Citizens making a difference"
standupca.org

Cheryl Schmit, Director
P. O. 355
Penryn, Ca. 95663

April 6, 2011

Honorable Wesley Chesbro
California State Assembly
State Capitol Room 2141
Sacramento, CA. 95841
Fax: 319-2101

RE: AB 968 – Oppose Certain Aspects

Dear Assembly Members Chesbro:

Stand Up For California writes today to seek further clarification and oppose certain aspects of AB 968. Certain aspects of this legislation, if enacted, have the potential to set serious and far-reaching precedent in California.

AB 968 uses mandatory statutory language requiring that all state agencies "*shall cooperate on matters of economic development and improvement for the tribes*". However, AB 968 does not list criteria by which to gauge if a state agency is or has to cooperate with a tribe.

In addition, AB 968 may create conflicts as many state agencies now have personnel in tribal liaison positions. Perhaps an alternative approach would be to elevate the tribal liaison position and empower that position for the development of a more efficient policy within each State Agency.

AB 968 Sections 11019.8 (a) (A), (B) and (C) requires State Agencies to provide federally recognized tribes information on state programs and grants, (i.e both state and private) as well technical assistance. Mailing costs to notify 107 federally recognized tribes regarding programs can be substantial. Moreover, what is the cost to state taxpayers/state general fund[1] for providing technical assistance to federally recognized Tribes in preparation of applications for public and private funds, conducting meetings and or workshops?

AB 968 in Section 11019.8 (b) (1) adds the requirement:

> ***"...every state agency <u>shall adopt</u> a policy of <u>communication and consultation</u> with all California Indian tribes regardless of whether a tribe qualifies as a federally recognized California Indian tribe".***

[1] Tribal governments do not pay local or state taxes. State Agency grants are programs paid for by state taxpayers. However, some State Agency programs are funded with federal moneys – it is reasonable that tribe governments participate in these programs.

This language has two very important words, ***"Communication" and "Consultation."*** Communication implies that information is provided and/or requested on an as needed basis. It goes without saying that there needs to be channels of communication, cooperation, education and in many instances development of mutually agreed upon protocols between State Agencies and Tribes that provide for the safety and well-being of all Californians.

But "***consultation"*** is an interesting word with a specific meaning in Indian Country. At the federal level, ***consultation*** requires lengthy meetings across the nation with tribal governments before comment is opened to the public for rulemaking in the development of federal regulations. This is required as the federal government has a ***"trust obligation"*** to Tribes. However, the State of California ***does not have a trust obligation*** which requires the same level of consultation prior to the development of a policy or regulation. Consultation at the "State level" means nothing more than to seek advice or information, to exchange views or serve in an advisory capacity. This difference in the definition of the word "***consultation***" **should be made explicitly clear.**

Most troubling is amended Section 11019.8 which makes reference to:

> ***"...with all California Indian tribes regardless of whether a tribe qualifies as a federally recognized California Indian tribe".***

Recognizing the principles of federalism, there is nothing to stop a state from enacting legislation for purposes it deems legitimate, such as requiring state agencies "*...to include federally recognized tribes or tribal groups".* However, since, 1789 the U. S. Constitution included a grant by states to give exclusive power to Congress to regulate Indians and Indian tribal governments. (Article 1, section 8 clause 3 of the US Constitution) California's Constitution [Art. 1 Sec. 7 (b)] guarantees that "a citizen or class of citizens may not be granted privileges and immunities not granted on the same terms to all citizens." This line in AB 968 is contrary to the equal protection clause of the California Constitution as benefits for an Indian group arguably are a classification based on race and not the inherent sovereignty of a federally recognized tribal government.

Tribal groups often identify their membership with blood quantum, shared ancestry and ethnicity. These are **"suspect classifications" for equal protection challenges based upon violations of the State and Federal Constitutions**.

- "Racial preference is contrary to our tradition and is scrutinized with particular care" *Korematsu v. U.S.* 323 US 214.

- "Forbids discrimination based on race" *Gibson vs. Mississippi* 162 US 565

Further, AB 968 inadvertently establishes ***state recognition*** of non-federally recognized Indian groups. It must be noted, California currently has 72 petitioning tribal groups all believing they are unique in their quest for federal recognition, land and gaming. In 1998, two years prior to the passage of Proposition 1A that amended our states constitution to legalize a monopoly for federally recognized tribes to establish gaming – there were only 48 tribal groups petitioning for federal recognition and that includes at least 11 groups in metropolitan areas of Southern California. How many additional

petitioning groups will evolve with the potential enactment of this legislation? Moreover, will there be objection by federally recognized tribes or competing tribal groups as to whether or not to include des-enrolled tribal members who may have formed new tribal groups?

Recognition of a tribal group to the status of federal recognition as a government requires a serious process, of historical, genealogical and ethnological research. This research is performed at the federal level by the Bureau of Acknowledgement and Research (BAR) by specialist in these fields. The State of California has no such specialist on staff at State Agencies or the State Legislature. State Agencies need to know who they are working with. For example, there are numerous disputes within California tribes as to who is in the tribe and who is not. In addition, members are des-enrolled regularly, resulting in confusion as to whom the State must communicate and consult with when such a need arises. What happens if conflicting direction is given by the various factions claiming to be the actual tribe?

AB 968 places a new requirement on the Governor of California to include tribal groups who do not meet the stringent criteria of the federal regulatory process to be included in a required annual meeting and have input into the development of the Governor's policies that significantly or uniquely affect the tribal community. Various tribal groups reside on established Indian Reservations or Rancheria and can be adequately represented by federally recognized tribes. Los Angeles County is home to the largest urban American Indian population in the United States. As of 1998, census projections put the number at 56,281, a 22% increase from 1990 census figures.[2] These groups can be adequately represented by city and county government. For individual Indians that need additional benefits the BIA offers programs for urban Indians. Additionally, the State of California offers assistance to those in need.

Finally AB 968 seeks the establishment of a Native American Advisor in the Governor's Office. Such an Advisor in the Governor's office would be helpful. However, limiting the Advisor to only being an advocate on behalf of all California Indian tribes and tribal groups limits the perspective of advice a Governor needs. California State Association of Counties has also been asking for a Tribal Liaison position in the Governor's office. Expanding the scope of the position and making the Liaison an advocate for mutually beneficial state/tribal policy that enhances government-to-government relationships would be an invaluable addition to the executive office.

Legally it is unsound to require that the advisor to the governor be a member of a California Indian Tribe, as it gives the perception of granting preferential treatment and will make all decisions suspect and lacking in objectivity. Specific experience in the functioning of state government and state agencies would be helpful criteria for the position.

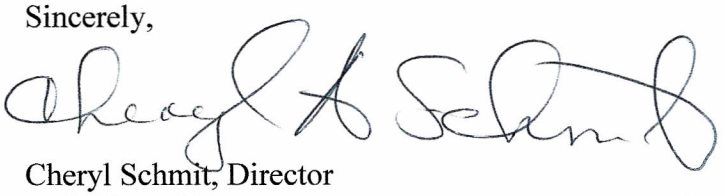
Lastly, is this a funded or unfunded position?

---

[2] June 2000 - *Urban American Indian Children in Los Angeles,* by Heather Singleton, MA. Research Associate UCLA American Indians Studies Center - Los Angeles County is home to the largest urban American Indian population in the United States. As of 1998, census projections put the number at 56,281, a 22% increase from 1990 census figures (Economics and Statistics Administration, 1999).http://www.standupca.org/reports/Heather%20Singelton%20Study%20on%20Urban%20Indians.pdf

We ask that you strike the requirement of including all tribal groups whether they are federally recognized or not. While we believe inclusion of the groups to be laudable, it creates and has the potential to create significant legal problems for the State of California and Indian entities. We urge tribal groups to pursue desired public policy changes through established regulatory processes, participation in scoping hearings and letters of comment on the development of State Agency policy, letters to their elected State Representatives and the Governor. All of these avenues of influence are available without special interest legislation.

Sincerely,



Cheryl Schmit, Director
916-663-3207
cherylschmit@att.net
www.standupca.org

CC: Governmental Organizations Committee
Eric Johnson, Chief Consultant
George Wiley