

Date of Hearing: March 27, 2023

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Laura Friedman, Chair  
AB 630 (Ramos) – As Amended March 16, 2023

**SUBJECT:** Department of Transportation: contracts: tribes

**SUMMARY:** Eliminates the requirement for tribal governments to waive sovereign immunity and various restrictions when contracting with the California Department of Transportation (Caltrans), and adds entities owned by federally recognized Indian tribes to applicable contracting requirements.

**EXISTING LAW:**

- 1) Establishes Caltrans and provides that it has full possession and control of all state highways and property and rights in property acquired for state highway purposes, construct all state highways. (Streets and Highways Code (SHC) 90)
- 2) Allows Caltrans to make and enter into any contracts that are required for performance of its duties, including with federally recognized Indian tribes related to on-reservation or off-reservation cultural resource management and environmental studies. (SHC 94)
- 3) Requires contracts with federally recognized Indian tribes, to implement off-reservation traffic impact mitigation contracts, adhere to the following:
  - a) Indian tribes provide for full reimbursement of Caltrans' costs.
  - b) A limited waiver of sovereign immunity by that Indian tribe for the state for the purpose of enforcing obligations arising from the contracted activity.
  - c) Funds for the project shall be placed in an escrow account prior to project development.
  - d) Requires the project shall comply with all applicable state and federal environmental impact and review requirements.
  - e) Caltrans' work on the transportation project under the contract shall not jeopardize or adversely affect the completion of other transportation projects included in the adopted State Transportation Improvement Program.
  - f) Requires the project to be included in or consistent with the affected regional transportation plan.

**FISCAL EFFECT:** Unknown

**COMMENTS:** As the owner and operator of the State Highway System (SHS), Caltrans has the responsibility and authority to engage in environmental and transportation review of proposed local development; to identify potential adverse impacts to the SHS resulting from such development; and, to participate, when appropriate, in determining mitigation for the impacts identified.

Local jurisdictions (e.g. cities and counties) with the authority to approve proposed local development projects are jurisdictions that are largely subject to the same state statutory and regulatory framework as Caltrans.

California is home to 110 federally recognized Indian 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 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. Had the 18 original treaties with California Indian tribes been honored by the State and federal government, California Indian tribes would possess over 7.5 million acres of land. Today, California tribes collectively possess about 7% of their unratified treaty territory.

Federally recognized tribal governments 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.

*Caltrans contracting authority with tribal governments.* Federally recognized tribal governments 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.

Gaming compacts between the state and tribes may require the tribes to prepare a tribal environmental document for a gaming facility. Approximately 50% of the federally recognized tribes operate gaming facilities, as provided for by the Indian Gaming Regulatory Act (IGRA). Gaming operations have led to increased development of additional economic enterprises, as well as projects for housing and enhanced health and social services for tribal members. Tribes without gaming operations are also expanding their members' housing and health and social services as resources become available.

Increasingly, tribes are undertaking economic development and their requisite transportation requirements, both on and off tribal land. This bill seeks to remove certain limitations and restrictions on Caltrans' direct contracting authorization with tribal governments.

*Sovereignty.* The United States (U.S.) Department of the Interior has the authority to regulate tribal governments' land management and sovereignty. Tribal sovereignty refers to the fact that each tribe has the inherent right to govern itself. The federal government is obligated to promote tribal self-determination and tribes' ability to provide for the health and welfare of tribal citizens within tribal lands. Yet despite its formal recognition of a certain degree of Native sovereignty, the federal government has also exercised significant control over tribal peoples and lands. Throughout U.S. history, federal administrative bodies, such as the U.S. Department of the Interior, have often failed to uphold the promises and obligations of sovereignty adequately. Tribal governments exist to provide for the welfare of the Indian people.

It is important to note that not all laws and policies aimed at governing the relationship between the U.S. Government, states, and tribes – often referred to as Indian Law or federal Indian law – affect all tribes in the same way.

The exercise of tribal jurisdiction, or a tribe's ability to create and enforce laws, for example, varies from state to state and tribe to tribe. California courts have limited civil jurisdiction, which means the courts can hear some civil matters while others are under the exclusive jurisdiction of the federal courts or the tribes.

This bill removes statutory restrictions that require a limited waiver of sovereign immunity and that limit the types of projects for which Caltrans can directly contract with federally recognized Native American tribes. Caltrans typically must work through an agency such as the federal Bureau of Indian Affairs to partner with tribal governments on projects and this process can cause delays and uncertainties for tribal government projects. These restrictions can be removed without creating financial risks, including that funds for a project could still be placed in escrow prior to project development.

*Limits to contracting.* There are statutory limitations and restrictions on Caltrans' direct contracting authorization with tribal governments, including; activities related to on-reservation or off-reservation cultural resource management and environmental studies, and off-reservation traffic impact mitigation projects on or connecting to the state highway system. This bill eliminates those limitations for both federally recognized tribes, and expands those contracting limitations to entities owned by federally recognized.

This bill's elimination of both the waiver of sovereign immunity requirement, and limitations for contracting only for cultural resource management and environmental studies, removes a barrier to Caltrans entering into direct contracts with federally recognized tribes, because tribes have been reluctant to agree to the waiver. This bill seeks to prevent delays and uncertainties for tribal government projects.

*According to the author.* "AB 630 updates existing law to allow Caltrans to enter into contracts with entities owned by federally recognized Indian tribes. The bill will allow Caltrans to collaborate with those entities on shared priorities for traffic mitigation, such as traffic impact mitigation around casinos."

*In support,* the Habematolel Pomo of Upper Lake writes, "California tribes and Caltrans will be able to collaborate on more issues that impact cultural resource management and environmental studies, off-reservation traffic impact mitigation projects in connection to state highway system issues, and similar priorities for traffic impact mitigations."

*Previous Legislation.* SB 1189 (Chesbro), Chapter 274, Statutes of 2004 authorizes Caltrans to contract with federally recognized Indian tribes for the performance of specified transportation duties.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Habematolel Pomo of Upper Lake

**Opposition**

None on file

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