

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 630 (Ramos)
Version: March 16, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Department of Transportation: contracts: tribes

DIGEST

This bill eliminates the requirement that a tribal government waive sovereign immunity and various restrictions when contracting with the California Department of Transportation (Caltrans), and expands the scope of entities for which the contracting requirements apply.

EXECUTIVE SUMMARY

Federally recognized Indian tribes occupy a unique status as “domestic independent nations that exercise inherent sovereign authority” within the United States. (*Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788.) Caltrans operates and manages the State Highway System. Current state law authorizes federally recognized Indian tribes to enter into contracts with Caltrans to implement traffic mitigation contracts with federally recognized Indian tribes, provided that the contract (1) provides for the full reimbursement of expenses and costs incurred by Caltrans, with those funds placed in an escrow account prior to project development, and (2) provide for a limited waiver of sovereign immunity by the tribe for purposes of enforcing obligations under the contract.

This bill makes two changes intended to make it easier for federally recognized Indian tribes and Caltrans to enter into contracts for much-needed highway projects. First, the bill authorizes Caltrans to enter into contracts with entities owned by federally recognized tribes, which will facilitate agreements to, e.g., mitigate traffic surrounding tribal casinos. Second, the bill eliminates the requirement that a tribe or tribal entity waive sovereign immunity as part of the contract.

This bill is sponsored by the Tule River Indian Tribe of California and is supported by the California Transportation Commission and Habematolel of Upper Lake. There is no

known opposition. The Senate Transportation Committee passed this bill with a vote of 16-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes Caltrans, which has full possession and control of all state highways and rights in property acquired for state highway purposes, and is authorized to lay out and construct all state highways as specified. (St. & Hy. Code, § 90.)
- 2) Authorizes Caltrans to make and enter into contracts required for the performance of its duties, except that contracts with federally recognized Indian tribes must be limited to 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. (St. & Hy. Code, § 94(a).)
- 3) Provides that the following applies in Caltrans contracts with federally recognized Indian tribes for off-reservation traffic impact mitigation:
 - a) Any contract shall provide for the full reimbursement of expenses and costs incurred by Caltrans in the exercise of its contractual duties.
 - b) Funding for the project shall be placed in an escrow account prior to the development.
 - c) The contract shall provide for a limited waiver of sovereign immunity by the Indian tribe entering into the contract for the state for the purpose of enforcing obligations arising from the contracted activity.
 - d) The proposed transportation project shall comply with all applicable state and federal environmental impact and review requirements.
 - e) Caltrans's 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) The transportation project is included in or consistent with the affected regional transportation plan. (St. & Hy. Code, § 94(b).)
- 4) Establishes that Indian tribes are "domestic independent nations" that exercise inherent sovereign authority, including sovereign immunity from suits brought by private entities and the States that can be qualified only by an act of Congress. (*Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788-789.)

This bill:

- 1) Expands Caltrans's authority to enter into contracts with Indian tribes to allow Caltrans to enter into contracts that are required for the performance of its duties, including with federally recognized Indian tribes and entities owned by those tribes.
- 2) Eliminates the requirement that a contract between Caltrans and an Indian tribe pursuant to 1) provide for a limited waiver of the tribe's sovereign immunity.
- 3) Requires that the funds for a project pursuant to 1) be placed into an escrow account prior to project development.

COMMENTS

1. Author's comment

According to the author:

AB 630 amends 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.

2. This bill expands Caltrans' authority to enter into contracts with federally recognized Indian tribes and entities owned by those tribes for the creation of traffic-related infrastructure

This bill modifies the terms under which Caltrans may contract with a federally recognized Indian tribe for the development of highway infrastructure in and around tribal lands and expands the scope of tribal entities that may enter into transportation contracts. The brunt of the bill is within the jurisdiction of the Senate Transportation Committee; the analysis of that Committee is incorporated herein by reference. The sponsor of the bill, the Tule River Indian Tribe of California, explains why the bill is needed:

Tribally owned business entities often share the needs of the communities where they are located, and wish to work with state or local governments to address those needs. By collaborating on planning and infrastructure, tribally owned entities and state and local government entities can best meet the needs of the region.

For purposes of this Committee's jurisdiction, this bill eliminates the requirement that Indian tribes entering into contracts with Caltrans waive their sovereign immunity. As explained by the United States Supreme Court, "Indian tribes are domestic independent

nations that exercise inherent sovereign authority” that can be modified only through Congressional action.¹ Tribal sovereign authority includes “the common-law immunity from suit traditionally enjoyed by sovereign powers,” which is “a necessary corollary to Indian sovereignty and self-governance.”² Tribal sovereign immunity extends to suits brought by states, including in state courts, as well as to suits brought by individuals.³ Tribal sovereign immunity is broad, extending even to suits arising from tribal commercial activity taking place off of tribal land,⁴ and extends to cases where it will deprive a state of the “most efficient remedy” against a tribe.⁵

The bill does not prohibit a tribe from waiving sovereign immunity in a contract with Caltrans; it simply removes the waiver as a mandatory element of a contract. Caltrans and tribes will still be able to negotiate contractual terms that address potential breaches and other factors. Moreover, the bill retains the requirement that funds for the project be placed in an escrow account prior to the project’s development, which significantly reduces Caltrans’s risk of losses. As the California Transportation Commission, writing in support, explains:

With limited resources available to tribal communities in funding programs like the Active Transportation Program and the new Local Transportation Climate Adaptation Program, it is important to remove any unnecessary statutory barriers that might delay or jeopardize critically needed transportation improvements. Deleting the requirement for a limited waiver of sovereign immunity will allow federally recognized Native American tribes to directly contract with Caltrans and expedite the delivery of projects that will have a significant positive impact on some of California’s most underserved and under-resourced communities.

SUPPORT

Tule River Indian Tribe of California (sponsor)
California Transportation Commission
Habematolel Pomo of Upper Lake

OPPOSITION

None known

¹ *Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788 (internal quotation marks omitted).

² *Id.* at pp. 788-789.

³ *Id.* at p. 789.

⁴ *Id.* at p. 790.

⁵ *Oklahoma Tax Com’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma* (1991) 498 U.S. 505, 514.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Transportation Committee (Ayes 16, Noes 0)
Assembly Floor (Ayes 74, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Transportation Committee (Ayes 15, Noes 0)
