

# The Sacramento Bee

## A slippery slope: Are tribes governments or businesses?

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When California Indian tribes were impoverished and virtually invisible, politicians could ignore them.

When the tribes gained the exclusive right to operate gambling casinos, however, politicians were drawn to them like flies to flypaper -- a relationship sweetened with many millions of dollars in campaign checks.

Mostly, the tribes wanted to bolster their monopoly on full-scale gambling, especially all-important slot machines, which are essentially licenses to print money. But once they had their monopoly, the tribes began to flex their political muscle to seek broader political and legal recognition, an effort that revolves about their somewhat murky status.

Essentially, the casino-owning tribes are governments that operate like private businesses, thus breaching the wall that has traditionally and properly separated the two. In effect, the tribes are governments when it suits them, and businesses when it suits them.

A couple of bills making their way through the Capitol in the final days of the 2006 legislative session illustrate the tribes' dual status.

One, Assembly Bill 2641 by Assemblyman Joe Coto, D-San Jose, is reminiscent of highly controversial legislation that the tribes pushed through the Legislature in 2002, only to see it vetoed by then-Gov. Gray Davis. The Coto measure would require landowners who come across possible Indian burial grounds to halt excavation and contact "the most likely descendents" of those in graves about preservation but would give the Native American Heritage Commission the final say on whether the land should be left undisturbed.

Business groups view it as an echo of the 2002 bill aimed at protecting "sacred sites." In both cases, opponents see it as a one-sided process that could stall or even kill development projects without recourse to the courts or other independent fact-finders.

The dual status of the tribes is brought into even sharper focus in Assembly Bill

2762 by Assemblyman Lloyd Levine, D-Van Nuys, that would give 16 Southern California tribes the right to join the Southern California Association of Governments. The bill sailed through the Assembly on a 73-0 vote and then through the Senate 33-1, and needs just one pro forma final vote before landing on Gov. Arnold Schwarzenegger's desk.

While a few small rural tribes have been granted recognition as local governments, Levine's bill would be a major expansion of that status -- and pour more grease on what is already a very slippery political slope.

If, indeed, tribes are sovereign governments as they persistently contend, then membership in SCAG -- which wields vast, if indirect, power over transportation and development policies for the region -- might be warranted. Certainly the location of casinos, with the attendant traffic and other effects, should be part of the regional planning process.

But if they are governments, how can they then claim the right to contribute large sums to the campaigns of politicians, including those who also hold membership in SCAG? It's a well-established principle that governments are barred from using their funds for overtly political purposes, particularly campaign contributions.

Levine's bill declares that although the tribes could join SCAG, they would not be giving up any of their sovereign rights, and would be exempted from the obligations of other local governments.

The potential peril posed by the measure is found in language that says tribes would not enjoy the powers that local governments hold, including that of seizing land through eminent domain. If they don't want such powers, what's the real point of having the tribes be granted membership in SCAG? It's incrementalism, pure and simple. Having been granted the legal right to join an association of governments, the tribes gain enhanced governmental status without having to give up their ability to function as private businesses when it is convenient to do so, such as in making campaign contributions.

Do we want tribes to have all the status and power of local governments, with the added authority to lavish campaign contributions on politicians who please them? We're headed down that slope and picking up speed.

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