

HOUSE BILL REPORT

HB 1706

As Passed Legislature

Title: An act relating to removing expiration dates for state consent to federal court jurisdiction in actions under the Indian gaming regulatory act.

Brief Description: Concerning jurisdiction under the Indian gaming regulatory act.

Sponsors: By Representatives Conway, Hunt, Wood, Hurst, Simpson and Appleton.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/13/07 [DP];

Commerce & Labor: 2/16/07, 2/23/07 [DP].

Floor Activity:

Passed House: 3/7/07, 67-27.

Passed Senate: 4/12/07, 40-8.

Passed Legislature.

Brief Summary of Bill

- Removes the expiration date for the state's limited waiver of sovereign immunity in actions brought by the tribes under the Indian Gaming Regulatory Act.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Green, McDermott, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member and Kretz.

Staff: Colleen Kerr (786-7168).

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

Staff: Joan Elgee (786-7106).

Background:

In 2001, the Legislature authorized a limited waiver of sovereign immunity for actions brought by tribes under the Indian Gaming Regulatory Act (IGRA) and for enforcement of state-tribal compacts adopted under the IGRA.

The Indian Gaming Regulatory Act

Congress enacted the IGRA in 1988 to create a comprehensive statutory framework for governing gaming on tribal lands. The IGRA prohibits tribes from pursuing Class III gambling on tribal lands unless there is a state-tribal compact governing the specific form of gambling. Tribes may request that the state negotiate a gaming compact; the IGRA authorizes the state to regulate the Class III gaming under the terms of the compact. Class III gambling includes banking card games, slot machines, pari-mutual racing, lotteries, and electronic games of chance.

Under the IGRA, states must negotiate the gaming compacts in good faith. If the state refuses to negotiate, or the tribe alleges the state is acting in bad faith, the tribe is permitted to sue the state in federal court. In 1996, the United States Supreme Court ruled that this provision of the IGRA is in violation of the 11th Amendment of the United States Constitution, rendering this portion of the IGRA null should a state assert its sovereign immunity defense.

Summary of Bill:

The July 30, 2007, expiration date for the state's limited waiver of sovereign immunity in actions brought by the tribes under the Indian Gaming Regulatory Act (IGRA), and for enforcement of State-Tribal compacts adopted under the IGRA, is removed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: (State Government & Tribal Affairs)

(In support) The Washington State Gambling Commission (Commission) supported the bill in 2001. The bill applies only to tribes that have a gaming compact with the state, one of the compromises in passing the original bill. Currently, there are 27 tribes with gaming compacts, with the addition of the Spokane Tribe, there will be 28. This limited waiver of sovereign immunity has provided a potential avenue of relief for those tribes and has demonstrated that the state is negotiating in good faith. The Commission voted unanimously to support an extension of the waiver rather than a removal of the expiration date as well. This waiver is particularly important to urban tribes that do not have reservations and who conduct

gaming on leased property in urban areas. Those tribes need these compacts to be legally enforceable. The tribes do not support an extension of the waiver and would like it to be permanent as there have been no lawsuits filed under this act.

(Opposed) None.

Staff Summary of Public Testimony: (Commerce & Labor)

(In support) The waiver is reciprocal because it is conditioned on the tribes also waiving their immunity in the compacts so the state is protected. No lawsuits have been brought. The waiver has worked and there is no need for a new sunset.

(In support, if clause extended) The waiver provides an avenue of relief for the tribes and indicates the state's good faith. The Washington State Gambling Commission supports extending the waiver rather than eliminating it. There was some uneasiness with waiving sovereign immunity indefinitely.

(Opposed) None.

Persons Testifying: (State Government & Tribal Affairs) Amy B. Hunter, Washington State Gambling Commission; and Michael M. Moran, Samish and Quileute Tribes.

Persons Testifying: (Commerce & Labor) (In support) Chris Masse, Kalispel Tribe and Jamestown S'Klallam Tribe.

(In support, if clause extended) Amy Hunter, Washington State Gambling Commission.

Persons Signed In To Testify But Not Testifying: (State Government & Tribal Affairs) None.

Persons Signed In To Testify But Not Testifying: (Commerce & Labor) None.