
**Community Development, Housing &
Tribal Affairs Committee**

HB 1261

Brief Description: Limiting enforcement action against tribal hunters.

Sponsors: Representatives Sawyer, Appleton, Stanford and Pollet.

Brief Summary of Bill

- Prohibits state enforcement action related to hunting activities by tribal members on private forest lands where the member's tribe and landowner have a written access agreement.

Hearing Date: 1/26/15

Staff: Sean Flynn (786-7124).

Background:

Tribal Hunting Rights.

In the mid 1850s, Washington Territorial Governor Isaac Stevens negotiated a series of treaties between the United States and various Indian tribes within the Washington Territory. In the treaties, the Indians ceded their interest in most of the lands in the Territory in exchange for monetary compensation and certain parcels of land which were reserved for the exclusive use of the tribes.

The Stevens' treaties also reserved certain aboriginal rights on lands outside of the designated reservations, including the right to engage in fishing and hunting. All the treaties provided substantially the same language: "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians . . . together with the privilege of hunting on open and unclaimed lands." Courts have interpreted these treaty provisions not as granting rights to the tribes, but as expressly recognizing rights the tribes possessed from time immemorial.

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.

In *State v. Buchanan*, (1999), the state Supreme Court examined the scope of the tribes' treaty hunting rights. The Court held that the treaty tribes could continue to exercise their right to hunt on any unoccupied publically-owned lands that are not incompatible with hunting activities. The right extended to areas of land expressly ceded to the United States by treaty and other areas were actually occupied or used for hunting by a tribe over an extended period of time. The Court further recognized that treaty hunting rights do not extend to private lands.

Not all federally recognized tribes in Washington signed treaties with the federal government. These tribes either have no recognized reserved hunting rights or have hunting rights secured by a federal statute or executive order. A few tribes located outside of Washington also have treaties that reserve hunting rights within the state.

Tribal Hunting Regulation.

Tribal governments have general police powers to regulate the activities of tribal members within the reservation boundaries. Tribes also may regulate tribal members hunting off-reservation, in accordance with a treaty or other recognized right. The treaty right to hunt preempts certain state regulation on tribal hunting.

Some tribal governments have adopted wildlife laws and regulations to govern members' hunting activities both on and off the reservation. Tribal officers enforce these laws and tribal courts have jurisdiction to prosecute offenders.

Tribal-State Co-Management.

The Department of Fish and Wildlife (Department) regulates and manages hunting activities in the state and enforces the state Fish and Wildlife Code. The Department officers have authority to stop and inspect any person suspected of engaging in hunting activities. The Department may authorize local law enforcement officers and tribal police officers as ex officio officers to enforce the Code.

In 1998 the Fish and Wildlife Commission issued a policy directing the Department to negotiate with tribes to resolve hunting issues. The Department has entered into several agreements and memoranda of understanding with different tribes regarding co-management of wildlife resources. These agreements range in subject and scope and generally involve the reporting and enforcing of hunting activity on lands where both the tribes and state claim and share jurisdictional authority.

Summary of Bill:

A member of a tribe is not subject to state enforcement action under the Fish and Wildlife Code related to hunting activities on privately owned forest lands, if the tribe has entered into a written access agreement with the private landowner. The application of this provision is subject to several specific conditions.

The tribe must have a treaty or other federal right to hunt, and the private forest lands must be within the recognized territory that the tribe ceded to the United States or the established aboriginal hunting grounds of that tribe.

The tribal member must utilize the private forest lands consistent with the forest landowner's terms and conditions. The tribe also must have hunting regulations in place that apply to members hunting on private forest lands. The tribe must provide a copy of the agreement to the regional office of the Department where the land is located.

The withdrawal of state enforcement jurisdiction under these conditions may not be construed to expand, limit, or define tribal treaty hunting rights, or to limit the discretion of private forest landowners to allow access to tribal members for hunting activities.

Appropriation: None.

Fiscal Note: Not requested.

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