

EHB 2476 - S AMD 199

By Senator Carrell and Kline

ADOPTED 03/07/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "General authority Washington peace officer" means an officer
6 authorized to enforce the criminal and traffic laws of the state of
7 Washington generally.

8 (2) "Tribal police officer" means any person in the employ of one
9 of the federally recognized sovereign tribal governments, whose
10 traditional lands and territories lie within the borders of the state
11 of Washington, to enforce the criminal laws of that government.

12 NEW SECTION. **Sec. 2.** (1) Tribal police officers under subsection
13 (2) of this section shall be recognized and authorized to act as
14 general authority Washington peace officers. A tribal police officer
15 recognized and authorized to act as a general authority Washington
16 peace officer under this section has the same powers as any other
17 general authority Washington peace officer to enforce state laws in
18 Washington, including the power to make arrests for violations of state
19 laws.

20 (2) A tribal police officer may exercise the powers of law
21 enforcement of a general authority Washington peace officer under this
22 section, subject to the following:

23 (a) The appropriate sovereign tribal nation shall submit to the
24 office of financial management proof of public liability and property
25 damage insurance for vehicles operated by the peace officers and police
26 professional liability insurance from a company licensed to sell
27 insurance in the state. For purposes of determining adequacy of
28 insurance liability, the sovereign tribal government must submit with
29 the proof of liability insurance a copy of the interlocal agreement

1 between the sovereign tribal government and the local governments that
2 have shared jurisdiction under this chapter where such an agreement has
3 been reached pursuant to subsection (10) of this section.

4 (i) Within the thirty days of receipt of the information from the
5 sovereign tribal nation, the office of financial management shall
6 either approve or reject the adequacy of insurance, giving
7 consideration to the scope of the interlocal agreement. The adequacy
8 of insurance under this chapter shall be subject to annual review by
9 the state office of financial management.

10 (ii) Each policy of insurance issued under this chapter must
11 include a provision that the insurance shall be available to satisfy
12 settlements or judgments arising from the tortious conduct of tribal
13 police officers when acting in the capacity of a general authority
14 Washington peace officer, and that to the extent of policy coverage
15 neither the sovereign tribal nation nor the insurance carrier will
16 raise a defense of sovereign immunity to preclude an action for damages
17 under state or federal law, the determination of fault in a civil
18 action, or the payment of a settlement or judgment arising from the
19 tortious conduct.

20 (b) The appropriate sovereign tribal nation shall submit to the
21 office of financial management proof of training requirements for each
22 tribal police officer. To be authorized as a general authority
23 Washington peace officer, a tribal police officer must successfully
24 complete the requirements set forth under RCW 43.101.157. Any
25 applicant not meeting the requirements for certification as a tribal
26 police officer may not act as a general authority Washington peace
27 officer under this chapter. The criminal justice training commission
28 shall notify the office of financial management if:

29 (i) A tribal police officer authorized under this chapter as a
30 general authority Washington state peace officer has been decertified
31 pursuant to RCW 43.101.157; or

32 (ii) An appropriate sovereign tribal government is otherwise in
33 noncompliance with RCW 43.101.157.

34 (3) A copy of any citation or notice of infraction issued, or any
35 incident report taken, by a tribal police officer acting in the
36 capacity of a general authority Washington peace officer as authorized
37 by this chapter must be submitted within three days to the police chief
38 or sheriff within whose jurisdiction the action was taken. Any

1 citation issued under this chapter shall be to a Washington court,
2 except that any citation issued to Indians within the exterior
3 boundaries of an Indian reservation may be cited to a tribal court.
4 Any arrest made or citation issued not in compliance with this chapter
5 is not enforceable.

6 (4) Any authorization granted under this chapter shall not in any
7 way expand the jurisdiction of any tribal court or other tribal
8 authority.

9 (5) The authority granted under this chapter shall be coextensive
10 with the exterior boundaries of the reservation, except that an officer
11 commissioned under this section may act as authorized under RCW
12 10.93.070 beyond the exterior boundaries of the reservation.

13 (6) For purposes of civil liability under this chapter, a tribal
14 police officer shall not be considered an employee of the state of
15 Washington or any local government except where a state or local
16 government has deputized a tribal police officer as a specially
17 commissioned officer. Neither the state of Washington and its
18 individual employees nor any local government and its individual
19 employees shall be liable for the authorization of tribal police
20 officers under this chapter, nor for the negligence or other misconduct
21 of tribal officers. The authorization of tribal police officers under
22 this chapter shall not be deemed to have been a nondelegable duty of
23 the state of Washington or any local government.

24 (7) Nothing in this chapter impairs or affects the existing status
25 and sovereignty of those sovereign tribal governments whose traditional
26 lands and territories lie within the borders of the state of Washington
27 as established under the laws of the United States.

28 (8) Nothing in this chapter limits, impairs, or nullifies the
29 authority of a county sheriff to appoint duly commissioned state or
30 federally certified tribal police officers as deputy sheriffs
31 authorized to enforce the criminal and traffic laws of the state of
32 Washington.

33 (9) Nothing in this act limits, impairs, or otherwise affects the
34 existing authority under state or federal law of state or local law
35 enforcement officers to enforce state law within the exterior
36 boundaries of an Indian reservation or to enter Indian country in fresh
37 pursuit, as defined in RCW 10.93.120, of a person suspected of

1 violating state law, where the officer would otherwise not have
2 jurisdiction.

3 (10) An interlocal agreement pursuant to chapter 39.34 RCW is
4 required between the sovereign tribal government and all local
5 government law enforcement agencies that will have shared jurisdiction
6 under this chapter prior to authorization taking effect under this
7 chapter. Nothing in this act shall limit, impair, or otherwise affect
8 the implementation of an interlocal agreement completed pursuant to
9 chapter 39.34 RCW by the effective date of this act, between a
10 sovereign tribal government and a local government law enforcement
11 agency for cooperative law enforcement.

12 (a) Sovereign tribal governments that meet all of the requirements
13 of subsection (2) of this section, but do not have an interlocal
14 agreement pursuant to chapter 39.34 RCW and seek authorization under
15 this chapter, may submit proof of liability insurance and training
16 certification to the office of financial management. Upon confirmation
17 of receipt of the information from the office of financial management,
18 the sovereign tribal government and the local government law
19 enforcement agencies that will have shared jurisdiction under this
20 chapter have one year to enter into an interlocal agreement pursuant to
21 chapter 39.34 RCW. If the sovereign tribal government and the local
22 government law enforcement agencies that will have shared jurisdiction
23 under this chapter are not able to reach agreement after one year, the
24 sovereign tribal governments and the local government law enforcement
25 agencies shall submit to binding arbitration pursuant to chapter 7.04A
26 RCW with the American arbitration association or successor agency for
27 purposes of completing an agreement prior to authorization going into
28 effect.

29 (b) For the purposes of (a) of this subsection, those sovereign
30 tribal government and local government law enforcement agencies that
31 must enter into binding arbitration shall submit to last best offer
32 arbitration. For purposes of accepting a last best offer, the
33 arbitrator must consider other interlocal agreements between sovereign
34 tribal governments and local law enforcement agencies in Washington
35 state, any model policy developed by the Washington association of
36 sheriffs and police chiefs or successor agency, and national best
37 practices.

1 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act constitute a
2 new chapter in Title 10 RCW.

3 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2008."

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4 On page 1, line 2 of the title, after "officers;" strike the
5 remainder of the title and insert "adding a new chapter to Title 10
6 RCW; and providing an effective date."

EFFECT: (1) Creates an effective date of July 1, 2008.

(2) Adds requirement that before certified tribal police officers are authorized as general authority Washington peace officers, the sovereign tribal government and all local government law enforcement agencies with which the tribal government will have shared jurisdiction must enter into an interlocal agreement. A sovereign tribal government and the local government law enforcement agencies are free to implement such an interlocal agreement as of the effective date of the act, or at any time thereafter. If the interlocal agreement has been implemented, and the appropriate sovereign tribal government has met all other requirements under the act, then the appropriate certified tribal officers are authorized by operation of law as general authority Washington peace officers.

(3) Provides that sovereign tribal governments that have not reached an interlocal agreement with the appropriate local law enforcement agencies as of the effective date of the act may submit proof of liability insurance and certification of tribal officers to the state Office of Financial Management (OFM), and then the sovereign tribal government and the appropriate local government law enforcement agencies have one year to enter into an interlocal agreement.

(4) Provides that if no such agreement is reached after one year, the sovereign tribal government and the local government law enforcement agencies must enter into binding arbitration with the American arbitration association for the purpose of completing an agreement prior to authorization of certified tribal officers going into effect.

(5) Provides that the form of arbitration shall be last best offer arbitration, and that as standards for choosing a last best offer, the arbitrator must consider other interlocal agreements between sovereign tribal governments and local government law enforcement agencies in Washington, any model policy developed by the Washington association of sheriffs and police chiefs, and national best practices.

(6) Adds requirement that, in addition to submittal of proof of liability insurance and certification of tribal officers to the OFM, for purposes of determining the adequacy of insurance coverage, the sovereign tribal government must also submit a copy of the interlocal agreement between it and the local government law enforcement agencies with which it has shared jurisdiction.

(7) Provides that the OFM shall consider the scope of the interlocal agreement between the sovereign tribal government and the local government law enforcement agencies in assessing the adequacy of the liability insurance held by the sovereign tribal government.

(8) Provides that neither the sovereign tribal government nor its insurance carrier shall raise a defense of sovereign immunity to preclude an action for damages under state or federal law.

(9) Provides that for purposes of civil liability, a tribal police officer shall not be considered an employee of the state of Washington or any local government except where a state or local government has deputized a tribal police officer as a specially commissioned officer.

(10) Provides that neither the state of Washington and its individual employees nor any local government and its individual employees shall be liable for the authorization of tribal police officers, nor for the negligence or other misconduct of tribal officers.

(11) Provides that the authorization of tribal police officers shall not be deemed to have been a nondelegable duty of the state of Washington or any local government.

(12) Provides that nothing in the act limits, impairs, or otherwise affects the existing authority under state and federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit of a person suspected of violating state law, where the officer would otherwise not have jurisdiction.

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