

SENATE BILL REPORT

SB 6147

As of January 23, 2012

Title: An act relating to creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country.

Brief Description: Creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country.

Sponsors: Senators Prentice, Pridemore, Swecker, Hargrove, Chase, Nelson and Kline.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/17/12.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Staff: Sam Thompson (786-7413)

Background: The 29 federally-recognized Indian tribes in Washington are subject to a complex system of federal, tribal, and state jurisdiction in Indian country. That term is defined in federal law to include land held by the federal government, tribes and tribal members both within and outside of reservations.

1953: PL 280. The federal government has delegated some of its authority over Indian country to state governments. Notably, a 1953 federal act, US Public Law 83-280 (PL 280), granted states authority to exercise state criminal and civil jurisdiction in Indian country to the same extent as elsewhere. PL 280 required some states to exercise this authority and gave other states – including Washington – the option to do so. Jurisdiction exercised by states in Indian county pursuant to PL 280 is commonly called PL 280 jurisdiction.

Under a 1957 state act, Washington asserted full PL 280 jurisdiction over 11 tribes. Later, under a 1963 state act, Washington asserted limited PL 280 jurisdiction, described below, over an additional ten tribes.

1968: ICRA. Another federal act, the Indian Civil Rights Act of 1968 (ICRA), narrowed PL 280 jurisdiction by requiring tribal consent for any new assumption of state jurisdiction. ICRA also authorized the federal government to accept full or partial retrocession by a state of its PL 280 jurisdiction.

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.

1968 to Present: Partial Retrocessions. The federal government has accepted offers by Washington to partially retrocede PL 280 criminal jurisdiction over seven tribes, including early retrocessions in 1968 and 1972. Since 1986 retrocessions have followed a process specified in state law, enacted that year, enabling seven named tribes to request the Governor to approve retrocession, contingent upon acceptance of a state offer by the federal government. Six of the seven named tribes have requested retrocession under this process. Governors have approved all of the requests. Of the ensuing six state offers to retrocede jurisdiction, the federal government has accepted five.

Current PL 280 Jurisdiction. Washington currently exercises PL 280 jurisdiction as follows:

- *Four Tribes: Full PL 280 Jurisdiction.* Muckleshoot, Nisqually, Skokomish, and Squaxin Island. This jurisdiction also applies in certain off-reservation sites.
- *Seventeen Tribes: Limited PL 280 Jurisdiction.* Chehalis, Colville, Hoh, Kalispel, Lower Elwha Klallam, Lummi, Makah, Port Gamble S’Klallam, Puyallup, Quileute, Quinault, Shoalwater Bay, Spokane, Suquamish, Swinomish, Tulalip, and Yakama. PL 280 jurisdiction is limited to eight subject areas: (1) compulsory school attendance; (2) public assistance; (3) domestic relations; (4) mental illness; (5) juvenile delinquency; (6) adoption proceedings; (7) dependent children; and (8) operation of motor vehicles upon public streets, alleys, roads and highways. This jurisdiction also applies in certain off-reservation sites.
- *Eight Tribes: Uncertain.* Cowlitz, Jamestown S’Klallam, Nooksack, Samish, Sauk-Suiattle, Snoqualmie, Stillaguamish, and Upper Skagit. Seven of these tribes were recognized by the federal government after enactment of ICRA, which, as noted above, requires tribal consent to any new assumption of PL 280 jurisdiction. None have consented to PL 280 jurisdiction, and it is uncertain whether Washington may assert PL 280 jurisdiction over them. Two of the seven, the Cowlitz and Snoqualmie, have not yet acquired reservations. An issue has arisen as to whether the eighth tribe, the Samish, were federally recognized prior to enactment of ICRA in 1968; in any event, the federal government formally recognized the tribe in 1996.

Interim Workgroup. A Joint Executive-Legislative Workgroup on Tribal Retrocession met in 2011 to study possible further retrocession of PL 280 jurisdiction. The workgroup considered legal and practical aspects of retrocession and discussed, but did not formally recommend, draft legislation establishing a new retrocession process.

Summary of Bill: Overview. A new process is established to consider a tribal request to retrocede PL 280 jurisdiction, vesting the Governor with authority to grant state approval or denial of the request. Tribal and municipal collaboration is encouraged. The Legislature may provide recommendations and comments. The Governor must approve or deny the request within one year of receiving it. Any denial of a request by the Governor must be supported by factual findings. Failure of the Governor to act is deemed approval. Gubernatorial approval must be submitted to the federal government for final review and potential acceptance.

Request by Tribe. A tribe’s authorized governing body may submit a request to the Governor to fully or partially retrocede PL 280 jurisdiction. Before submitting the request,

the tribe and affected municipalities are encouraged to collaborate to ensure that best interests are served.

Action by Governor and Legislature. Upon receipt, the Governor must, within 90 days, convene a meeting with the tribe's governing body or authorized representatives to consider the request. Within 120 days of receipt, but prior to gubernatorial approval or denial, the Legislature may conduct public hearings and submit recommendations and comments to the Governor. Within one year of receipt, extendable by agreement, the Governor must issue a proclamation approving or denying the request, either in whole or in part. Within ten days of approval, the Governor must submit the request to the federal government. If the Governor denies the request, the Governor must provide factual findings supporting denial. If the Governor fails to act before the deadline, the request is deemed approved, and approval must be submitted to the federal government.

Limitations. Retrocession does not become effective until accepted by the federal government in accordance with federal law. Notwithstanding retrocession, the state must retain civil jurisdiction necessary for civil commitment of sexually violent predators.

Appropriation: None.

Fiscal Note: Requested on January 12, 2012.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Yakama Nation. Tribal representatives have met with Yakima County and city representatives to seek to resolve potential jurisdictional concerns regarding this legislation. The Nation has cross-commissioned tribal law enforcement officers under agreements with other jurisdictions, which can facilitate retrocession. The Nation is enhancing its law enforcement capability. Its new jail, able to accommodate 34 adults and 34 juveniles, with safeguards to separate juveniles from adults, will be completed in April. It will promote rehabilitation of offenders. Recent state supreme court rulings underscore the need to clarify tribal law enforcement authority. State courts may not be aware of tribal customs; concerns have arisen about judicial division of property when a traditional tribal marriage is dissolved. Tribal members have been mistreated in county jails and other facilities, sometimes due to outsiders' ignorance of customs and disabilities of members. Tribal government personnel have received extensive training and certification. Retrocession is supported by national tribal organizations. Unlike other, recently recognized tribes, the Nation, which consists of 14 tribes, has rights established long ago, in the Yakama Treaty of 1855. The Nation seeks to regain authority that it lost; the meaning of the 1855 treaty should be restored. Who better to govern the Nation than its own leaders? Retrocession can help save lives of tribal members, many of whom suffer from alcohol, drug and other abuse, and varied physical and mental disorders and do not get adequate care. Tribal children have been taken from parents by state authorities. Youth suicide rates are high. People on the reservation who are not members of the Nation also need help. This bill is a long time coming, and a step in the right direction.

Colville Tribes. The tribes are capable of exercising jurisdiction. This bill promotes self-government and self-determination, and can relieve the state of an unfunded mandate imposed by the federal government.

Tulalip Tribes and Umatilla Tribe. The tribes are capable of governing themselves, and can enforce the law. This bill also facilitates tribal jurisdiction over certain lands outside the boundaries of reservations.

CON: Yakima County has been working with the Yakama Nation to resolve concerns, and appreciates current language in the bill encouraging tribes to collaborate with local governments before submitting a retrocession request. However, the County seeks more specific language to address its jurisdictional concerns.

OTHER: Washington counties appreciate current language in the bill encouraging tribes to collaborate with local governments before submitting a retrocession request.

Persons Testifying: PRO: Dawn Vyvyan, Harry Smiskin, Virgil Lewis, George Colby, Mavis Kindness, Sharon Goudy, Raymond Smartlowit, George Salam, Pernell Wattamett, Sam Jim, Joanna Meninick (Xaxéshoyat Manáynaktt), LaRena Sohappay (SuptiKawai Souxupee), Daraly Howard, Cecelia Wesby, Mike Shilow, Regina Jerry, Yakama Nation; Ricky Gabriel, Colville Tribes; Steve Robinson, Tulalip Tribes and Umatilla Tribe.

CON: Brianna Taylor, Yakima County.

OTHER: Brian Enslow, WA State Assn. of Counties.