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

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**HB 1496**

**Brief Description:** Concerning hunting-related enforcement actions involving tribal members.

**Sponsors:** Representatives Sawyer, McCoy, Hunt, Appleton, Santos, Liias, Riccelli, Dunshee, Stanford, Ormsby and Pollet.

**Brief Summary of Bill**

- Requires a Department of Fish and Wildlife officer or ex officio officer to refer enforcement actions related to the hunting activity of a tribal member to the enforcement authority of the member's tribe if the activity occurred on any open and unclaimed lands where the tribe has a treaty right to hunt.

**Hearing Date:** 2/12/13

**Staff:** Sean Flynn (786-7124).

**Background:**

Tribal Hunting Treaty Rights.

In 1854 and 1855, Governor Isaac Stevens negotiated a series of treaties between the United States and various Indian tribes within the Washington Territory (Territory). In the treaties, the Indians ceded their interest in most of the lands in the Territory in exchange for monetary compensation. Certain parcels of land were reserved for the exclusive use of particular 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

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unclaimed lands." These were rights that the tribes possessed from time immemorial, which were expressly retained by the tribes in the treaties, not granted to them by the United States.

The meaning and geographic scope of these reserved rights were not defined in the treaties. The treaty language has been the subject of extensive litigation in the state and federal courts, mostly in regarding to the treaty fishing rights. In *State v. Buchanan*, 138 Wn.2d 186, 978 P.2d 1070 (1999), the state supreme court examined the scope of the treaty hunting right on "open and unclaimed lands." The court interpreted the right in two parts. First, the court determined that the tribes had reserved rights to their aboriginal hunting grounds, including the land expressly ceded in the treaties, as well as any other areas that were actually occupied or used for hunting over an extended period of time. Second, the court determined that the right to hunt within that area was reserved on lands that remained open and unclaimed, including any unoccupied publically-owned lands that are not incompatible with hunting.

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 recognized by federal statute or executive order. A few tribes located outside of Washington also have treaties that reserve hunting rights within the State.

#### State-Tribal Hunting Regulation.

The treaty right to hunt preempts certain state regulation on tribal hunting, unless the regulation is necessary for conservation purposes. The conservation exception only applies if the regulation is reasonable and necessary for conservation purposes, and the application to Indians is necessary in the interest of conservation.

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 federally recognized right. Many tribal governments have adopted wildlife laws and regulations to govern the hunting of members both on and off the reservation. Tribal officers enforce these laws and tribal courts have jurisdiction to prosecute offenders.

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 the authority to stop and inspect any person suspected of engaging in hunting activities. Local law enforcement officers and tribal police officers may be authorized as ex officio officers to enforce the state Fish and Wildlife code. State courts have jurisdiction over violations of 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:**

Any Department of Fish and Wildlife officer or ex officio officer must immediately refer any inspection, investigation or other enforcement action related to the hunting activity of a tribal member to the enforcement authority of the member's tribe, if the member presents a tribal identification card to the officer and the activity occurred on any open and unclaimed lands where the tribe has treaty right to hunt.

**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.