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

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**HB 1495**

**Brief Description:** Concerning access of tribal members to state land.

**Sponsors:** Representatives Sawyer, Lias, McCoy, Fey, Hunt, Riccelli, Appleton, Santos, Dunshee, Stanford, Ryu, O'Ban, Ormsby and Pollet.

**Brief Summary of Bill**

- Requires that the closure of lands maintained by the Department of Natural Resources shall not restrict tribal members from accessing areas 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. 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 unclaimed lands."

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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 by a tribe 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.

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.

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.

#### Department of Natural Resources Land Management.

The Department of Natural Resources (DNR) manages public lands for various purposes. Such lands include forest, range, agricultural, aquatic, and commercial lands, as well as Natural Area Preserves, and Natural Resource Conservation Areas. Some lands are managed in trust to generate revenue for certain beneficiaries, including public schools, higher education institutions and counties.

The Legislature has directed the DNR to manage state lands for multiple public uses, including recreation, hunting and fishing, and non-consumptive wildlife activities when those uses do not conflict with the trust management responsibilities and goals of the land. The DNR may also acquire lands for the purpose of providing access to by road to public lands from any public highway.

#### **Summary of Bill:**

The closure of any lands, including roads, maintained by DNR shall not restrict any tribal member from accessing areas where the member's tribe has a 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.