

HOUSE BILL REPORT

ESHB 1496

As Passed House:
March 6, 2013

Title: An act relating to hunting-related enforcement actions involving tribal members.

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

Sponsors: House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Sawyer, McCoy, Hunt, Appleton, Santos, Lias, Riccelli, Dunshee, Stanford, Ormsby and Pollet).

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 2/12/13, 2/14/13 [DPS].

Floor Activity:

Passed House: 3/6/13, 70-27.

Brief Summary of Engrossed Substitute Bill

- Requires the Attorney General to produce a training module on tribal hunting rights.
- Requires the Department of Fish and Wildlife to adopt enforcement policies and provide training to officers related to tribal hunting rights based on the Attorney General's training module.
- Requires the Department of Fish and Wildlife officers and ex officio officers to take action consistent with the Attorney General's training module.
- Encourages cooperative agreements between the Department of Fish and Wildlife or local law enforcement agencies and tribes in regards to hunting enforcement.

HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 8 members: Representatives McCoy, Chair; Appleton, Vice Chair; Angel, Ranking

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.

Minority Member; Johnson, Assistant Ranking Minority Member; Pike, Ryu, Santos and Sawyer.

Minority Report: Do not pass. Signed by 1 member: Representative Haler.

Staff: Sean Flynn (786-7124).

Background:

Tribal Hunting Treaty 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 (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." 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 regards to the treaty fishing rights. In *State v. Buchanan*, 138 Wn.2d 186, 978 P.2d 1070 (1999), the Washington Supreme Court (Court) examined the scope of the treaty hunting right on "open and unclaimed lands." The Court interpreted the right in two parts: (1) the court determined that the tribes had reserved rights in 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; and (2) the court determined that the the tribes could exercise their right to hunt within that area 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 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.

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 recognized right. 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 (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 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 Engrossed Substitute Bill:

The Attorney General is ordered to create a training module that recommends the course of action taken by state peace officers in the enforcement of state hunting laws involving a person with a tribal identification card. The training module must include information on tribal hunting law, including applicable treaty provisions, case law interpreting treaty rights, and tribal government organization. The training module must be updated to reflect changes in case law, treaty interpretation, academic findings, and agreements entered into by states and tribes.

The Department must adopt enforcement policies and guidelines related to tribal hunting rights based on the Attorney General's training module. All Department officers must receive four hours of training a year related to the training module and the Department's enforcement policies. Where a tribal member presents a tribal identification card to a Department officer or ex-officio officer, any action taken by the officer must be consistent with the contents of the training module.

The requirement that officers follow the training module does not abrogate or affect the terms of any mutual law enforcement, intergovernmental or other cooperative agreement between the Department or local law enforcement agency and a tribe. Cooperative agreements between the Department or local law enforcement agencies and tribes are encouraged in order to maximize efficiency and mutual benefit in hunting enforcement.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 7, 2013.

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

Staff Summary of Public Testimony:

(In support) This bill serves the purposes of cooperative enforcement. Tribal hunting existed before Washington became a state. This right was reserved in the treaties. The bill deals with jurisdiction issues, and jurisdiction is clear, going back 40 years ago. Including a "federally recognized right to hunt" clarifies the bill. Tribes should be subject to their own regulation. Tribes are true conservationists and tribal scientists have done extensive research on wildlife. Tribes have their own gaming officers. Tribes have the right to police their own members. Tribal fish and wildlife officers' qualifications include training at the federal and state law enforcement academy. Some of the concerns about the amount of enforcement the tribes can provide are no longer a concern because current tribal law enforcement capabilities are sufficient. Although the tribes have rights over extensive areas, only a small portion of those lands are open for hunting, making it more manageable to patrol. Tribes conduct joint patrols with other tribes and the state. All police officers feel handcuffed by limitations on authority such as from court cases like the *Miranda Gant*. Tribal hunting is a small portion of all state hunting activity. The state harvested 36,390 deer and elk. All treaty tribes harvested 860 deer and elk. Tribal officers will call and get direction from the state when they have stopped a person for a hunting violation. The tribes have a good working relationship with the Department officers. Mutual cooperation is important. Tribes have funded equipment for the Department, including bear traps. The state needs cooperative enforcement. Tribal officers are often better prepared for hunting enforcement than state officers.

(Neutral) All state and local government police officers are defined as ex officio officers. Hunting is highly regulated by state and tribes. The Department provides training for all officers on federal and state law regarding hunting rights and is trained to know which tribes have rights in the areas that the officers work in. The Department contacts are made to determine whether or not a person is a tribal member with a hunting right. Officers are familiar with the tribal hunting regulations of the tribes and tribal violations are referred to tribal authorities. There are time and distance issues that make it difficult to make an immediate referral. The Department does not want to impinge on any lawful tribal treaty hunting right and wants to assist tribal authorities on stopping illegal hunting. Tribal identification cards are issued by the tribe and include photo identification and enrollment number.

(Opposed) None.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; Miguel Perez Gibson, Colville Tribes; Joe Orford and Jeff Tatro, Stillaguamish Tribe; Dan Sandstrom and Paul Herrera, Puyallup Tribe; and Steve Robinson, Quinault Tribe.

(Neutral) Bruce Bjork and Mike Cenci, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.