

HOUSE BILL ANALYSIS

HB 2869

Title: An act relating to the equal application of conservation practices.

Brief Description: Applying conservation practices equally.

Sponsors: Representatives Sump, Koster, Boldt, Bush, Pennington, Sherstad, Mielke and Thompson.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background: In 1984, the voters of Washington passed Initiative 456. Initiative 456 contains a number of general policy statements regarding Washington's natural resources and how they are managed. Included in these policy statements are the following:

- The state of Washington has responsibility for, and express domain over, the management of the state's natural resources, such as lands, waters, timber, fish, and game;
- No citizen shall be denied equal access to and use of any resource on the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same;
- The Indian Citizens Act of 1924, by which all Indians became citizens of the United States, terminated any special off-reservation rights or privileges of Indians established through treaties that are denied to other citizens, and any denial of rights based upon race, sex, origin, cultural heritage, or by and through any treaty based upon the same is unconstitutional; and
- No rights, privileges, or immunities shall be denied to any citizen upon the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same.

The initiative directed the Secretary of State to transmit copies of the initiative to the United States Congress.

The Office of the Attorney General (AGO) issued an opinion letter on the initiative to the directors of the Departments of Fisheries and Game shortly after its adoption. The letter stated that the initiative cannot change federal law, including federal treaty rights, because federally secured treaty rights are the law of the land under the Supremacy Clause of the United States Constitution. As stated in the AGO's letter,

"the Initiative's requirement of non-discriminatory equal access does not reduce the pre-existing federally secured treaty rights, nor does it grant those same rights to all citizens, thereby removing the special status of such rights."

The AGO's letter also stated that the 1924 Indian Citizenship Act did not remove federal protection for Indians or require Indians to sever their tribal affiliation as a condition of citizenship. In addition, federal court decisions have held that citizenship for Indians does not operate to dissolve tribal ties.

Summary of Bill: A legislative finding is made that when the voters approved Initiative 456, they agreed that limitations upon private property rights should affect all citizens on an equal basis. The Legislature intends to reaffirm the principles of Initiative 456 and ensure that all citizens of the state enjoy the same privileges.

The provisions of Initiative 456 stating that no citizen should be denied equal access to and use of any resource, and that no rights, privileges, or immunities shall be denied to any citizen on the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same, are amended to include "membership in or affiliation with any tribe or other group."

Fiscal Note: Not requested.

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

Office of Program Research