

HOUSE BILL REPORT

ESHB 1936

As Passed House:

March 17, 2003

Title: An act relating to the tribal law enforcement officers act of 2003.

Brief Description: Providing for a study on tribal law enforcement.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Carrell, McCoy, O'Brien and Lovick).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/26/03, 2/28/03 [DPS].

Floor Activity:

Passed House: 3/17/03, 57-41.

Brief Summary of Engrossed Substitute Bill

- Requires the House Criminal Justice and Corrections Committee and the Senate Judiciary Committee to study tribal law enforcement jurisdiction and the extension of general authority peace officer powers to tribal law enforcement officers.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Staff: Jim Morishima (786-7191).

Background:

Tribal Jurisdiction

Jurisdiction on tribal lands is governed by a combination of tribal law, state law, federal law, and treaty. In 1963 under federal authorization, Washington assumed criminal and

civil jurisdiction over tribal lands within the state (the state has subsequently retroceded this jurisdiction back to the federal government and the tribes for six tribes in Washington). The state does not exercise civil or criminal jurisdiction over tribal members on tribal lands except for in the following cases: Compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and the operation of motor vehicles upon the public streets, alleys, roads, and highways.

Tribes generally have their own court systems, criminal statutes, and law enforcement agencies. Tribes that are subject to state jurisdiction may enter into agreements with local law enforcement agencies to provide law enforcement on tribal lands.

In general, the tribes do not have the inherent jurisdiction to try and punish non-Native Americans on tribal lands. However, tribal law enforcement officers do have the authority to stop non-Native American drivers on the reservation to investigate possible violations of tribal law. If the non-Native American driver is suspected of a crime, the tribal officer may then temporarily detain the driver and hand him or her over to state or local law enforcement officials.

Summary of Engrossed Substitute Bill:

The House Criminal Justice and Corrections Committee and the Senate Judiciary Committee must study tribal law enforcement jurisdiction and the extension of general authority peace officer powers to tribal law enforcement officers. When conducting the study, the committees must consult with the 29 federally recognized tribes, tribal law enforcement, prosecuting attorneys, defense attorneys, local sheriffs or police chiefs, nontribal persons occupying land held in fee simple within the boundaries of tribal land, and other persons with expertise in relations between the state and the tribes as the committees deem necessary. The committees must submit their findings and recommendations, including any proposed legislation, to the Governor and the Legislature no later than December 1, 2003.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill will increase cooperation between tribal and non-tribal law enforcement. Criminal activity is growing in and around tribal reservations. The bill will increase safety on tribal and non-tribal lands. It will save tax dollars by allowing

law enforcement resources to be used more efficiently. The bill will stop duplicative and wasteful use of law enforcement resources. The bill is like a road; it does not force anyone to do anything. The bill will also end jurisdictional confusion between the tribal and non-tribal law enforcement and will lead to more effective community-oriented policing. The bill will allow statistical trends to be more easily identified and will allow better training of officers. The bill ensures that the rights of the arrested will be protected and that the tribes will be held liable for their actions. No tribal law enforcement officials are granted commissions by this bill and any officers who are extended general authority peace officer powers must have adequate training.

(Concerns) This bill needs more consideration to make sure that it is done right the first time. An interim study should be done to determine what the best route would be. Tribal officials should be involved in the development of this idea. Several parts of this bill are unclear including the mechanism through which the general authority peace officer powers are granted and the required tort liability insurance.

Testimony Against: Because both the state and the tribes are sovereign governments, the tribes should have no law enforcement authority over non-tribal persons. Tribal law enforcement officers often have inadequate training. This bill represents an end-run around the authority of the local sheriff “ the local governments should decide whether to grant this authority to tribal officers. Cross-deputization does not work in all cases. American citizens should not be subjected to the authority of a government in which they have no representation. Giving tribal officers jurisdiction over non-tribal persons on state roads could deny people their civil rights.

Testified: (In support) Representative Carrell, prime sponsor; Representative McCoy, sponsor; Mike Lasnier, Northwest Association of Tribal Enforcement Officer and Lower Elwha Tribe; Mike DeCapria, Quinault Nation Police; and J. A. Goss, Jr., Tulalip Tribe Police Department.

(Concerns) Dawn Vyvyan, Yakama Nation; and Randy Scott, Quinault Nation Colville Confederated Tribes.

(Opposed) Sandra Swanson, citizen; and Rusty Jones, Toppenish City Councilman.