

HOUSE BILL REPORT

HB 2497

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to providing notification of natural resource-related actions.

Brief Description: Notifying tribes of significant natural resource-related action by certain state entities.

Sponsors: Representatives Linville, McCoy, Cairnes, Hunt, Rockefeller, Jarrett, Pettigrew, Edwards, Ericksen, Upthegrove, Moeller, Chase, Morrell and Santos.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/28/04, 2/6/04 [DPS].

Brief Summary of Substitute Bill

- Certain state agencies are required to provide notification to any affected federally-recognized Indian tribe of a significant natural resources-related agency action.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Eickmeyer, Grant, Hunt, McDermott and Quall.

Minority Report: Do not pass. Signed by 6 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Orcutt and Sump.

Staff: Jason Callahan (786-7117).

Background:

Numerous state agencies have regulatory, management, or proprietary jurisdiction over portions of the state's natural resources. Documentation of many decisions made by these agencies are generally available to the public through the open records laws, and

notification of rule-making is required in the Administrative Procedures Act. Special notification is not generally required to be given to Indian tribes under state statutory law; however, judicial decisions have required the state, through its agencies, to cooperate with identified Indian tribes in the management of certain natural resources.

According to the Governor's Office of Indian Affairs, there are 29 federally-recognized Indian tribes located within the borders of Washington.

Summary of Substitute Bill:

The Department of Natural Resources, the Board of Natural Resources, the Forest Practices Board, the Department of Fish and Wildlife, the Fish and Wildlife Commission, the Department of Agriculture, the Department of Ecology, the State Conservation Commission, the Department of Transportation, the State Board of Health, and the Department of Health are all required to provide timely notification to any affected federally-recognized Indian tribes of any agency action that is deemed by the agency to relate to natural resources.

The agencies are required to provide notification of any rule, policy statement, order, administrative decision, or execution of statutory function that is judged by the agency to significantly affect the state's water, mineral, forest, fisheries, or wildlife resources. The notification requirements can be satisfied by providing an electronic communication to the legislative authority of the appropriate tribe.

Failure to provide notification does not invalidate an agency action.

Substitute Bill Compared to Original Bill:

The substitute bill removes a requirement that the agencies must develop tribal notification rules. The substitute also specifies that the tribal notification requirements can be met by providing an electronic transmission, allows the agencies to determine what actions significantly affect natural resources, specifies that an agency action cannot be invalidated by the failure to provide tribal notification, and adds an intent section.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) Past state accords have recognized the importance of

government-to-government communications. However, things change over time as administrations change, and the bill would ensure ongoing consistency. It is a good policy for the state agencies and the tribes to have open communications and a no-surprises policy.

The state notification policies are not centralized or standardized. Therefore, they are inconsistent. Discussions about notification should not be handled on a case-by-case basis.

(Concerns) Many agencies already work closely with the tribes, and the tribes receive all of the notification given to the general public.

The agencies may have trouble determining when one of their actions are significant.

Testimony Against: None.

Persons Testifying: (In support) (Original bill) Representative Linville, prime sponsor; Randy Scott, Quinault Indian Nation and Colville Tribes; and Tom Laurie, Office of the Governor.

(In support with concerns) (Original bill) Lembit Ratassepp, Washington State Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.