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HOUSE BILL 2848

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State of Washington

58th Legislature

2004 Regular Session

By Representatives O'Brien, Tom, Kagi, Cairnes, Murray, McCoy, Cox, Hunt, Lovick, Flannigan and Dunshee

Read first time 01/21/2004. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to the tribal law enforcement officers act of 2004;  
2 and adding a new chapter to Title 10 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds a need for tribal law  
5 enforcement officers to enforce the laws of the state of Washington  
6 over non-Indian persons while those persons are on tribal lands or  
7 reservations to efficiently deal with criminal activities conducted by  
8 those who would threaten the peace and safety of Indian communities  
9 through their actions. The legislature further finds that allowing  
10 tribal law enforcement officers to exercise such limited powers over  
11 non-Indian persons in Indian country as defined by federal law is  
12 necessary to protect all Washington citizens through the equal  
13 application of the laws of tribal governments and the laws of the state  
14 of Washington. The legislature intends to balance the common interests  
15 of the state of Washington and tribal governments to provide basic  
16 police services in the effort to maintain peace and social order, and  
17 provide for the more efficient use of available resources by agencies  
18 responding to crimes and incidents that occur in Indian country.

1        NEW SECTION.    **Sec. 2.**    (1) A duly sworn and commissioned tribal law  
2 enforcement officer may exercise general authority peace officer powers  
3 over non-Indian persons on tribal lands or within the external  
4 boundaries of an Indian reservation in the following circumstances:

5        (a) When the officer is participating in a multiagency task force  
6 or a mutual aid operation conducted under an established interagency  
7 agreement or memorandum of understanding;

8        (b) When the officer has been extended a commission to so act from  
9 the chief law enforcement official of a political subdivision of the  
10 state within which the tribal lands or reservation are wholly or  
11 partially located.    If the tribal lands or reservation are only  
12 partially contained within the commissioning political subdivision, the  
13 officer may only exercise general authority peace officer powers over  
14 non-Indian persons on the portion of the tribal lands or reservation  
15 located within that commissioning political subdivision; or

16        (c) If the following conditions are met:

17        (i) The officer possesses a certificate of basic law enforcement  
18 training, a certificate of equivalency, or an exemption from the  
19 requirement from the Washington state criminal justice training  
20 commission;

21        (ii) The officer's employing tribal government is in full  
22 compliance with a valid agreement it has signed that contains the  
23 elements listed in subsection (2) of this section.    Such an agreement  
24 must be filed with the governor's office of Indian affairs to be valid;  
25 and

26        (iii) The officer's employing tribal government has entered into an  
27 agreement with the county or counties who will process arrests made by  
28 tribal officers under this subsection (1)(c) for:        (A) The  
29 reimbursement of increased costs to the county or counties associated  
30 with the exercise of general authority peace officer powers by tribal  
31 officers under this subsection (1)(c); and (B) the distribution of  
32 revenues associated with the exercise of general authority peace  
33 officer powers by tribal officers under this subsection (1)(c).    When  
34 negotiating the agreement required by this subsection (1)(c)(iii), the  
35 tribal government and the county or counties shall negotiate in good  
36 faith.

37        (2) An agreement under subsection (1)(c)(ii) of this section must  
38 contain the following elements:

1 (a) A statement that the tribe is sovereign and an agreement that  
2 the tribe agrees to follow all the rules, procedures, and processes  
3 prescribed by the courts of the state for the purpose of enforcing  
4 state law upon non-Indians;

5 (b) An agreement that an arrested non-Indian person is entitled to  
6 all due process provided by the state;

7 (c) An agreement that the tribe recognize the federal and state  
8 constitutional rights of an arrested non-Indian person as if that  
9 individual had been arrested by a general authority peace officer  
10 employed by the state or one of its political subdivisions;

11 (d) An agreement that the tribe must maintain specified hiring and  
12 training standards for their commissioned officers as set forth by the  
13 Northwest association of tribal enforcement officers or equivalent  
14 standards;

15 (e) An agreement that the tribe is civilly liable for the acts or  
16 omissions of their tribal law enforcement officers when exercising  
17 general authority peace officer powers under subsection (1)(c) of this  
18 section; and

19 (f) If the tribal law enforcement agency is not subject to the  
20 federal tort claims act, proof of an insurance policy in the amount of  
21 at least one million dollars covering any liability arising from the  
22 exercise of general authority peace officer powers by tribal officers  
23 under subsection (1)(c) of this section.

24 (3) Nothing in this section shall be interpreted to invalidate the  
25 lawful enforcement of the criminal laws of the state by a tribal law  
26 enforcement officer as otherwise authorized by statute or common law.

27 (4) For purposes of this section, "general authority peace officer  
28 powers" means the authority to arrest and detain non-Indian persons on  
29 tribal lands or within the external boundaries of an Indian reservation  
30 for violations of state law.

31 NEW SECTION. **Sec. 3.** This act may be known and cited as the  
32 tribal law enforcement act of 2004.

33 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act constitute  
34 a new chapter in Title 10 RCW.

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