

SENATE BILL REPORT

SB 5867

As of February 27, 2007

Title: An act relating to the authorization of tribal, Indian nation, and bureau of Indian affairs law enforcement and public safety officers to act as Washington state peace officers.

Brief Description: Authorizing tribal, Indian nation, and bureau of Indian affairs law enforcement and public safety officers to act as Washington peace officers.

Sponsors: Senators Kline and Sheldon.

Brief History:

Committee Activity: Judiciary: 2/13/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7405)

Background: Under current law, tribal officers cannot issue citations or arrest non-Indians on tribal land unless the employer tribe has a cross-commission or is cross-deputized with a local law enforcement agency, such as the county sheriff. Tribal officers only have authority to stop and detain non-Indians for criminal acts on the reservation. Once the alleged perpetrator is detained, the tribal officer must wait for local law enforcement, such as the county sheriff or Washington State Patrol (WSP), to arrive.

With regard to civil traffic regulation, tribes may regulate conduct of non-members that imperils the political integrity, economic security, health, or welfare of the tribe. *Nevada v. Hicks*, 533 U.S. 353 (2001); *Montana v. United States*, 450 U.S. 544 (1981). Courts have construed this very narrowly. Courts have held that generalized health and safety concerns associated with traffic regulation do not necessarily give tribal officers authority over non-Indians because careless driving endangers everyone and does not uniquely threaten tribal interests. The presumption is against the existence of tribal regulatory authority over non-Indian motorists on public roadways and highways. However, a tribe may be able to prove fact specific instances justifying the assertion of such tribal authority.

Proponents of this bill believe that tribal officers, with sufficient training, should be allowed to deal with events that occur on the reservation. It is believed that passage of this bill would take away confusion regarding under what circumstances a tribal officer is allowed to stop and detain a non-Indian on the reservation.

Summary of Bill: Tribal law enforcement or public safety officers, who have entered into an agreement with the WSP after completing 400 hours of training at the Washington law

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enforcement academy, are allowed to exercise general authority peace officer powers over non-Indian persons when those individuals are on tribal lands or within the external boundaries of Indian reservations.

The agreement must contain the following conditions: (1) proof of adequate public liability and property damage insurance; (2) the chief of the WSP has the authority to suspend any commission; (3) the chief of the WSP is required to suspend the agreement with five days' notice if any provision of the agreement is violated; (4) any citation issued pursuant to a commission is required to be sent to a Washington State court, except for those issued to Indians within the boundaries of the Indian reservation; (5) there must be at least one meeting with the chief of the WSP patrol each year to discuss the status of the agreement; (6) any citations required to be provided to a Washington court must be submitted to the chief of the WSP within five days; and (7) commissioned tribal officers are allowed to proceed in hot pursuit of an offender beyond the boundaries of the reservation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: CON: A mechanism already exists in Washington State that would allow tribal officers to be cross-commissioned or cross-deputized. In many jurisdictions across the state, the county sheriffs and local tribal entities have entered into agreements for cross-deputization. Last year, the Legislature provided tribal officers with a procedure in which tribal officers can obtain certification in the Washington law enforcement academy. This is a matter better left to be dealt with by county sheriffs.

There are also concerns regarding why the WSP has been given the duty of authorizing commission of tribal officers. The fact that the state patrol is involved would imply that this deals with state-wide jurisdiction rather than a more limited jurisdiction.

Washington police officers are required to have 720 hours of law enforcement training and are encouraged to continue this education. Tribal officers, under this bill, will only be required to attend 400 hours of law enforcement training. This creates inconsistency. Some officers worry that tribal officers would lack sufficient training. Furthermore, county sheriffs and state troopers are required to obtain polygraph and psychological exams prior to employment. This is not required of tribal officers. The lack of these exams in tribal officers causes concern that the sheriffs or the state patrol would have to assume liability of those tribal officers.

OTHER: There does not currently exist a 400 hour class for law enforcement training. The sheriffs require a 720 hour class and the state patrol requires a little more than that.

Persons Testifying: CON: Don Pierce, Washington Association of Sheriffs and Police Chiefs.

OTHER: Cari Brezonick, Criminal Justice Training Commission.