

SENATE BILL REPORT

ESHB 2233

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 16, 2012

Title: An act relating to creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country.

Brief Description: Creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country.

Sponsors: House Committee on State Government & Tribal Affairs (originally sponsored by Representatives McCoy, Hunt, Haigh, Pedersen, Appleton, Morris, Billig, Fitzgibbon, Eddy, Sells, Tharinger, Jinkins, Hasegawa, Pollet, Wylie, Upthegrove and Roberts).

Brief History: Passed House: 2/10/12, 54-42.

Committee Activity: Government Operations, Tribal Relations & Elections: 2/16/12 [DPA].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Chase and Nelson.

Staff: Sam Thompson (786-7413)

Background: The 29 federally-recognized Indian tribes in Washington are subject to a complex system of federal, tribal, and state jurisdiction in Indian country. That term is defined in federal law to include land held by the federal government, tribes and tribal members both within and outside of reservations.

1953: PL 280. The federal government has delegated some of its authority over Indian country to state governments. Notably, a 1953 federal act, US Public Law 83-280 (PL 280), granted states authority to exercise state criminal and civil jurisdiction in Indian country to the same extent as elsewhere. PL 280 required some states to exercise this authority and gave other states – including Washington – the option to do so. Jurisdiction exercised by states in Indian country pursuant to PL 280 is commonly called PL 280 jurisdiction.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under a 1957 state act, Washington asserted full PL 280 jurisdiction over 11 tribes. Later, under a 1963 state act, Washington asserted limited PL 280 jurisdiction, described below, over all other tribes and Indian country in the state.

1968: ICRA. Another federal act, the Indian Civil Rights Act of 1968 (ICRA), narrowed PL 280 jurisdiction by requiring tribal consent for any new assumption of state jurisdiction. ICRA also authorized the federal government to accept full or partial retrocession by a state of its PL 280 jurisdiction.

1969 to Present: Partial Retrocessions. The federal government has accepted offers by Washington to partially retrocede PL 280 criminal jurisdiction over seven tribes, including early retrocessions in 1969 and 1972. Since 1986, retrocessions have followed a process set in state law, enacted that year and later amended. That law authorizes the Governor to approve requests from any of seven named tribes to partially retrocede PL 280 criminal jurisdiction, contingent upon acceptance by the federal government. Five of the seven named tribes have been partially retroceded PL 280 criminal jurisdiction under this process.

Current PL 280 Jurisdiction. Washington currently exercises PL 280 jurisdiction as follows:

- *Four Tribes: Full PL 280 Jurisdiction.* Muckleshoot, Nisqually, Skokomish, and Squaxin Island. This jurisdiction also applies in certain off-reservation sites.
- *Seventeen Tribes: Limited PL 280 Jurisdiction.* Chehalis, Colville, Hoh, Kalispel, Lower Elwha Klallam, Lummi, Makah, Port Gamble S’Klallam, Puyallup, Quileute, Quinault, Shoalwater Bay, Spokane, Suquamish, Swinomish, Tulalip, and Yakama. PL 280 jurisdiction is limited to eight subject areas: (1) compulsory school attendance; (2) public assistance; (3) domestic relations; (4) mental illness; (5) juvenile delinquency; (6) adoption proceedings; (7) dependent children; and (8) operation of motor vehicles upon public streets, alleys, roads and highways. This jurisdiction also applies in certain off-reservation sites.
- *Eight Tribes: Uncertain.* Cowlitz, Jamestown S’Klallam, Nooksack, Samish, Sauk-Suiattle, Snoqualmie, Stillaguamish, and Upper Skagit. Seven of these tribes were recognized by the federal government after enactment of ICRA, which, as noted above, requires tribal consent to any new assumption of PL 280 jurisdiction. None have consented to PL 280 jurisdiction, and it is uncertain whether Washington may assert PL 280 jurisdiction over them. An issue has arisen as to whether the eighth tribe, the Samish, were federally recognized prior to enactment of ICRA in 1968; in any event, the federal government formally recognized the tribe in 1996.

Interim Workgroup. A Joint Executive-Legislative Workgroup on Tribal Retrocession met in 2011 to study possible further retrocession of PL 280 jurisdiction. The workgroup considered legal and practical aspects of retrocession and discussed, but did not formally recommend, draft legislation establishing a new retrocession process.

Summary of Bill (Recommended Amendments): A new process is provided under which the state may partially or entirely retrocede PL 280 jurisdiction over a federally-recognized tribe and the Indian country of the tribe. Indian country is defined to mean land within reservations, dependent Indian communities, and Indian allotments. This definition is the same definition of Indian country in federal law.

To initiate retrocession, a tribe's authorized governing body must submit a retrocession resolution to the Governor with information about the tribe's plan for exercising jurisdiction following retrocession. The tribal resolution must express desire for partial or complete retrocession of PL 280 jurisdiction. Before a tribe submits a resolution to the Governor, the tribe and affected municipalities are encouraged to adopt agreements ensuring that the best interests of the tribe and surrounding communities are served by retrocession.

Upon receiving a tribal resolution, the Governor must, within 90 days, meet with the tribe's governing body or authorized representatives to consider the proposed retrocession. The Governor's office must consult elected officials from counties, cities, and towns near the area of the proposed retrocession.

Within one year of receiving a tribal resolution, the Governor must issue a proclamation approving or denying the proposed retrocession, in whole or in part. This deadline may be extended. Within ten days of issuing a proclamation approving a proposed retrocession, the Governor must submit it to the federal government in accordance with requirements for federal approval. If the Governor denies all or part of the proposed retrocession, reasons for the denial must be provided to the tribe in writing.

Within 120 days of the Governor's receipt of a tribal resolution, but prior to issuance of a gubernatorial proclamation approving or denying the proposed retrocession, state legislative committees may conduct public hearings to consider the proposed retrocession. Following a hearing, the committees may submit recommendations and/or comments to the Governor. The recommendations are not binding or otherwise of legal effect.

A proposed retrocession approved in a gubernatorial proclamation does not become effective until accepted in accordance with federal procedures.

A retrocession accomplished pursuant to the process does not: (1) affect the state's civil jurisdiction over the civil commitment of sexually violent predators, and the state must retain that jurisdiction notwithstanding completion of the retrocession; and (2) abate any action or proceeding filed with any court or agency of the state or local government preceding the effective date of the completion of the retrocession.

Any partial criminal retrocession commenced under the existing process is not affected. Any tribe that has commenced but not completed partial criminal retrocession under the existing process may request retrocession under the new process in lieu of completing that procedure. Any tribe that has completed partial criminal retrocession under the existing process may use the new process.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Amendments): Clarifications and technical changes are made. A provision is added specifying that a retrocession will not abate any action or proceeding filed with any court or agency of the state or local government preceding the effective date of the retrocession.

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 as Heard in Committee: PRO: Provisions now in this bill address issues that have been raised. The Yakama Nation is grateful for the efforts of legislators to pass this good bill. Yakama Nation representatives are currently negotiating memorandums of understanding with affected local governments. The Yakama Nation looks forward with hope for enactment of this bill.

CON: The Washington Farm Bureau is concerned about possible assertion of tribal jurisdiction over persons who are not members of the tribe and over land that is not land held in trust for the tribe, and seeks clarifications.

OTHER: Yakima County concerns have been addressed by three provisions that: (1) require a tribe to provide information about its plan for exercising jurisdiction following retrocession; (2) encourage a tribe and affected municipalities to adopt agreements ensuring that the best interests of the tribe and surrounding communities are served; and (3) require the Governor to consult elected officials from counties, cities, and towns near the area of the proposed retrocession. Yakima County is now neutral on this bill.

Persons Testifying: PRO: Representative McCoy, prime sponsor; Harry Smiskin, Dawn Vyvyan, George Colby, Yakama Nation.

CON: Dan Wood, WA Farm Bureau.

OTHER: Brianna Taylor, Yakima County.