

SENATE BILL REPORT

SB 5332

As of February 28, 2011

Title: An act relating to requiring the state to retrocede civil jurisdiction over Indians and Indian territory, reservations, country, and lands to the United States.

Brief Description: Requiring the state to retrocede civil jurisdiction over Indians and Indian territory, reservations, country, and lands.

Sponsors: Senators Rockefeller, Chase, Harper, Nelson, Prentice and Kline.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/27/11.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Staff: Sharon Swanson (786-7447)

Background: In 1953 the United States Congress passed Public Law 280, authorizing any state to assert concurrent jurisdiction over any reservation within the territorial jurisdiction of the state, with or without tribal consent. In 1957 the Washington Legislature elected to assert jurisdiction but only over those reservations that requested it.

In 1963 the Legislature elected to assert criminal and civil jurisdiction over Indian tribes and reservations, with or without tribal consent, in eight different subject areas:

- compulsory school attendance;
- public assistance;
- domestic relations;
- mental illness;
- juvenile delinquency;
- adoption;
- dependencies; and
- operation of motor vehicles on public streets, alleys, roads and highways.

Federal law also permits a state to retrocede jurisdiction back to an Indian tribe and the federal government. Retrocession requires an agreement among the state, the tribe, and the federal government.

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.

Currently, there is a provision in Washington State law to address retrocession by the state for all or any measure of criminal jurisdiction for the following tribes:

- Quileute;
- Chehalis;
- Swinomish;
- Skokomish;
- Muckleshoot;
- Tulalip; and
- Coville.

There is no provision in state law to address retrocession by the state for all or any measure of civil jurisdiction over any tribe.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A process is established authorizing the state to retrocede to the United States government the civil jurisdiction previously acquired by the state over Indians for acts on tribal and allotted lands of the Yakama Nation's reservation.

To initiate a civil jurisdiction retrocession request, the Yakama Nation must submit a retrocession resolution to the Governor. Upon receiving a resolution, the Governor has 90 days to decide whether or not to issue a proclamation retroceding civil jurisdiction to the United States. In lieu of declining to issue a proclamation, the Governor may extend the decision period for an additional 90 days. Following any extension by the Governor, by mutual agreement with the Yakama Nation, the decision period may be extended for up to an additional 90 days in order to develop sufficient mutual understanding through agreed protocols or memoranda to support continued government-to-government communication and cooperation regarding the management of civil matters.

The proclamation for retrocession becomes effective only when accepted by a duly designated officer of the United States government according to the requirements established by federal rules for the acceptance of such retrocession of jurisdiction.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: There exists a complicated history between our state, federal government and tribes. Washington State has previously taken steps to allow for the retrocession of criminal jurisdiction over tribes but has not yet addressed a process for civil retrocession to occur. It is time our state addressed this question. The substitute bill before the committee mirrors the process already created for criminal retrocession. The substitute does add language to provide for a consultation between the Governor and the tribe that is seeking civil retrocession. There are many complicated

questions and processes that must be addressed. Many tribes have an interest and the capacity for self-governance. The history of PL 280 is an unfortunate one. PL 280 was a law that was imposed upon Indian people. The elders did not understand the language or the impact, certainly the long-term impact, that this law would have. Tribes have always had laws and customs in place to address the needs of their people. Crime has always been dealt with harshly and appropriately based on custom and history. Allowing tribes to have self-governance will help restore our traditions and our way of life for current and future generations. Additionally, self-governance will relieve the burden from the state. Specifically, the Yakama Nation has had our own government up and running since the 1950s. Perhaps it would alleviate the concerns of the Legislature if the process for civil retrocession was addressed tribe by tribe. The Swinomish Tribe supports the Yakama Nation in this effort. The current situation on tribal lands can only be improved through self-governance. Currently, our youth are lost and some are dying. One in four Indian women suffer physical or sexual abuse. This bill will bring our communities together.

Persons Testifying: PRO: Senator Rockefeller, prime sponsor; Dawn Vyvyan, Harry Smiskin, George Colby, Yakama Nation; Debra Lekanot, Swinomish Tribe.