

SENATE BILL REPORT

SB 6147

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, February 2, 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: Senators Prentice, Pridemore, Swecker, Hargrove, Chase, Nelson and Kline.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/17/12, 2/02/12 [DPS, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6147 be substituted therefor, and the substitute bill do pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Benton.

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

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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.

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.

1968 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 1968 and 1972. Since 1986 retrocessions have followed a process specified in state law, enacted that year, enabling seven named tribes to request the Governor to approve retrocession, contingent upon acceptance of a state offer by the federal government. Six of the seven named tribes have requested retrocession under this process. Governors have approved all of the requests. Of the ensuing six state offers to retrocede jurisdiction, the federal government has accepted five.

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 Substitute): An intent section describes the state's acquisition of jurisdiction over tribes pursuant to federal and state acts and finds that the state

should enact a new process facilitating partial or complete retrocession of state jurisdiction. Nonsubstantive clarifications of current state jurisdiction are made.

A new process by which the state may retrocede jurisdiction is specified. Any partial criminal retrocession commenced under the existing process is not affected.

To initiate retrocession, the duly authorized governing body of a tribe 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 retrocession of all or part of state civil and/or criminal jurisdiction. Before a tribe submits a resolution to the governor, the tribe and affected municipalities are encouraged to adopt interlocal agreements, or other collaborative arrangements, to ensure 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 duly authorized tribal representatives to consider 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 by mutual consent. In addition, either the tribe or the Governor may extend the deadline once for up to six months. 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 designated by the majority leader of the senate and speaker of the house may conduct public hearings to consider the proposed retrocession. Following hearings, the committees may submit advisory 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.

Notwithstanding retrocession, the state must retain civil jurisdiction necessary for civil commitment of sexually violent predators.

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.

An action or proceeding filed with a court or agency of the state or local government preceding the effective date of retrocession under the new process will not abate by reason of the retrocession or determination of jurisdiction.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute): The title is changed to: "An Act Relating to state jurisdiction over Indian tribes and Indian country" (the title of the underlying bill is: "An Act Relating to creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country").

An intent section is added describing the state's acquisition of jurisdiction over tribes pursuant to federal and state acts. Nonsubstantive clarifications of current state jurisdiction are made.

The new retrocession process is changed as follows:

- A tribe proposing retrocession must describe its plan to exercise jurisdiction after retrocession.
- The one-year deadline for a Governor to approve or deny a proposed retrocession may be extended.
- A Governor denying a proposed retrocession need not provide comprehensive, detailed factual findings, but written reasons must be provided.
- A provision is deleted that provided for automatic approval of a proposed retrocession if a Governor failed to act within a one-year deadline.
- Clarifications provide that the existing retrocession process may still apply for eligible tribes, and an action or proceeding preceding retrocession will not abate by reason of the retrocession or determination of jurisdiction.

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 on Original Bill: PRO: Yakama Nation. Tribal representatives have met with Yakima County and city representatives to seek to resolve potential jurisdictional concerns regarding this legislation. The Nation has cross-commissioned tribal law enforcement officers under agreements with other jurisdictions, which can facilitate retrocession. The Nation is enhancing its law enforcement capability. Its new jail, able to accommodate 34 adults and 34 juveniles, with safeguards to separate juveniles from adults, will be completed in April. It will promote rehabilitation of offenders. Recent state supreme court rulings underscore the need to clarify tribal law enforcement authority. State courts may not be aware of tribal customs; concerns have arisen about judicial division of property when a traditional tribal marriage is dissolved. Tribal members have been mistreated in county jails and other facilities, sometimes due to outsiders' ignorance of customs and disabilities of members. Tribal government personnel have received extensive training and certification. Retrocession is supported by national tribal organizations. Unlike other, recently recognized tribes, the Nation, which consists of 14 tribes, has rights established long ago, in the Yakama Treaty of 1855. The Nation seeks to regain authority that it lost; the meaning of the 1855 treaty should be restored. Who better to govern the Nation than its own leaders? Retrocession can help save lives of tribal members,

many of whom suffer from alcohol, drug and other abuse, and varied physical and mental disorders and do not get adequate care. Tribal children have been taken from parents by state authorities. Youth suicide rates are high. People on the reservation who are not members of the Nation also need help. This bill is a long time coming, and a step in the right direction.

Colville Tribes. The tribes are capable of exercising jurisdiction. This bill promotes self-government and self-determination, and can relieve the state of an unfunded mandate imposed by the federal government.

Tulalip Tribes and Umatilla Tribe. The tribes are capable of governing themselves, and can enforce the law. This bill also facilitates tribal jurisdiction over certain lands outside the boundaries of reservations.

CON: Yakima County has been working with the Yakama Nation to resolve concerns, and appreciates current language in the bill encouraging tribes to collaborate with local governments before submitting a retrocession request. However, the County seeks more specific language to address its jurisdictional concerns.

OTHER: Washington counties appreciate current language in the bill encouraging tribes to collaborate with local governments before submitting a retrocession request.

Persons Testifying: PRO: Dawn Vyvyan, Harry Smiskin, Virgil Lewis, George Colby, Mavis Kindness, Sharon Goudy, Raymond Smartlowit, George Salam, Pernell Wattamett, Sam Jim, Joanna Meninick (Xaxéshoyat Manáynaktt), LaRena Sohappy (SuptiKawai Souxupee), Daraly Howard, Cecelia Wesby, Mike Shilow, Regina Jerry, Yakama Nation; Ricky Gabriel, Colville Tribes; Steve Robinson, Tulalip Tribes and Umatilla Tribe.

CON: Brianna Taylor, Yakima County.

OTHER: Brian Enslow, WA State Assn. of Counties.