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ENGROSSED SUBSTITUTE SENATE BILL 6147

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State of Washington

62nd Legislature

2012 Regular Session

By Senate Government Operations, Tribal Relations & Elections  
(originally sponsored by Senators Prentice, Pridemore, Swecker,  
Hargrove, Chase, Nelson, and Kline)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to state jurisdiction over Indian tribes and Indian  
2 country; amending RCW 37.12.010; adding new sections to chapter 37.12  
3 RCW; creating a new section; and repealing RCW 37.12.050.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) A 1953 federal act, Public Law 280, 83rd Congress, 1st Session,  
7 required certain states to assume jurisdiction over criminal offenses  
8 and civil causes of action involving Indians in Indian country, and  
9 authorized other states, including Washington, to assume that  
10 jurisdiction if they opted to do so. The federal act provided that  
11 generally applicable state criminal and civil laws could "have the same  
12 force and effect within such Indian country as they have elsewhere  
13 within the state."

14 (2) A 1957 Washington state act, chapter 240, Laws of 1957,  
15 directed the governor to issue a proclamation assuming state criminal  
16 and civil jurisdiction in accordance with the 1953 federal act over the  
17 lands of any Indian tribe when the governor received a resolution from  
18 the "tribal council or other governing body . . . expressing its desire  
19 that its people and lands be subject to the criminal or civil

1 jurisdiction of the state of Washington to the extent authorized by  
2 federal law . . ." Under the 1957 state act, the state assumed  
3 jurisdiction "to the same extent" that it exercises civil and criminal  
4 jurisdiction, or both, elsewhere within the state. Pursuant to the  
5 1957 state act, Governor Albert D. Rosellini issued proclamations  
6 assuming state jurisdiction over eleven tribes.

7 (3) A 1963 Washington state act, chapter 36, Laws of 1963, provided  
8 that the state assumed jurisdiction outright, without tribal consent,  
9 over "Indians and Indian territory, reservations, country, and lands  
10 within the state," but, on trust or restricted lands "within an  
11 established Indian reservation," limited that jurisdiction to eight  
12 subject areas: Compulsory school attendance, public assistance,  
13 domestic relations, mental illness, juvenile delinquency, adoption  
14 proceedings, dependent children, and operation of motor vehicles upon  
15 public streets, alleys, roads, and highways. The 1963 state act also  
16 provided that Indian tribes that petitioned for, were granted and  
17 became subject to state jurisdiction under the 1957 state act remained  
18 subject to state civil and criminal jurisdiction under that act, which  
19 was incorporated, with modifications, into the 1963 state act.  
20 Pursuant to the 1963 state act, the state assumed limited jurisdiction  
21 over all other Indian country in the state.

22 (4) A 1968 federal act, Public Law 90-284 (25 U.S.C. Sec. 1323),  
23 repealed the 1953 federal act, but also provided that "such repeal  
24 shall not affect any cession of jurisdiction made pursuant to such  
25 section prior to its repeal." The 1968 federal act also provided that  
26 no state could assume jurisdiction in the future without tribal consent  
27 and authorized the federal government "to accept a retrocession by any  
28 state of all or any measure of the criminal or civil jurisdiction, or  
29 both, acquired by the state" pursuant to the 1953 federal act and other  
30 federal law.

31 (5) Beginning in 1968, the federal government accepted offers by  
32 Washington to partially retrocede criminal jurisdiction the state  
33 assumed over seven tribes. The federal government accepted an offer  
34 regarding one tribe in 1969, and another offer regarding a different  
35 tribe in 1972. Later, beginning in 1986, retrocessions have followed  
36 a process specified in a 1986 state act, amended in later years,  
37 enabling seven named tribes to request the governor to approve partial  
38 retrocession of state criminal jurisdiction, contingent upon acceptance

1 of a state offer by the federal government. Washington governors have  
2 approved requests presented by five of the tribes named in the 1986  
3 state act for partial retrocession of state criminal jurisdiction, and  
4 the federal government has accepted these offers.

5 (6) The state should enact a new provision facilitating partial or  
6 complete retrocession of state jurisdiction over Indians and Indian  
7 country.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 37.12 RCW  
9 to read as follows:

10 The definitions in this section apply throughout this chapter  
11 unless the context clearly requires otherwise.

12 (1) "Civil retrocession" means the state's act of returning to the  
13 federal government all or part of the civil jurisdiction acquired over  
14 Indians and Indian country under federal Public Law 280, Act of August  
15 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. Sec. 1162, 25  
16 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

17 (2) "Criminal retrocession" means the state's act of returning to  
18 the federal government all or part of the criminal jurisdiction  
19 acquired over Indians and Indian country under federal Public Law 280,  
20 Act of August 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C.  
21 Sec. 1162, 25 U.S.C. Secs. 1321-1326, and 28 U.S.C. Sec. 1360);

22 (3) "Indian country" means:

23 (a) All land within the limits of any Indian reservation under the  
24 jurisdiction of the United States government, notwithstanding the  
25 issuance of any patent, and including rights-of-way running through the  
26 reservation;

27 (b) All dependent Indian communities with the borders of the United  
28 States whether in the original or subsequently acquired territory  
29 thereof, and whether within or without the limits of a state; and

30 (c) All Indian allotments, the Indian titles to which have not been  
31 extinguished, including rights-of-way running through the same; and

32 (4) "Indian tribe" means any federally recognized or federally  
33 acknowledged Indian tribe, nation, community, band, or group.

34 **Sec. 3.** RCW 37.12.010 and 1963 c 36 s 1 are each amended to read  
35 as follows:

36 (1) On March 13, 1963, the state of Washington ((hereby obligates

1 ~~and binds itself to assume~~) assumed criminal and civil jurisdiction  
2 over Indians and Indian territory, reservations, country, and lands  
3 (~~within this~~) in the state in accordance with the (~~consent of the~~  
4 ~~United States given by the~~) federal act of August 15, 1953 (Public Law  
5 280, 83rd Congress, 1st Session)(~~, but such~~). This assumption of  
6 jurisdiction (~~shall~~) does not apply to Indians when on their tribal  
7 lands or allotted lands within an established Indian reservation and  
8 held in trust by the United States or subject to a restriction against  
9 alienation imposed by the United States, (~~unless the provisions of RCW~~  
10 ~~37.12.021 have been invoked,~~) except for the following:

- 11 ((+1)) (a) Compulsory school attendance;
- 12 ((+2)) (b) Public assistance;
- 13 ((+3)) (c) Domestic relations;
- 14 ((+4)) (d) Mental illness;
- 15 ((+5)) (e) Juvenile delinquency;
- 16 ((+6)) (f) Adoption proceedings;
- 17 ((+7)) (g) Dependent children; and
- 18 ((+8)) (h) Operation of motor vehicles upon the public streets,  
19 alleys, roads and highways(~~:- PROVIDED FURTHER, That~~).

20 (2) Notwithstanding subsection (1) of this section, Indian tribes  
21 that petitioned for, were granted and became subject to state  
22 jurisdiction pursuant to (~~this~~) chapter 240, Laws of 1957 on or  
23 before March 13, 1963 (~~shall remain~~) are subject to state civil and  
24 criminal jurisdiction as (~~if chapter 36, Laws of 1963 had not been~~  
25 ~~enacted~~) provided in RCW 37.12.021, unless the federal government has  
26 accepted a retrocession.

27 (3) As provided in 25 U.S.C. Sec. 1323, the state may request the  
28 federal government to accept a retrocession of all or any measure of  
29 the criminal or civil jurisdiction, or both, acquired by the state  
30 pursuant to the federal act of August 15, 1953 (Public Law 280, 83rd  
31 Congress, 1st Session). When considering whether to present such a  
32 request to the federal government, the state must comply with the  
33 procedure specified in section 5 of this act.

34 NEW SECTION. Sec. 4. RCW 37.12.050 (State's jurisdiction limited  
35 by federal law) and 1957 c 240 s 5 are each repealed.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 37.12 RCW  
2 to read as follows:

3        (1) Upon the effective date of this section, the process by which  
4 the state may retrocede to the United States all or part of the civil  
5 and/or criminal jurisdiction acquired by the state over an Indian tribe  
6 and the Indian country of the tribe must be accomplished in accordance  
7 with the requirements of this section. However, this section does not  
8 affect the validity of any retrocession procedure commenced under RCW  
9 37.12.100 through 37.12.140 prior to the effective date of this  
10 section.

11        (2) To initiate civil and/or criminal retrocession, the duly  
12 authorized governing body of an Indian tribe must submit a retrocession  
13 resolution to the governor accompanied by information about the tribe's  
14 plan regarding its exercise of jurisdiction following the proposed  
15 retrocession. The retrocession resolution must express the Indian  
16 tribe's desire for retrocession of all or part of the civil and/or  
17 criminal jurisdiction acquired by the state pursuant to this chapter  
18 over the Indian country occupied by such Indian tribe and over the  
19 members of such Indian tribe. Before an Indian tribe submits a  
20 retrocession resolution to the governor, the tribe and affected  
21 municipalities are encouraged to adopt interlocal agreements, or other  
22 collaborative arrangements, to ensure that the best interests of the  
23 tribe and surrounding communities are served by the proposed  
24 retrocession.

25        (3) Upon receiving a retrocession resolution, the governor must,  
26 within ninety days, convene a government-to-government meeting with  
27 either the governing body of the Indian tribe or duly authorized tribal  
28 representatives to consider the proposed retrocession.

29        (4) Within one year of the receipt of an Indian tribe's  
30 retrocession resolution, the governor must issue a formal, written  
31 proclamation approving or denying the proposed retrocession, either in  
32 whole or in part. This one-year deadline may be extended by mutual  
33 consent of the Indian tribe and the governor. In addition, either the  
34 Indian tribe or the governor may extend the deadline once for up to six  
35 months. Within ten days of issuing a proclamation approving a proposed  
36 retrocession, the governor must submit the proclamation to the federal  
37 government in accordance with requirements for federal approval of the

1 proposed retrocession. In the event that the governor denies all or  
2 part of the proposed retrocession, reasons for the denial must be  
3 provided to the Indian tribe in writing.

4 (5) Within one hundred twenty days of the governor's receipt of an  
5 Indian tribe's retrocession resolution, but prior to the governor's  
6 issuance of a proclamation approving or denying the proposed  
7 retrocession, designated standing committees of the state house of  
8 representatives and senate may conduct public hearings to consider the  
9 proposed retrocession. The majority leader of the senate must  
10 designate the senate standing committee and the speaker of the house of  
11 representatives must designate the house standing committee. Following  
12 such public hearings, the designated standing committees may submit  
13 advisory recommendations and/or comments to the governor regarding the  
14 proposed retrocession. In no event are such recommendations binding on  
15 the governor or otherwise of legal effect.

16 (6) A proposed retrocession approved in a gubernatorial  
17 proclamation does not become effective until it is accepted in  
18 accordance with procedures established by the United States for  
19 accepting a proposed retrocession of state jurisdiction.

20 (7) Notwithstanding the state's retrocession of criminal and/or  
21 civil jurisdiction under this section, the state must retain the civil  
22 jurisdiction necessary for the civil commitment of sexually violent  
23 predators pursuant to chapter 71.09 RCW.

24 (8) Any Indian tribe that has commenced but not completed the  
25 retrocession procedure authorized in RCW 37.12.100 through 37.12.140  
26 may request retrocession under this section in lieu of completing that  
27 procedure. Any Indian tribe that has completed the retrocession  
28 procedure authorized in RCW 37.12.100 through 37.12.140 may use the  
29 process authorized in this section to request retrocession of  
30 jurisdiction retained by the state under RCW 37.12.120. The provisions  
31 of RCW 37.12.120 are not applicable to a civil and/or criminal  
32 retrocession that is accomplished in accordance with the requirements  
33 of this section.

34 (9) An action or proceeding which has been filed with any court or  
35 agency of the state or local government preceding the effective date of  
36 retrocession of jurisdiction under this section shall not abate by

1 reason of the retrocession or determination of jurisdiction.

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