

HOUSE BILL REPORT

HB 1495

As Reported by House Committee On:
Community Development, Housing & Tribal Affairs

Title: An act relating to access of tribal members to state lands.

Brief Description: Concerning access of tribal members to state land.

Sponsors: Representatives Sawyer, Liias, McCoy, Fey, Hunt, Riccelli, Appleton, Santos, Dunshee, Stanford, Ryu, O'Ban, Ormsby and Pollet.

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 2/12/13, 2/14/13 [DPS].

Brief Summary of Substitute Bill

- Requires that the closure of lands maintained by the Department of Natural Resources shall not restrict tribal members from accessing areas where the tribe has a treaty or other federally recognized right to hunt, unless necessary in an emergency.

HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives McCoy, Chair; Appleton, Vice Chair; Angel, Ranking Minority Member; Johnson, Assistant Ranking Minority Member; Pike, Ryu, Santos and Sawyer.

Minority Report: Do not pass. Signed by 1 member: Representative Haler.

Staff: Sean Flynn (786-7124).

Background:

Tribal Hunting Treaty Rights.

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.

In the mid 1850s Washington Territorial Governor Isaac Stevens negotiated a series of treaties between the United States and various Indian tribes within the Washington Territory (Territory). In the treaties, the Indians ceded their interest in most of the lands in the Territory in exchange for monetary compensation and certain parcels of land which were reserved for the exclusive use of the tribes.

The Stevens' treaties also reserved certain aboriginal rights on lands outside of the designated reservations, including the right to engage in fishing and hunting. All the treaties provided substantially the same language: "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians . . . together with the privilege of hunting on open and unclaimed lands."

These were rights that the tribes possessed from time immemorial, which were expressly retained by the tribes in the treaties, not granted to them by the United States.

The meaning and geographic scope of these reserved rights were not defined in the treaties. The treaty language has been the subject of extensive litigation in the state and federal courts, mostly in regarding to the treaty fishing rights. In *State v. Buchanan*, 138 Wn.2d 186, 978 P.2d 1070 (1999), the Washington Supreme Court (Court) examined the scope of the treaty hunting right on "open and unclaimed lands." The court interpreted the right in two parts: (1) the court determined that the tribes had reserved rights in their aboriginal hunting grounds, including the land expressly ceded in the treaties, as well as any other areas that were actually occupied or used for hunting by a tribe over an extended period of time; and (2) the court determined that the the tribes could exercise their right to hunt within that area on lands that remained open and unclaimed, including any unoccupied publically-owned lands that are not incompatible with hunting.

The treaty right to hunt preempts certain state regulation on tribal hunting, unless the regulation is necessary for conservation purposes. The conservation exception only applies if the regulation is reasonable and necessary for conservation purposes, and the application to Indians is necessary in the interest of conservation.

Not all federally recognized tribes in Washington signed treaties with the federal government. These tribes either have no recognized reserved hunting rights or have hunting rights secured by a federal statute or executive order. A few tribes located outside of Washington also have treaties that reserve hunting rights within the state.

Department of Natural Resources Land Management.

The Department of Natural Resources (DNR) manages public lands for various purposes. Such lands include: forest, range, agricultural, aquatic, and commercial lands, as well as Natural Area Preserves, and Natural Resource Conservation Areas. Lands are managed in trust to generate revenue for certain beneficiaries, including public schools, higher education institutions and counties. The DNR may acquire lands for the purpose of providing access by road to public lands from any public highway.

The Legislature also has directed the DNR to manage state lands for multiple public uses, including recreation, hunting and fishing, and nonconsumptive wildlife activities when those uses do not conflict with the trust management responsibilities and goals of the land.

Summary of Substitute Bill:

The closure of any lands, including roads, maintained by the DNR shall not restrict any tribal member from accessing areas where the member's tribe has a treaty or other federally recognized right to hunt, unless necessary to protect public safety in an emergency.

Substitute Bill Compared to Original Bill:

The substitute bill permits the closure of lands that restrict tribal members from accessing areas where the member's tribe has a treaty or other federally recognized right to hunt, unless necessary to protect public safety in an emergency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill clarifies that state agencies do not have the authority to restrict access to tribes, which is already the law. Tribes have the right to access to usual and accustomed fishing, hunting or gathering grounds in the state. The right to access was retained by treaties, guaranteed in the United States Constitution and case law, including *United States v. Washington*. Including a "federally recognized right to hunt" clarifies the bill. Tribes have gained funding to manage and estimate wildlife populations. There are so few tribal hunters in the winter months and there is no measured negative impact on wildlife populations. Access is important because available lands are shrinking. Some tribes have agreements to handle gate keys from the Army Corps of Engineers. Gathering is also very important for tribal access. Tribal access trumps any state law. The state has limited enforcement capacity due to budget limits. The state should continue to work cooperatively with tribes and emphasize the Centennial Accord. Tribes will support allowing emergency closures.

(Other) In 2007 a controversy arose about the closing of roads in Columbia County due to a forest fire. Senate Bill 5315 (in 2012) was enacted to set a model policy for closing roads. There should be an amendment to allow for closures during an emergency such as a forest fire.

(Opposed) None.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; Miguel Perez Gibson, Colville Tribes; Joe Orford and Jeff Tatro, Stillaguamish Tribe; Dan Sandstrom, Barbara Mueller, and Paul Herrera, Puyallup Tribe; and Steve Robinson, Quinault Tribe.

(Other) Craig Partridge, Department of Natural Resources; and Don Pierce, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.