

SENATE BILL REPORT

ESHB 1496

As Reported by Senate Committee On:
Natural Resources & Parks, April 2, 2013

Title: An act relating to hunting-related enforcement actions involving tribal members.

Brief Description: Concerning hunting-related enforcement actions involving tribal members.

Sponsors: House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Sawyer, McCoy, Hunt, Appleton, Santos, Lias, Riccelli, Dunshee, Stanford, Ormsby and Pollet).

Brief History: Passed House: 3/06/13, 70-27.

Committee Activity: Natural Resources & Parks: 3/28/13, 4/02/13 [DPA, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended.

Signed by Senators Pearson, Chair; Smith, Vice Chair; Rolfes, Ranking Member; Hewitt and Kline.

Minority Report: That it be referred without recommendation.

Signed by Senator Parlette.

Staff: Curt Gavigan (786-7437)

Background: Role of the Department of Fish and Wildlife (DFW). DFW serves as manager of the state's fish and wildlife resources. Among other duties, DFW must classify wildlife and establish the basic rules and regulations governing the time, place, manner, and methods used to harvest or enjoy fish and wildlife.

Scope of Title 77 RCW. Title 77 RCW serves as the primary location for statutes providing DFW with authorities and responsibilities relating to fish and wildlife resources. The title contains provisions relating to matters including the following:

- agency organization and oversight;
- fish and wildlife management and rulemaking authority;
- licensing structures for hunting and commercial and recreational fishing; and
- enforcement of fish and wildlife laws and rules.

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.

Reservation of Treaty Hunting Rights. A number of Washington tribes reserved certain rights through a series of treaties signed in the mid-1800s, which generally included language substantially similar to the following: "[t]he right of taking fish...is further secured to said Indians, in common with all citizens of the territory...together with the privilege of hunting...on open and unclaimed lands."

Tribal reserved hunting rights were the subject of a series of state appellate court decisions that analyzed issues such as the meaning of the term open and unclaimed and under what circumstances the state can regulate off-reservation tribal hunting for conservation purposes.

Summary of Bill (Recommended Amendments): Requires Creation of a Tribal Hunting Training Module. The Attorney General's Office must create a training module on tribal hunting rights. The purpose of the module is to assist all Washington police officers in understanding the following:

- the rights of tribal hunters;
- the complexity of enforcing hunting laws; and
- the recommended course of action when an individual presents a tribal identification card.

The module must include information on applicable treaties, case law, tribal governments, and other relevant authority and information. It must be updated as necessary to reflect changes in case law and other relevant authorities.

All new DFW officers must receive at least four hours of training on the module and relevant Fish and Wildlife Commission (Commission) policies. Thereafter, the training must be repeated each year for every DFW officer, with a focus on any recent changes.

The Commission must adopt and review enforcement policies relating to tribal hunting rights based on the content of the training module.

Provides Protocol for Tribal Hunting Enforcement. When a federally recognized tribal member presents a tribal identification card, DFW officers and other specified law enforcement officers must, to the greatest extent possible, consult the tribal hunting training module and take actions consistent with the content of that module.

This protocol does not affect the terms of an intergovernmental or mutual aid agreement between DFW, a tribe, or local law enforcement.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES & PARKS COMMITTEE (Recommended Amendments):

- Specifies that fish and wildlife and ex-officio fish and wildlife officers must consult and take action consistent with the training module produced under the bill, to the greatest extent possible;
- Specifies that the Attorney General's Office must make the module available to law enforcement agencies after its development; and
- Specifies that the list describing applicable treaties to be covered by the module is not an exclusive list.

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 Engrossed Substitute House Bill: PRO: This bill will provide enforcement offices in the state of Washington, with a training tool in order to best protect tribal members' treaty-protected hunting rights and curb inconsistencies in the application of state law to tribal members.

Persons Testifying: PRO: Representative Sawyer, prime sponsor; Miguel Perez-Gibson, Confederate Tribes of the Colville Reservation; Bruce Bjork, DFW; Steve Robinson, Umatilla, Tualalip, Stillaguamish, and Quinault Indian Tribes.