

HOUSE BILL REPORT

ESHB 1097

As Passed House:
March 7, 2017

Title: An act relating to tribal consultation regarding hunting rights and activities.

Brief Description: Concerning tribal consultation regarding hunting rights and activities.

Sponsors: House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Sawyer, Hansen, Fitzgibbon, Stanford, Jinkins, Frame, Gregerson, Santos, Tarleton and Pollet).

Brief History:

Committee Activity:

Community Development, Housing & Tribal Affairs: 1/25/17, 1/26/17 [DPS].

Floor Activity:

Passed House: 3/7/17, 64-33.

Brief Summary of Engrossed Substitute Bill

- Requires the Governor and Fish and Wildlife Commission to consult, upon request, with a tribe on specific Department of Fish and Wildlife actions affecting tribal hunting rights issues.

HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Ryu, Chair; Macri, Vice Chair; McCabe, Ranking Minority Member; Barkis, Assistant Ranking Minority Member; Reeves and Sawyer.

Minority Report: Without recommendation. Signed by 1 member: Representative Jenkin.

Staff: Sean Flynn (786-7124).

Background:

Tribal Hunting 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.

The United States negotiated treaties with various Indian tribes within the Washington Territory in the 1850s, before statehood. 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 treaties also reserved certain aboriginal rights on lands outside of the designated reservations, including the right to engage in fishing and hunting.

In regards to hunting, courts have recognized that the treaties protect tribal hunting rights on public lands outside of the reservation that were actually occupied or used for hunting by a tribe over an extended period of time. The treaty hunting rights preempts certain state regulation on tribal hunting activities.

Tribes may regulate tribal members hunting off-reservation, in accordance with a treaty or other recognized federal right. Some tribal governments have adopted wildlife laws and regulations to govern members' hunting activities both on and off the reservation. Tribal officers enforce these laws and tribal courts have jurisdiction to prosecute offenders.

Fish and Wildlife Commission.

The Washington Department of Fish and Wildlife (Department) operates under a legislative mandate to preserve, protect, perpetuate, and manage the state's wildlife. The Fish and Wildlife Commission (Commission) provides the comprehensive goals, policies and objectives that are implemented by the Department through the Department Director. The Commission is comprised of nine members appointed by the Governor to six-year staggered terms. The Commission appoints the Department Director.

The Commission has responsibility for prescribing the time, place, manner, and methods of the hunting, trapping, and fishing seasons, regulating food fish and shellfish, and adopting rules to implement the fish and wildlife laws. The Commission also has final approval authority for tribal, interstate, international, and other department agreements. The Commission meets with the Governor each year to review the basic goals, objectives, and performance of the Department.

In 1998 the Commission issued a policy directing the Director to negotiate with tribes to resolve hunting issues. The Department has entered into several agreements and memoranda of understanding with different tribes regarding co-management of wildlife resources. These agreements range in subject and scope and generally involve the reporting and enforcing of hunting activity on lands where both the tribes and the state claim and share jurisdictional authority.

Summary of Engrossed Substitute Bill:

A federally recognized tribe may request a consultation with the Commission and the Governor regarding any specific Department policy, rule, or action that affects tribal hunting activities. The Governor must convene a consultation within 30 days of receiving such a request. The Commission must attend the consultation meeting, or delegate the

responsibility to the Director if the requesting tribe agrees to the delegation. The meeting is not required to be open to the public.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) A required consultation with the Governor will help to elevate the conversation regarding hunting rights and activities in the state. It is appropriate to include a statewide elected official in accordance with true government-to-government relations.

Treaties are contracts that include mutual obligations. Rights recognized in treaties are the law of the land and must be upheld the same as a constitutional right. The tribal treaties recognize the rights that were reserved for tribes at the time the treaties were signed. Treaty rights are not being recognized and upheld because of increased development of public lands, which have restricted access to historic tribal hunting areas.

(Opposed) None.

Persons Testifying: Representative Sawyer, prime sponsor; Nickolaus Lewis, Lummi Nation; and Ehren Flygare, Puyallup Tribe.

Persons Signed In To Testify But Not Testifying: None.