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**Civil Rights & Judiciary Committee**

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**SB 5083**

**Brief Description:** Allowing certain records, documents, proceedings, and published laws of federally recognized Indian tribes to be admitted as evidence in courts of Washington state.

**Sponsors:** Senators McCoy, Hasegawa and Saldaña.

**Brief Summary of Bill**

- Allows governmental records and documents and printed published laws of federally recognized tribes to be self-authenticating when presented in Washington state courts.

**Hearing Date:** 3/6/19

**Staff:** Ingrid Lewis (786-7289).

**Background:**

Tribal Courts and Enforcement of Court Orders.

There are approximately 573 federally-recognized tribes in the United States, 29 of which are in Washington. Federal law recognizes that Native American tribes retain the sovereign right of self-government that includes the power to make and enforce their own laws. Various laws and intergovernmental agreements recognize the authority of federally-recognized tribes to establish a tribal court. Tribal courts exert general jurisdiction over their tribal membership, as limited by the tribal code and constitution, and federal law. These courts vary in size, jurisdiction, and procedure.

The full faith and credit clause of the United States Constitution authorizes Congress to prescribe the manner in which states give effect the judgments of other states. Under this clause, state courts enforce the judgments of other state courts as if they were their own orders.

Washington State Superior Court Civil Rule 82.5 requires superior courts to recognize, implement, and enforce the orders, judgments, and decrees of Indian tribal courts in matters in which the tribal court has either exclusive or concurrent jurisdiction, unless the superior court

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finds the tribal court that rendered the order, judgment, or decree: (1) lacked jurisdiction over a party or the subject matter; (2) denied due process as provided by the Indian Civil Rights Act of 1968; or (3) does not reciprocally provide for recognition and implementation of orders, judgments, and decrees of the superior courts of the state of Washington.

#### Rules of Evidence.

A document or other item of tangible evidence is admissible into evidence only if it is relevant to the case at hand, satisfies other rules of evidence, and is actually what it purports to be as demonstrated through authentication of the evidence. Generally, a public record or report is self-authenticating, subject to several procedural or statutory requirements. A self-authenticating document is a document that can be admitted into evidence without proof being submitted to support the claim that the document is what it appears to be.

The requirements for proof for authenticating court records, agency records, and foreign laws to admit them into evidence in state court actions are provided in both statute and court rules. Court records and proceedings of federal courts, other states, and territories are admissible into evidence if certified by the officer in charge of the records and affixed with the court's seal; there is an exception to the hearsay rule for these records. State courts are required to admit certified copies of federal, state, and territorial government records and documents. Certified copies are to be affixed with the government's official seal, if available.

State courts are required to admit printed copies of the laws of states, territories, and foreign governments into evidence as presumptive evidence of the government's laws provided that the laws are published under the government's authority and commonly used by its courts as evidence of its laws.

#### **Summary of Bill:**

The records and proceedings of a federally-recognized Indian tribe are admissible into evidence if certified by the tribal officer in charge of the records and affixed with the tribal court's seal. Certified copies of governmental records and documents from a federally recognized Indian tribe are admissible into evidence; copies must be affixed with the government's official seal, if available.

Printed copies of a federally recognized Indian tribe's published laws are admissible as evidence as presumptive evidence of the tribe's laws.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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