

Draft Bill by Representative McCoy

[For discussion purposes at the November 16, meeting]

EXPLANATORY MEMORANDUM

TO: Members, Joint Executive-Legislative Workgroup On Tribal Retrocession

FROM: Thamas Osborn, Senior Counsel
House State Government & Tribal Affairs Committee

RE: Draft Civil and Criminal Retrocession Bill by Representative McCoy

DATE: November 9, 2011

Introduction:

The purpose of this memorandum is to provide Workgroup members with a summary of the attached retrocession bill prepared by Representative McCoy. Workgroup members are encouraged to review the draft bill in preparation for the discussion that will take place at the November 16 meeting.

Brief Summary of Draft Bill:

The attached draft bill creates a procedure by which the state may retrocede its jurisdiction back to the federal government with respect to a federally recognized Indian tribe in the State of Washington. The retrocession procedure set forth in the draft bill includes the following requirements:

- 1) The governing body of a tribe must pass a resolution requesting that the state retrocede all or part of its civil and/or criminal jurisdiction over the tribe.
- 2) The tribe's retrocession resolution must be forwarded to the Governor.
- 3) The Governor must convene a government-to-government meeting with the tribe within 45 days of receiving the retrocession resolution.
- 4) Within 90 days of the Governor's receipt of the tribal resolution, the appropriate standing committees of the state House and Senate may conduct public hearings on the tribe's request for state retrocession. Following such public hearings, the designated legislative committees may submit non-binding, advisory recommendations to the Governor.
- 5) Within one year of her/his receipt of the retrocession resolution, the Governor must issue a proclamation either approving or denying all or part of the resolution.
- 6) If the Governor approves the proposed retrocession, the proclamation must be submitted to a duly designated officer of the federal government. The proclamation does not become effective until it is approved in accordance with federal retrocession procedures.
- 7) If the governor fails to approve or deny the resolution within the one year time frame, the resolution is deemed approved and the governor must forward to the federal government a proclamation approving the proposed retrocession. This one year deadline may be extended by the mutual consent of the tribe and the Governor.

- 8) Notwithstanding the state's retrocession of criminal and/or civil jurisdiction, the state shall retain that criminal and civil jurisdiction necessary for the civil commitment of sexually violent predators.
- 9) The provisions of RCW 37.12.010 are not applicable to a civil or criminal retrocession that is accomplished in accordance with the requirements of the draft bill.

Draft Bill by Representative McCoy

[For discussion purposes at the November 16, meeting]

AN ACT Relating to creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country; and adding a new section to chapter 37.12 RCW.

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

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

(1) The process by which the state may retrocede to the United States all or part of the civil and/or criminal jurisdiction previously acquired by the state over a federally recognized Indian tribe, and the Indian country of such tribe, must be accomplished in accordance with the requirements of this section.

(2) To initiate the civil and/or criminal retrocession process, a majority of any Indian tribe, tribal council, or other governing body that is duly recognized by the United States Bureau of Indian affairs must submit a retrocession resolution to the governor. The resolution must express the desire of the tribe for the retrocession by the state of all or any measures or provisions of the civil and/or criminal jurisdiction acquired by the state under this chapter over the Indians and Indian country of such Indian tribe.

(3) Upon receiving a resolution under this section, the governor must within forty-five days convene a government-to-government meeting with either the governing body of the tribe or duly authorized tribal representatives for the purpose of considering the tribe's retrocession resolution.

(4) Within one year of the receipt of a tribe's retrocession resolution the governor must issue a formal, written proclamation approving or denying the resolution, either in whole or in part. This one year deadline may be extended by the mutual consent of the tribe and the governor. Within ten days of issuance of a proclamation approving the retrocession resolution, the governor must formally submit the proclamation to the federal government in accordance with the procedural requirements for federal approval of the proposed retrocession.

(a) In the event the governor denies all or part of the resolution, the proclamation must contain comprehensive, detailed factual findings in support of such denial.

(b) If the governor fails to issue a proclamation approving or denying the tribes retrocession resolution before the expiration of the one year deadline, the tribal resolution shall be deemed approved and the governor shall, within thirty days following the expiration of such deadline, issue a proclamation approving the tribal resolution and recommending that the federal government approve the tribes request for state retrocession. The governor must formally submit the proclamation to the federal government within ten days of issuance and in accordance with the procedural requirements for federal approval of the proposed retrocession.

(5) Within ninety days of the governor's receipt of a tribe's resolution requesting civil and/or criminal retrocession, but prior to the governor's issuance of the proclamation approving or denying the tribes resolution, the appropriate standing committees of the state house and senate may conduct public hearings on the tribe's request for state retrocession. The president of the senate shall designate the senate standing committee and the speaker of the house of representatives shall designate the house standing committee. Following such public hearings the designated

legislative committees may submit advisory recommendations and/or comments to the governor regarding the proposed retrocession, but in no event shall such legislative recommendations be binding on the governor or otherwise be of legal effect.

(6) The proclamation for retrocession does not become effective until it is approved by a duly designated officer of the United States government and in accordance with the procedures established by the United States for the approval of a proposed state retrocession.

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

(8) The following definitions apply for the purposes of this section:

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

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

(b) "Indian tribe" means any federally recognized Indian tribe, nation, community, band, or group, and the enrolled members of the tribe;

(c) "Indian country" means the territory, reservations, country, and lands belonging to a federally recognized Indian tribe or held in trust for such tribe; and

(d) "Indian" means an enrolled member of a federally recognized Indian tribe.

(9) The provisions of RCW 37.12.010 are not applicable to a civil and/or criminal retrocession that is accomplished in accordance with the requirements of this section.

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