



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

INDIAN TRIBAL POLICE

House Bill 4800 with committee amendment

House Bill 5039 with committee amendments

First Analysis (9-28-95)

Sponsor: Rep. Jim McBryde
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

In general, because federally recognized Indian tribes are sovereign nations, the state has no criminal jurisdiction over Indians on Indian lands (such as reservations), nor do Indian tribes have criminal jurisdiction over non-Indians on Indian lands. However, jurisdiction issues are complicated and jurisdiction can vary depending on whose law is being enforced, where the law is being enforced, who is doing the enforcing, and against whom the law is being enforced. Allowing cross-deputization between state (and local) and tribal law enforcement agencies is one way of addressing these complex jurisdictional issues.

Public Act 155 of 1994 (enrolled House Bill 4516) was thought to have addressed the issue of overlapping criminal jurisdictions by allowing state and local law enforcement agencies to deputize or authorize tribal police officers to act as state or local peace officers under the Michigan Law Enforcement Officers Training Council (MLEOTC) Act. The bill amended the act to allow sheriffs to deputize tribal officers to enforce Michigan law for non-tribal members on tribal lands. The act also allowed "the state or a city, township, charter township, or village that is authorized by law to appoint individuals as police officers" to appoint tribal law enforcement officers certified under the act to act as peace officers under state laws.

However, reportedly the attorney general verbally advised the Department of State Police that its enabling act -- and not the MLEOTC act -- would have to be amended in order to provide the department with the authorization to deputize tribal officers. Reportedly at the request of the state police, legislation has been introduced that would address this issue.

In a somewhat related matter, Public 155 also added a definition of "law enforcement officer of a Michigan Indian tribal police force" that included a reference to specific chapters of the Code of Federal Regulations. However, reportedly federal regulations recently have changed so that that current reference no longer is correct. Legislation also has been introduced that would correct this reference to federal regulations.

THE CONTENT OF THE BILL:

House Bill 4800 would amend the Department of State Police enabling act (Public Act 59 of 1935, MCL 28.6e) to allow the director of the state police to appoint a tribal officer from a federally recognized Indian tribe that possessed trust lands within Michigan, and who was regularly employed by the tribe's police force, to act as a police officer on Indian lands ("Indian Country," see below). The tribal officer's tribe would remain responsible for the officer's compensation, and the tribal officer would not become eligible to participate in any state pension, disability, or life insurance plan, or any hospitalization or other medical insurance plan of the Department of State Police by virtue of his or her appointment under the bill. Further, the Department of State Police and/or the director would not become liable for the tribal officer's actions as a result of such an appointment.

Deputized tribal officers would be allowed to act as police officers under the bill only upon "Indian Country" of their tribe. "Indian country" would be defined as including all of the following:

*All land in any Indian reservation under jurisdiction of the U.S. government, including rights-

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*All dependent Indian communities within the U.S.

*All Indian allotments, still having Indian titles, including rights-of-way.

House Bill 5039 would amend the Michigan Law Enforcement Officers Training Council Act (Public Act 203 of 1965, MCL 28.602) to change the reference to federal law (in the definition of "law enforcement officer of a Michigan Indian tribal police force") from "25 C.F.R. 11.301 to 11.304" to "25 C.F.R. 12.100 to 12.103."

Tie-bar. Neither bill could take effect unless both were enacted.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 4800 as introduced would have no fiscal implications for the state since the tribe would pay compensation to tribal officers appointed by the Department of State Police. (6-7-95) [The committee amendment to the bill simply tie-barred the bill to House Bill 5039.]

ARGUMENTS:

For:

House Bill 4800 would complete a process begun by Public Act 155 of 1994, which authorized sheriffs to deputize qualified tribal police officers to enforce Michigan laws on tribal lands. Reportedly the sheriff of Chippewa County, in the Upper Peninsula, has used the act to deputize ten tribal officers employed by the Bay Mills Indian Community. The bill would build on this existing relationship between law enforcement agencies in Michigan and sovereign Indian nations with lands within the state, and would help enforcement of state law on tribal property. Some people also anticipate that tribes will enter into reciprocal arrangements with the state police as well (i.e. allowing state police officers to enforce tribal law on tribal members not on tribal lands).

For:

Although a broader reference to title 25 of the Code of Federal Regulations (C.F.R.) had been proposed in House Bill 5039 as introduced so that future changes could be picked up, this represented a delegation of authority to another entity over which the state has no control. To avoid that problem, references to federal statute or rules or to

a nongovernmental entity are fixed as to time and future changes are not incorporated by reference. Consequently, the bill would correct the now incorrect reference to federal regulations.

POSITIONS:

The Bay Mills Indian Community submitted testimony in support of House Bill 4800 as introduced. (5-23-95)

Representatives of the following indicated their support for the bills as introduced:

*The Michigan Department of State Police

*The Bay Mills Tribal Police

*The Sault Sainte Marie Chippewa Tribe