

IN THE SENATE

SENATE BILL NO. 1320

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO JURISDICTION IN INDIAN COUNTRY; AMENDING CHAPTER 51, TITLE 67,
2 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5104, IDAHO CODE, TO
3 PROVIDE FOR RETROCESSION OF CIVIL OR CRIMINAL JURISDICTION FOR INDIAN
4 TRIBES, TO PROVIDE A PROCESS FOR RETROCESSION, TO PROVIDE LIMITS FOR
5 RETROCESSION AND TO DEFINE TERMS.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Chapter 51, Title 67, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 67-5104, Idaho Code, and to read as follows:

11 67-5104. RETROCESSION OF CIVIL OR CRIMINAL JURISDICTION -- PROCESS --
12 LIMITS. (1) The process by which the state may retrocede to the United States
13 all or part of the civil or criminal jurisdiction previously acquired by the
14 state over a federally recognized Indian tribe, and the Indian country of
15 such tribe, must be accomplished in accordance with the requirements of this
16 section.

17 (2) To initiate civil or criminal retrocession, the duly authorized
18 governing body of a tribe must submit a retrocession resolution to the gover-
19 nor accompanied by information about the tribe's plan regarding the tribe's
20 exercise of jurisdiction following the proposed retrocession. The resolu-
21 tion must express the desire of the tribe for the retrocession by the state
22 of all or any measures or provisions of the civil or criminal jurisdiction
23 acquired by the state under this chapter over the Indian country and the
24 members of such Indian tribe. Before a tribe submits a retrocession reso-
25 lution to the governor, the tribe and affected municipalities and counties
26 are encouraged to collaborate to achieve the goal of ensuring that the best
27 interests of the tribe and the surrounding communities are served by the
28 retrocession process.

29 (3) Upon receiving a resolution under this section, the governor must
30 within ninety (90) days convene a government-to-government meeting with ei-
31 ther the governing body of the tribe or duly authorized tribal representa-
32 tives for the purpose of considering the tribe's retrocession resolution.
33 The governor's office must consult with elected officials from the counties,
34 cities and towns proximately located to the area of the proposed retroces-
35 sion.

36 (4) Within one (1) year of the receipt of an Indian tribe's retrocession
37 resolution, the governor must issue a proclamation if approving the request
38 either in whole or in part. This one (1) year deadline may be extended by the
39 mutual consent of the tribe and the governor, as needed. In addition, ei-
40 ther the tribe or the governor may extend the deadline once for a period of
41 up to six (6) months. Within ten (10) days of issuance of a proclamation ap-
42 proving the retrocession resolution, the governor must formally submit the

1 proclamation to the federal government in accordance with the procedural re-
2 quirements for federal approval of the proposed retrocession. In the event
3 the governor denies all or part of the resolution, the reasons for such de-
4 nial must be provided to the tribe in writing.

5 (5) Within one hundred twenty (120) days of the governor's receipt of
6 a tribe's resolution requesting civil or criminal retrocession, but prior
7 to the governor's approval or denial of the tribe's resolution, the appro-
8 priate committees of the house and senate may conduct public hearings on the
9 tribe's request for state retrocession. The majority leader of the senate
10 must designate the senate committee, and the speaker of the house of repre-
11 sentatives must designate the house committee. Following such public hear-
12 ings, the designated legislative committees may submit advisory recommenda-
13 tions or comments to the governor regarding the proposed retrocession, but
14 in no event are such legislative recommendations binding on the governor or
15 otherwise of legal effect.

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

20 (7) The provisions of section 67-5101, Idaho Code, are not applicable
21 to a civil or criminal retrocession that is accomplished in accordance with
22 the requirements of this section.

23 (8) For any proclamation issued by the governor under this section that
24 addresses the operation of motor vehicles upon the public streets, alleys,
25 roads and highways, the governor must consider the following:

26 (a) Whether the affected tribe has in place interlocal agreements with
27 neighboring jurisdictions, including applicable state transportation
28 agencies, that address uniformity of motor vehicle operations over In-
29 dian country;

30 (b) Whether there is a tribal traffic policing agency that will ensure
31 the safe operation of motor vehicles in Indian country;

32 (c) Whether the affected tribe has traffic codes and courts in place;
33 and

34 (d) Whether there are appropriate traffic control devices in place suf-
35 ficient to maintain the safety of the public roadways.

36 (9) A civil or criminal retrocession accomplished pursuant to this sec-
37 tion shall not:

38 (a) Affect the state's civil jurisdiction over the civil commitment of
39 sexual offenders pursuant to chapter 83, title 18, Idaho Code, and the
40 state must retain such jurisdiction notwithstanding the completion of
41 the retrocession process authorized under this section; and

42 (b) Abate any action or proceeding that has been filed with any court or
43 agency of the state or local government preceding the effective date of
44 the completion of a retrocession authorized under this section.

45 (10) As used in this section:

46 (a) "Civil retrocession" means the state's act of returning to the fed-
47 eral government the civil jurisdiction acquired over Indians and Indian
48 country under federal Public Law 280, codified as amended in 18 U.S.C.
49 1162, 25 U.S.C. 1321-1326, and 28 U.S.C. 1360.

1 (b) "Criminal retrocession" means the state's act of returning to the
2 federal government the criminal jurisdiction acquired over Indians and
3 Indian country under federal Public Law 280, codified as amended in 18
4 U.S.C. 1162, 25 U.S.C. 1321-1326, and 28 U.S.C. 1360.

5 (c) "Indian country" means:

6 (i) All land within the limits of any Indian reservation under
7 the jurisdiction of the United States government, notwithstanding
8 the issuance of any patent, and including rights-of-way running
9 through the reservation;

10 (ii) All dependent Indian communities within the borders of the
11 United States, whether in the original or subsequently acquired
12 territory thereof, and whether within or without the limits of a
13 state; and

14 (iii) All Indian allotments, the Indian titles to which have not
15 been extinguished, including rights-of-way running through the
16 same.

17 (d) "Indian tribe" is as defined in section 67-4001, Idaho Code.