

# **Idaho Public Law 280**

## **Proposed Legislation Retrocession Process**

Council on Indian Affairs

# PL 280 History

- Jurisdiction: State, Federal and Tribal
- US Congress enacted PL 280 in 1953 during the tribal Termination Era.
  - This extended state jurisdiction onto Indian reservations
- 1963: Idaho became a partial jurisdiction state for 7 subject areas
- Idaho tribes not allowed to provide input at that time

# IDAHO PL 280 Subject areas

- A. Compulsory School Attendance
- B. Juvenile Delinquency and Youth Rehabilitation
- C. Dependent, Neglected and Abused Children
- D. Insanities and Mental Illness
- E. Public Assistance
- F. Domestic Relations
- G. Operation and management of Motor Vehicles, Highways and Roads maintained by the County or Political Subdivisions thereof

# Other states and tribes

- Of the 12 states that assumed jurisdiction over tribes in the 1950 and 1960s, 7 states have retroceded that jurisdiction back to the federal government at the request of the tribes.
- Tribes that have successfully retroceded services back to federal government

Burns Paiute

Umatilla

Winnebago

Sioux

Menominee

Chippewa

All Tribes in Montana

All Tribes in Nevada

8 Tribes in Washington including  
Yakamas 2 years ago.

# Idaho's 2017 Report results

- “State Jurisdiction in Indian Country” – March 2017 by Office of Performance Evaluations
  - Implementation of PL 280 is primarily the responsibility of county governments
  - No funding provided by federal government to PL 280 states or local government
  - PL 280 reduces federal funding to tribes

<https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r1702.pdf>

# Why Retrocede?

- Tribal governments seek to ensure the safety of Tribal community and their citizens, maintain law and order, and to provide essential governmental services for tribal people
- To develop a comprehensive system of justice
  - Unique Tribal culture
  - Social issues, and
  - Rehabilitation needs of our membership
- Federal Trust Responsibility
  - Would require the federal government to honor its trust responsibility in those subject areas within the reservation rather than delegating those responsibilities to the state and receive those benefits off the reservation.

# Benefit to State

- Recognizes the complex jurisdiction situations on Indian reservations
- Clarify state's jurisdiction on reservations
- Promote transparency and intergovernmental cooperation among tribal, state, local governments
- County governments roles and funding clarified.

# Proposed Retrocession Process

- Idaho Council on Indian Affairs: July 19, 2017
  - Presentation of Washington State “retrocession process model”
- S1320: Retrocession Process bill with 2-phases
  - Phase 1: Creates process for the State and Tribes to retrocede, or return, jurisdiction back to the federal government
  - Phase 2: Each individual tribe follows process to retrocede specific subject areas

# Phase 1: Overall process

- **Phase 1: Establishes overall process for retrocession of State assumption over PL 280 back to the federal government**
  - Idaho Legislature authorizes the executive agencies to work directly with the Tribes; then,
  - Idaho Governor's approval of the process via Proclamation
  - Idaho Governor's Office sends copy of the Proclamation to:
    - US Attorney General's Office
    - US Department of Interior

# Phase 2: Identifies Process for Individual Tribes

- **Phase 2: Provides process for individual tribes to retrocede specific subject areas**
  - Tribes desiring to retrocede:
    - Submit to Idaho Governor's Office - resolution and proposed plan for jurisdiction, for specific subject areas
    - Tribes encouraged to collaborate with local municipalities
  - Idaho Governor's Office:
    - Receives request and has 90 days to conduct govt-to-govt with tribe
    - Consult with local counties, cities & towns
    - Within 1 year – Governor's Office must issue Proclamation approving, and listing specific subject areas
    - If disapprove in whole or part – Governor's Office must provide a written explanation

# Phase 2: Process (con't)

- Consideration of Idaho House & Senate Subcommittees:
  - May hold public hearings
  - Subcommittees submit advisory recommendations or comments to the Governor's Office

# Phase 2: Federal Decision makers

- Department of Interior Secretary & United States Attorney General's Office receives Idaho Governor's Proclamation
- DOI Secretary and US Attorney General makes determination for full or partial retrocession, as per individual tribal request

# Summary

- S1320 will set up a process to retrocede for individual tribes
  - Individual tribes determine if they are ready
  - Each tribe develops a plan for specific subject areas
  - Individual tribe and state work together on retrocession process
- QUESTIONS?