

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	7 - 0 - 1
Yeas:	Barnhart, Berger, Garrett, Holvey, Wingard, Hunt, Olson
Nays:	0
Exc.:	Freeman
Prepared By:	Jim Stenbridge, Administrator and Cheyenne Ross, Committee Staff
Meeting Dates:	6/17, 6/24, 6/27

WHAT THE MEASURE DOES: Provides authorized tribal police officers with certain powers and protections provided to Oregon law enforcement officers if certain conditions are met. Grants authority to persons certified by Department of Public Safety Standards and Training (DPSST), whose employing tribal governments comply with insurance requirements, adopt policies regarding discovery in criminal cases in conformity with state law and neighboring jurisdictions, and codify the following in tribal law: waiver of sovereign immunity from tort liability; provisions governing records retention, public access to records, and preservation of biological evidence; and a deadly force plan. Creates process for nontribal law enforcement to apply to tribal government for authority to enforce state and tribal law on Indian country and requires report to legislature on number of incidents of potential exercise of such authority, if not granted. Creates transitional approach to grant of authority to tribal officers, limiting scope during first two years to three specific situations outside Indian country (hot pursuit, commission of crime in officer's presence, and upon request or approval of law enforcement agency with jurisdiction), and unrestricted in Indian country. Sunsets these provisions July 1, 2013. Provides full scope of authority the following two years, sunseting July 1, 2015, then reverting to existing law. Defines Indian country. Prohibits receipt of public funds by tribal governments for law enforcement activities. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Authority granted to tribal law enforcement under *Kurtz*
- Law enforcement training, certification and regulation not part of *Kurtz*
- Tort liability not part of *Kurtz*
- Instability of nonuniform, discretionary means to address jurisdictional issues locality-by-locality (deputizations and mutual aid agreements), if any
- Case-by-case litigation over time to address questions/issues remaining post-*Kurtz*
- Value of benefit to public safety
- Provisions of amendment

EFFECT OF COMMITTEE AMENDMENT: Modifies July 1, 2019 sunset date to July 1, 2015, changing duration of grant of full scope of authority from six years to two, before return to current law under *Kurtz*. Adds further conditions on grant of authority requiring tribal governments to enact tribal law regarding records retention, public access to records, preservation of biological evidence, and a deadly force plan. Creates process for nontribal law enforcement to apply to tribal government for authority to enforce state and tribal law on Indian country and requires report to legislature on number of incidents of potential exercise of such authority, if not granted. Resolves conflict with SB 405, should both measures become law.

BACKGROUND: In *State v. Kurtz*, S058346 (Or. 3-25-2011), 233 Or. App. 573 (2010), a defendant was found guilty of eluding and resisting arrest by a tribal law enforcement officer at the trial court level, but the convictions were overturned by the Oregon Court of Appeals. The Court of Appeals strictly applied both the statutory definitions of

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This summary has not been adopted or officially endorsed by action of the committee.

police and peace officer that requires the officer's employing entity to be a unit of Oregon government. Tribes are separate sovereigns and not explicitly included in either definition.

Senate Bill 412-C took its cue from the Court of Appeals' decision, to address disparities in the scope of authority and the treatment of law enforcement officers beyond the two crimes that were the subject of the *Kurtz* opinion (eluding and resisting). While the measure was pending in the Legislature, the Oregon Supreme Court reversed the Court of Appeals to treat similarly those persons entrusted by governments to serve in the same public safety capacity, but only for purposes of the two subject crimes (court decisions are usually limited to their distinct facts and specific issues).

The Supreme Court's decision in *Kurtz* and Senate Bill 412-C are consistent with each other, but the measure goes further than *Kurtz* to address other potential areas of litigation, the most significant being the potential for tort liability.