



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 588 (as enacted)
Sponsor: Senator Tom Casperson
Senate Committee: Outdoor Recreation and Tourism
House Committee: Tourism and Outdoor Recreation

PUBLIC ACT 36 of 2016

Date Completed: 4-24-17

CONTENT

The bill amended Part 435 (Hunting and Fishing Licensing) of the Natural Resources and Environmental Protection Act to require an individual who has been issued a hunting, fur harvester's, or fishing license to exhibit the license upon the demand of a tribal conservation officer who complies with certain requirements.

A person who holds a hunting, fur harvester's, or fishing license must carry it and exhibit the license upon the demand of a conservation officer, a law enforcement officer, or the owner or occupant of the land if either or both of the following apply:

- The person is hunting, trapping, or fishing.
- Except as otherwise provided, the individual is in possession of a firearm or other hunting, trapping, or fishing apparatus in an area frequented by wild animals or fish, as applicable.

Under the same circumstances, the bill also requires a licensee to exhibit his or her license, upon demand, to a tribal conservation officer who is in uniform, displays proper credentials, and is on official duty within the ceded territory of the Treaty of March 28, 1836.

The bill defines "tribal conservation officer" as a conservation officer employed by the Great Lakes Indian Fish and Wildlife Commission, the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, the Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, or the Little River Band of Ottawa Indians.

The bill took effect on June 6, 2016.

MCL 324.43516

BACKGROUND

The Treaty of 1836, also known as the Treaty of Washington, was negotiated between the United States government and the Ottawa and Chippewa Indian Tribes. Under Article One of the treaty, the various tribes ceded approximately the northern third of Michigan's Lower Peninsula, and the eastern half of the Upper Peninsula to the United States (nearly 14 million acres of land). In exchange, the tribes were promised various payments, as well as a grant of land southwest of the Missouri River for the purpose of establishing a final settlement. The tribes also reserved "the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement."¹

¹ Treaty of 1836, Art. XIII.

The scope of these rights has been litigated since the 1970s. On behalf of the Bay Mills Indian Community, the United States filed a lawsuit in 1973 to determine whether the Treaty of 1836 reserved the tribe's right to fish in the areas of the Great Lakes subject to the treaty. Other tribes (the Sault Ste. Marie Tribe of Chippewa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Band of Odawa Indians, and the Little River Band of Ottawa Indians) intervened, and the treaty right was affirmed in 1979.² In 1985, the various parties entered into a 15-year consent decree, which governed how the Great Lakes fishery would be allocated among the parties. After the original decree expired in 2000, the parties negotiated a new 20-year agreement.

In 1979, the five tribes in *United States v. Michigan* amended their complaint to assert various hunting, fishing, and gathering rights on the lands ceded under the Treaty of 1836. In 2004, it was alleged that the treaty continued to reserve hunting and fishing rights on inland land and water within the ceded territory not required for settlement under the treaty's terms.

In 2007, this dispute was resolved by a settlement agreement between the United States, the State of Michigan, and the five tribes. The agreement establishes the framework under which members of the five tribes will exercise and regulate their rights to hunt and fish within inland areas of the ceded territory. Among other things, the agreement specifies that State law enforcement officers have the authority to enforce tribal regulations only if the parties can identify a mechanism by which tribal law enforcement officers would have the authority to stop hunters and fisherman in the field in order to determine their status as tribe members, enforce tribal regulations against tribe members, and, if deputized under applicable law, enforce State regulations with respect to nontribal members.³

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill will have no fiscal impact on the State and an indeterminate, though likely minimal, fiscal impact on local government. The bill allows a tribal conservation officer to demand to see an individual's hunting, fur harvester's, or fishing license. Failure to produce a license is a misdemeanor under Part 435 and punishable by up to 90 days in jail and a fine of up to \$250 and the costs of prosecution. An increase in misdemeanor arrests and convictions may place incremental resource demands on local court systems, law enforcement, and jails, although assessing the offender for the costs of prosecution will help to defray those costs. Any associated increase in fine revenue will be dedicated to public libraries.

Fiscal Analyst: Josh Sefton

² *United States v. Michigan*, 471 F.Supp. 192 (1979).

³ Inland Consent Decree, § 24.6 (2007).