

Committee Member Questions and Answers on SB 731

Questions:

Authorized Tribal Officers are certified and authorized to enforce State law. Does SB 731 exempt the tribes from all of the police reform and accountability bills that have been passed in the past year? If not, which ones still apply?

SB 412 (2011) established an agreement between the tribes and the State of Oregon. Does anything in SB 731 change the terms outlined in SB 412? If so, what changes?

While respecting sovereign nation rights on tribal lands, I am concerned specifically about actions an Authorized Tribal Officer might take off tribal lands while acting in an official capacity. If an Authorized Tribal Officer is involved in an incident off tribal lands, are they subject to the same criminal and civil liability that any other DPSST certified officer would face? If, for example, an Authorized Tribal Officer is involved in a fatal Officer Involved Shooting off tribal lands while backing a County Deputy, is that officer subject to the same investigatory process and any civil liability for his or her actions? If not, what is different in the process?

Answers:

SB 731A does **not** change that when a tribal police officer is operating under SB 412, **all state laws apply.**

The bill clarifies SB 412 requires all tribal law enforcement units to comply with the rules and regulations established by the Board on Public Safety Standards and Training (Board), and enforced by the Department of Public Safety Standards and Training (DPSST) **as they relate to authorized tribal police officers.** It maintains the list of requirements for character and background checks for officers and requires notification of the dates of hire and separation and the reason for separation from employment of tribal police officers.

SB 731A ensures tribal law enforcement agencies maintain their sovereignty on-reservation and off-reservation within a tribe's inherent jurisdiction (like fishing/treaty related offenses that tribes regulate regarding tribal member conduct).

Any tribal officer or agency operating outside of a reservation and NOT within a tribe's inherent jurisdiction would be subject to all of Oregon's laws, including previous and current bills under consideration.

SB 412 already requires tribes to waive sovereign immunity from suit for the kind of conduct highlighted regarding officer involved shootings off-reservation. Specifically, SB 412 requires the following and SB 731 does not change that:

"That waives sovereign immunity, in a manner similar to the waiver expressed in ORS 30.260 to 30.300, as to tort claims asserted in the tribal government's court that arise from the conduct of an authorized tribal police officer. The waiver described in this subparagraph: (i) Must apply to the conduct of an authorized tribal police officer that occurs while the provision of tribal law is in effect; (ii) Must allow for recovery against the tribal government in an amount equal to or greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local public body; (iii) May require that the claim be

asserted in accordance with any applicable tort claims procedures of the tribal government; and (iv) May exclude claims that could be brought in federal court under the Federal Tort Claims Act.”

Thus, DPSST has certified that all Oregon tribes exercising SB 412 authority provide a tribal court forum and tort claim procedures with recovery limits the same or greater than the recovery limits under state tort claim statutes. Such forums are available for claims against a tribal officer exercising SB 412 authority as an “Authorized Tribal Officer.”

The Tort Claims Code that allows for suit in tribal court in accordance with the requirements of SB 412. So, an off-reservation involved tribal officer shooting, acting in their official capacity, is subject to suit in tribal court through the tribal process but recovery is at the same limit as the state subjects itself to.