

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE RESOLUTION 234

Introduced by Chambers, 11.

Read first time January 25, 2008

Committee: Judiciary

WHEREAS, Congress, by the Act of August 15, 1953, codified at 18 U.S.C. 1162 and 28 U.S.C. 1360, generally known as Public Law 280, ceded federal jurisdiction to the State of Nebraska over offenses committed by or against Indians and civil causes of action between Indians or to which Indians are parties that arise in Indian country in Nebraska; and

WHEREAS, Congress subsequently enacted the Indian Civil Rights Act of 1968, which included a provision codified at 25 U.S.C. 1323 that authorizes the federal government to accept a retrocession of criminal or civil jurisdiction from the states subject to Public Law 280; and

WHEREAS, the State of Nebraska has retroceded much of the jurisdiction it acquired over tribal lands under Public Law 280 back to the federal government, including all civil and criminal jurisdiction within the Santee Sioux Reservation, LR 17, Ninety-seventh Legislature, 2001; all criminal jurisdiction within the Winnebago Reservation, LR 57, Eighty-ninth Legislature,

1986; and criminal jurisdiction within that part of the Omaha Indian Reservation located in Thurston County, except for offenses involving the operation of motor vehicles on public roads or highways within the reservation, LR 37, Eightieth Legislature, 1969; and

WHEREAS, the partial retrocession of criminal jurisdiction over the Omaha Indian Reservation has created confusion for federal, state, and tribal law enforcement officers because the Omaha Indian Reservation overlaps with multiple counties, while LR 37 only offered a retrocession of criminal jurisdiction in Thurston County, and because the retrocession was limited to offenses not involving the operation of motor vehicles on public roads and highways; and

WHEREAS, the State of Nebraska did not include any similar limitations on the geographic reach or scope of its retrocession of criminal jurisdiction over offenses occurring within the Winnebago Reservation and Santee Sioux Reservation; and

WHEREAS, the Omaha Tribe has petitioned the State of Nebraska to effectuate a complete retrocession to the United States of its remaining criminal and civil jurisdiction within the Omaha Indian Reservation; and

WHEREAS, the Omaha Tribe has already demonstrated the capability to assume its portion of the associated responsibilities by previously establishing a tribal court system and a tribal code

of laws, which incorporates Nebraska motor vehicle and related laws; and

WHEREAS, the Nebraska State Patrol and the Omaha Tribe have entered into a cross-deputation agreement that empowers officers of the Nebraska State Patrol to enforce tribal laws within the exterior boundaries of the Omaha Indian Reservation; and

WHEREAS, the Bureau of Indian Affairs and the Omaha Tribe have entered into a cross-deputation agreement that empowers officers of the Bureau of Indian Affairs to enforce tribal laws within the exterior boundaries of the Omaha Indian Reservation and empowers officers of the Omaha Tribe to enforce federal laws within the exterior boundaries of the Omaha Indian Reservation.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature retrocedes to the United States the criminal and civil jurisdiction over the Omaha Indian Reservation acquired by the State of Nebraska pursuant to Public Law 280 of 1953.

2. That the retrocession of jurisdiction extends to the exterior boundaries of the Omaha Indian Reservation regardless of the county and shall include offenses involving the operation of motor vehicles on public roads or highways.

3. That the retrocession of jurisdiction shall be effective at 12:01 A.M., October 1, 2008.

4. That the State of Nebraska and its political

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subdivisions shall take all necessary action to put this resolution into effect, such action to include arrangements with the Department of Interior and the department's Bureau of Indian Affairs concerning the assumption of law enforcement responsibilities in the areas of Indian country covered by this resolution and cooperative agreements with the Omaha Tribe and affected counties and municipalities.