

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3115/1dn  
PJD:kmg:ch

April 25, 2001

Senator George:

The language of proposed s. 13.015, stats., requiring each house of the legislature to permit at least one tribal delegate to have a seat in the house creates a rule of procedure under article IV, section 8, of the constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

The draft submitted with your request requires each house to "seat" the tribal delegates. I am uncertain of the meaning of that term in this bill. The constitution does not permit a delegate to vote on legislation or to be a member of a house for any other purpose.

***Wisconsin Constitution:***

Article IV, Apportionment. Section 3. At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants.

Article IV, Representatives to the assembly, how chosen. Section 4. The members of the assembly shall be chosen biennially, by single districts, on the Tuesday succeeding the first Monday of November in even-numbered years, by the qualified electors of the several districts, such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable.

Article IV, Senators, how chosen. Section 5. The senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen; and no assembly district shall be divided in the formation of a senate district. The senate districts shall be numbered in the regular series, and the senators shall be chosen alternately from the odd and even-numbered districts for the term of 4 years.

***United States Constitution:***

[Art. IV-4] The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE XV.[Amdt. 15-1] Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

In view of these constitutional provisions, I changed the submitted draft language to parallel the wording that provides for the delegate from the District of Columbia to the U.S. House of Representatives.

The law of Congress creating the delegate to the U.S. House of Representatives sets forth qualification requirements for the delegate. Do you want to include any of them in this proposal? They are:

***D.C. Code § 1-401 (2000):***

§ 1-401. Delegate to the House of Representatives from the District of Columbia

(b) (1) No individual may hold the Office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election:

(A) He is a qualified elector (as that term is defined in §§ 1-1302(2)) of the District of Columbia;

(B) He is at least 25 years of age;

(C) He holds no other paid public office; and

(D) He has resided in the District of Columbia continuously since the beginning of the 3-year period ending on such date.

(2) He shall forfeit his office upon failure to maintain the qualifications required by this subsection.

***The qualifications required for members of the legislature are:***

“Wisconsin Constitution Article IV, §6 Qualifications of legislators. Section 6. No person shall be eligible to the legislature who shall not have resided one year within the state, and be a qualified elector in the district which he may be chosen to represent.

“Article IV, §13 Ineligibility of federal officers. Section 13. No person being a member of congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature; and if any person shall, after his election as a member of the legislature, be elected to congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his

seat. This restriction shall not prohibit a legislator from accepting short periods of active duty as a member of the reserve or from serving in the armed forces during any emergency declared by the executive.

“Article IV, §28 Oath of office. Section 28. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall before they enter upon the duties of their respective offices, take and subscribe an oath or affirmation to support the constitution of the United States and the constitution of the state of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.”

If the delegates were considered “members” for statutory purposes, this draft could have several fiscal effects in addition to those related to providing a seat for the delegates. For example, delegates would be entitled to reimbursement of expenses under s. 13.123, stats.

This bill does not include the delegates in any statutory provision applying to representatives and senators. Do you wish to provide expenses or otherwise amend the statutes to provide the delegates the same or similar privileges and restrictions as are provided to members? While I believe that the statutes could provide the same statutory privileges and restrictions, other than voting, the house rules cannot.

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