

25-15

1 teaching experience in either public or, private, or tribal schools. An applicant is not eligible
 2 for a license or certificate unless the state superintendent finds that the private school or tribal
 3 school in which the applicant taught offered an adequate educational program during the
 4 period of the applicant's teaching therein. Private schools are not obligated to employ only
 5 licensed or certified teachers.

NOTE: Provides that, although state law does not require that teachers in tribal schools have a state license, a state license may be issued if the applicant who teaches in a tribal school meets the state license criteria. Further provides that appropriate experience in a tribal school is counted in determining teaching experience under the state licensure law.

COMMENT: Whether a tribal school is obligated to employ only state licensed or certified teachers is determined by tribal law (or by federal law if the tribal school receives funding from the BIA). Because the issue is not determined by state law, the ~~draft~~ ^{bill} does not include language regarding the matter.

✓
 P. 28
 DRS wants
 this included
 in the bill

6 (e) 1. In this paragraph, "alternative education program" means an instructional
 7 program, approved by the school board, that utilizes successful alternative or adaptive school
 8 structures and teaching techniques and that is incorporated into existing, traditional
 9 classrooms or regularly scheduled curricular programs or that is offered in place of regularly
 10 scheduled curricular programs. "Alternative educational program" does not include a private
 11 school, a tribal school, or a home-based private educational program.

NOTE: For the alternative education program license, specifies that, like a private school, an alternative educational program does not include a tribal school.

12 (11) DRIVER EDUCATION COURSES. Approve driver education courses offered by school
 13 districts, county children with disabilities education boards, and technical college districts for
 14 the purposes of s. 343.16 (1) (c) 1. and establish minimum standards for driver education
 15 courses offered in private schools and tribal schools for the purposes of s. 343.16 (1) (c) 3.

1 All driver education courses approved or for which standards are established under this
2 subsection shall do all of the following.

NOTE: Authorizes the state superintendent to establish minimum standards for driver education courses offered in tribal schools so that the courses can be accepted by the Department of Transportation (DOT) under ss. 343.06 (1) (c) and 343.16, stats., which relate to qualifications for a driver's license and examining applicants for a driver's license.

COMMENT: If the tribal school does not comply with the requirements for the driver education course, the consequence would be that DOT cannot accept the tribal school course for purposes of the driver's license statute.

3 **SECTION 46.** 115.34 (2) of the statutes is amended to read:

4 115.34 (2) The state superintendent shall make payments to school districts and to,
5 private schools, and tribal schools for school lunches served to children in the prior year as
6 determined by the state superintendent from the appropriation under s. 20.255 (2) (cm).
7 Payments to school districts and to, private schools, and tribal schools shall equal the state's
8 matching obligation under 42 USC 1751 et seq. Payments in the current year shall be
9 determined by prorating the state's matching obligation based on the number of school lunches
10 served to children in the prior year. In this subsection, "private school" means any school
11 defined in s. 115.001 (3r) which complies with the requirements of 42 USC 2000d.

NOTE: Adds tribal schools to the school lunch program.

12 **SECTION 47.** 115.341 (1) and (2) of the statutes are amended to read:

13 115.341 (1) From the appropriation under s. 20.255 (2) (cm), the state superintendent
14 shall reimburse each school board 10 cents for each breakfast served at a school that meets the
15 requirements of 7 CFR 220.8 or 220.8a, whichever is applicable, and shall reimburse each
16 governing body of a private school or tribal school 10 cents for each breakfast served at the
17 private school or tribal school that meets the requirements of 7 CFR 220.8 or 220.8a,
18 whichever is applicable.

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Section #. 118.15 (1) (a) of the statutes is amended to read:

118.15 (1) (a) Except as provided under pars. (b) to (d) and sub. (4), unless the child is excused under sub. (3) or has graduated from high school, any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or ^{private} ^{or tribal} school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age.

History: 1971 c. 40, 125, 154; 1973 c. 89, 243, 319, 332; 1975 c. 39, 199; 1979 c. 221, 298, 300, 355; 1981 c. 20; 1983 a. 512; 1985 a. 29; 1987 a. 36, 285, 399; 1989 a. 31, 336; 1991 a. 39; 1993 a. 223, 399; 1995 a. 27 s. 3945, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 164, 205, 239; 2001 a. 109.

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tribal school has in effect a policy, or the tribe has in effect a law, providing for school attendance enforcement that effectuates the purpose of s. 118.15 (compulsory school attendance) and s. 118.16 (school attendance enforcement).

Of particular interest is s. 118.16 (5) which specifies the activities that a school must undertake (unless s. 118.16 (5m), stats., applies) before a proceeding may be brought to have a court declare a juvenile in need of protection or services as an habitual truant or as a child who violated a municipal truancy or habitual truancy ordinance or to proceed against a child's parent or guardian for the crime of failing to cause the child to attend school. These activities include meeting, or attempting to meet with the parents, providing an opportunity for educational counseling, and evaluating learning problems and social problems.

COMMENT: The ~~draft~~^{bill} does not treat tribal schools similarly to private schools in that private schools are required: (1) to keep records, including: the dates school is held, the names and ages of pupils, the names and addresses of parents of the pupils, and the dates pupils were present at school; and (2) make that information available to the school board's school attendance officer.

SECTION 66. 118.153 (1) (b) of the statutes is amended to read:

118.153 (1) (b) "Dropout" means a child who ceased to attend school, does not attend a public or private, or tribal school, technical college, or home-based private educational program on a full-time basis, has not graduated from high school, and does not have an acceptable excuse under s. 118.15 (1) (b) to (d) or (3).

NOTE: Exempts a child who attends tribal school from the definition of "dropout" in the statute for children at risk of not graduating from high school programs. That definition is used by cross-reference in several other statutes.

COMMENT: The draft does not amend s. 118.163, stats., relating to municipal truancy and school dropout ordinances. However, the effect of the amendments noted above that include tribal schools will affect s. 118.163 because that statute cross-references the definitions of truancy and dropout that are amended above.

SECTION 67. 118.16 (2) (em) of the statutes is created to read:

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tribal school has in effect a policy, or the tribe has in effect a law, providing for school attendance enforcement that effectuates the purpose of s. 118.15 (compulsory school attendance) and s. 118.16 (school attendance enforcement).

Of particular interest is s. 118.16 (5) which specifies the activities that a school must undertake (unless s. 118.16 (5m), stats., applies) before a proceeding may be brought to have a court declare a juvenile in need of protection or services as an habitual truant or as a child who violated a municipal truancy or habitual truancy ordinance or to proceed against a child's parent or guardian for the crime of failing to cause the child to attend school. These activities include meeting, or attempting to meet with the parents, providing an opportunity for educational counseling, and evaluating learning problems and social problems.

~~COMMENT: The draft does not treat tribal schools similarly to private schools in that private schools are required: (1) to keep records, including: the dates school is held, the names and ages of pupils, the names and addresses of parents of the pupils, and the dates pupils were present at school; and (2) make that information available to the school board's school attendance officer.~~

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2
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~~NOTE: Exempts a child who attends tribal school from the definition of "dropout" in the statute for children at risk of not graduating from high school programs. That definition is used by cross-reference in several other statutes.~~

~~COMMENT: The ^{bill} draft does not amend s. 118.163, stats., relating to municipal truancy and school dropout ordinances. However, the effect of the amendments noted above that include tribal schools will affect s. 118.163 because that statute cross-references the definitions of truancy and dropout that are amended above.~~

~~SECTION 67. 118.16 (2) (em) of the statutes is created to read:~~

38-10

1 118.16 (2) (em) Shall request information regarding the attendance of any child
2 between the ages of 6 and 18 who is a resident of the school district and who claims or is
3 claimed to be in attendance at a tribal school.

NOTE: As part of the school attendance enforcement statute, current law requires private schools to keep a record containing certain information about pupils, including their attendance. Current law also specifies that a school attendance officer must have access to this information at all reasonable times. [s. 118.16 (2) (e) and (3), stats.] The draft requires a school attendance officer to request information about the attendance of a child between the ages of 6 and 18 who is a resident of the school district and who claims or is claimed to be attending a tribal school.

WFF COMMENT: The draft does not require the tribal school to keep or provide the information to the school attendance officer.

4 SECTION 68. 118.162 (1) (am) and (m) of the statutes are created to read:

5 118.162 (1) (am) A representative from each tribal school in the county, designated by
6 the governing body of that tribal school that he or she represents, who may be a member of
7 the tribal school governing body, school administrator, teacher, pupil services professional,
8 or parent of a child enrolled in that tribal school.

9 (m) A parent of a pupil enrolled in a tribal school located in the county, who resides in
10 the county, designated by the county board.

NOTE: Adds to the county committee that advises on school districts' truancy plans: (a) a representative of each tribal school in the county; and (b) a parent of a tribal school pupil.

COMMENT: The latter provision is modeled after the provision for a parent of a private school pupil being appointed to the county committee.

11 SECTION 69. 118.255 (2) (a), (b) and (c) of the statutes are amended to read:

12 118.255 (2) (a) If a school board, cooperative educational service agency, or county
13 children with disabilities education board provides physical or mental health treatment
14 services to its pupils, it may also provide such services within the private school or tribal
15 school facilities to those private school or tribal school pupils who are referred to the public

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1 118.16 (2) (em) Shall request information regarding the attendance of any child
2 between the ages of 6 and 18 who is a resident of the school district and who claims or is
3 claimed to be in attendance at a tribal school.

NOTE: As part of the school attendance enforcement statute, current law requires private schools to keep a record containing certain information about pupils, including their attendance. Current law also specifies that a school attendance officer must have access to this information at all reasonable times. [s. 118.16 (2) (e) and (3), stats.] The draft requires a school attendance officer to request information about the attendance of a child between the ages of 6 and 18 who is a resident of the school district and who claims or is claimed to be attending a tribal school.

COMMENT: The draft does not require the tribal school to keep or provide the information to the school attendance officer.

4 **SECTION 68.** 118.162 (1) (am) and (m) of the statutes are created to read:

5 118.162 (1) (am) A representative from each tribal school in the county, designated by
6 the governing body of that tribal school that he or she represents, who may be a member of
7 the tribal school governing body, school administrator, teacher, pupil services professional,
8 or parent of a child enrolled in that tribal school.

9 (m) A parent of a pupil enrolled in a tribal school located in the county, who resides in
10 the county, designated by the county board.

NOTE: Adds to the county committee that advises on school districts' truancy plans: (a) a representative of each tribal school in the county; and (b) a parent of a tribal school pupil.

COMMENT: ^{WLP} The latter provision is modeled after the provision for a parent of a private school pupil being appointed to the county committee.

11 **SECTION 69.** 118.255 (2) (a), (b) and (c) of the statutes are amended to read:

12 118.255 (2) (a) If a school board, cooperative educational service agency, or county
13 children with disabilities education board provides physical or mental health treatment
14 services to its pupils, it may also provide such services within the private school or tribal
15 school facilities to those private school or tribal school pupils who are referred to the public

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1 home-based private educational programs, or other school districts on the 3rd Friday of
 2 September of the previous school year; plus the number or an estimate of the number of those
 3 persons under this paragraph who were residents of the school district and not enrolled in the
 4 school district, private schools, tribal schools, home-based private educational programs, or
 5 other school districts on the 3rd Friday of September of the previous school year.

6 (s) Such other facts and statistics in relation to the schools, public or, private, or tribal,
 7 in the school district as the department requires.

NOTE: In the annual school district report submitted by the school district clerk to DPI, requires inclusion of the above information about tribal schools and tribal school pupils.

COMMENT: ^{NEJ} (This information can be included only if the tribal school voluntarily provides the information to the school district.)

8 **SECTION 74.** 121.05 (1) (a) 7. of the statutes is amended to read:

9 121.05 (1) (a) 7. Pupils enrolled in a nonsectarian private school or program or tribal
 10 school under s. 118.15 (1) (d) 4.

NOTE: Current law requires that the pupil membership report (which is used to calculate state aid to school districts) include pupils enrolled in a nonsectarian private school or program if the school district is paying tuition for the pupil to attend such a private school or program because of a curriculum modification agreed to by the school board. This SECTION adds tribal schools to reflect the proposed amendment to s. 118.15 (1) (d) 4., above.

11 **SECTION 75.** 121.76 (1) (a) of the statutes is amended to read:

12 121.76 (1) (a) "Agency of service" means a school board, board of control of a
 13 cooperative educational service agency, county children with disabilities education board, or
 14 governing body of a nonsectarian private school or university model school, or governing
 15 body of a tribal school, which provides services for which tuition may be charged.

NOTE: Current law defines "agency of service" for purposes of subch. V, ch. 121, stats., which describes various circumstances under which a

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SEC. CR. 121.83(1)(a) 4.

121.83(1)(a) 4. If the agency of service is a tribal school, a proportional share of federal aid received by the tribal school for the pupil for whom it receives tuition shall be subtracted.

SEC. RC. 121.83(1)(a) 4, as created by 2005 Wisconsin Act (this act)

121.83(1)(a) 4. If the agency of service is a tribal school, a proportional share of federal aid received by the tribal school for the pupil, shall be subtracted.

and a proportional share of state aid received by the tribal school for the pupil under s. 115.455 for the pupil, shall be subtracted.

As we discussed - don't include

70-11

prosecuted under s. 944.21, stats. (crimes relating to obscene materials or performance).

1 SECTION 101. 948.095 (1) (a) of the statutes is amended to read:

2 948.095 (1) (a) "School" means a public or private elementary or secondary school or
3 a tribal school as defined in s. 115.001 (16).

NOTE: Current statutes provide that it is a Class H felony for school staff at a public or private school to have sexual contact or sexual intercourse with a child who is age 16 or older. (If school staff are not involved, it is a class A misdemeanor to have sexual intercourse with a child age 16 or older.) The draft adds tribal schools to the definition of "school" for this purpose.

4 SECTION 102. 948.11 (4) (b) 2. of the statutes is amended to read:

5 948.11 (4) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school, as
6 defined in s. 115.001 (16).

NOTE: Provides that an employee, member of the board of directors, or trustee of a tribal school, while in his or her capacity as such, may not be prosecuted under s. 948.11, stats. (crimes relating to exposing a child to harmful material or harmful descriptions or narrations).

7 SECTION 103. 948.50 (2) (a) of the statutes is amended to read:

8 948.50 (2) (a) "School" means a public school, a parochial or private school, or a tribal
9 school as defined in s. 115.001 (16) which provides an educational program for one or more
10 grades between kindergarten and grade 12 and which is commonly known as a kindergarten,
11 elementary school, middle school, junior high school, senior high school, or high school.

Note:

~~COMMENT:~~ Current statutes provide a criminal penalty for strip searches of pupils by school employees. The ~~draft~~^{bill} adds tribal schools to the definition of school for this purpose. (Section 118.32, stats. (prohibiting strip searches), refers to schools without further definition, and the definition is supplied by s. 948.50.)

12 ~~SECTION 104. 948.61 (1) (b) of the statutes is amended to read:~~

2005

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Nonstat File Sequence:

AAA

LRB _____ / _____

_____ : _____ : _____

NONSTAT SESSLAW

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → nonstat

For the budget action phrase, execute: create → action: → *NS: → 91XX

For a subsection, execute: create → text: → *NS: → sub

For a paragraph, execute: create → text: → *NS: → par

For a subdivision, execute: create → text: → *NS: → subd

For a subdivision paragraph, execute: create → text: → *NS: → subpar

2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9100 department code.

SECTION # [91]. Nonstatutory provisions; ...

(#1) ()

The ^{repeal and} recreation of sections 121.78(4) and 121.73(1)(a) of the

statutes and the repeal and recreation of

section 121.78(4) of the statutes are void

unless 2005 Assembly Bill ... is enacted without amendment before July 1, 2006.

or 2005 state bill

Why include without redraft?

They could be amended in

sure over respect that will affect this issue - the issue is if bill is enacted to provide state funding for certain projects

Grant, Peter

From: Kiel, Joyce
Sent: Wednesday, July 27, 2005 3:32 PM
To: Grant, Peter
Subject: RE: LRB-3017

Peter:

Please make the changes we discussed on the phone (leaving p. 43, line 2 as in LRB-3017/P2; deleting last new sentence starting on p. 43, line 5; using your new sentence in s. 121.78 (4); and complying with the last paragraph of your email). Here are the NOTES I promised you:

Note to s. 121.76 (2) (c)---- (replace with the following):

Under current law, if an agency of service, including a private school, receives tuition from a school district, it must rebate a proportional share of all federal and state aid it received. Because a tribal school could assert a defense of sovereign immunity in any lawsuit to collect a rebate, the bill does not require a tribal school to rebate such aid. Rather, the bill provides in s. 121.78 (4) and (5), stats., below, that federal and state aid are subtracted in determining the amount of tuition payment to the tribal school when the tribal school provides either court-ordered educational placement under an agreement with the school district or curriculum modification under an agreement with the school district.

Note to s. 121.78 (4):

1. Retain first paragraph as in LRB-3017/P2 and add the following as the last sentence of first paragraph:

The agency of service must rebate all federal and state aid received for that pupil under s. 121.76 (2) (c), stats.

For second paragraph--substitute:

The bill specifies that if a tribal school is providing a court-ordered educational placement for a pupil under an agreement with the school district, the *minimum* amount paid by the school board to the tribal school must be determined by multiplying the average per pupil cost of the school district times 0.80 and then subtracting all federal and state aid received by the tribal school for that pupil.

Incidentally, I discussed the above with Mary Jo Cleaver at DPI. She is okay with it, so, go ahead and do the /1 version.

Thanks for your input.

Joyce L. Kiel, Senior Staff Attorney
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Joyce.Kiel@legis.state.wi.us

From: Grant, Peter
Sent: Friday, July 22, 2005 11:48 AM
To: Kiel, Joyce
Subject: RE: LRB-3017

Hi Joyce -

I have one question about your proposal and one change to your other changes to the draft.

Regarding the proposal, it seems to me that we're saying the same thing about four times. In s. 121.76 (2) (c) 2., it says

federal and state aid are subtracted in determining tuition. In s. 121.78 (4), it says the school board must pay the tribal school 80% of the cost less any federal and state aid, and then it says any federal and state aid must be subtracted in determining tuition. Then we create 121.78 (5), which says if the agency of service is a tribal school, federal and state aid must be subtracted in determining tuition.

How about if we leave p. 43, line 2 as is in the draft and just delete the additional sentence on lines 5 to 7? I would not create 121.76 (2) (c) 2. I also would not add the additional sentence to 121.78 (4); I don't think it's necessary. But I'd create 121.78 (5) as you suggest.

Regarding your other changes, look at p. 61. I think the comma on line 10 is useful and I'd keep it. However, I'd delete the comma after "body" and "designee" on lines 7 and 9.

Peter

-----Original Message-----

From: Kiel, Joyce
Sent: Thursday, July 21, 2005 3:03 PM
To: Grant, Peter
Cc: Lovell, David
Subject: RE: LRB-3017

Peter:

My comments to your email are in different size print (mine is bigger) in blue mixed in with your email--see below.

Read them first, then here is my latest proposal (italics = overstrike, since I couldn't get this program to do overstrike)

- Delete the treatment of s. 121.76 (2) (a).
- Replace SECTIONS 80 and 81 with the following:
 - Renumber s. 121.76 (2) (c) to s. 121.76 (2) (c) 1. and amend as follows: "*The Except as provided in subd. 2., the agency of service shall rebate a proportional share of state or federal aid received for pupils for whom it received tuition. The rebate shall be paid to the agency or person who paid the tuition within 30 days of its receipt by the agency of service.*"
 - b. Section s. 121.76 (2) (c) 2. is created to read: "Subdivision 1. does not apply to an agency of service that is a tribal school that has entered into a contractual agreement with a school board under s. 48.345 (12) (a) 5., 118.15 (1) (d) 4., or 938.345 (7d) (a) 5. which provides that the amount of federal and state aid received by the tribal school for that pupil is subtracted in determining the amount of tuition paid by the school board."
 - c. Add Note:
"NOTE: Under current law, if an agency of service, including a private school, receives tuition from a school district, it must rebate a proportional share of any federal or state aid it received to the entity paying the tuition. The bill provides that this rebate requirement does not apply to a tribal school that is providing services to a pupil pursuant to a contractual agreement between the tribal school and school board under the curriculum modification statute or because of an educational placement at the tribal school ordered by a juvenile court if the agreement provided for deducting the amount of federal and state aid in determining the amount of the tuition payment that the school board would make. Such agreements are required to provide for subtracting these amounts under s. 121.78 (4) and (5), below."
- Page 44, line 11, change "*any federal*" to "*any federal or state*". At the end of line 11, add: "*Any federal or state aid received by the tribal school for that pupil shall be subtracted in determining the amount of tuition to be paid to the tribal school by the school board.*"
- In the last line of the Note to SECTION 82, change "any federal aid" to "federal and state aid".

- Add to end of Note to SECTION 82: "This is the minimum amount of tuition payment. The amount to be paid may exceed that amount pursuant to agreement between the school board and tribal school. However, the bill specifies that federal and state aid received by the tribal school for the pupil must be subtracted in determining the amount of tuition that the school district pays to the tribal school."
- Replace SECTION 83 with the following: Section 121.78 (5) is created to read: "ALTERNATIVE PROGRAMS. If a pupil is placed in an alternative program under s. 118.15 (1) (d) 4., the school board shall pay tuition to the agency of service pursuant to a contractual agreement between the school board and the agency of service. If the agency of service is a tribal school, any federal or state aid received by the tribal school for the pupil shall be subtracted in determining the amount of tuition to be paid." ADD NOTE: "The bill provides that if a school board approves a curriculum modification allowing a pupil to attend a nonsectarian private school or tribal school at school district expense and pursuant to an agreement between the school board and the private school or tribal school, the school board pays tuition pursuant to an agreement with the private school or tribal school. The bill requires such an agreement with a tribal school to provide for subtracting the amount of federal and state aid received for the pupil in determining the amount of tuition paid by the school district to the tribal school. The bill is silent with respect to private schools in this regard. Private schools are required to rebate any such payment under s. 121.76 (2) (c)."
- Page 67, lines 1 to 4--delete.
- Change the effective date provision to just say it takes effect on the day after publication--no exceptions needed.

Peter:

I am returning the draft with a hard copy of this email--showing these and other changes to be made.

Let me know if you have any questions.

Joyce L. Kiel, Senior Staff Attorney
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 Madison, WI 53703
 608-266-3137
 608-266-3830 (fax)
 Joyce.Kiel@legis.state.wi.us

-----Original Message-----

From: Grant, Peter
Sent: Wednesday, July 20, 2005 2:31 PM
To: Kiel, Joyce
Subject: LRB-3017

Joyce, how about the following plan:

- Delete the treatment of 121.76(2)(a). OK.

- In 121.76(2)(c), delete "other than a tribal schol." and the last sentence. Instead, begin the paragraph "Except as provided under s. 121.78(5).". The problem I see is that proposed s. 121.78 (5) doesn't really deal with rebates, so it is not really providing an exception to the rebate requirement, plus there is also s. 121.78 (4) that has to be dealt with. See my proposed changes above which address this in another way
- Leave s. 121.78 (4) as is in the draft (subject to your answer to the question raised below). See my changes above.
- Create 121.78(5) to read as follows:

121.78 (5) ALTERNATIVE PROGRAMS. If a pupil is placed in an alternative program under s. 118.15 (1) (d) 4. or 6., the school board shall pay tuition to the agency of service pursuant to a contractual agreement between the school board and the agency of service. If the agency of service is a tribal school, any federal or state aid received by the tribal school for the pupil shall be subtracted in determining the amount of tuition to be paid. I see why you are trying to include both s. 118.15 (1) (d) 4. and 6. since they are both referred to in s. 121.81 (3) (b). However, I question including s. 118.15 (1) (d) 6. First, s. 118.15 (1) (d) 6. doesn't relate to tribal schools, and the bill isn't really trying to affect anyone else. Second, s. 118.15 (1) (d) 6. already states that enrollment "may" be pursuant to a contract between school districts, and the proposal says it must--which looks like a substantive change. As for whether it is worthwhile to include the provision to refer to s. 118.15 (1) (d) 4. I think so--see above.

I have another question for you. I think I may have asked you this before, but bear with me because if I did, I've forgotten your answer. Why do we need to make the enactment of these few sections of this bill contingent on the enactment of the state aid portion of the other bill? It was done that way because it refers specifically to the state aid under s. 115.455 only, which is contingent on passage of the other bill. However, I think you are right, it could just refer generically to state payments. See my changes above. In the tuition chapter it is clear that any state or federal aid received on behalf of a pupil must be subtracted when computing tuition. See s. 121.75 (2). Section 121.75 (2) applies to school districts, not tribal schools. What is at issue is how much the school district will pay the tribal school, not how the tribal school calculates its tuition. State law really can't hold tribal schools to s. 121.75 (2) (or other statutory tuition calculation provisions either which don't even work for them anyway). (Plus, s. 121.75 (2) applies "only to the extent feasible"; it is not really a "requirement" for everyone.) So even if you assume that we have to restate that fact by including language like p. 43, lines 5 - 7 (which I'm not *totally* convinced of), (that was included because a tribal school might raise a defense of sovereign immunity if there were a lawsuit trying to collect a rebate, so it seemed more appropriate to subtract out the money before it went to the tribal school--but I think that it would be more appropriate to include that subtraction provision elsewhere (rather than mixing it in with the rebate provision, see my changes above) why do we need to add SECTION 81? Why not simply say that any state or federal aid received for the pupil is subtracted when computing tuition? If the tribal school gets no state aid for the pupil (because the other bill is not enacted), where is the harm? I can see your point on this. See my suggested changes above.

Peter

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

LRB-3017/P2dn

PG:kjf:pg

July 13, 2005

Joyce:

I think there may be a problem with the treatment of ss. 121.76 (2) (c) and 121.78 (4). First, the bill does not (and probably cannot) provide a ceiling on the amount of tuition that a tribal school may charge. So requiring that federal aid and the newly created state aid be deducted may have no effect. Second, there appears to be a conflict between the provision that requires a school district to pay at least 80 percent of its average per pupil cost and the provision that requires that federal aid be deducted in determining the amount of tuition paid to the tribal school. See s. 121.75 (2). Finally, in s. 121.76 (2) (c), I'm not sure that there is a legal distinction between requiring a tribal school to rebate a specified amount once tuition is calculated (which apparently the state cannot do), and requiring that a specified amount be deducted when computing the tuition amount.

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7/21/05

Peter - See my response to your email (copy attached).
Please make those changes and the ones shown in this draft.
Let me know if you have any questions.

Thanks,

Joyce Keef

Kiel, Joyce

From: Kiel, Joyce
Sent: Thursday, July 21, 2005 3:03 PM
To: Grant, Peter
Cc: Lovell, David
Subject: RE: LRB-3017

Peter:

My comments to your email are in different size print (mine is bigger) in blue mixed in with your email--see below.

Read them first, then here is my latest proposal (italics = overstrike, since I couldn't get this program to do overstrike)

- Delete the treatment of s. 121.76 (2) (a).
- Replace SECTIONS 80 and 81 with the following:
 - Renumber s. 121.76 (2) (c) to s. 121.76 (2) (c) 1. and amend as follows: "*The Except as provided in subd. 2., the agency of service shall rebate a proportional share of state or federal aid received for pupils for whom it received tuition. The rebate shall be paid to the agency or person who paid the tuition within 30 days of its receipt by the agency of service.*"
 - b. Section s. 121.76 (2) c) 2. is created to read: "Subdivision 1. does not apply to an agency of service that is a tribal school that has entered into a contractual agreement with a school board under s. 48.345 (12) (a) 5., 118.15 (1) (d) 4., or 938.345 (7d) (a) 5. which provides that the amount of federal and state aid received by the tribal school for that pupil is subtracted in determining the amount of tuition paid by the school board."
 - c. Add Note:

"NOTE: Under current law, if an agency of service, including a private school, receives tuition from a school district, it must rebate a proportional share of any federal or state aid it received to the entity paying the tuition. The bill provides that this rebate requirement does not apply to a tribal school that is providing services to a pupil pursuant to a contractual agreement between the tribal school and school board under the curriculum modification statute or because of an educational placement at the tribal school ordered by a juvenile court if the agreement provided for deducting the amount of federal and state aid in determining the amount of the tuition payment that the school board would make. Such agreements are required to provide for subtracting these amounts under s. 121.78 (4) and (5), below."
- Page 44, line 11, change "*any federal*" to "*any federal or state*". At the end of line 11, add: "*Any federal or state aid received by the tribal school for that pupil shall be subtracted in determining the amount of tuition to be paid to the tribal school by the school board.*"
- In the last line of the Note to SECTION 82, change "any federal aid" to "federal and state aid".
- Add to end of Note to SECTION 82: "This is the minimum amount of tuition payment. The amount to be paid may exceed that amount pursuant to agreement between the school board and tribal school. However, the bill specifies that federal and state aid received by the tribal school for the pupil must be subtracted in determining the amount of tuition that the school district pays to the tribal school."
- Replace SECTION 83 with the following: Section 121.78 (5) is created to read: "ALTERNATIVE

PROGRAMS. If a pupil is placed in an alternative program under s. 118.15 (1) (d) 4., the school board shall pay tuition to the agency of service pursuant to a contractual agreement between the school board and the agency of service. If the agency of service is a tribal school, any federal or state aid received by the tribal school for the pupil shall be subtracted in determining the amount of tuition to be paid." ADD NOTE: "The bill provides that if a school board approves a curriculum modification allowing a pupil to attend a nonsectarian private school or tribal school at school district expense and pursuant to an agreement between the school board and the private school or tribal school, the school board pays tuition pursuant to an agreement with the private school or tribal school. The bill requires such an agreement with a tribal school to provide for subtracting the amount of federal and state aid received for the pupil in determining the amount of tuition paid by the school district to the tribal school. The bill is silent with respect to private schools in this regard. Private schools are required to rebate any such payment under s. 121.76 (2) (c)."

- Page 67, lines 1 to 4--delete.
- Change the effective date provision to just say it takes effect on the day after publication--no exceptions needed.

Peter:

I am returning the draft with a hard copy of this email--showing these and other changes to be made.

Let me know if you have any questions.

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-----Original Message-----

From: Grant, Peter
Sent: Wednesday, July 20, 2005 2:31 PM
To: Kiel, Joyce
Subject: LRB-3017

Joyce, how about the following plan:

- Delete the treatment of 121.76(2)(a). OK.
- In 121.76(2)(c), delete "other than a tribal school." and the last sentence. Instead, begin the paragraph "Except as provided under s. 121.78(5)". The problem I see is that proposed s. 121.78 (5) doesn't really deal with rebates, so it is not really providing an exception to the rebate requirement, plus there is also s. 121.78 (4) that has to be dealt with. See my proposed changes above which address this in another way
- Leave s. 121.78 (4) as is in the draft (subject to your answer to the question raised below). See my changes above.
- Create 121.78(5) to read as follows:

121.78 (5) ALTERNATIVE PROGRAMS. If a pupil is placed in an alternative program under s. 118.15 (1) (d) 4. or 6.,

the school board shall pay tuition to the agency of service pursuant to a contractual agreement between the school board and the agency of service. If the agency of service is a tribal school, any federal or state aid received by the tribal school for the pupil shall be subtracted in determining the amount of tuition to be paid. I see why you are trying to include both s. 118.15 (1) (d) 4. and 6. since they are both referred to in s. 121.81 (3) (b). However, I question including s. 118.15 (1) (d) 6. First, s. 118.15 (1) (d) 6. doesn't relate to tribal schools, and the bill isn't really trying to affect anyone else. Second, s. 118.15 (1) (d) 6. already states that enrollment "may" be pursuant to a contract between school districts, and the proposal says it must--which looks like a substantive change. As for whether it is worthwhile to include the provision to refer to s. 118.15 (1) (d) 4. I think so--see above.

I have another question for you. I think I may have asked you this before, but bear with me because if I did, I've forgotten your answer. Why do we need to make the enactment of these few sections of this bill contingent on the enactment of the state aid portion of the other bill? It was done that way because it refers specifically to the state aid under s. 115.455 only, which is contingent on passage of the other bill. However, I think you are right, it could just refer generically to state payments. See my changes above. In the tuition chapter it is clear that any state or federal aid received on behalf of a pupil must be subtracted when computing tuition. See s. 121.75 (2). Section 121.75 (2) applies to school districts, not tribal schools. What is at issue is how much the school district will pay the tribal school, not how the tribal school calculates its tuition. State law really can't hold tribal schools to s. 121.75 (2) (or other statutory tuition calculation provisions either which don't even work for them anyway). (Plus, s. 121.75 (2) applies "only to the extent feasible"; it is not really a "requirement" for everyone.) So even if you assume that we have to restate that fact by including language like p. 43, lines 5 - 7 (which I'm not *totally* convinced of), (that was included because a tribal school might raise a defense of sovereign immunity if there were a lawsuit trying to collect a rebate, so it seemed more appropriate to subtract out the money before it went to the tribal school--but I think that it would be more appropriate to include that subtraction provision elsewhere (rather than mixing it in with the rebate provision, see my changes above) why do we need to add SECTION 81? Why not simply say that any state or federal aid received for the pupil is subtracted when computing tuition? If the tribal school gets no state aid for the pupil (because the other bill is not enacted), where is the harm? I can see your point on this. See my suggested changes above.

Peter

Tracking:

Recipient

Grant, Peter

Lovell, David

Delivery

Delivered: 07/21/2005 3:03 PM

Delivered: 07/21/2005 3:03 PM