



2005 ASSEMBLY BILL 638

August 30, 2005 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Education.

1 **AN ACT** *to amend* 20.505 (8) (hm) (intro.); and *to create* 20.255 (2) (kt), 20.505
2 (8) (hm) 23. and 115.455 of the statutes; **relating to:** providing state aid to
3 tribal schools for certain pupils and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

GENERAL BACKGROUND

This bill defines a "tribal school" as an institution with an educational program that has as its primary purpose providing education in any grade or grades from kindergarten to 12 and that is controlled by the elected governing body of a federally recognized American Indian tribe or band in Wisconsin or by a tribal educational authority established under the laws of a federally recognized American Indian tribe or band in Wisconsin.

Currently, four schools in Wisconsin would come under that definition. They are the: Menominee Tribal School; Oneida Nation of Wisconsin Schools; Lac Courte Oreilles

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Tribal School; and Mashkiisibii (Bad River) Tribal School. The first three have contracts with and are funded, in full or in part, by the Bureau of Indian Affairs (BIA). A tribe also may provide funding to its tribal school. The last school is funded by the Bad River Tribal Council and does not have a contract with or receive a grant from the BIA.

BIA FUNDING OF TRIBAL SCHOOLS

The BIA provides funding to those tribal schools with which the BIA has a contract or to which the BIA provides a grant. In general, the funds provided by the BIA to a BIA contract or grant school include:

1. An amount determined under the BIA's Indian Student Equalization Program (ISEP) by multiplying a base unit value for the basic instructional program (for the 2004–05 school year, \$3,996) by the weighted student unit count of ISEP–eligible pupils (which factors in average daily membership determined during the tribal school's pupil count week and assigns weights to certain pupils under certain circumstances). An ISEP–eligible pupil is a pupil who is a member of a federally recognized American Indian tribe or has at least 1/4 degree of Indian blood, is enrolled in a BIA contract or grant school during the tribal school's pupil count week, is not enrolled in any other school during the count week, and actually attends the tribal school at least one full day during the count week.

2. Additional amounts under ISEP based on additional weighting; adjustments for small schools; and funding for contingencies, school board training, pupil transportation, interim maintenance and minor repairs, administrative costs, prekindergarten programs, and operation and maintenance.

3. Additional amounts under specific federal education programs, such as: special education funding under Part B of the Individuals with Disabilities Education Act (IDEA) or funding under various titles of the Elementary and Secondary Education Act (ESEA).

All of the tribal schools in Wisconsin currently permit non–ISEP eligible (non–ISEP) pupils to attend the tribal school, although some limit the number of such pupils. Non–ISEP pupils are not counted in determining federal aid to the tribal school and do not generate federal funding for the tribal school under the portion of ISEP formula that multiplies the base unit value (currently \$3,996) times the weighted pupil unit count. Estimates of the non–ISEP pupils enrolled in Wisconsin tribal schools currently are: Menominee Tribal School--8; Oneida Nation of Wisconsin Schools--20; Lac Courte Oreilles Tribal School--40; and Mashkiisibii (Bad River) Tribal School--26. (All the pupils at the Mashkiisibii Tribal School are non–ISEP pupils because that school does not have a contract with or receive a grant from the BIA.)

THE BILL

This bill does the following:

1. Provides state aid to a tribal school in an amount that is calculated by multiplying the ISEP base unit value determined by the BIA for the prior school year times the number of non–ISEP eligible pupils at the tribal school during the tribal school's pupil count week in a school year. The general purpose is, for each non–ISEP eligible pupil, to pay each tribal school (including a tribal school that does not have a contract with or receive a grant from the BIA) approximately the amount that would have been allotted to the tribal school by the BIA under ISEP for the basic educational program if the the pupil were ISEP eligible. The bill provides that a pupil who is enrolled at a public school on the public school's count date of the third Friday in September (and, thus, is counted in determining aid for that school district) is not considered to be a non–ISEP pupil, and no aid is provided to the tribal school for that pupil.

2. Creates an appropriation to the Department of Public Instruction (DPI) to fund this payment. The appropriation uses tribal gaming revenues paid to the state. The bill provides an appropriation of \$375,700, which is based on the current estimate of the number of non–ISEP pupils enrolled in tribal schools (94) multiplied by the ISEP base unit value for the 2004–05 school year of \$3,996, rounded to the next \$100. The bill provides for prorating the amount if the funds are not sufficient in a school year.

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3. Includes a payment schedule and requires submission to DPI of information about the non-ISEP pupils. The bill also creates a mechanism to verify the information about the non-ISEP pupils.

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

	2005-06	2006-07
20.255 Public instruction, department of		
(2) AID FOR LOCAL EDUCATIONAL PROGRAMMING		
(kt) Aid to tribal schools	PR-S A	-0- 375,700

NOTE: Appropriates to DPI the amount in the schedule for payment of aid to tribal schools from tribal gaming revenues paid to the state as described in s. 115.455, below.

7 **SECTION 2.** 20.255 (2) (kt) of the statutes is created to read:

8 20.255 (2) (kt) *Aid to tribal schools.* The amounts in the schedule for the
9 payment of aid to tribal schools under s. 115.455. All moneys transferred from the
10 appropriation account under s. 20.505 (8) (hm) 23. shall be credited to this
11 appropriation. Notwithstanding s. 20.001 (3) (a), the unencumbered balance on
12 June 30 of each year shall revert to the appropriation account under s. 20.505 (8)
13 (hm).

14 **SECTION 3.** 20.505 (8) (hm) (intro.) of the statutes is amended to read:

15 20.505 (8) (hm) *Indian gaming receipts.* (intro.) All moneys required to be
16 credited to this appropriation under s. 569.06, all moneys transferred under 2001
17 Wisconsin Act 16, sections 9201 (5mk), 9205 (1mk), 9210 (3mk), 9223 (5mk), 9224
18 (1mk), 9225 (1mk), 9231 (1mk), 9237 (4mk), 9240 (1mk), 9251 (1mk), 9256 (1mk),
19 9257 (2mk), and 9258 (2mk), and all moneys that revert to this appropriation account
20 from the appropriation accounts specified in subds. 1c. to ~~19. 23.~~, less the amounts

ASSEMBLY BILL 638**SECTION 3**

1 appropriated under par. (h) and s. 20.455 (2) (gc), for the purpose of annually
2 transferring the following amounts:

3 **SECTION 4.** 20.505 (8) (hm) 23. of the statutes is created to read:

4 20.505 (8) (hm) 23. The amount transferred to s. 20.255 (2) (kt) shall be the
5 amount in the schedule under s. 20.255 (2) (kt).

NOTE: SECTIONS 2 to 4 provide that the appropriation is funded by tribal gaming
revenues paid to the state.

6 **SECTION 5.** 115.455 of the statutes is created to read:

7 **115.455 Aid to tribal schools. (1)** In this section:

8 (a) “Non-ISEP pupil” means a pupil who was enrolled in and present at a tribal
9 school during its pupil count week in a school year, was not enrolled in any other
10 school during that pupil count week or at a public school on the 3rd Friday of
11 September of that school year, attended the tribal school at least one full day during
12 the pupil count week, and was not eligible to be counted in determining the weighted
13 student unit count for the purpose of determining the amount of federal aid under
14 the basic program of the federal Indian school equalization program under 25 CFR
15 Part 39 in that school year.

16 (b) “Pupil count week” means the week in which a tribal school counts its pupils
17 under 25 CFR 39.30 (b) or 39.34 or would count its pupils under 25 CFR 39.30 (b) if
18 the tribal school were eligible for funding under the federal Indian school
19 equalization program.

NOTE: The pupil count week under the ISEP regulations is the last full week in
September. However, 25 CFR 39.34 also permits a tribal school to petition the BIA’s
director of the Office of Indian Education Programs to substitute another week in
September under certain circumstances.

20 (c) “Tribal school” means an institution with an educational program that has
21 as its primary purpose providing education in any grade or grades from kindergarten

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1 to 12 and that is controlled by the elected governing body of a federally recognized
2 American Indian tribe or band in Wisconsin or by a tribal educational authority
3 established under the laws of a federally recognized American Indian tribe or band
4 in Wisconsin.

5 (2) Subject to subs. (3) and (4), from the appropriation under s. 20.255 (2) (kt)
6 in each school year the state superintendent shall pay each tribal school that applies
7 for aid under this section an amount equal to the number of non-ISEP pupils
8 identified during the tribal school's pupil count week in that school year multiplied
9 by the base unit value computed for the previous school year under 25 CFR 39.16.
10 The state superintendent shall pay 50 percent of the total amount under this
11 subsection in November and 50 percent in May.

12 (3) If the appropriation under s. 20.255 (2) (kt) in any school year is insufficient
13 to pay the full amount of aid under this section, state aid payments shall be prorated
14 among the tribal schools entitled to such aid based on the number of non-ISEP pupils
15 identified during the tribal school's pupil count week in that school year in proportion
16 to the number of non-ISEP pupils identified during the pupil count week of all tribal
17 schools applying for aid under this section for that school year.

18 (4) No tribal school may receive aid under this section in a school year unless
19 all of the following apply:

20 (a) A tribal school official certifies to the state superintendent by October 31
21 of that school year, on a form specified by the state superintendent, the names and
22 grade levels of all non-ISEP pupils identified during the tribal school's pupil count
23 week.

24 (b) The tribal school agrees that the state superintendent may either conduct
25 an audit of pupil enrollment and attendance records of the non-ISEP pupils or

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SECTION 5

1 require the tribal school to submit a statement by an independent auditor, approved
2 by the state superintendent, that the pupil enrollment and attendance records of the
3 non-ISEP pupils are accurate.

4 (5) The state superintendent shall deduct the amount of any overpayment that
5 is not refunded to the department from a future payment under this section.

6 **SECTION 6. Initial applicability.**

7 (1) This act first applies in the 2006-07 school year.

8 (END)