

**2001 DRAFTING REQUEST**

**Bill**

Received: 11/22/2000

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Legislative Council - JLC 6-3137

By/Representing: Joyce Kiel

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: **Children - day care**  
**Children - out-of-home placement**  
**Health - facility licensure**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Tribal administration of rehabilitation reviews under caregiver background check law

**Instructions:**

See Attached-convert WLCS 0014/1 to LRB draft.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	malaigm 11/27/2000	gilfokm 01/06/2001	jfrantze 01/09/2001	_____	lrb_docadmin 01/09/2001		S&L
/1	malaigm 01/24/2001	gilfokm 01/26/2001	rschluet 02/01/2001	_____	lrb_docadmin 02/01/2001	lrb_docadmin 03/15/2001	S&L
				_____		<del>lrb_docadmin</del>	
				_____		<del>lrb_docadmin</del>	

FE Sent For:

<END>

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Subject: Children - day care  
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Health - facility licensure

Extra Copies:

*JSL  
KME*

Pre Topic:

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/P1	malaigm 11/27/2000	gilfokm 01/06/2001	jfrantze 01/09/2001		lrb_docadmin 01/09/2001		S&L

FE Sent For:

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26-01*  
*[Signature]*  
*1-31-1*  
*[Signature]*  
*1-31-1*  
<END>

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By/Representing: Joyce Kiel

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Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Children - day care  
Children - out-of-home placement  
Health - facility licensure

Extra Copies: ISR  
KMG

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Tribal administration of rehabilitation reviews under caregiver background check law

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**Instructions:**

See Attached-convert WLCS 0014/1 to LRB draft.

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	malaigm	P1-1/KMG 16-01	LC Convert Jb 11/22				
FE Sent For:			Jb 1/9	Jb/Sk <END> 1/9			

**MEMORANDUM**

from JOYCE L. KIEL  
Legislative Council Staff  
(608) 266-3137

11/21/00

Re: WLCS: 0014/1

Gordon Malaise —

The special Committee on State-Tribal  
Relations voted to recommend this draft  
to the Joint Legislative Council for  
introduction next session.

Would you please do an LRB draft.  
(There are a few differences from  
the tribal provisions in 1999 AB 823.  
Please call me before you change anything.)

Our support staff put this into the  
LC to LRB cabinet.

Thanks for your help.

Joyce Kiel

1     **AN ACT** to amend 48.685 (1) (br), 48.685 (5) (a), 50.065 (1) (dm) and 50.065 (5); and  
2     to create 48.685 (1) (f), 48.685 (1) (g), 48.685 (5d) (c), 48.685 (5d) (d), 48.685 (7)  
3     (bm), 50.065 (1) (fm), 50.065 (1) (h), 50.065 (5d) (c), 50.065 (5d) (d) and 50.065 (7)  
4     (bm) of the statutes; relating to: tribal administration of rehabilitation reviews for  
5     persons who otherwise may not operate, be employed at, contract with or reside at an  
6     entity that provides care for children or adults.

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

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

#### CURRENT LAW

##### General Background

Under current law, except as discussed below, if a person has been convicted of certain serious crimes, has abused or neglected a client, has misappropriated the property of a client, has abused or neglected a child, or must be credentialed and has credentials that are not current or that are limited so as to restrict the person from providing adequate care to a client, then the following apply:

1. The Department of Health and Family Services (DHFS) may not license, certify, issue a certificate of approval to or register the person to operate an adult treatment facility, organization or service (or continue the license, certification, certificate of approval or registration). (An adult facility includes, for example, nursing homes, community-based residential facilities, home health agencies, community mental health and alcoholism and other drug abuse programs.) Also, DHFS may not license (or continue or renew the license of) the person to operate a foster home, treatment foster home, group home, shelter care facility, child welfare agency or day care center. A facility, organization or service that provides care for adults or children and that is subject to this law is defined as an "entity."

2. A county department of human services or county department of social services (county department) or a child welfare agency may not license (or renew the license of) the person to operate a foster home or treatment foster home.
3. A county department may not certify the person as a day care provider for purposes of reimbursement under the Wisconsin Works (W-2) program.
4. A school board may not contract with the person to operate a day care program.
5. An entity may not employ as a caregiver, contract with as a caregiver or permit to reside as a nonclient resident the person if the person has or is expected to have regular direct contact with clients of the entity.

These provisions apply if the appropriate regulatory agency or entity knew or should have known about the person's record.

#### **Rehabilitation Exception**

Under current law, if a person has such a record, the prohibitions discussed above do not apply if the person demonstrates to the appropriate regulatory agency by clear and convincing evidence and in accordance with procedures established by DHFS by administrative rule that he or she has been rehabilitated. (However, for purposes of licensing a foster home or treatment home, a person convicted of certain crimes specified in s. 48.685 (5) (bm), Stats., is not permitted to demonstrate rehabilitation.)

#### **Tribal Administration of Rehabilitation Exception**

Under current law, a federally recognized American Indian tribe or band in Wisconsin (tribe) may choose to conduct rehabilitation reviews with respect to entities located within the boundaries of the tribe's reservation. A reservation is defined for this purpose as land in the state within the boundaries of a reservation of a tribe or within the Bureau of Indian Affairs Service Area for the Ho-Chunk Nation.

A tribe that chooses to do so must submit to DHFS a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.
2. The title of the person or body designated by the tribe to whom a request for review must be made.
3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

4. The title of the person or body designated by the tribe to whom a person may appeal an adverse decision and whether the tribe has any further rights of appeal.
5. The manner in which the tribe will submit information relating to a rehabilitation review to DHFS so that DHFS may include that information in its annual rehabilitation report to the Legislature.
6. A copy of the form to be used to request a rehabilitation review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

Current law provides that if DHFS does not approve the plan within 90 days after receiving the plan from the tribe, the plan is considered approved. If, during that 90-day period, DHFS disapproves the plan, DHFS must provide written notice of that disapproval to the tribe, together with the reasons for disapproval. DHFS may not disapprove a plan unless it finds that the plan is not rationally related to the protection of clients. If DHFS disapproves the plan, the tribe may, within 30 days after receiving the notice, request that the Secretary of Health and Family Services review DHFS's decision. A final decision by the Secretary is not subject to further review.

#### PROVISIONS OF DRAFT

The draft does the following:

1. Amends the definition of "reservation" by deleting the reference to the Bureau of Indian Affairs Service Area for the Ho-Chunk Nation. The draft defines "trust land" as land in Wisconsin held in trust by the U.S. government for the benefit of a tribe or a member of a tribe. The draft then replaces references to reservation with references to reservation or trust land.
2. Specifies that if a tribe's rehabilitation review plan has been approved by DHFS, the tribe may conduct rehabilitation reviews with respect to all entities on the tribe's reservation or trust land.
3. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to some, but not all, entities on the tribe's reservation or trust land. (Under current law, it is arguable that a tribe may only request authority to conduct rehabilitation reviews for all, but not some, entities on its reservation.)

The draft requires DHFS to establish by administrative rule the criteria to be used to determine whether a tribe may be authorized to conduct rehabilitation reviews for some, but not all, entities on the tribe's



reservation or trust land. The draft also requires DHFS to grant the tribe's request if those criteria are met.

4. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to an entity located outside the boundaries of the tribe's reservation or trust land and owned or operated by the tribe or a tribal enterprise. The draft defines "tribal enterprise" as a business that is at least 51% owned and controlled by the governing body of one or more tribes, is actively managed by the governing body, or by the designee of the governing body of one or more Indian tribes, and is currently performing a useful business function.

In evaluating the tribe's request, DHFS must consider factors such as the proximity of the tribal entity to the reservation or trust land and the population to be served by the tribal entity. The draft permits DHFS to grant rehabilitation review authority to the tribe with respect to that tribal entity, if DHFS determines that the conduct of rehabilitation reviews by the tribe with respect to that tribal entity is rationally related to the protection of clients.

1 SECTION 1. 48.685 (1) (br) of the statutes is amended to read:

2 48.685 (1) (br) "Reservation" means land in this state within the boundaries of a  
3 reservation of a tribe ~~or within the bureau of Indian affairs service area for the Ho-Chunk~~  
4 Nation.

5 SECTION 2. 48.685 (1) (f) of the statutes is created to read:

6 48.685 (1) (f) "Tribal enterprise" has the meaning given in s. 71.07 (2di) (b) 2.

7 SECTION 3. 48.685 (1) (g) of the statutes is created to read:

8 48.685 (1) (g) "Trust land" means land in this state held in trust by the U.S. government  
9 for the benefit of a tribe or a member of a tribe.

10 SECTION 4. 48.685 (5) (a) of the statutes is amended to read:

11 48.685 (5) (a) The Except as provided in par. (bm), the department may license to  
12 operate an entity, a county department may certify under s. 48.651, a county department or a  
13 child welfare agency may license under s. 48.62 and a school board may contract with under  
14 s. 120.13 (14) a person who otherwise may not be licensed, certified or contracted with for a

1 reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with or permit  
2 to reside at the entity a person who otherwise may not be employed, contracted with or  
3 permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person  
4 demonstrates to the department, the county department, the child welfare agency or the school  
5 board or, in the case of an entity located outside the boundaries of a reservation or trust land  
6 that is owned or operated by a tribe or tribal enterprise and that is subject to rehabilitation  
7 reviews by the tribe under sub. (5d) (d) or an entity that is located within the boundaries of on  
8 a reservation or trust land, to the person or body designated by the tribe under sub. (5d) (a) 3.,  
9 by clear and convincing evidence and in accordance with procedures established by the  
10 department by rule or by the tribe that he or she has been rehabilitated.

11 **SECTION 5.** 48.685 (5d) (c) of the statutes is created to read:

12 48.685 (5d) (c) 1. A tribe whose rehabilitation review plan has been approved by the  
13 department may conduct reviews under sub. (5) with respect to all entities on the tribe's  
14 reservation or trust land.

15 2. A tribe may request the department to grant the tribe the authority to conduct  
16 rehabilitation reviews under sub. (5) with respect to some, but not all, entities on the tribe's  
17 reservation or trust land. The department shall grant that authority if the criteria established  
18 by rule under sub. (7) (bm) are satisfied.

19 **SECTION 6.** 48.685 (5d) (d) of the statutes is created to read:

20 48.685 (5d) (d) A tribe whose rehabilitation review plan has been approved by the  
21 department may request the department to grant the tribe the authority to conduct  
22 rehabilitation reviews under sub. (5) with respect to an entity located outside the boundaries  
23 of the tribe's reservation or trust land that is owned or operated by the tribe or a tribal  
24 enterprise. The department shall evaluate the tribe's request, considering factors such as the

1 proximity of the tribal entity to the reservation or trust land and the population to be served  
2 by the tribal entity. If the department determines that the conduct of rehabilitation reviews by  
3 the tribe with respect to the tribal entity is rationally related to the protection of clients, the  
4 department may authorize the tribe to conduct rehabilitation reviews with respect to the tribal  
5 entity.

6 **SECTION 7.** 48.685 (7) (bm) of the statutes is created to read:

7 48.685 (7) (bm) Establish by rule criteria for the department to use in determining  
8 whether a tribe whose plan is approved under sub. (5d) (b) may be authorized to conduct  
9 rehabilitation reviews under sub. (5) for some, but not all, entities on the tribe's reservation  
10 or trust land.

11 **SECTION 8.** 50.065 (1) (dm) of the statutes is amended to read:

12 50.065 (1) (dm) "Reservation" means land in this state within the boundaries of a  
13 reservation of a tribe ~~or within the bureau of Indian affairs service area for the Ho-Chunk~~  
14 ~~Nation.~~

15 **SECTION 9.** 50.065 (1) (fm) of the statutes is created to read:

16 50.065 (1) (fm) "Tribal enterprise" has the meaning given in s. 71.07 (2di) (b) 2.

17 **SECTION 10.** 50.065 (1) (h) of the statutes is created to read:

18 50.065 (1) (h) "Trust land" means land in this state held in trust by the U.S. government  
19 for the benefit of a tribe or a member of a tribe.

20 **SECTION 11.** 50.065 (5) of the statutes is amended to read:

21 50.065 (5) The department may license, certify, issue a certificate of approval to or  
22 register to operate an entity a person who otherwise may not be licensed, certified, issued a  
23 certificate of approval or registered for a reason specified in sub. (4m) (a) 1. to 5., and an entity  
24 may employ, contract with or permit to reside at the entity a person who otherwise may not

1 be employed, contracted with or permitted to reside at the entity for a reason specified in sub.  
2 (4m) (b) 1. to 5., if the person demonstrates to the department, or, in the case of an entity  
3 located outside the boundaries of a reservation or trust land that is owned or operated by a tribe  
4 or tribal enterprise and that is subject to rehabilitation reviews by the tribe under sub. (5d) (d)  
5 or an entity that is located within the boundaries of on a reservation or trust land, to the person  
6 or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and  
7 in accordance with procedures established by the department by rule, or by the tribe, that he  
8 or she has been rehabilitated.

9 **SECTION 12.** 50.065 (5d) (c) of the statutes is created to read:

10 50.065 (5d) (c) 1. A tribe whose rehabilitation plan has been approved by the  
11 department may conduct reviews under sub. (5) with respect to all entities on the tribe's  
12 reservation or trust land.

13 2. A tribe may request the department to grant the tribe the authority to conduct  
14 rehabilitation reviews under sub. (5) with respect to some, but not all, entities on the tribe's  
15 reservation or trust land. The department shall grant that authority if the criteria established  
16 by rule under sub. (7) (bm) are satisfied.

17 **SECTION 13.** 50.065 (5d) (d) of the statutes is created to read:

18 50.065 (5d) (d) A tribe whose rehabilitation plan has been approved by the department  
19 may request the department to grant the tribe the authority to conduct rehabilitation reviews  
20 under sub. (5) with respect to an entity located outside the boundaries of the tribe's reservation  
21 or trust land that is owned or operated by the tribe or a tribal enterprise. The department shall  
22 evaluate the tribe's request, considering factors such as proximity of the tribal entity to the  
23 reservation or trust land and the population to be served by the tribal entity. If the department  
24 determines that the conduct of rehabilitation reviews by the tribe with respect to the tribal

1 entity is rationally related to the protection of clients, the department may authorize the tribe  
2 to conduct rehabilitation reviews with respect to the tribal entity.

3 **SECTION 14.** 50.065 (7) (bm) of the statutes is created to read:

4 50.065 (7) (bm) Establish by rule criteria for the department to use in determining  
5 whether a tribe whose plan is approved under sub. (5d) (b) may be authorized to conduct  
6 rehabilitation reviews under sub. (5) for some, but not all, entities on the tribe's reservation  
7 or trust land.

8 (END)



Trues  
Due 1/9/2001  
LRB-1176/P1

GMM: King

DRote

~~11/1/01~~  
~~1/9/01~~

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

This bill is explained in the **NOTE** provided by the joint legislative council in the bill.

PREFATORY

FE-SL

- 1 AN ACT <sup>Gen. Cat.</sup> relating to: tribal administration of rehabilitation reviews for
- 2 persons who otherwise may not operate, be employed at, contract with, or reside
- 3 at an entity that provides care for children or adults

and granting rule-making authority

Analysis by the Legislative Reference Bureau

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

PREFATORY NOTE: This <sup>bill</sup> draft was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

CURRENT LAW

General Background

delete blank line

Under current law, except as discussed below, if a person has been convicted of certain serious crimes, has abused or neglected a client, has misappropriated the property of a client, has abused or neglected a child, or must be credentialed and has credentials that are not current or that are limited so as to restrict the person from providing adequate care to a client, then the following apply:

1. The Department of Health and Family Services (DHFS) may not license, certify, issue a certificate of approval to, or register the person to operate an adult treatment facility, organization or service for continue the license, certification, certificate of approval or registration. ~~An adult facility include~~, for example, nursing homes,

treatment  
Adult facilities, services, and organizations include

Advisors:  
what is the current rule on capitalizing state or fed. bodies in analyses + pref. notes?

community-based residential facilities, home health agencies, <sup>and</sup> community mental health and alcoholism and other drug abuse programs. <sup>i</sup> Also, DHFS may not license ~~for~~ continue or renew the license of ~~the~~ person to operate a foster home, treatment foster home, group home, shelter care facility, child welfare agency, or day care center. A facility, organization, or service that provides care for adults or children and that is subject to this law is defined as an "entity."

2. A county department of human services or county department of social services (county department) or a child welfare agency may not license ~~for~~ renew the license of ~~the~~ person to operate a foster home or treatment foster home.

3. A county department may not certify the person as a day care provider for purposes of reimbursement under the Wisconsin Works (W-2) program.

4. A school board may not contract with the person to operate a day care program.

5. An entity may not employ as a caregiver, contract with as a caregiver or permit to reside as a nonclient resident the person if the person has or is expected to have regular direct contact with clients of the entity.

These provisions apply if the appropriate regulatory agency or entity knew or should have known about the person's record.

Rehabilitation Exception

Under current law, ~~if a person has such a record,~~ <sup>to a person who has such a record</sup> the prohibitions discussed above do not apply if the person demonstrates to the appropriate regulatory agency by clear and convincing evidence and in accordance with procedures established by DHFS by administrative rule that he or she has been rehabilitated. ~~However, for~~ <sup>however,</sup> purposes of licensing a foster home or treatment home, <sup>for</sup> a person convicted of certain crimes specified in s. 48.685 (5) (bm), Stats., is not permitted to demonstrate rehabilitation.

Tribal Administration of Rehabilitation Exception

Under current law, a federally recognized American Indian tribe or band in Wisconsin (tribe) may choose to conduct rehabilitation reviews with respect to entities located within the boundaries of the tribe's reservation. A reservation is defined for this purpose as land in the state within the boundaries of a reservation of a tribe or within the Bureau of Indian Affairs Service Area for the Ho-Chunk Nation.

A tribe that chooses to do so must submit to DHFS a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.
2. The title of the person or body designated by the tribe to whom a request for review must be made.
3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.
4. The title of the person or body designated by the tribe to whom a person may appeal an adverse decision and whether the tribe <sup>provides</sup> has any further rights of appeal.
5. The manner in which the tribe will submit information relating to a rehabilitation review to DHFS so that DHFS may include that information in its annual rehabilitation report to the Legislature.
6. A copy of the form to be used to request a rehabilitation review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

caps + I  
- 3 -

THE BILL  
disapprove

DF disapproval

Current law provides that if DHFS does not approve the plan within 90 days after receiving the plan from the tribe, the plan is considered approved. If, during that 90-day period, DHFS disapproves the plan, DHFS must provide written notice of that disapproval to the tribe, together with the reasons for disapproval. DHFS may not disapprove a plan unless it finds that the plan is not rationally related to the protection of clients. If DHFS disapproves the plan, the tribe may, within 30 days after receiving the notice, request that the Secretary of Health and Family Services review DHFS's decision. A final decision by the Secretary is not subject to further review.

bill

Provisions Of Draft

The draft does the following:

bill

1. Amends the definition of "reservation" by deleting the reference to the Bureau of Indian Affairs Service Area for the Ho-Chunk Nation. The draft defines "trust land" as land in Wisconsin held in trust by the U.S. government for the benefit of a tribe or a member of a tribe. The draft then replaces references to reservation with references to reservation or trust land.

2. Specifies that if a tribe's rehabilitation review plan has been approved by DHFS, the tribe may conduct rehabilitation reviews with respect to all entities on the tribe's reservation or trust land.

3. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to some, but not all, entities on the tribe's reservation or trust land. Under current law, it is arguable that a tribe may only request authority to conduct rehabilitation reviews for all, but not some, entities on its reservation.

bill

bill

The draft requires DHFS to establish by administrative rule the criteria to be used to determine whether a tribe may be authorized to conduct rehabilitation reviews for some, but not all, entities on the tribe's reservation or trust land. The draft also requires DHFS to grant the tribe's request if those criteria are met.

that is

(tribal entity)

4. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to an entity located outside the boundaries of the tribe's reservation or trust land and owned or operated by the tribe or a tribal enterprise. The draft defines "tribal enterprise" as a business that is at least 51% owned and controlled by the governing body of one or more tribes, is actively managed by the governing body, or by the designee of the governing body of one or more Indian tribes, and is currently performing a useful business function.

bill

bill

In evaluating the tribe's request, DHFS must consider factors such as the proximity of the tribal entity to the reservation or trust land and the population to be served by the tribal entity. The draft permits DHFS to grant rehabilitation review authority to the tribe with respect to that tribal entity if DHFS determines that the conduct of rehabilitation reviews by the tribe with respect to that tribal entity is rationally related to the protection of clients.

SECTION 1. 48.685 (1) (br) of the statutes is amended to read:

48.685 (1) (br) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(dr)

SECTION 2. 48.685 (1) of the statutes is created to read:

P.W.F.  
1  
2  
3  
4  
5



~~(dr)~~ (dr)

① 48.685 (1) ~~(a)~~ "Tribal enterprise" has the meaning given in s. 71.07 (2di) (b) 2.

2 SECTION 3. 48.685 (1) (g) of the statutes is created to read: Federal

3 48.685 (1) (g) "Trust land" means land in this state held in trust by the ~~the~~ <sup>USA</sup> government for the benefit of a tribe or a member of a tribe.

5 SECTION 4. ~~48.685 (5) (a) of the statutes is amended to read:~~

6 48.685 (5) (a) ~~The Except as provided in par. (bm), the department may license~~  
7 ~~to operate an entity, a county department may certify under s. 48.651, a county~~  
8 ~~department or a child welfare agency may license under s. 48.62, and a school board~~  
9 ~~may contract with under s. 120.13 (14) a person who otherwise may not be licensed,~~  
10 ~~certified<sup>1</sup> or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity~~  
11 ~~may employ, contract with<sup>2</sup> or permit to reside at the entity a person who otherwise~~  
12 ~~may not be employed, contracted with<sup>3</sup> or permitted to reside at the entity for a reason~~  
13 ~~specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the~~  
14 ~~county department, the child welfare agency<sup>4</sup> or the school board or, in the case of an~~  
15 ~~entity located outside the boundaries of a reservation or trust land that is owned or~~  
16 ~~operated by a tribe or tribal enterprise and that is subject to rehabilitation reviews~~  
17 ~~by the tribe under sub. (5d) (d) or an entity that is located within the boundaries of~~  
18 ~~on a reservation or trust land, to the person or body designated by the tribe under~~  
19 ~~sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures~~  
20 ~~established by the department by rule or by the tribe that he or she has been~~  
21 ~~rehabilitated.~~

Subject to subd. 2, a

22 SECTION 5. 48.685 (5d) (c) of the statutes is created to read:

23 48.685 (5d) (c) 1. ~~A~~ tribe whose rehabilitation review plan has been approved  
24 by the department may conduct reviews under sub. (5) with respect to all entities on  
25 the tribe's reservation or trust land.

~~that is subject to rehabilitation reviews by the~~  
~~tribe under sub. (5d) (c)~~

Insert  
4-21

1           2. A tribe may request the department to grant the tribe the authority to  
2 conduct rehabilitation reviews under sub. (5)✓ with respect to some, but not all,  
3 entities on the tribe's reservation or trust land. The department shall grant that  
4 authority if the criteria established by rule under sub. (7) (bm)✓ are satisfied.

5           **SECTION 6.** 48.685 (5d) (d) of the statutes is created to read:

6           48.685 (5d) (d) A tribe whose rehabilitation review plan has been approved by  
7 the department may request the department to grant the tribe the authority to  
8 conduct rehabilitation reviews under sub. (5) with respect to an entity located  
9 outside the boundaries of the tribe's reservation or trust land that is owned or  
10 operated by the tribe or a tribal enterprise. The department shall evaluate the tribe's  
11 request, considering factors such as the proximity of the tribal entity to the  
12 reservation or trust land and the population to be served by the tribal entity. If the  
13 department determines that the conduct of rehabilitation reviews by the tribe with  
14 respect to the tribal entity is rationally related to the protection of clients, the  
15 department may authorize the tribe to conduct rehabilitation reviews with respect  
16 to the tribal entity.

17           **SECTION 7.** 48.685 (7) (bm) of the statutes is created to read:

18           48.685 (7) (bm) Establish by rule criteria for the department to use in  
19 determining whether a tribe whose plan is approved under sub. (5d) (b)✓ may be  
20 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,  
21 entities on the tribe's reservation or trust land.

22           **SECTION 8.** 50.065 (1) (dm) of the statutes is amended to read:

23           50.065 (1) (dm) "Reservation" means land in this state within the boundaries  
24 of a reservation of a tribe or ~~within the bureau of Indian affairs service area for the~~  
25 ~~Ho-Chunk Nation.~~

P.W.F.

1 SECTION 9. 50.065 (1) (fm) of the statutes is created to read:

2 50.065 (1) (fm) "Tribal enterprise" has the meaning given in s. 71.07 (2di) (b)

3 2.

4 SECTION 10. 50.065 (1) (h) of the statutes is created to read:

5 50.065 (1) (h) "Trust land" means land in this state held in trust by the ~~the~~ <sup>the federal</sup> government for the benefit of a tribe or a member of a tribe.

7 SECTION 11. 50.065 (5) of the statutes is amended to read:

8 50.065 (5) The department may license, certify, issue a certificate of approval  
9 to or register to operate an entity a person who otherwise may not be licensed,  
10 certified, issued a certificate of approval or registered for a reason specified in sub.  
11 (4m) (a) 1. to 5., and an entity may employ, contract with or permit to reside at the  
12 entity a person who otherwise may not be employed, contracted with or permitted  
13 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person  
14 demonstrates to the department, or, in the case of ~~an entity located outside the~~  
15 ~~boundaries of a reservation or trust land that is owned or operated by a tribe or tribal~~  
16 ~~enterprise and that is subject to rehabilitation reviews by the tribe under sub. (5d)~~  
17 ~~or~~ <sup>no strike-plain</sup> an entity <sup>that is</sup> located within the boundaries of ~~on~~ a reservation ~~or trust land~~,  
18 to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and  
19 convincing evidence and in accordance with procedures established by the  
20 department by rule, or by the tribe, that <sup>the person</sup> ~~he or she~~ has been rehabilitated.

21 SECTION 12. 50.065 (5d) (c) of the statutes is created to read:

22 50.065 (5d) (c) 1. A tribe whose rehabilitation plan has been approved by the  
23 department may conduct reviews under sub. (5) with respect to all entities on the  
24 tribe's reservation or trust land.

P.W.F.

Subject to subd. 2, a

~~that~~ subject to rehabilitation reviews by a tribe under sub. (5d) (c) or (d)

1           2. A tribe may request the department to grant the tribe the authority to  
2 conduct rehabilitation reviews under sub. (5) with respect to some, but not all,  
3 entities on the tribe's reservation or trust land. The department shall grant that  
4 authority if the criteria established by rule under sub. (7) (bm) are satisfied.

5           **SECTION 13.** 50.065 (5d) (d) of the statutes is created to read:

6           50.065 (5d) (d) A tribe whose rehabilitation plan has been approved by the  
7 department may request the department to grant the tribe the authority to conduct  
8 rehabilitation reviews under sub. (5) with respect to an entity located outside the  
9 boundaries of the tribe's reservation or trust land that is owned or operated by the  
10 tribe or a tribal enterprise. The department shall evaluate the tribe's request,  
11 considering factors such as proximity of the tribal entity to the reservation or trust  
12 land and the population to be served by the tribal entity. If the department  
13 determines that the conduct of rehabilitation reviews by the tribe with respect to the  
14 tribal entity is rationally related to the protection of clients, the department may  
15 authorize the tribe to conduct rehabilitation reviews with respect to the tribal entity.

16           **SECTION 14.** 50.065 (7) (bm) of the statutes is created to read:

17           50.065 (7) (bm) Establish by rule criteria for the department to use in  
18 determining whether a tribe whose plan is approved under sub. (5d) (b) may be  
19 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,  
20 entities on the tribe's reservation or trust land.

21

(END)

Insert 4-21 ✓

Section #. 48.685 (5) (a) of the statutes is amended to read:

Except as provided in par. (b)m, the

48.685 (5) (a) ~~The~~ department may license to operate an entity, a county department may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62 and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified, or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside at the entity a person who otherwise may not be employed, contracted with, or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department, the child welfare agency, or the school board, or, in the case of an entity that is ~~located within the boundaries of a reservation,~~ to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that ~~he or she~~ has been rehabilitated.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186.

the person

subject to rehabilitation reviews  
by a tribe under sub.  
(5d) (c) or (d)

(led & insert)

D-Note

Soyce:

In reviewing this draft, please note all of the following changes to the <sup>WLCS</sup> WLCS draft:

1. The draft adds "and granting rule-making authority" to the relating clause.

2. The draft makes numerous minor changes to the <sup>(CS)</sup> Prefatory Note, for example, changing "draft" to "bill," adding commas, and putting state or federal agencies in lower case, to <sup>con</sup> conform the note to the LRB Drafting Manual.

3. The draft places the definition of "tribal enterprise" before "tribe" to maintain alphabetical order.

4. The draft eliminates a <sup>mouthful</sup> of awkward text from <sup>ss.</sup> 48.685 (5) <sup>(a)</sup> and <sup>ss.</sup> 50.265 (5) by describing the entities that are subject to

tribal review ~~with~~ with a simple cross-reference

to sub. (5d) (c) <sup>or</sup> (d)."

(the draft)

to subd. 2.

S. 1 provides a cross-reference in ss. 48.065 (5d)

(c) 1. and so. 065 (5d) (c) 1. to help clarify that

a tribe may conduct reviews for all entities.

unless the tribe requests that authority for just

some entities.

GMM

48.685

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

LRB-1176/P1dn  
GMM:kmg:jf

January 9, 2001

Joyce:

In reviewing this draft, please note all of the following changes to the WLCS draft:

1. The draft adds "and granting rule-making authority" to the relating clause.
2. The draft makes numerous minor changes to the PREFATORY NOTE, for example, changing "draft" to "bill," adding commas, and putting state or federal agencies in lower case, to conform the note to the LRB Drafting Manual.
3. The draft places the definition of "tribal enterprise" before "tribe" to maintain alphabetical order.
4. The draft eliminates a mouthful of awkward text from ss. 48.685 (5) (a) and 50.065 (5) by describing the entities that are subject to tribal review with a simple cross-reference to sub. (5d) (c) or (d)."
5. The draft provides a cross-reference to subd. 2. in ss. 48.685 (5d) (c) 1. and 50.065 (5d) (c) 1. to help clarify that a tribe may conduct reviews for all entitles unless the tribe requests that authority for just some entities.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.state.wi.us](mailto:gordon.malaise@legis.state.wi.us)





State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1176/FA  
GMM:kmg:jf  
①  
RWR  
↑

(see p. 3)

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*Sen. Cox*

1 **AN ACT to amend** 48.685 (1) (br), 48.685 (5) (a), 50.065 (1) (dm) and 50.065 (5);  
2 and **to create** 48.685 (1) (dr), 48.685 (1) (g), 48.685 (5d) (c), 48.685 (5d) (d),  
3 48.685 (7) (bm), 50.065 (1) (fm), 50.065 (1) (h), 50.065 (5d) (c), 50.065 (5d) (d) and  
4 50.065 (7) (bm) of the statutes; **relating to:** tribal administration of  
5 rehabilitation reviews for persons who otherwise may not operate, be employed  
6 at, contract with, or reside at an entity that provides care for children or adults  
7 and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

This bill is explained in the PREFATORY NOTE provided by the joint legislative council in the bill.

For further information see the **state and local** 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:***

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on state-tribal relations.

## CURRENT LAW

### General Background

Under current law, except as discussed below, if a person has been convicted of certain serious crimes, has abused or neglected a client, has misappropriated the property of a client, has abused or neglected a child, or must be credentialed and has credentials that are not current or that are limited so as to restrict the person from providing adequate care to a client, then the following apply:

1. The department of health and family services (DHFS) may not license, certify, issue a certificate of approval to, or register the person to operate an adult treatment facility, organization, or service or continue the license, certification, certificate of approval, or registration. Adult treatment facilities, services, and organizations include, for example, nursing homes, community-based residential facilities, home health agencies, and community mental health and alcoholism and other drug abuse programs. Also, DHFS may not license or continue or renew the license of the person to operate a foster home, treatment foster home, group home, shelter care facility, child welfare agency, or day care center. A facility, organization, or service that provides care for adults or children and that is subject to this law is defined as an "entity."

2. A county department of human services or county department of social services (county department) or a child welfare agency may not license or renew the license of the person to operate a foster home or treatment foster home.

3. A county department may not certify the person as a day care provider for purposes of reimbursement under the Wisconsin Works (W-2) program.

4. A school board may not contract with the person to operate a day care program.

5. An entity may not employ as a caregiver, contract with as a caregiver, or permit to reside as a nonclient resident the person if the person has or is expected to have regular direct contact with clients of the entity.

These provisions apply if the appropriate regulatory agency or entity knew or should have known about the person's record.

### Rehabilitation Exception

Under current law, the prohibitions discussed above do not apply to a person who has such a record if the person demonstrates to the appropriate regulatory agency by clear and convincing evidence and in accordance with procedures established by DHFS by administrative rule that he or she has been rehabilitated. For purposes of licensing a foster home or treatment foster home, however, a person convicted of certain crimes specified in s. 48.685 (5) (bm), stats., is not permitted to demonstrate rehabilitation.

### Tribal Administration of Rehabilitation Exception

Under current law, a federally recognized American Indian tribe or band in Wisconsin (tribe) may choose to conduct rehabilitation reviews with respect to entities located within the boundaries of the tribe's reservation. A reservation is defined for this purpose as land in the state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

A tribe that chooses to do so must submit to DHFS a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

4. The title of the person or body designated by the tribe to whom a person may appeal an adverse decision and whether the tribe provides any further rights of appeal.

5. The manner in which the tribe will submit information relating to a rehabilitation review to DHFS so that DHFS may include that information in its annual rehabilitation report to the legislature.

6. A copy of the form to be used to request a rehabilitation review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

Current law provides that, if DHFS does not disapprove the plan within 90 days after receiving the plan from the tribe, the plan is considered approved. If, during that 90-day period, DHFS disapproves the plan, DHFS must provide written notice of that disapproval to the tribe, together with the reasons for disapproval. DHFS may not disapprove a plan unless it finds that the plan is not rationally related to the protection of clients. If DHFS disapproves the plan, the tribe may, within 30 days after receiving the notice of disapproval, request that the secretary of health and family services review DHFS's decision. A final decision by the secretary is not subject to further review.

THE BILL

The bill does the following:

\* 1. Amends the definition of "reservation" by deleting the reference to the Bureau of Indian Affairs Service Area for the Ho-Chunk Nation. The bill defines "trust land" as land in Wisconsin held in trust by the <sup>Federal</sup> ~~the~~ government for the benefit of a tribe or a member of a tribe. The bill then replaces references to reservation with references to reservation or trust land.

2. Specifies that if a tribe's rehabilitation review plan has been approved by DHFS, the tribe may conduct rehabilitation reviews with respect to all entities on the tribe's reservation or trust land.

3. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to some, but not all, entities on the tribe's reservation or trust land. Under current law, it is arguable that a tribe may only request authority to conduct rehabilitation reviews for all, but not some, entities on its reservation.

The bill requires DHFS to establish by administrative rule the criteria to be used to determine whether a tribe may be authorized to conduct rehabilitation reviews for some, but not all, entities on the tribe's reservation or trust land. The bill also requires DHFS to grant the tribe's request if those criteria are met.

4. Permits a tribe to request that DHFS grant the tribe authority to conduct rehabilitation reviews with respect to an entity located outside the boundaries of the tribe's reservation or trust land that is owned or operated by the tribe or a tribal enterprise (tribal entity). The bill defines "tribal enterprise" as a business that is at least 51% owned and controlled by the governing body of one or more tribes, is actively managed by the governing body, or by the designee of the governing body of one or more Indian tribes, and is currently performing a useful business function.

In evaluating the tribe's request, DHFS must consider factors such as the proximity of the tribal entity to the reservation or trust land and the population to be served by the tribal entity. The bill permits DHFS to grant rehabilitation review authority to the tribe with respect to that tribal entity if DHFS determines that the conduct of rehabilitation reviews by the tribe with respect to that tribal entity is rationally related to the protection of clients.

1 SECTION 1. 48.685 (1) (br) of the statutes is amended to read:

2 48.685 (1) (br) "Reservation" means land in this state within the boundaries  
3 of a reservation of a tribe or within the bureau of Indian affairs service area for the  
4 Ho-Chunk Nation.

5 SECTION 2. 48.685 (1) (dr) of the statutes is created to read:

1 48.685 (1) (dr) "Tribal enterprise" has the meaning given in s. 71.07 (2di) (b)

2 2.

3 **SECTION 3.** 48.685 (1) (g) of the statutes is created to read:

4 48.685 (1) (g) "Trust land" means land in this state held in trust by the federal  
5 government for the benefit of a tribe or a member of a tribe.

6 **SECTION 4.** 48.685 (5) (a) of the statutes is amended to read:

7 48.685 (5) (a) The Except as provided in par. (bm), the department may license  
8 to operate an entity, a county department may certify under s. 48.651, a county  
9 department or a child welfare agency may license under s. 48.62, and a school board  
10 may contract with under s. 120.13 (14) a person who otherwise may not be licensed,  
11 certified, or contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an  
12 entity may employ, contract with, or permit to reside at the entity a person who  
13 otherwise may not be employed, contracted with, or permitted to reside at the entity  
14 for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the  
15 department, the county department, the child welfare agency, or the school board,  
16 or, in the case of an entity that is located ~~within the boundaries of a reservation~~  
17 subject to rehabilitation reviews by a tribe under sub. (5d) (c) or (d), to the person or  
18 body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence  
19 and in accordance with procedures established by the department by rule or by the  
20 tribe that ~~he or she~~ the person has been rehabilitated.

21 **SECTION 5.** 48.685 (5d) (c) of the statutes is created to read:

22 48.685 (5d) (c) 1. Subject to subd. 2., a tribe whose rehabilitation review plan  
23 has been approved by the department may conduct reviews under sub. (5) with  
24 respect to all entities on the tribe's reservation or trust land.

1           2. A tribe may request the department to grant the tribe the authority to  
2 conduct rehabilitation reviews under sub. (5) with respect to some, but not all,  
3 entities on the tribe's reservation or trust land. The department shall grant that  
4 authority if the criteria established by rule under sub. (7) (bm) are satisfied.

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6           48.685 (5d) (d) A tribe whose rehabilitation review plan has been approved by  
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8 conduct rehabilitation reviews under sub. (5) with respect to an entity located  
9 outside the boundaries of the tribe's reservation or trust land that is owned or  
10 operated by the tribe or a tribal enterprise. The department shall evaluate the tribe's  
11 request, considering factors such as the proximity of the tribal entity to the  
12 reservation or trust land and the population to be served by the tribal entity. If the  
13 department determines that the conduct of rehabilitation reviews by the tribe with  
14 respect to the tribal entity is rationally related to the protection of clients, the  
15 department may authorize the tribe to conduct rehabilitation reviews with respect  
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18           48.685 (7) (bm) Establish by rule criteria for the department to use in  
19 determining whether a tribe whose plan is approved under sub. (5d) (b) may be  
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21 entities on the tribe's reservation or trust land.

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23           50.065 (1) (dm) "Reservation" means land in this state within the boundaries  
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1           **SECTION 9.** 50.065 (1) (fm) of the statutes is created to read:

2           50.065 (1) (fm) “Tribal enterprise” has the meaning given in s. 71.07 (2di) (b)

3           2.

4           **SECTION 10.** 50.065 (1) (h) of the statutes is created to read:

5           50.065 (1) (h) “Trust land” means land in this state held in trust by the federal  
6 government for the benefit of a tribe or a member of a tribe.

7           **SECTION 11.** 50.065 (5) of the statutes is amended to read:

8           50.065 (5) The department may license, certify, issue a certificate of approval  
9 to, or register to operate an entity a person who otherwise may not be licensed,  
10 certified, issued a certificate of approval, or registered for a reason specified in sub.  
11 (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside at the  
12 entity a person who otherwise may not be employed, contracted with, or permitted  
13 to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person  
14 demonstrates to the department, or, in the case of an entity that is ~~located within the~~  
15 ~~boundaries of a reservation~~ subject to rehabilitation reviews by a tribe under sub.  
16 (5d) (c) or (d), to the person or body designated by the tribe under sub. (5d) (a) 3., by  
17 clear and convincing evidence and in accordance with procedures established by the  
18 department by rule, or by the tribe, that ~~he or she~~ the person has been rehabilitated.

19           **SECTION 12.** 50.065 (5d) (c) of the statutes is created to read:

20           50.065 (5d) (c) 1. Subject to subd. 2., a tribe whose rehabilitation plan has been  
21 approved by the department may conduct reviews under sub. (5) with respect to all  
22 entities on the tribe’s reservation or trust land.

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24 conduct rehabilitation reviews under sub. (5) with respect to some, but not all,

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15 50.065 (7) (bm) Establish by rule criteria for the department to use in  
16 determining whether a tribe whose plan is approved under sub. (5d) (b) may be  
17 authorized to conduct rehabilitation reviews under sub. (5) for some, but not all,  
18 entities on the tribe's reservation or trust land.

19

(END)

# MEMORANDUM

from JOYCE L. KIEL  
Legislative Council Staff  
(608) 266-3137

3/14/01

L R B  
Legal Section

The Joint Legislative Council  
voted to introduce this.

Please have it jacketed and  
sent to Wendy Ulrichs at the Legislative  
Council staff.

Thanks,

Joyce Kiel





STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

February 1, 2001

### MEMORANDUM

To: Legislative Council - JLC

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-1176 Tribal administration of rehabilitation reviews under caregiver background check law

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9738 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.