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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2003-04

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on Agriculture...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

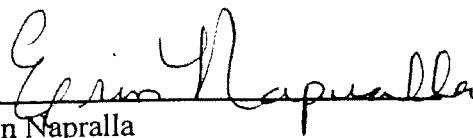
\* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



Moved by Representative Plouff, seconded by Representative M. Williams that **Assembly Bill 400** be recommended for passage.

Ayes: (12) Representatives Ott, M. Williams, Petrowski,  
Hines, Loeffelholz, Towns, Gronemus,  
Plouff, Balow, Vruwink, Hebl and Molepske.  
Noes: (2) Representatives Kestell and Suder.  
Absent: (1) Representative Ainsworth.

PASSAGE RECOMMENDED, Ayes 12, Noes 2

  
Erin Napralla  
Committee Clerk

## Vote Record Committee on Agriculture

Date: 10-30-03

Moved by: Plouff

Seconded by: Williams

AB 400      SB \_\_\_\_\_      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_      SJR \_\_\_\_\_      Appointment \_\_\_\_\_  
 AR \_\_\_\_\_      SR \_\_\_\_\_      Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement  
 Introduction       Rejection       Tabling       Nonconcurrence

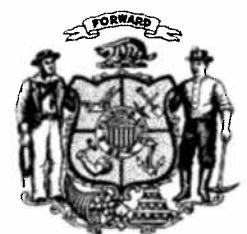
<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Representative Alvin Ott, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Mary Williams</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative John Ainsworth</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Representative Jerry Petrowski</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Steve Kestell</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Scott Suder</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative J.A. Hines</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Gabe Loeffelholz</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Debra Towns</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Barbara Gronemus</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Joe Plouff</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Larry Balow</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Amy Sue Vruwink</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Tom Hebl</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Representative Louis Molepske</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>12</u>	<u>2</u>	<u>1</u>	<u>—</u>

Motion Carried

Motion Failed



# WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
STATE-TRIBAL RELATIONS

June 18, 2003

RL 2003-08

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**LEGISLATION RECOMMENDED BY THE  
SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS**

Prepared by:  
Joyce L. Kiel, Senior Staff Attorney, and David L. Lovell, Senior Analyst  
June 18, 2003

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## PART I

### KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

#### Recommendations Introduced by the Joint Legislative Council

The Joint Legislative Council (JLC) has introduced the following legislation in the 2003-04 Session of the Legislature based on the recommendations of the Special Committee on State-Tribal Relations:

**A. 2003 ASSEMBLY JOINT RESOLUTION 37 AND 2003 SENATE JOINT RESOLUTION 36, RELATING TO STATE RECOGNITION OF THE SOVEREIGN STATUS OF FEDERALLY RECOGNIZED AMERICAN INDIAN TRIBES AND BANDS**

These companion resolutions provide that the Legislature: (1) affirms state recognition of the sovereign status of federally recognized American Indian tribes and bands; (2) encourages all state agencies to respect tribal sovereignty; and (3) encourages all state agencies to continue to reevaluate and improve the implementation of laws that affect American Indian tribal rights.

**B. 2003 ASSEMBLY BILL 398 AND 2003 SENATE BILL 189, RELATING TO CREATION OF THE WISCONSIN TRIBAL-STATE COUNCIL**

These companion bills create a Wisconsin tribal-state council, consisting of equal numbers of tribal and state representatives, to facilitate communications between the state government and tribal governments. The bills provide funding from tribal gaming revenues paid to the state for council operations and for three staff positions.

**C. 2003 ASSEMBLY BILL 399 AND 2003 SENATE BILL 190, RELATING TO PREPARATION OF TRIBAL IMPACT STATEMENTS FOR BILLS THAT WOULD HAVE AN IMPACT ON TRIBAL GOVERNMENTS OR AMERICAN INDIANS**

These companion bills require that statements be prepared regarding legislation that has an impact on American Indians or tribal governments that is different from the impact on other individuals or other governments or entities. The bills establish procedures for such tribal impact statements that are substantially similar to the procedures that exist for the preparation of legislative fiscal estimates.

**D. 2003 ASSEMBLY BILL 400 AND 2003 SENATE BILL 191, RELATING TO REPRESENTATIONS MADE REGARDING WILD RICE SOLD OR OFFERED FOR SALE IN THIS STATE**

Current law contains limited provisions regarding the labeling of wild rice offered for sale. These companion bills replace those provisions with a more comprehensive statute that requires that labels, signs, and other representations regarding wild rice offered for sale inform consumers if the wild rice is cultivated, if it is a blend of wild-grown and cultivated wild rice, and if it is machine harvested. The bills also require disclosure of the proportion of

wild-grown wild rice that is contained in mixes and the state or province where the wild rice was grown. The bills create penalties for violations of the labeling requirements.

**E. 2003 ASSEMBLY BILL 401 AND 2003 SENATE BILL 192, RELATING TO TRIBAL ADMINISTRATION OF REHABILITATION REVIEWS FOR PERSONS WHO OTHERWISE MAY NOT OPERATE, BE EMPLOYED AT, CONTRACT WITH, OR RESIDE AT AN ENTITY THAT PROVIDES CARE FOR CHILDREN OR ADULTS**

Current law permits a tribe to conduct rehabilitation reviews under the caregiver background check law with respect to entities located on a tribe's reservation under certain circumstances. If certain circumstances apply, these companion bills permit a tribe to conduct rehabilitation reviews for entities located on any of the following: (1) the tribe's reservation; (2) any off-reservation trust land of that tribe or a member of that tribe; or (3) outside the boundaries of the tribe's reservation or trust land if the entity is owned or operated by the tribe or a tribal enterprise. The last may occur only if the Department of Health and Family Services (DHFS) grants authority after considering various factors. The bills also specify that the tribe's rehabilitation review plan submitted to DHFS may request authority to conduct rehabilitation reviews with respect to some, but not all, entities located on the tribe's reservation or off-reservation trust land; they also require DHFS to promulgate administrative rules establishing criteria to determine whether to approve such a request.

**F. 2003 ASSEMBLY BILL 402 AND 2003 SENATE BILL 193, RELATING TO PROCEEDINGS INVOLVING AN AMERICAN INDIAN JUVENILE WHO IS ALLEGED TO HAVE COMMITTED A DELINQUENT ACT WHILE PHYSICALLY OUTSIDE THE BOUNDARIES OF A RESERVATION AND OFF-RESERVATION TRUST LAND BECAUSE OF CERTAIN TRIBAL COURT ORDERS**

These companion bills apply to an American Indian juvenile who is under an order of a tribal court (with the exception of certain types of orders) and is off the tribe's reservation and off-reservation trust land of that tribe or a tribal member as a direct consequence of that tribal court order. If the juvenile allegedly commits a delinquent act under these circumstances, the bills require the county intake worker to notify tribal officials. If tribal officials notify the intake worker that a petition may be filed in tribal court, the intake worker must consult with tribal officials to determine if it would be in the best interests of the juvenile and of the public to have the case proceed solely in tribal court. Similar consultation requirements apply to the district attorney (or corporation counsel) and juvenile court if the case proceeds to those levels.

The bills also eliminate the county where the juvenile resides as venue for a juvenile court delinquency proceeding under these circumstances, unless it is also either the county where the violation occurred or the county where the juvenile is present.

**Recommendations NOT Introduced by the JLC**

The Special Committee on State-Tribal Relations recommended the following legislation, but the JLC did not introduce these proposals in the 2003-04 Session of the Legislature:

**G. LRB-1470/1, RELATING TO POLICY OF EXECUTIVE BRANCH CONSULTATION WITH TRIBAL GOVERNMENTS**

LRB-1470/1 provides that the Legislature encourages the Governor to develop a consultation policy under which state executive branch agencies solicit input from tribal officials in developing state policies and programs that affect American Indians or American Indian tribes or that affect the relationship between state government and tribal governments. Under the policy, executive branch agencies also would identify personnel to meet regularly with tribal officials. The Governor is encouraged to promote positive government-to-government relations between the state and the tribes.

**H. LRB-1372/2, RELATING TO INCREASING THE MAXIMUM AMOUNT OF INDIAN STUDENT ASSISTANCE GRANTS**

Under the current Indian Student Assistance Grant program, the Higher Educational Aids Board (HEAB) makes grants to American Indian students enrolled in accredited institutions of higher education in this state. LRB-1372/3 increases the maximum grant amount that a student may receive under the program from \$1,100 per year to \$3,200 per year and increases the appropriation for the program to fund the increased grant amount.

## PART II

### COMMITTEE ACTIVITY

#### A. ASSIGNMENT

The Special Committee on State-Tribal Relations is a permanent committee of the JLC established under s. 13.83 (3), Stats. The committee is directed by statute to:

. . . study issues related to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues.

The membership of the committee, appointed by the JLC, consists of not fewer than six nor more than 12 legislator members of the Senate and Assembly, including at least one member of the majority party and at least one member of the minority party from each house, and not fewer than six nor more than 11 members selected from names submitted by the federally recognized American Indian tribes and bands in this state (tribes) or the Great Lakes Inter-Tribal Council (GLITC). The committee is assisted by a Technical Advisory Committee (TAC) composed of a representative of each of the following state departments: Health and Family Services; Workforce Development; Justice; Natural Resources; Public Instruction; Revenue; and Transportation. A list of the JLC membership, the committee membership, and the TAC membership are included as *Appendices 2, 3, and 4*, respectively.

#### B. SUMMARY OF MEETINGS

The committee held two meetings during the period covered by this report on the following dates:

September 24, 2002. The committee held its first meeting in the State Capitol. The committee began a review of legislation that had been introduced in the previous session of the Legislature by the JLC at the recommendation of the 2000-02 committee, but not passed. It delayed voting on recommendations that the JLC reintroduce those bills in the new Legislature to allow members of the committee who were not members of the 2000-02 committee to study the proposals further.

The committee heard presentations from representatives of the Wisconsin Indian Education Association and HEAB regarding the financing of higher education for American Indian students. In particular, the committee discussed the Indian Student Assistance Grant program, the HEAB's budget recommendations for that program and appropriate levels of student assistance under that program and directed staff to develop options for legislation. The committee also directed the chair to express to gubernatorial candidates the committee's support for the HEAB's alternate budget proposal to provide larger grants under the program.

Staff briefed the committee on work related to the coordination of tribal and state court actions in certain juvenile cases in which both court systems may have jurisdiction. The

committee directed staff to continue its work and bring a draft to the committee at a later meeting.

The committee received information from staff regarding the negotiation of tribal-state gaming compacts and the allocation by the state of gaming revenues paid by the tribes to the state under those compacts. The committee also discussed its assignment.

November 19, 2002. The committee met at Lac du Flambeau. It heard presentations regarding the coordination of the actions of tribal and state court actions in cases relating to involuntary mental health and alcohol or other drug abuse commitments. Presentations were made by a panel of county and tribal officials led by Judge James B. Mohr, Vilas County Circuit Court, and by representatives of the DHFS.

The committee continued its discussion of legislation developed by the 2000-02 committee and introduced in the previous session of the Legislature. The chair directed staff to discuss concerns about the definition of reservation in one of these proposals (relating to tribal administration of rehabilitation reviews under the caregiver background check law) raised by the committee member representing the Ho-Chunk Nation and to then submit drafts to the committee on a mail ballot.

The committee also reviewed a bill draft related to the coordination of tribal and state court actions in certain juvenile cases in which both court systems may have jurisdiction and heard a presentation from staff from the Menominee Indian Tribe of Wisconsin and the Shawano County Department of Social Services. The chair directed staff to discuss concerns about the definition of reservation in the draft raised by the committee member representing the Ho-Chunk Nation and prepare a revised draft to include changes agreed to by committee members for submission to the committee on a mail ballot.

The committee continued its discussion of higher education funding for American Indian students and gave drafting instructions for a bill draft to be submitted to the committee on a mail ballot.

## **PART III**

### **RECOMMENDATIONS INTRODUCED BY THE JLC**

This Part of the report provides background information, and a description of the proposals recommended by the Special Committee on State-Tribal Relations for introduction in the 2003-04 Session of the Legislature and subsequently introduced by the JLC.

[Note: Each of the bills and the joint resolution have been introduced in both houses as companion legislation. For clarity, this report refers to them in singular form, e.g., “the bill.”]

#### **A. LEGISLATION REGARDING COMMUNICATIONS BETWEEN THE STATE GOVERNMENT AND TRIBAL GOVERNMENTS**

The resolution and two bills described in this section are the culmination of nearly three years of study and discussion by the Special Committee on State-Tribal Relations and by its predecessor, the American Indian Study Committee (AISC). From May 1999 through March 2000, the AISC discussed the idea of tribal delegates to the Legislature, although it did not make any recommendation on this topic.

When the 2000-02 Special Committee on State-Tribal Relations commenced its work in October 2000, it engaged in a broader discussion of improving communications between the state government and tribal governments. Under the sponsorship of the four legislative caucus leaders and the 11 tribal chairs, and with technical and financial assistance from the National Conference of State Legislatures and the National Congress of American Indians, Chair Musser helped to organize the Leadership Conference on State-Tribal Relations, which was held in Madison in February 2001. The conference identified many mechanisms that the state could pursue to improve communications between the state government and tribal governments. It also provided state and tribal leaders an opportunity to discuss issues and concerns regarding communications between their respective governments.

Following the Leadership Conference, the 2000-02 Special Committee studied the ideas identified or generated by the conference and developed four legislative recommendations based on those ideas.

Based on the recommendation of the 2000-02 Special Committee, the JLC introduced the following four proposals in the 2001-02 Legislative Session:

- 2001 Assembly Joint Resolution 90 (consultation policy).
- 2001 Assembly Joint Resolution 91 (sovereignty recognition).
- 2001 Assembly Bill 771 (tribal-state council).
- 2001 Assembly Bill 772 (tribal impact statements).

The bills and resolutions were introduced very late in the legislative session. They were referred to the Assembly Committee on Government Operations, which held a public hearing on all four proposals on February 27, 2002. No further action was taken and, thus, none of the proposals passed.

During a special session called to review the state budget, the Senate incorporated the provisions of Assembly Bill 771 (creating a tribal-state council) into its version of January 2000 Special Session Assembly Bill 1, the 2001-03 Budget Reform Bill. The Assembly did not concur in this action. The Conference Committee later removed this provision from the budget reform bill.

The 2002-04 Special Committee voted to recommend that the same four proposals (with slight modifications to update the drafts) be introduced by the JLC in the 2003-04 Legislative Session. The three proposals introduced by the JLC are described below. The fourth proposal, which was *not* introduced by the JLC in the 2003-04 Legislative Session is described in Part IV. A., below.

## **I. Recognition of the Sovereign Status of Tribes**

### ***a. Background***

The sovereign status of tribes is established as a matter of federal and tribal law. The sovereignty that a tribe possesses is inherent, which means that it comes from within the tribe itself, and existed before the founding of the United States. However, the U.S. Supreme Court has held that tribal sovereignty is not absolute but, rather, is subject to certain limits resulting from the unique relationship of the tribes to the United States. In general, under federal law, tribes retain those attributes of their original sovereignty that have not been given up in a treaty, divested by an act of Congress, or divested by implication as a result of their status as, to use the term adopted by the U.S. Supreme Court, "domestic dependent nations."

Tribal sovereignty is not dependent on state action. Nonetheless, the committee recommended that, in order to promote a better understanding of tribal sovereignty and better relations with the tribes, the state formally recognize the sovereign status of the tribes in the state. The 2000-02 committee recommended using as a pattern the resolution adopted by the California Legislature in 2000 to recognize the sovereignty of tribes in California.

### ***b. 2003 Assembly Joint Resolution 37 and 2003 Senate Joint Resolution 36***

The resolution states that the Legislature does the following:

(1) Affirms state recognition of the sovereign status of tribes as separate and independent political communities within the territorial boundaries of the United States.

(2) Encourages all state departments and agencies, when engaging in activities or developing policies affecting American Indian tribal rights or trust resources, to do so in a knowledgeable manner that is respectful of tribal sovereignty.

(3) Encourages all state departments and agencies to continue to reevaluate and improve the implementation of laws that affect tribal rights.

## **2. Wisconsin Tribal-State Council**

### ***a. Background***

More than 30 states have created some structure in their executive branch to address state-tribal relations. These include most of the states that contain substantial American Indian populations and many states with smaller American Indian populations, including some states in which no state recognized or federally recognized tribal governments are located. Some states have created these structures through legislation, while others have done so through executive orders or less formal executive actions. The organization and functioning of these entities vary greatly. A common feature, however, is that councils, commissions, and offices of Indian affairs typically either bring state and tribal representatives together or establish liaison between the governments. As a result, these entities facilitate communications and help inform the functioning of state government on matters involving American Indians and tribal governments.

At the Leadership Conference, it was observed that Wisconsin is perhaps the only state with a substantial American Indian presence--11 federally recognized American Indian tribes and bands and over 69,000 American Indian state residents--that does not have an executive branch institution designed to address state-tribal relations or to facilitate communications between state government and tribal governments.

### ***b. 2003 Assembly Bill 398 and 2003 Senate Bill 189***

These companion bills create a new council composed of 11 representatives of the American Indian tribes and bands in this state and 11 representatives of state and local governments. They direct the council to elect two cochairs, one from among the tribal representatives and one from among the state and local representatives. The council is attached to the Department of Administration (DOA) for administrative purposes but is designed to function autonomously. In particular, it determines its own times and locations of meetings and submits its reports to the Governor and the Legislature, rather than to the Secretary of Administration. The bills require all state agencies to provide assistance to the council, upon request.

The bills assign a number of functions to the council that relate to facilitating communications and sharing information between the state and tribal governments. In addition, the bills direct the council to monitor those actions of the executive and legislative branches of state government that may affect tribal governments and American Indians and to make policy recommendations regarding those matters. Specifically, the bills direct the council to do all of the following:

(1) Facilitate the resolution of disputes, disagreements, and misunderstandings between state government and tribal governments by coordinating communication between the appropriate representatives of the state and tribal governments.



(2) Serve as an information clearinghouse regarding state-tribal relations and state programs that affect tribal governments and American Indians.

(3) Serve as a resource to state agencies, authorities, and the Legislature on matters involving state-tribal relations, including providing staff support to task forces or committees.

(4) Monitor state executive branch policies and practices that affect tribal governments and American Indians.

(5) Develop recommendations for state executive branch policies.

(6) Monitor agreements between state government and tribal governments.

(7) Support and coordinate communication between state agency and authority liaisons who work with tribes, to promote the smooth delivery of state services to tribal governments and American Indians and to avoid the duplication of effort. The bill directs the council to review the adequacy of existing state liaison positions and to recommend any changes in the number of liaison positions as it deems necessary.

(8) Monitor state legislation that potentially may affect tribal governments or American Indians.

(9) Develop recommendations for state legislation.

(10) Provide training to state officials and employees concerning the legal status of American Indian tribes and bands, legal and practical aspects of relations between tribal governments and the state and federal governments, and issues affecting state-tribal relations. The bill directs the council to provide training to state executive branch officials and employees at least once per year and to provide training to state legislators and legislative employees at least once at the start of each legislative session.

(11) Submit a biennial report on the council's activities to the Governor, to the Special Committee on State-Tribal Relations, and to the Chief Clerk of each house of the Legislature for distribution to the appropriate standing committees.

The bill appropriates \$215,000 in fiscal year 2003-04 for the operation of the council and authorizes three full-time equivalent positions: an executive director, a policy analyst, and a support position. The appropriation is from gaming revenues paid by the tribes to the state. Of the amount appropriated, \$15,000 is for one-time start-up costs; the balance (\$200,000) would be the council's base funding for purposes of future budgeting.

### **3. Tribal Impact Statements**

#### ***a. Background***

It is not uncommon for legislation to have impacts on American Indians or tribal governments that are different from the impacts on other individuals or on other units of government. Differential impacts can arise from a variety of sources but primarily from the

unique legal status of reservations and land held in trust by the federal government for tribes or tribal members and from federal law relating to activities on those lands. In addition, these impacts may not be intended or anticipated by the authors of the legislation. In the past, this has led to legislation of general applicability that has had unanticipated adverse impacts on American Indians or tribal governments, for example, in the design of the state's economic development programs.

The preparation of a report describing any impact of legislation on American Indians or tribal governments that is different from the impact on other individuals or governmental units is one mechanism to help inform the legislative process and prevent the enactment of legislation with unintended impacts on American Indians or tribal governments.

***b. 2003 Assembly Bill 399 and 2003 Senate Bill 190***

The bill requires the preparation of statements describing the impact of legislation on tribal governments and American Indians. The requirements of the bill are designed to parallel the current requirements contained in the statutes and the joint rules of the Legislature for the preparation of statements describing the fiscal impact of legislation.

The bill directs the Legislative Reference Bureau (LRB) to identify bills for which tribal impact statements are required and authorizes either house of the Legislature to request one. In addition, the chair or either cochair of the Special Committee on State-Tribal Relations may request a tribal impact statement. If the Wisconsin tribal-state council is created (2003 Assembly Bill \_\_ and 2003 Senate Bill 189), the bill permits the executive director or either cochair of the council to request a tribal impact statement. It directs the DOA to assign the task of preparing a statement to the appropriate agency or agencies. It establishes a deadline for the preparation of a statement and requirements for its distribution. The bill prohibits a standing committee from holding a public hearing on, or reporting a bill for which a tribal impact statement is required, prior to receipt of the statement.

**B. LEGISLATION REGARDING THE LABELING OF WILD RICE OFFERED FOR SALE**

**1. Background**

Wild rice is a very important resource for several American Indian tribes in Wisconsin for cultural, historical, and economic reasons. Many members of these tribes harvest wild rice by traditional methods, for their own use and to sell. Some non-Indian individuals also use traditional harvest methods.

Wild rice that is offered for sale comes to market through three different channels: some is harvested by hand from wild stands; some is cultivated on farms and harvested by combine (largely in California and Minnesota); and some is harvested mechanically from wild stands (a practice in Canada). Because the traditional process of harvesting wild rice by hand is much more labor intensive than mechanized cultivation and harvesting, the cost of production, and so the retail price, of hand-harvested, wild-grown wild rice is several times greater than that of cultivated wild rice or of wild rice that is mechanically harvested from the wild. The price difference puts sellers of wild rice that is hand-harvested from the wild at a

competitive disadvantage to the sellers of cultivated and mechanically-harvested wild rice, especially where the buyer does not have information regarding the source of the wild rice.

Current law contains some requirements for the labeling of wild rice that is offered for sale. Specifically, a wholesaler or supplier is required to label cultivated wild rice as being "paddy-grown" unless the wild rice is blended with wild-grown wild rice. In addition, a wholesaler or supplier is prohibited from labeling wild rice as "100% natural wild rice" unless it is 100% wild-grown wild rice. However, current law does not indicate how blends of wild-grown and cultivated wild rice may be labeled or address the method of harvesting or the place of origin of the wild rice. In addition, current law does not apply to retail sales.

This proposal was also introduced by the JLC on the recommendation of the 2000-02 Special Committee. It was introduced late in the 2001 Legislative Session as 2001 Assembly Bill 773. The Assembly passed the bill on a voice vote, but the Senate did not take it up before final adjournment.

## **2. 2003 Assembly Bill 400 and 2003 Senate Bill 191**

The bill repeals and recreates the existing statute relating to the labeling of wild rice offered for sale in this state.

The bill requires that the label of any wild rice that is sold or offered for sale in this state, at retail or wholesale, and any sign, advertisement, or other representation regarding such wild rice must inform consumers if the wild rice is cultivated, if it is a blend of wild-grown and cultivated wild rice, and if it is machine harvested. If the wild rice is a blend, the label must indicate the proportions making up the blend. If the wild rice is in a packaged food product that contains at least 40% other food products and that is labeled or marketed as a wild rice product, the label must indicate the proportion of the product that is wild rice. The bill also requires that labels and representations regarding wild rice indicate the state or province in which the wild rice was grown.

The labeling requirements do not apply to wild rice that is cooked and ready to eat. Wild rice that is identified as cultivated or blended, and packaged wild rice products are not required to be identified as machine harvested.

The bill does not make any requirements regarding the labeling of or representations regarding wild rice that is 100% wild-grown or that is harvested by traditional methods, except to require that the state or province of origin be identified.

The bill requires the Department of Agriculture, Trade, and Consumer Protection to promulgate rules for implementation of the requirements created by the bill.

The bill provides that a person who violates the labeling and advertising requirements must forfeit not less than \$50 nor more than \$500 for the first violation and not less than \$200 nor more than \$1,000 for subsequent violations.

**C. LEGISLATION REGARDING TRIBAL ADMINISTRATION OF REHABILITATION REVIEWS UNDER THE CAREGIVER BACKGROUND CHECK LAW**

**1. Background**

Under current law, except as discussed below, if a person has been convicted of certain serious crimes, has abused or neglected a client or a child, has misappropriated the property of a client, 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, in general, DHFS or other regulatory agencies may not license, certify, issue a certificate of approval to, or register the person to operate a facility, organization, or service (an "entity") that provides care for adults or children and that is subject to the caregiver background check law.

Also, an entity may not employ or contract with the person as a caregiver, or permit the person to reside at the entity as a nonclient resident, 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.

However, these prohibitions 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.)

Under current law, a 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 certain elements. DHFS may disapprove the plan under certain limited circumstances.

2003 Assembly Bill 400 and 2003 Senate Bill 192 are identical to 2001 Assembly Bill 223, which was introduced by the 2001-02 JLC on the recommendation of the 2000-02 Special Committee on State-Tribal Relations. 2001 Assembly Bill 223 passed the Assembly on a vote of Ayes, 98; Noes, 0. The Senate did not vote on concurrence before adjournment, thus the bill failed to be enacted.

**2. 2003 Assembly Bill 401 and 2003 Senate Bill 192**

The bill provides that if a tribe's rehabilitation review program has been approved by DHFS, a tribe may conduct rehabilitation reviews for entities located not only on the tribe's reservation but also: (a) on any off-reservation trust land of that tribe or a member of that tribe; and (b) outside the boundaries of the tribe's reservation and off-reservation trust land if the entity is owned or operated by the tribe or a tribal enterprise. The bill defines "tribal enterprise" as a business that is at least 51% owned or 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 tribes, and is currently providing a useful business function. In connection with making these changes, the bill changes the definition of reservation to land in Wisconsin within the boundaries of a tribe's reservation.

The bill provides that when evaluating a tribe's request to conduct rehabilitation reviews outside the boundaries of the tribe's reservation or any off-reservation trust land, 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 is rationally related to the protection of clients.

The bill also 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 off-reservation trust land. However, the bill additionally 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. The bill requires DHFS to grant the tribe's request if criteria established by DHFS by administrative rule are met.

#### **D. LEGISLATION REGARDING AMERICAN INDIAN JUVENILES ALLEGED TO HAVE COMMITTED A DELINQUENT ACT UNDER CERTAIN CIRCUMSTANCES**

##### **I. Background**

2003 Assembly Bill 402 and 2003 Senate Bill 193 relates to proceedings involving an American Indian juvenile (age 16 or under for violations of criminal laws) who is physically outside the boundaries of the reservation of a tribe and any off-reservation trust land of either a tribe or tribal member as a direct consequence of an order issued by a court of that tribe (other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship) and allegedly commits a delinquent act.

The Menominee Indian Tribe of Wisconsin originally proposed that the 2000-02 Special Committee on State-Tribal Relations address the issue following the Wisconsin Court of Appeals decision in *In the Interest of Elmer J.K. III*, 224 Wis. 2d 372, 591 N.W.2d 176 (Wis. Ct. App. 1999). That case involved a Menominee juvenile who had been adjudicated delinquent by the Menominee Tribal Court and placed by the tribal court in a residential facility outside the boundaries of the Menominee Reservation and who then engaged in disorderly conduct and battery to staff members at the residential facility in violation of several Wisconsin criminal statutes. The *Elmer J.K.* court held that the state court had jurisdiction and stated that the Menominee Tribal Court did not have jurisdiction. Chair Musser directed that a group of interested persons be convened to consider the matter. The group developed a proposal that was presented to the Special Committee. The bill contains the modifications to that proposal agreed to by committee members.

## 2. 2003 Assembly Bill 402 and 2003 Senate Bill 193

The bill relates to an American Indian juvenile who allegedly commits a delinquent act while physically outside the boundaries of a tribe's reservation and any off-reservation trust land of that tribe or a tribal member as a direct consequence of a tribal court order as noted above (the specified circumstances). The bill provides a process for consultation to determine which government (tribal or state) should exercise its existing jurisdiction based on the best interests of the juvenile and of the public. The bill does not alter, diminish, or expand the jurisdiction of either the state courts or tribal courts. The jurisdiction of a tribal court is determined by federal law and tribal law, rather than state law. The provisions of the bill are as follows:

### *a. Duties of Juvenile Court Intake Worker*

If the juvenile court intake worker determines in the intake inquiry that the specified circumstances exist, the intake worker must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under the specified circumstances. If the intake worker is notified by a tribal official that a petition related to the delinquent act has been or may be filed in tribal court, the intake worker must consult with tribal officials.

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker must, as under current law, do one of the following: (1) enter into a deferred prosecution agreement; (2) request that the district attorney file a delinquency petition or, if the juvenile is under 10 years of age, request that the district attorney or corporation counsel file a juvenile in need of protection or services (JIPS) delinquency petition; or (3) close the case.

### *b. Duties of District Attorney or Corporation Counsel*

Under current law, a district attorney may file a delinquency petition in the juvenile court, and either the district attorney or corporation counsel (as determined by the county board) may file a JIPS delinquency petition in the juvenile court, based on the request of the intake worker or after the intake worker has closed the case. The bill provides that, if the specified circumstances apply, before filing such a petition the district attorney or corporation counsel must determine whether the intake worker has received notification from a tribal official that a petition relating to the alleged delinquent act has been or may be filed in tribal court. If the intake worker has received that notification or if a tribal official has provided that notification directly to the district attorney or corporation counsel, the district attorney or corporation counsel must attempt to consult with appropriate tribal officials before filing the delinquency or JIPS delinquency petition in juvenile court.

*c. Delinquency or JIPS Delinquency Petition*

If a decision is made to file a delinquency petition or JIPS delinquency petition in juvenile court, the petition must include a statement that the specified circumstances exist. In addition, the petition also must include a statement that a petition has been or may be filed in tribal court relating to the same delinquent act if a tribal official has informed the intake worker, district attorney, or corporation counsel that that is the case.

*d. Juvenile Court Procedure*

If the juvenile court is informed during a delinquency proceeding or JIPS delinquency proceeding that a petition relating to the same delinquent act has been or may be filed in tribal court, the juvenile court must stay (suspend) the proceeding and communicate with the tribal court to discuss whether the tribal court or juvenile court may be the more appropriate forum. If the juvenile court and tribal court either mutually agree or agree under the terms of an established judicial protocol applicable to the juvenile court that the tribal court would be the more appropriate forum, the juvenile court must either dismiss the delinquency petition or JIPS delinquency petition without prejudice or stay the proceeding. The juvenile court's decision must be based on the best interests of the juvenile and of the public.

If the juvenile court stays the proceeding, rather than dismissing the petition, the juvenile court's jurisdiction over the juvenile continues for one year after the last order affecting the stay is entered. During that time, a motion may be made by any of the parties to lift the stay order and have the juvenile court take further action. If, however, the stay order remains in place, the petition will automatically be dismissed one year following the last court order.

*e. Venue*

If a petition relating to the same delinquent act has been filed in tribal court, the bill prohibits venue for a delinquency proceeding or JIPS delinquency proceeding from being in the county where an American Indian juvenile resides (unless it is also either the county where the juvenile is present or the county where the violation occurred). In contrast, under current law, venue for a delinquency proceeding or JIPS delinquency proceeding may be in any of the following 3 county circuit courts: (1) the county where the juvenile resides; (2) the county where the juvenile is present; or (3) the county where the violation occurred.

## **PART IV**

### **COMMITTEE RECOMMENDATIONS** **NOT INTRODUCED BY THE JLC**

The Special Committee on State-Tribal Relations made the following recommendations for legislation that were not introduced by the JLC:

#### **A. CONSULTATION POLICY**

##### **1. Background**

Pursuant to an Executive Order, the federal Bureau of Indian Affairs has established a government-to-government consultation policy to promote dialogue between the Bureau of Indian Affairs and tribes regarding proposed federal actions affecting tribes so that meaningful and timely input is received from tribal officials about proposed federal actions. Oregon enacted legislation, effective January 1, 2002, providing that a state agency must develop and implement a policy to promote communication between the state agency and tribes and must make a reasonable effort to cooperate with tribes in developing and implementing programs of the state agency that affect tribes. Washington has developed government-to-government implementation guidelines which, among other things, formalize the requirement for the State of Washington to seek consultation and participation by representatives of tribal governments in developing policy and program activities.

Wisconsin currently does not have a policy regarding consultation. The committee recommended a joint resolution endorsing a consultation process.

##### **2. LRB-1470/1**

LRB-1470/1 states that the Legislature encourages the Governor to develop and implement a consultation policy under which state executive branch agencies do all of the following:

(1) Ensure meaningful and timely input by representatives of tribal government in developing state policies and programs that have a substantial and direct effect on: (a) one or more tribes in the state; (b) American Indians in the state; or (c) the relationship between state government and the tribes in the state.

(2) Identify key personnel in the agency who are responsible for coordination with tribal governments and have them meet on a regular basis with tribal officials regarding issues of mutual interest.

Under the joint resolution, the Legislature also encourages the Governor to promote positive government-to-government relations between the state and the tribes in Wisconsin.



## **B. LEGISLATION REGARDING INDIAN STUDENT ASSISTANCE GRANTS**

### **1. Background**

The Indian Student Assistance Program is a needs-based grant program administered by HEAB to assist Indian students to receive a higher education. Grants are available for undergraduate and graduate study at any accredited public or private institution of higher education in this state. Full- and part-time students in good academic standing are eligible for grants for a period of up to five years. To be eligible for a grant, a student must be a resident of this state and must have at least 1/4 Indian ancestry, as certified by a federally recognized Indian tribe, or be recognized as a member of a tribe for purposes of the program.

When this program was created in 1971, a cap on the maximum size of Indian Student Assistance grants was set at \$1,500 per year. The cap was increased to \$1,800 in 1979 and to \$2,200 in 1991, to reflect increases in the cost of higher education. 1995 Wisconsin Act 27, the 1995-97 Biennial Budget Act, did not change the cap itself, but reduced the amount of a grant that may be paid from state revenues to \$1,100. That act created a separate appropriation from which the grant amounts may be matched with funds contributed by tribes. Although the tribes typically provide some financial assistance to their tribal members for higher education, they do not do so by contributing funds to HEAB to specifically match the part of the Indian Student Assistance grant that is funded by the state program.

1999 Wisconsin Act 9, the 1999-2001 Biennial Budget Act, changed the funding source for the grant from general purpose revenue to program revenue derived from gaming revenues paid to the state by the tribes under the gaming compacts and related agreements.

### **2. LRB-1372/3**

LRB-1372/3 does the following:

- Increases the maximum amount of individual grants allowed from \$1,100 to \$3,200. This amount is intended to fund the same share of average financial need as the grants funded in 1994-95, the last time that the grant amount was modified.
- Increases the appropriation for grants to an amount estimated to allow full funding of grant applications at the higher grant amount. The draft assumes a base funding level of \$787,600 annually and increases this appropriation by \$1,481,600 for a total appropriation of \$2,269,200 annually.
- Repeals the appropriation and language regarding tribal contributions for matching grants.

Committee and Joint Legislative Council Votes

Special Committee Votes

This Appendix identifies the votes by the Special Committee on State-Tribal Relations and the JLC on the proposals that were approved by the Special Committee for recommendation to the JLC.

By a mail ballot dated December 18, 2002, the Special Committee voted to recommend the following drafts to the JLC for introduction in the 2003-04 Session of the Legislature. The votes on the drafts are as follows:

- WLC: 0082/1, relating to policy of executive branch consultation with tribal governments. The motion passed on a vote of *Ayes, 16* (Reps. Musser, Boyle, Coggs, Hines, Pettis, and Sherman; Sens. George and Zien; and Public Members Besaw, Bichler, Brown, Gordon, Ninham, Puskarenko, Taylor, and Thundercloud); *Noes, 0*; and *Not Voting, 1* (Bigboy). This was subsequently redrafted by the Legislative Reference Bureau (LRB) as LRB-1470/1.
- WLC: 0083/1, relating to state recognition of the sovereign status of federally recognized American Indian tribes and bands. The motion passed on a vote of *Ayes, 16* (Reps. Musser, Boyle, Coggs, Hines, Pettis, and Sherman; Sens. George and Zien; and Public Members Besaw, Bichler, Brown, Gordon, Ninham, Puskarenko, Taylor, and Thundercloud); *Noes, 0*; and *Not Voting, 1* (Bigboy). This was subsequently redrafted by the LRB as LRB-1417/1.
- WLC: 0084/1, relating to creation of the Wisconsin tribal-state council and making an appropriation. The motion passed on a vote of *Ayes, 16* (Reps. Musser, Boyle, Coggs, Hines, Pettis, and Sherman; Sens. George and Zien; and Public Members Besaw, Bichler, Brown, Gordon, Ninham, Puskarenko, Taylor, and Thundercloud); *Noes, 0*; and *Not Voting, 1* (Bigboy). This was subsequently redrafted by the LRB as LRB-1397/2.
- WLC: 0085/1, relating to preparation of tribal impact statements for bills that would have an impact on tribal governments or American Indians. The motion passed on a vote of *Ayes, 15* (Reps. Musser, Boyle, Coggs, Hines, and Pettis; Sens. George and Zien; and Public Members Besaw, Bichler, Brown, Gordon, Ninham, Puskarenko, Taylor, and Thundercloud); *Noes, 1* (Sherman); and *Not Voting, 1* (Bigboy). This was subsequently redrafted by the LRB as LRB-1398/1.

- WLC: 0086/1, relating to representations made regarding wild rice sold or offered for sale in this state, granting rule-making authority, and providing a penalty. The motion passed on a vote of **Ayes, 16** (Reps. Musser, Boyle, Coggs, Hines, Pettis, and Sherman; Sens. George and Zien; and Public Members Besaw, Bichler, Brown, Gordon, Ninham, Puskarenko, Taylor, and Thundercloud); **Noes, 0**; and **Not Voting, 1** (Bigboy). This was subsequently redrafted by the LRB as LRB-1368/1.

- WLC: 0080/1, relating to increasing the maximum amount of Indian student assistance grants and making an appropriation. The motion passed on a vote of **Ayes, 16** (Reps. Musser, Boyle, Coggs, Hines, Pettis, and Sherman; Sens. George and Zien; and Public Members Besaw, Bichler, Brown, Gordon, Ninham, Puskarenko, Taylor, and Thundercloud); **Noes, 0**; and **Not Voting, 1** (Bigboy). This was subsequently redrafted by the LRB as LRB-1372/3.

By a mail ballot dated April 24, 2003, the Special Committee voted to recommend the following drafts to the JLC for introduction in the 2003-04 Session of the Legislature. The votes on the drafts are as follows:

- WLC: 0148/1, relating to tribal administration of rehabilitation reviews for persons who otherwise may not operate, be employed at, contract with, or reside at an entity that provides care for children or adults and granting rule-making authority. The motion passed on a vote of **Ayes, 12** (Reps. Musser, Boyle, Hines, Pettis, and Sherman; Sen. Zien; and Public Members Bichler, Brown, Gordon, Ninham, Puskarenko, and Taylor; **Noes, 1** (Rep. Coggs); and **Not Voting, 4** (Sen. George; and Public Members Besaw, Bigboy, and Thundercloud). This was subsequently redrafted by the LRB as LRB-2552/1.

- WLC: 0039/2, relating to proceedings involving an American Indian juvenile who is alleged to have committed a delinquent act while off a reservation and off-reservation trust land because of certain tribal court orders. The motion passed on a vote of **Ayes, 12** (Reps. Musser, Boyle, Hines, Pettis, and Sherman; Sen. Zien; and Public Members Bichler, Brown, Gordon, Ninham, Puskarenko, and Taylor; **Noes, 1** (Rep. Coggs); and **Not Voting, 4** (Sen. George; and Public Members Besaw, Bigboy, and Thundercloud). This was subsequently redrafted by the LRB as LRB-2553/2.

*[A ballot submitted by Sen. George after publication of the Proposed Report to the Legislature (May 20, 2003) indicated that he voted Aye on WLC: 0148/1 and WLC: 0039/2.]*

### JLC Votes

At its June 3, 2003 meeting, the JLC voted as follows on the recommendations of the Special Committee on State-Tribal Relations:

- LRB-1417/1, introduction by the JLC passed by a vote of Ayes, 15 (Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Erpenbach, Harsdorf, Risser, and Welch); Noes, 2 (Rep. Gard; and Sen. Ellis); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer). LRB-1417/1 was subsequently introduced as companion resolutions, 2003 Assembly Joint Resolution 37 and 2003 Senate Joint Resolution 36.
- LRB-1397/2, introduction by the JLC passed by a vote of Ayes, 15 (Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Erpenbach, Harsdorf, Risser, and Welch); Noes, 2 (Rep. Gard; and Sen. Ellis); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer). LRB-1397/2 was subsequently introduced as companion bills, 2003 Assembly Bill 398 and 2003 Senate Bill 189.
- LRB-1398/1, introduction by the JLC passed by a vote of Ayes, 15 (Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Erpenbach, Harsdorf, Risser, and Welch); Noes, 2 (Rep. Gard; and Sen. Ellis); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer). LRB-1398/1 was subsequently introduced as companion bills, 2003 Assembly Bill 399 and 2003 Senate Bill 190.
- LRB-1368/1, introduction by the JLC passed by a vote of Ayes, 15 (Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Erpenbach, Harsdorf, Risser, and Welch); Noes, 2 (Rep. Gard; and Sen. Ellis); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer). LRB-1368/1 was subsequently introduced as companion bills, 2003 Assembly Bill 400 and 2003 Senate Bill 191.
- LRB-2552/1, introduction by the JLC passed by a vote of Ayes, 15 (Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Erpenbach, Harsdorf, Risser, and Welch); Noes, 2 (Rep. Gard; and Sen. Ellis); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and

Panzer). LRB-2552/1 was subsequently introduced as companion bills, 2003 Assembly Bill 401 and 2003 Senate Bill 192.

- LRB-2553/2, introduction by the JLC passed by a vote of Ayes, 15 (Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend, and Travis; and Sens. Lasee, Brown, Darling, Decker, Erpenbach, Harsdorf, Risser, and Welch); Noes, 2 (Rep. Gard; and Sen. Ellis); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer). LRB-2553/2 was subsequently introduced as companion bills, 2003 Assembly Bill 402 and 2003 Senate Bill 193.
- Introduction of LRB-1470/1 failed by a vote of Ayes, 9 (Reps. Wieckert, Freese, Schneider, Townsend, and Travis; and Sens. Darling, Decker, Erpenbach, and Risser); Noes, 8 (Reps. Gard, Kaufert, and Lehman; and Sens. Lasee, Brown, Ellis, Harsdorf, and Welch); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer).
- Introduction of LRB-1372/3 failed by a vote of Ayes, 8 (Reps. Freese, Schneider, Townsend, and Travis; and Sens. Brown, Decker, Erpenbach, and Risser); Noes, 9 (Reps. Wieckert, Gard, Kaufert, and Lehman; and Sens. Lasee, Darling, Ellis, Harsdorf, and Welch); and Absent, 5 (Reps. Coggs, Foti, and Kreuser; and Sens. George and Panzer).

*[Rep. Foti noted that, had he been present, he would have voted "no" on all eight of the drafts recommended by the Special Committee on State-Tribal Relations.]*

## APPENDIX 2

### JOINT LEGISLATIVE COUNCIL s. 13.81, Stats.

#### CO-CHAIR

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*Senate President*  
2259 Lasee Road  
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#### CO-CHAIR

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

## APPENDIX 3

### STATE-TRIBAL RELATIONS

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Lac Courte Oreilles Bd. Of Lake Sup.  
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**STUDY ASSIGNMENT:** The Committee is directed to study issues relating to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

Established and Chair and Vice Chair appointed by a May 22, 2002 mail ballot; members appointed by a July 15, 2002 mail ballot.

17 MEMBERS: 2 Senators; 6 Representatives; and 9 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Joyce L. Kiel, Senior Staff Attorney; David L. Lovell, Senior Analyst; and Tracey Uselman, Support Staff.

**STATE-TRIBAL RELATIONS**

**Technical Advisory Committee**

JOHN GREENE

**Department of Justice**  
Assistant Attorney General  
123 West Washington Ave.  
Madison, WI 53702-0009

J.P. LEARY

**Department of Public Instruction**  
125 South Webster St.  
Madison, WI 53702-0008

RACHELLE ASHLEY

**Department of Workforce Development**  
201 East Washington Ave., Rm. E200  
Madison, WI 53707-7935

JIM WEBER

**Department of Health and Family Services**  
1 West Wilson St.  
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EUGENE JOHNSON

**Department of Transportation**  
Office of Disadvantaged Bus. Ent. Programs  
4802 Sheboygan Ave., Rm. 451  
Madison, WI 53702-0002

MICHAEL LUTZ

**Department of Natural Resources**  
101 South Webster LS/5  
Madison, WI 53702-0005

THOMAS OURADA

**Department of Revenue**  
2135 Rimrock Rd., #624A  
Madison, WI 53713-1443

**ASSIGNMENT:** Established pursuant to s. 13.83 (3) (f), Stats., to assist the Special Committee on State-Tribal Relations in performing its statutory functions.

**7 MEMBERS:** One representative designated by the following departments: Health and Family Services; Justice; Natural Resources; Public Instruction; Revenue; Transportation; and Workforce Development.



Committee Materials List

**April 24, 2003 Mail Ballot**

April 24, 2003 Mail Ballot

Memorandum, regarding mail ballot

Memorandum, to the Special Committee members from Representative Terry Musser, Chair, Special Committee on State-Tribal Relations, relating to Mail Ballot (4-24-03)

WLC: 0039/2, relating to proceedings involving an American Indian juvenile who is alleged to have committed a delinquent act while off a reservation and off-reservation trust land because of certain tribal court orders

WLC: 0148/1, relating to tribal administration of rehabilitation reviews for persons who otherwise may not operate, be employed at, contract with, or reside at an entity that provides care for children or adults and granting rule-making authority

**December 18, 2002 Mail Ballot**

December 18, 2002 Mail Ballot

WLC: 0080/1, relating to increasing the maximum amount of Indian student assistance grants and making an appropriation

WLC: 0082/1, relating to policy of executive branch consultation with tribal governments

WLC: 0083/1, relating to state recognition of the sovereign status of federally recognized American Indian tribes and bands

WLC: 0084/1, relating to creation of the Wisconsin tribal-state council and making an appropriation

WLC: 0085/1, relating to preparation of tribal impact statements for bills that would have an impact on tribal governments or American Indians

WLC: 0086/1, relating to representations made regarding wild rice sold or offered for sale in this state, granting rule-making authority, and providing a penalty

**November 19, 2002 Meeting**

Memo No. 02-4, Jurisdiction Over An American Indian Juvenile Who Is Alleged To Have Committed a Delinquent Act While Off the Reservation Under a Tribal Court Order (11-11-02)

WLC: 0039/1, relating to proceedings involving an American Indian juvenile who is alleged to have committed a delinquent act while off a reservation and off-reservation trust land because of certain tribal court orders

Memorandum to Working Group members, relating to jurisdiction over an American Indian juvenile who is alleged to have committed a delinquent act while off the reservation because of a tribal court order (10-25-02)

Memo No. 02-5, Legislative Options Relating to Funding for Indian Student Assistance Grants (11-11-02)

Letter, to Governor-Elect James Doyle, from Representative Terry Musser, Chair, Special Committee on State-Tribal Relations, relating to Indian student assistance grants

Letter, from John Wilhelmi, Program Attorney, Menominee Indian Tribe of Wisconsin, relating to jurisdiction over an American Indian juvenile who is alleged to have committed a delinquent act while off the reservation under a tribal court order

Flow Chart, Judge James B. Mohr, Vilas County Circuit Court, relating to involuntary mental commitment proceedings

Testimony, Dan Zimmerman, Bureau of Community Health, Department of Health and Family Services, relating to funding for mental health services

Testimony, Patrick Cork, Area Administrator, Office of Strategic Finance, Area Administration, Rhinelander Regional Office, Department of Health and Family Services

Memorandum, Dan Zimmerman, Bureau of Community Mental Health, relating to the November 19, 2002 meeting (11-21-02)

## **September 24, 2002 Meeting**

Memo No. 02-1, Legislation Recommended by the Special Committee on State-Tribal Relations to the 2001-02 Legislature (9-16-02)

Memo No. 02-2, Indian Student Assistance Program (9-16-02)

Memo No. 02-3, Negotiation of Tribal-State Gaming Compacts and Allocation of Tribal Gaming Revenue Paid to the State (9-16-02)

Testimony, Scott Beard, President, Wisconsin Indian Education Association

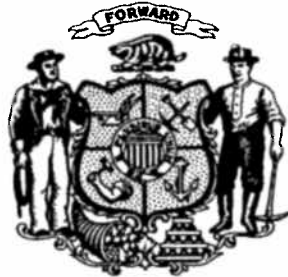
Report and application, Jane Hojan-Clark, Executive Secretary, Higher Educational Aids Board



State of Wisconsin  
JOINT LEGISLATIVE COUNCIL

Co-Chairs  
ALAN LASEE  
President, State Senate

STEVE WIECKERT  
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF  
Terry C. Anderson  
Director  
Laura D. Rose  
Deputy Director

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON AGRICULTURE  
FROM: Terry C. Anderson, Director *TCA*  
RE: Hearing on 2003 Assembly Bill 400  
DATE: July 15, 2003

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2003-08, dated June 18, 2003.

The following recommendation of the Special Committee on State-Tribal Relations has been referred to your committee:

**2003 Assembly Bill 400**, relating to representations made regarding wild rice sold or offered for sale in this state, granting rule-making authority, and providing a penalty.

Assembly Bill 400 is scheduled to be considered by your committee at its meeting which will be held on **Thursday, July 24, 2003, beginning at 10:30 a.m., in Room 417 North, State Capitol.**

If you have any questions relating to the above report or bill, please feel free to contact Joyce Kiel, Senior Staff Attorney, at 266-3137.

TCA:wu;ksm

Enclosure



STATE OF WISCONSIN


To Bulanda  
Date 6-27-03 Time 11:40

WHILE YOU WERE OUT

M Paul Mendline  
of Rest. Assoc.  
Phone 270-9950

Telephoned	<input checked="" type="checkbox"/>	Please Call	<input checked="" type="checkbox"/>
Called to See You	<input type="checkbox"/>	Rush	<input type="checkbox"/>
Returned Your Call	<input type="checkbox"/>	Will Call Again	<input type="checkbox"/>

Message Re: AB 400  
Wm Bruce Bull

\* He would like to be told  
 when the hearing on

Party Receiving Call

this sit will be ... LM 7/17/03

STATE OF WISCONSIN

Re. AB 400 Wild & Rice  
To \_\_\_\_\_  
Date 7/8 message from Enn time \_\_\_\_\_

WHILE YOU WERE OUT

M Kerlynn called. A1 is  
of ok w/ 24 hr but there is  
Phone no guarantee held sether

Telephoned	<input type="checkbox"/>	Please Call	<input type="checkbox"/>
Called to See You	<input type="checkbox"/>	Rush	<input type="checkbox"/>
Returned Your Call	<input type="checkbox"/>	Will Call Again	<input type="checkbox"/>

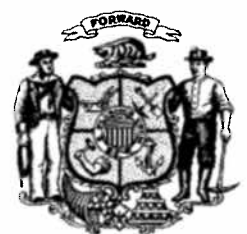
Message \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Party Receiving Call



# WISCONSIN STATE LEGISLATURE



A 5400

1/24/05

# Sherran / Musser testimony

A hand will be in  
harvested by hand  
also processed by hand.

Mechanically harvested rice  
pale cost a fraction  
of what need wild rice does.

If you want to substitute  
harvest the hands every -  
you should be rewarded for it!

Not GMO type hybrid but allow  
amount of change that allow  
for mechanical cultivation.

Q Kettle - A hand will be in no product  
but compare to harvest methods:  
Harvesting does not change  
and produce but  
proteins - "field to bag" process  
it's a bit cottage industry compares

con...

- preserving a heritage process  
a cultivated traditional

just want a label  
label NOT restrictive to nature  
Americans but  
traditional wild rice needs to  
label that way!

- want to make clear to  
consumer about their's

buyers  
bye: on reputation this does not  
apply ...

Kettle - Indian come percentage  
Canadian rice on wild rice  
nothing prevent them!

Joya: civil law does not apply -  
messy situation for tribes  
somehow have their consumers  
not totally certain  
to applicability to reputation



cont. A3 400 7/24/03

Gronemus - feels there's quality  
difference ...

Labeling product is very  
important.

How do we enforce out of  
state producers?

Sherman: no prevention just  
ask for proper labeling  
when retailer gets it.

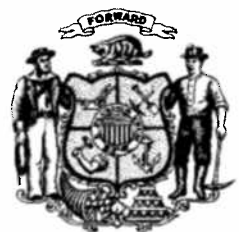
Loeffelholz - protein testing on  
different rices?

- If mixed w/ wild - labeled "blend"

Bill O - Minnesota have MN label rice grown in CA  
- wanted to ensure it  
was a MN grown product  
Forced them in Calif. to change  
their brand names.



# WISCONSIN STATE LEGISLATURE



## Assembly

### Record of Committee Proceedings

#### Committee on Agriculture

##### Assembly Bill 773

Relating to: representations made regarding wild rice sold or offered for sale in this state, granting rule-making authority, and providing a penalty.  
Joint Legislative Council.

February 5, 2002 Referred to Committee on Agriculture.

February 14, 2002 **PUBLIC HEARING HELD**

Present: (14) Representatives Ott, Ainsworth, Petrowski, Kestell, Loeffelholz, Bies, Hines, Gronemus, Plouff, Reynolds, Steinbrink, Lassa, Schneider and Hubler.

Absent: (2) Representatives Hahn and Suder.

##### Appearances for

- State Rep. Terry Musser, 92nd Assembly District
- State Rep. Gary Sherman, Member of State Tribal Relations Committee
- Michael Koran, DATCP

##### Appearances against

- None.

##### Appearances for Information Only

- David Lovell, Legislative Council Staff

##### Registrations for

- Ron Hermes, Oneida Tribe of Indians of Wisconsin

##### Registrations against

- None.

February 28, 2002 **EXECUTIVE SESSION**

Present: (16) Representatives Ott, Hahn, Ainsworth, Petrowski, Kestell, Suder, Loeffelholz, Bies, Hines, Gronemus, Plouff, Reynolds, Steinbrink, Lassa, Schneider and Hubler.

Absent: (0) None.

Moved by Representative Hubler, seconded by Representative Gronemus, that **Assembly Bill 773** be recommended for passage.

Ayes: (14) Representatives Ott, Hahn, Ainsworth,  
Petrowski, Loeffelholz, Bies, Hines,  
Gronemus, Plouff, Reynolds, Steinbrink,  
Lassa, Schneider and Hubler.

Noes: (2) Representatives Kestell and Suder.

Absent: (0) None.

PASSAGE RECOMMENDED, Ayes 14, Noes 2, Absent 0

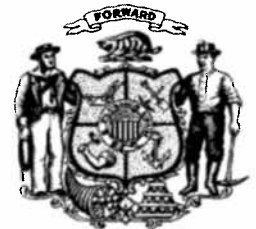


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Beata Kalies  
Committee Clerk



# WISCONSIN STATE LEGISLATURE



# **Assembly Republican Majority Bill Summary**

## **AB 773: Wild Rice Bill**

Relating to: representations made regarding wild rice sold or offered for sale in this state, granting rule-making authority, and providing a penalty.

By Joint Legislative Council.

**Date:** March 7, 2002

### **BACKGROUND**

Under current law, some labeling of wild rice is required but it is ambiguous, does not indicate blends, harvesting method, or place of origin and does not apply to retail sales.

### **SUMMARY OF AB 773**

Assembly Bill 773, requires labeling of any wild rice sold or offered for sale in Wisconsin, to contain information regarding cultivation, harvesting, state of origin and proportions making up rice blends. Such labeling would apply to retail and wholesale sales as well as any signs or advertisements relating to wild rice sales. Violators must forfeit \$50 but not more than \$500 for the first violation and \$200 but not more than \$1,000 for subsequent violations.

### **FISCAL EFFECT**

A fiscal estimate prepared by the Department of Agriculture, Trade & Consumer Protection indicates costs associated with this legislation will be one-time and minimal.

### **PROS**

1. AB 773 protects the niche market for wild rice and the culture that harvests wild rice by hand.
2. This legislation clarifies current wild rice labeling, requires disclosure of how rice is grown and harvested, and applies to both retailers and wholesalers.
3. With AB 773 labeling accurately reflects wild rice production costs and justifies its price.

### **CONS**

1. Some members raised concern that such labeling would be later required for other harvested products.
2. Comments made during the hearing indicate differences in opinion whether or not there is a taste difference based on harvesting method.

### **SUPPORTERS**

Rep. Terry Musser, Rep. Gary Sherman; Michael Koran, DATCP; Ron Hermes, Oneida Tribe.

### **OPPOSITION**

No one testified or registered in opposition to AB 773.

### **HISTORY**

Assembly Bill 773 was introduced on February 5<sup>th</sup>, 2002, and referred to the Assembly Committee on Agriculture. A public hearing was held on February 14<sup>th</sup>, 2002. On February 28<sup>th</sup>, 2002, the Committee voted 14-2-0 [Representatives Kestell and Suder voted no] to recommend passage of AB 773.

**CONTACT:** Beata Kalies, Office of Rep. Al Ott





**AB773**

**ASSEMBLY BILL 773**

An Act to repeal and recreate 97.57 of the statutes; relating to: representations made regarding wild rice sold or offered for sale in this state, granting rule-making authority, and providing a penalty. (FE)

2002

02-05-02. A. Introduced by JOINT LEGISLATIVE COUNCIL.	
02-05-02. A. Read first time and referred to committee on Agriculture. . . . .	634
02-12-02. A. Fiscal estimate received.	
02-14-02. A. Public hearing held.	
02-28-02. A. Executive action taken.	
03-05-02. A. Report passage recommended by committee on Agriculture, Ayes 14, Noes 2. . . . .	724
03-05-02. A. Referred to committee on Rules. . . . .	724
03-05-02. A. Placed on calendar 3-7-2002 by committee on Rules.	
03-07-02. A. Read a second time. . . . .	758
03-07-02. A. Ordered to a third reading. . . . .	758
03-07-02. A. Rules suspended. . . . .	758
03-07-02. A. Read a third time and <b>passed</b> . . . . .	758
03-07-02. A. Ordered immediately messaged. . . . .	758
03-08-02. S. Received from Assembly. . . . .	628
03-08-02. S. Read first time and referred to committee on Labor and Agriculture. . . . .	630
03-20-02. S. Failed to con	



unique legal status of reservations and land held in trust by the federal government for tribes or tribal members and from federal law relating to activities on those lands. In addition, these impacts may not be intended or anticipated by the authors of the legislation. In the past, this has led to legislation of general applicability that has had unanticipated adverse impacts on American Indians or tribal governments, for example, in the design of the state's economic development programs.

The preparation of a report describing any impact of legislation on American Indians or tribal governments that is different from the impact on other individuals or governmental units is one mechanism to help inform the legislative process and prevent the enactment of legislation with unintended impacts on American Indians or tribal governments.

***b. 2001 Assembly Bill 772***

2001 Assembly Bill 772 requires the preparation of statements describing the impact of legislation on tribal governments and American Indians. The requirements of the bill are designed to parallel the current requirements contained in the statutes and the joint rules of the Legislature for the preparation of statements describing the fiscal impact of legislation.

Assembly Bill 772 directs the Legislative Reference Bureau (LRB) to identify bills for which tribal impact statements are required and authorizes either house of the Legislature to request one. In addition, the chair or either cochair of the Special Committee on State-Tribal Relations may request a tribal impact statement. If the Wisconsin tribal-state council is created (2001 Assembly Bill 771), Assembly Bill 772 permits either cochair or the executive director of the council to request a tribal impact statement. It directs the DOA to assign the task of preparing a statement to the appropriate agency or agencies. It establishes a deadline for the preparation of a statement and requirements for its distribution. The bill prohibits a standing committee from holding a public hearing on, or reporting a bill for which a tribal impact statement is required, prior to receipt of the statement.

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**LEGISLATION REGARDING THE LABELING OF WILD RICE OFFERED FOR SALE**

**1. Background**

Wild rice is a very important resource for several American Indian tribes in Wisconsin for cultural, historical, and economic reasons. Many members of these tribes harvest wild rice by traditional methods, for their own use and to sell. Some non-Indian individuals also use traditional harvest methods.

Wild rice that is offered for sale comes to market through three different channels: some is harvested by hand from wild stands; some is cultivated on farms and harvested by combine (largely in California and Minnesota); and some is harvested mechanically from wild stands (a practice in Canada). Because the traditional process of harvesting wild rice by hand is much more labor intensive than mechanized cultivation and harvesting, the cost of production, and so the retail price, of hand-harvested, wild-grown wild rice is several times greater than that of cultivated wild rice or of wild rice that is mechanically harvested from the wild. The price difference puts sellers of wild rice that is hand-harvested from the wild at a

competitive disadvantage to the sellers of cultivated and mechanically-harvested wild rice, especially where the buyer does not have information regarding the source of the wild rice.

Current law contains some requirements for the labeling of wild rice that is offered for sale. Specifically, a wholesaler or supplier is required to label cultivated wild rice as being "paddy-grown" unless the wild rice is blended with wild-grown wild rice. In addition, a wholesaler or supplier is prohibited from labeling wild rice as "100% natural wild rice" unless it is 100% wild-grown wild rice. However, current law does not indicate how blends of wild-grown and cultivated wild rice may be labeled or address the method of harvesting or the place of origin of the wild rice. In addition, current law does not apply to retail sales.

## 2. 2001 Assembly Bill 773

2001 Assembly Bill 773 repeals and recreates the existing statute relating to the labeling of wild rice offered for sale in this state.

The bill requires that the label of any wild rice that is sold or offered for sale in this state, at retail or wholesale, and any sign, advertisement, or other representation regarding such wild rice must inform consumers if the wild rice is cultivated, if it is a blend of wild-grown and cultivated wild rice, and if it is machine harvested. If the wild rice is a blend, the label must indicate the proportions making up the blend. If the wild rice is in a packaged food product that contains at least 40% other food products and that is labeled or marketed as a wild rice product, the label must indicate the proportion of the product that is wild rice. The bill also requires that labels and representations regarding wild rice indicate the state or province in which the wild rice was grown.

The labeling requirements do not apply to wild rice that is cooked and ready to eat. Wild rice that is identified as cultivated or blended, and packaged wild rice products are not required to be identified as machine harvested.

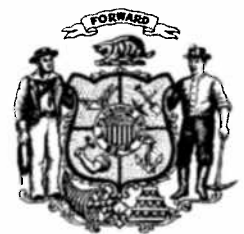
The bill does not make any requirements regarding the labeling of or representations regarding wild rice that is 100% wild-grown or that is harvested by traditional methods, except to require that the state or province of origin be identified.

Assembly Bill 773 requires the Department of Agriculture, Trade, and Consumer Protection to promulgate rules for implementation of the requirements created by the bill.

The bill provides that a person who violates the labeling and advertising requirements must forfeit not less than \$50 nor more than \$500 for the first violation and not less than \$200 nor more than \$1,000 for subsequent violations.



# WISCONSIN STATE LEGISLATURE



2/14/02  
Public Hearing

AB 773 Wild Rice

① Musser [ bill req. disclosure of wild grown rice  
apply to retailers + whole sales

② Sherman - constituents presented problem  
they import wild rice from Minnesota  
- Natively grown wild rice is different  
exp. cost of production ...

Q Hubler - <sup>sign on word not taken into account</sup>  
Label + advertising is taken into  
account.  
David Lovell  
[ will promulgate rules

Kester - why need machine harvested label?  
does it really make that much  
difference, are we going to do this with  
Musser - how its grown + harvested <sup>evenly</sup>  
does make a difference  
for religious reasons...

Sherman there is a culture that harvested wild  
rice naturally + want to market it  
that way - The bill protects it

AB 773

Plouff - Protection & development  
of a niche market.

Sherman - Hand harvesting takes care  
of sowing as well

Mike Horan (Datup)

supports it as Datup  
& tribal as well

- a lot of <sup>Inorn</sup> wild rice is grown for  
their own food

NOT intended to make money perse

Kestel - is <sup>there</sup> really a difference  
in quality or taste based on  
method of harvesting?

Mike - Can't tell the difference.