

2003-04 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Health, Children,
Families, Aging and
Long Term Care
(SC-HCFALTC)

Sample:

Record of Comm. Proceedings ... RCP

- 03hrAC-EdR_RCP_pt01a
- 03hrAC-EdR_RCP_pt01b
- 03hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ 03hr_sb0192_pt02

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
STATE-TRIBAL RELATIONS

June 18, 2003

RL 2003-08

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

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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.

1. 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

1. 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 VotesSpecial 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

ALAN LASEE
Senate President
2259 Lasee Road
De Pere, WI 54115

CO-CHAIR

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DAVID TRAVIS
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Waunakee, WI 53597

JOHN GARD
Speaker
481 Aubin Street
P.O. Box 119
Peshtigo, WI 54157

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.

STATE-TRIBAL RELATIONS

Representative Frank Boyle
4900 East Tri-Lakes Road
Superior, WI 54880

Senator Gary R. George, **Vice-Chair**
1100 W. Wells Street
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Representative Terry M. Musser, **Chair**
W13550 Murray Road
Black River Falls, WI 54615

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13394 W. Trepania Road
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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

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Assistant Attorney General
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EUGENE JOHNSON
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Office of Disadvantaged Bus. Ent. Programs
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Department of Workforce Development
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THOMAS OURADA
Department of Revenue
2135 Rimrock Rd., #624A
Madison, WI 53713-1443

JIM WEBER
Department of Health and Family Services
1 West Wilson St.
Room 618
Madison, WI 53702-0007

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

Jermstad, Sara

From: Rose, Laura
Sent: Monday, June 30, 2003 1:19 PM
To: Jermstad, Sara
Subject: RE: July 22 hearing

SB 192

Sara,

SBs 73 and 74 were reintroduced into the 2003 session by the Legislative Council by a unanimous voice vote on March 12, 2003.

The bills were originally introduced into the 2001 session. The Committee and Legislative Council Votes were as follows:

SB 73: (WLC: 0142/1), relating to requiring the creation of a task force to develop a plan to close at least one state center for the developmentally disabled, was recommended by a Committee vote of Ayes, 13 (Sens. Robson and Roessler; Reps. Foti and Plouff; and Public Members Brinkman, Friese, Helgesen, McGwin, Olson, Ryan, Thompson, Ward and Wittenmyer); and Noes, 0.

At its May 15, 2001 meeting, the Joint Legislative Council voted to introduce WLC: 0142/1 on a roll call vote as follows: Ayes, 19 (Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Meyerhofer; and Sens. Risser, Baumgart, Burke, Chvala, Darling, George, Grobschmidt, Robson and Zien); Noes, 0; and Absent, 3 (Rep. Stone; and Sens. Panzer and Rosenzweig). The proposal was subsequently introduced as 2001 Senate Bill 231 and 2001 Assembly Bill 473.

SB 74: (WLC: 0059/2), relating to adding legislative members to the council on developmental disabilities, and requiring an annual report to the Legislature; WLC: 0060/2, relating to permitting counties to provide the nonfederal share of MA to create additional brain injury waiver slots; WLC: 0100/2, relating to requiring the DHFS to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the MA program, and requiring rule-making; and WLC: 0116/1, relating to requiring the DHFS to develop a plan to require one subunit within the DHFS to administer all institutional and community-based services for persons with developmental disabilities; and to combine all funding under the MA program for institutional and community-based services into one appropriation.

The Committee vote was as follows: Ayes, 13 (Sens. Robson and Roessler; Reps. Foti and Plouff; and Public Members Brinkman, Friese, Helgesen, McGwin, Olson, Ryan, Thompson, Ward and Wittenmyer); Noes, 0.

These drafts were subsequently redrafted as WLC: 0151/1.

At its May 15, 2001 meeting, the JLC voted to introduce WLC: 0151/1 into both houses of the Legislature on a roll call vote of Ayes, 18 (Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Meyerhofer; and Sens. Risser, Baumgart, Burke, Chvala, Darling, George, Grobschmidt, Robson and Zien); Noes, 0; and Absent, 4 (Reps. Black and Stone; and Sens. Panzer and Rosenzweig).

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

From: Jermstad, Sara
Sent: Monday, June 30, 2003 11:25 AM
To: Rose, Laura
Subject: RE: July 22 hearing

Laura,

SB 73 and 74 were from the Special Committee on Developmentally Disabilities - SB73 relates to the creation of a task force to develop a plan for closing the centers and SB74 relates to adding legislators to the Council on DD, expanding eligibility and requiring submission of waiver requests, etc. I believe the Discipline of Health Care Professionals bills were not re-introduced by Leg Council this session. In fact, Senator Roessler is planning to (re) introduce those bills soon.

Thank you for the votes for the other bills. I appreciate it.

Sara

Sara Jermstad
Office of Senator Carol Roessler
Sara.Jermstad@legis.state.wi.us
(608)266-5300 / 888-736-8720

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

From: Rose, Laura
Sent: Monday, June 30, 2003 10:14 AM
To: Jermstad, Sara
Subject: RE: July 22 hearing

Sara,

SBs 73 and 74 were developed by the Special Committee on Discipline of Health Care Professionals. That committee met in 1999, and the report I sent over before contains the committee and Legislative Council votes on that bill. Those bills were reintroduced into the 2001 session by the Legislative Council on March 14, 2001 by a unanimous voice vote.

Here are the committee and Legislative Council votes on the other bills:

MENTAL HEALTH PARITY: SBs 71 and 72:

SPECIAL COMMITTEE VOTES

- WLC: 0119/1, relating to treatment of prescription drug costs, diagnostic testing, and payments under mandated coverage of mental health and alcoholism and other drug abuse problems: Ayes, 14 (Sen. Hansen; Reps. Vrakas and Lehman; and Public Members Beilman, Frett, Gross, Krumholz, Moulthrop, Reider, Rosenzweig, Schick, Slota-Varma, Wieske, and Yunk); Noes, 0; and Absent, 0. [The recommended proposal was subsequently drafted as LRB-1978/2.]
- WLC: 0120/1, relating to increasing coverage limits for insurance coverage of nervous or mental health disorders or alcoholism or other drug abuse problems: Ayes, 8 (Sen. Hansen; Rep. Lehman; and Public Members Beilman, Gross, Moulthrop, Rosenzweig, Slota-Varma, and Yunk); Noes, 6 (Rep. Vrakas; and Public Members, Frett, Krumholz, Reider, Schick, and Wieske); Absent, 0. [The recommended proposal was subsequently drafted as LRB-1979/1.]

JOINT LEGISLATIVE COUNCIL VOTES

The Joint Legislative Council voted to recommend the proposed bill drafts on March 12, 2003. The votes on the drafts were as follows:

Rep. Freese moved, seconded by Sen. Panzer, that LRB-1978/2, relating to treatment of prescription drug costs, diagnostic testing, and payments under mandated insurance coverage of treatment for nervous and mental disorders and alcoholism and other drug abuse problems and granting rule-making authority, be introduced by the Joint Legislative Council. The motion passed by a voice vote.

[Sen. Welch asked that the record reflect that he voted "no" on LRB-1978/2.]

Sen. Erpenbach moved, seconded by Rep. Coggs, that LRB-1979/1, relating to increasing the limits for insurance coverage of nervous or mental health disorders or alcoholism or other drug abuse problems, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows:

Ayes, 13 (Sens. Erpenbach, Harsdorf, Panzer, and Risser; and Reps. Coggs, Foti, Freese, Kaufert, Kreuser, Lehman, Schneider, Townsend, and Travis); Noes, 4 (Sens. Lasee, Darling, and Welch; and Rep. Wieckert); Absent, 4 (Sens. Decker, Ellis, and George; and Rep. Gard); and Vacancy, 1.

[Rep. Gard noted that had he been present, he would have voted "Aye" on LRB-1979/1.]

RELATIVE CAREGIVERS: SB 82:

SPECIAL COMMITTEE VOTES

By a mail ballot dated February 10, 2003, the Special Committee voted to recommend WLC: 0127/1 to the JLC for introduction in the 2003-04 Session of the Legislature. The votes on the draft were as follows:

· WLC: 0127/1, relating to the kinship care program, notice of guardianship proceedings, creating a medical services consent form, and requesting the joint legislative council to study guardianship and legal custody: Ayes, 12 (Sen. Moore; Reps. Kestell, Krug, and Ott; and Public Members Albrecht, Cabraal, Gonzalez, Hafner, Huber, Kratz, McAllister, and Medaris); and Noes, 0.

JOINT LEGISLATIVE COUNCIL VOTES

At its February 19, 2003 meeting, the Joint Legislative Council voted as follows on the following recommendation of the Special Committee:

Introduction by the Joint Legislative Council of WLC: 0127/1 **PASSED** by a unanimous voice vote. WLC: 01271 was subsequently introduced as 2003 Assembly Bill 201 and 2003 Senate Bill 82.

STATE TRIBAL RELATIONS: SB 192:

· 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.

The Legislative Council vote was Ayes, 15 (Sens. Erpenbach, Brown, Harsdorf, Risser, Lasee, Darling, Welch, Decker; Reps. Wieckert, Freese, Kaufert, Lehman, Schneider, Townsend and Travis); No, 2 (Rep. Gard and Sen. Ellis); Not voting, 4 (Reps. Coggs, Kreuser and Sens. George and Panzer); and Rep. Foti indicating that he would have voted "no" if present.

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

From: Jermstad, Sara
Sent: Thursday, June 26, 2003 4:23 PM
To: Rose, Laura
Subject: July 22 hearing

Laura,

You probably noticed that all the bills we will be hearing at the July 22 hearing are Leg Council bills. Carol would like to know what the Leg Council votes were for each of the bills. Would you be able to find that out for me?

Thank you,
Sara

Sara Jermstad
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Sara.Jermstad@legis.state.wi.us
(608)266-5300 / 888-736-8720

Halbur, Jennifer

From: Jermstad, Sara
Sent: Wednesday, July 23, 2003 10:24 AM
To: Halbur, Jennifer
Subject: FW: Your Question Relating to the Legislative History of 1999-2000 Predecessor to 2003 Senate Bill 192

Since this is regarding committee yesterday and you still have the folders, I'm forwarding to you.

Sara Jermstad
Office of Senator Carol Roessler
Sara.Jermstad@legis.state.wi.us
(608)266-5300 / 888-736-8720

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

From: Rohrer, Daniel
Sent: Wednesday, July 23, 2003 10:22 AM
To: Jermstad, Sara
Subject: FW: Your Question Relating to the Legislative History of 1999-2000 Predecessor to 2003 Senate Bill 192

CR inbox... (this is you right??)

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

From: Kiel, Joyce
Sent: Wednesday, July 23, 2003 8:55 AM
To: Sen.Roessler
Cc: Rep.Musser; Rose, Laura; Lovell, David
Subject: Your Question Relating to the Legislative History of 1999-2000 Predecessor to 2003 Senate Bill 192

Dear Senator Roessler:

At the July 22, 2003 hearing on 2003 Senate Bill 192, relating to tribal administration of rehabilitation review under the caregiver background check law, you asked about the legislative history of 1999 Assembly Bill 823 which Representative Musser testified that he had authored to fine-tune the caregiver background check law relating to tribal administration of rehabilitation review. (The 1998-2000 American Indian Study Committee (predecessor to the Special Committee on State-Tribal Relations) had developed the concept of tribal administration, then most of the concept was included in an amendment to the 1999-2001 budget bill, rather than being acted on separately.) (AB-823 also included various technical changes to the caregiver background check law requested by DHFS.)

As noted at the July 22, 2003 hearing, 1999 AB-823 was recommended by the Assembly Health Committee on a vote of Ayes, 17; Noes, 0. It passed the Assembly on a voice vote. It was referred to the Senate Committee on Health, Utilities, Veterans, and Military Affairs. On March 30, 2000, that committee recommended concurrence on a vote of Ayes, 6; Noes, 1. **In particular, you asked which Senate Committee member had voted against concurrence. It was Senator Welch.** (The following Senators voted Aye: Moen, Breske, Robson, Erpenbach, Rude, and Rosenzweig.) The Senate adjourned a week later without taking up the bill.

The next session, the 2000-02 Special Committee on State-Tribal Relations recommended a bill draft that was very similar to the tribal provisions in 1999 AB-823. That draft was introduced by the Joint Legislative Council as 2001 Assembly Bill 223. The Assembly Health Committee unanimously recommended AB-223. Late in the 2001-02 session, the Assembly passed it on a vote of Ayes, 98; Noes, 0. The Senate did not take it up.

2003 Senate Bill 192 (and its companion 2003 Assembly Bill 401) contains the same provisions as 2001 AB-223.

Let me know if you need anything more.

Joyce L. Kiel, Senior Staff Attorney
Wisconsin Legislative Council Staff
Suite 401, One East Main Street
Madison, WI 53703
608-266-3137
608-266-3830 (fax)
Joyce.Kiel@legis.state.wi.us

Committee Meeting Attendance Sheet

Committee on Health, Children, Families, Aging and Long Term Care

Date: 7-22-03

Meeting Type: Public Hearing

Location: 411 South

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Senator Carol Roessler, Chairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ted Kanavas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Welch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Judith Robson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Charles Chvala	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Robert Jauch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Tim Carpenter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Excused

[

Totals: 7 0 2

Committee Meeting Attendance Sheet

Committee on Health, Children, Families, Aging and Long Term Care

Date: 7/22/03

Meeting Type: Executive Session

Location: 411 South

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Senator Carol Roessler, Chairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ted Kanavas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Welch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Judith Robson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Charles Chvala	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Robert Jauch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Tim Carpenter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 7 2 2

Vote Record

Committee on Health, Children, Families, Aging and Long Term Care

Date: 9/14

Moved by: Roessler

Seconded by: Welch

AB _____ SB 192 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>
Senator Carol Roessler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ted Kanavas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Welch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Judith Robson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Charles Chvala	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Jauch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Tim Carpenter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 9 _____

Open until 5pm

Motion Carried

Motion Failed