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Details: Public Hearing – October 18, 2007

(FORM UPDATED: 07/12/2010)

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

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Education (SC-Ed)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

9MB

Vote Record Committee on Education

Date: 12/6/2007

Moved by: Hansen

Seconded by: Olsen

AB _____ **SB 98** _____ 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:

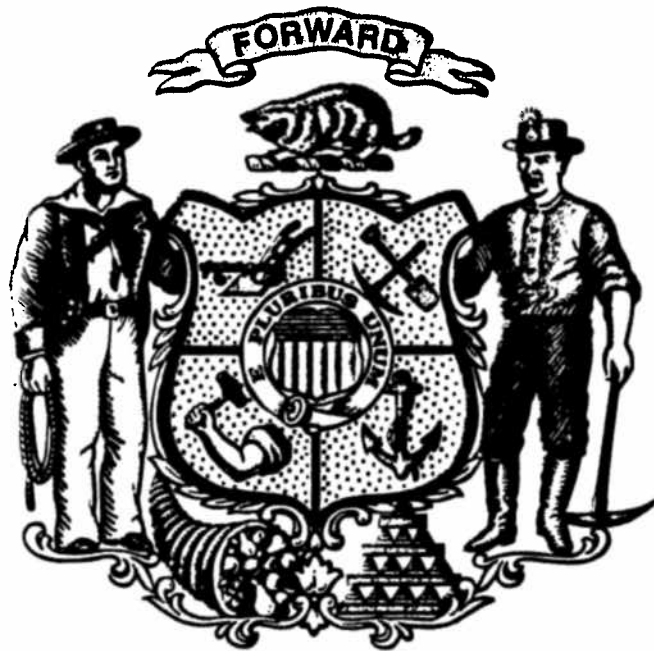
- Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

Committee Member

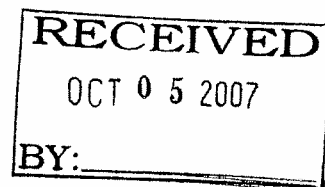
	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator John Lehman, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jon Erpenbach	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Pat Kreitlow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Luther Olsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Glenn Grothman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mary Lazich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>0</u>	<u>0</u>	<u>0</u>

Motion Carried

Motion Failed



State of Wisconsin
JOINT LEGISLATIVE COUNCIL



Co-Chairs

FRED A. RISSER
President, State Senate

STEVE WIECKERT
Representative, State Assembly



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

TO: MEMBERS OF THE SENATE COMMITTEE ON EDUCATION
FROM: Terry C. Anderson, Director *TCA*
RE: Hearing on 2007 Senate Bill 98
DATE: October 5, 2007

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2007-02, dated March 22, 2007.

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

- **2007 Senate Bill 98**, relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils and making an appropriation.

Senate Bill 98 is scheduled to be considered by your committee at its meeting which will be held on **Thursday, October 18, 2007, beginning at 10:00 a.m., in Room 201 Southeast, State Capitol.**

If you have any questions relating to the above report or bill, please feel free to contact Joyce L. Kiel, Senior Staff Attorney, at 266-3137, or David L. Lovell, Senior Analyst, at 266-1537.

TCA:wu:ksm
Enclosure



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
STATE-TRIBAL RELATIONS

March 22, 2007

*

RL 2007-02

Special Committee on State-Tribal Relations

Prepared by:
Joyce L. Kiel, Senior Staff Attorney, and David L. Lovell, Senior Analyst
March 22, 2007

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Joint Legislative Council (JLC) has introduced the following legislation in the 2007-08 Session of the Legislature based on the recommendations of the 2006-08 Special Committee on State-Tribal Relations.

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

2007 Assembly Bill 197 and 2007 Senate Bill 96, Relating to Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law

Current law authorizes a tribal law enforcement officer to enforce the laws of the state with respect to any person within the boundaries of the tribe’s reservation or off-reservation trust lands if, among other conditions, the tribal government adopts a resolution waiving the tribe’s sovereign immunity to the extent necessary to allow the enforcement, in state courts, of liability for its officers’ actions. The bill provides that, as an alternative to the waiver of sovereign immunity, the tribe may carry liability insurance that meets specified conditions.

2007 Assembly Bill 198 and 2007 Senate Bill 97, Relating to Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) employs conservation wardens to enforce the Chippewa Off-Reservation Conservation Code with regard to Chippewa Indians hunting, fishing, or gathering resources in the ceded territory but outside the boundaries of their reservations. The bill amends a wide range of statutes relating to peace officers to: (1) give GLIFWC wardens the same law enforcement tools and the same powers and privileges that current law gives to wardens of the Department of Natural Resources (DNR); and (2) give GLIFWC wardens the same protections of personal safety that current law gives to DNR wardens. The bill also authorizes a GLIFWC warden to aid or assist a peace officer and to make arrests for felony violations of state law in the ceded territory, in much the same way as current law gives these authorizations to a peace officer outside of his or her territorial jurisdiction.

2007 Assembly Bill 199 and 2007 Senate Bill 98, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils

For the most part, current statutes make no mention of tribal schools, although three operate in Wisconsin. The bill defines a “tribal school” and amends a wide range of statutes to extend to tribal schools and tribal school pupils and staff many benefits and protections provided to private schools and private school pupils and staff. The bill does not impose on tribal schools the requirements that apply to private schools but does provide certain benefits only if certain conditions are met.

PART II

COMMITTEE ACTIVITY

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), including not more than one member based on the recommendation of any tribe or 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.

Summary of Meetings

The 2006-08 Special Committee has held two meetings:

November 14, 2006	State Capitol
January 17, 2007	Menominee Reservation, Keshena, Wisconsin

At its November 14, 2006 meeting, the Special Committee heard a number of briefings:

- Committee staff briefed the committee on the status of legislation introduced in the 2005-06 Legislative Session by the JLC at the recommendation of the 2004-06 Special Committee.
- Committee staff briefed the committee on a project related to concurrent criminal jurisdiction of the state and the tribes on Indian reservations (with the exception of the Menominee Reservation, which is treated differently under federal law).
- **Mark Mitchell**, Department of Health and Family Services (DHFS), briefed the committee on DHFS initiatives related to the federal Indian Child Welfare Act and funding for tribal child welfare services.
- **Laura Arbuckle**, Department of Administration (DOA), briefed the committee on the on-going activities of Governor Doyle's administration to improve communications between the executive branch of state government and tribal governments.
- **Art Zimmerman** and **Jere Bauer**, Legislative Fiscal Bureau (LFB), briefed the committee on the state budget process and described how, within that process, the state allocates revenues it receives from the tribes under gaming compacts.

The committee discussed the possibility of expanding the Wisconsin Retirement System (WRS) to allow police officers employed by tribes to participate. Chairperson Musser discussed a number of

important questions a tribal government would have to consider before participating in the WRS, outlined in a staff memorandum, and asked the tribal representatives on the committee to discuss these issues with their tribal councils, to determine if there is interest on the part of tribal governments, as well as tribal police departments, to pursue this policy.

The meeting concluded with a discussion of topics for study by the committee. The committee discussed the possibility of recommending some of the 2005 bills for reintroduction in the 2007-08 Legislative Session. There was also interest in reviewing legislative ideas that came from a state and tribal leaders conference in 2001 to see whether any of those proposals warrant reconsideration. It was suggested as well that the committee look at how well certain state economic development programs work in Indian country.

At the January 19, 2007 meeting in Keshena, the Special Committee voted to recommend that the JLC introduce three bill drafts--the first relating to liability for the actions of tribal law enforcement officers when enforcing state laws; the second relating to conservation wardens employed by GLIFWC; and the third relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils. All three were amended versions of bills introduced by the JLC in the 2005-06 Legislative Session on the recommendation of the 2004-06 Special Committee that were not enacted. Committee members also asked legislative members of the committee to reintroduce a joint resolution on state recognition of tribal sovereignty similar to resolutions introduced in the past three legislative sessions.

Paul Stuibler, Legislative Audit Bureau (LAB), described the LAB's audit of state economic development programs and provided information about which were funded with tribal gaming revenues paid to the state. The committee heard testimony from **Gloria Cobb** and **Jerry Rayala**, GLITC, about their economic development programs and from **Troy Swallow**, Department of Commerce, regarding the department's role in working with tribes on economic development programs. Mr. Rayala suggested that the committee study two funding issues relating to economic development.

The committee also discussed a draft relating to participation of tribal law enforcement officers in the WRS and requested that a revised draft be prepared for discussion at its next meeting. The committee was also briefed about prior legislative and other initiatives regarding the use of American Indian mascots, logos, nicknames, and names by public schools.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the proposals recommended by the 2006-08 Special Committee on State-Tribal Relations for introduction in the 2007-08 Session of the Legislature and subsequently introduced by the JLC.

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

2007 Assembly Bill 197 and 2007 Senate Bill 96, Relating to Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law

Background

Tribal law enforcement officers do not have the inherent power to enforce state laws but, in Wisconsin, may acquire this power in either of two ways. First, the state or a subdivision of the state may grant this power on an individual basis. Most commonly, a county sheriff will deputize qualified tribal law enforcement officers.

Second, state statutes may grant this power. Section 165.92, Stats., authorizes a tribal law enforcement officer to enforce the laws of this state with respect to any person within the boundaries of the tribe’s reservation or off-reservation trust lands, if the officer and the tribe meet several conditions. One condition is that a tribal law enforcement officer may not enforce the laws of this state unless the governing body of the tribe adopts a resolution waiving the tribe’s sovereign immunity to the extent necessary to allow the enforcement of liability for its officers’ actions in the courts of this state, or adopts another resolution that the Wisconsin Department of Justice (DOJ) determines has substantially the same result.

Section 175.40 (6) and (6m), Stats., give peace officers authority to aid and assist and enforce certain state criminal laws outside their territorial jurisdiction under certain circumstances—the first when on-duty and the second when off-duty. Both apply to tribal law enforcement officers, but only if the tribal law enforcement officer is empowered to act under s. 165.92, Stats., and certain other conditions are met.

The 2004-06 Special Committee recommended a draft which would have provided an alternative to the waiver of sovereign immunity by the tribe that is currently required for a tribal law enforcement officer to exercise the powers allowed by s. 165.92. It would have allowed the tribe to instead maintain liability insurance with a limit of at least \$1,000,000 for any claim. That draft required that the insurance policy provide that the insurer may not raise the defense of tribal sovereign immunity in defending a claim against the policy, up to the limits of the policy. This alternative would have applied only if the tribe provided evidence of the required insurance to DOJ.

That draft was introduced by the JLC as companion bills 2005 Assembly Bill 628 and 2005 Senate Bill 297. Neither bill was enacted, although Senate Bill 297 was passed by the Senate on a voice vote and then referred to the Assembly Committee on State Affairs, which recommended concurrence on a vote of Ayes, 9; Noes, 0. However, it was not scheduled for a vote by the Assembly.

When the 2006-08 Special Committee reviewed this issue, it recommended that the JLC introduce a variation of the prior proposal. In addition to several minor changes clarifying liability, the committee recommended that the minimum amount of insurance be \$2,000,000 per occurrence, instead of \$1,000,000 per claim.

2007 Assembly Bill 197 and 2007 Senate Bill 96

The bill provides an alternative to the waiver of sovereign immunity by the tribe that is currently required for a tribal law enforcement officer to exercise the powers allowed by s. 165.92. It allows the tribe to instead maintain liability insurance with a limit of at least \$2,000,000 for any occurrence. It requires that the insurance policy provide that the insurer may not raise the defense of tribal sovereign immunity in defending a claim against the policy, up to the limits of the policy. This alternative applies only if the tribe has provided evidence of the required insurance to DOJ. When this evidence is provided, the bill requires DOJ to notify the sheriff of each county and chief of police of each municipality in which the tribe has a reservation or trust land that the tribe has met the criterion for s. 165.92 to apply.

The bill also clarifies that a tribe's liability for actions under s. 165.92 includes liability for errors and omissions when transporting a person after arrest. In addition, the bill clarifies that the liability provisions of s. 175.40 (6m), Stats. (off-duty officer acting outside his or her territorial jurisdiction under this statute is acting as an officer, agent, or employee of the state), apply to a tribal law enforcement officer acting under that authority, rather than the liability provisions of s. 165.92.

2007 Assembly Bill 198 and 2007 Senate Bill 97, Relating to Treatment in the Statutes of Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission

Background

In the 1970s and 1980s, litigation in federal court sought to determine the extent of rights for the harvest of natural resources retained by the Chippewa Indian bands in Wisconsin when the bands ceded territory to the United States in treaties in 1837 and 1842. In a series of orders, the court affirmed the bands' continuing rights to hunt, fish, and gather on off-reservation public lands and waters throughout the ceded territories in northern Wisconsin. Among other things, the court approved the Chippewa bands' proposal to adopt an off-reservation conservation code (off-reservation code) governing their members' exercise of those rights within the ceded territory but outside the boundaries of Chippewa reservations, and to form an inter-tribal agency to enforce that code. GLIFWC is the agency the Chippewa bands created for this purpose.

An incident in which a GLIFWC warden working off-reservation detained a non-Indian person for a state firearms violation and delivered the individual to the county sheriff called into question the authority of the warden to detain the individual, as well as the legality of other aspects of the warden's behavior, such as going armed in the uniform of a law enforcement officer in a vehicle with equipment, such as lights and siren, that are generally illegal.

This case brought to attention that much of what GLIFWC wardens do is not contemplated under the statutes and that, in fact, the statutes could be read as prohibiting GLIFWC wardens from doing many things that the federal court intended them to do. Similarly, many statutes that serve to protect the physical safety of law enforcement officers and others that serve to protect the interests of the public do not apply to GLIFWC wardens. These statutes *do* apply to DNR conservation wardens.

The 2004-06 Special Committee recommended a draft to address the matter which is very similar to the bill described below. That draft was introduced by the JLC as companion bills 2005 Assembly Bill 630 and 2005 Senate Bill 299. Senate Bill 299 was passed by the Senate on a voice vote,

then referred to the Assembly Committee on Natural Resources. That committee took no action on the Senate bill, and it did not pass. However, the Assembly Committee on Natural Resources had earlier recommended passage of the companion Assembly bill on a vote of Ayes, 12; Noes, 0. Neither the Assembly bill nor Senate bill was scheduled for a vote by the Assembly.

When the 2006-08 Special Committee reviewed this issue, it made minor changes in the proposal. The changes relate to liability insurance provisions (so that they are similar to the liability insurance coverage provisions described above regarding Assembly Bill 197 and Senate Bill 96) and to clarifying that a GLIFWC warden is not a peace officer under s. 175.40, as discussed above (since a GLIFWC warden is covered under a newly created section of the statutes, namely s. 175.41).

2007 Assembly Bill 198 and 2007 Senate Bill 97

The bill is intended to accomplish two goals: first, to facilitate the work of GLIFWC and its wardens in enforcing the off-reservation code; and second, to enable GLIFWC wardens to assist state and local law enforcement agencies.

Facilitating the Work of GLIFWC Wardens

To facilitate the work of GLIFWC wardens, the bill applies many provisions of the criminal code and the conservation and motor vehicle statutes to them. In general, the bill does the following:

1. Applies statutes regarding the protection of officers or interference with law enforcement to **all GLIFWC wardens**. Examples of the statutes treated in this manner are s. 940.20 (2), Stats., battery to a law enforcement officer, s. 941.21, Stats., disarming a peace officer, and s. 946.41, Stats., resisting or obstructing an officer. The bill also applies a number of other, miscellaneous statutes to all GLIFWC wardens, such as the requirement that a peace officer provide first aid to a person in custody (s. 940.291, Stats.), communicable diseases (ch. 252, Stats.), and the exception for peace officers to the prohibition on shining animals (s. 29.314, Stats.). The bill also applies to all GLIFWC wardens the exceptions enjoyed by peace officers to various aspects of the motor vehicle code, including exceptions to various rules of the road and various restrictions on vehicle equipment.

2. Applies most statutes regarding the possession or use of firearms and other weapons by peace officers to **GLIFWC wardens who meet state certification standards**. Examples of statutes treated in this manner are exceptions for peace officers to prohibitions against carrying concealed weapons (s. 941.23, Stats.) and the use of pepper spray (s. 941.26, Stats.). The bill does **not** apply statutes authorizing the possession or use of explosives or particularly dangerous weapons to **any** GLIFWC warden. Examples of statutes in this category are exceptions for peace officers to prohibitions against the possession or use of machine guns, short-barreled shotguns and rifles, explosives, and certain other weapons (ss. 941.26 (3), 941.27 (2), and 941.28 (4), Stats.).

3. Authorizes GLIFWC and its wardens to use the transaction information for management of enforcement (TIME) system if GLIFWC agrees to contribute information in its possession to DOJ for addition to the TIME system. (The TIME system allows officers in the field to access information regarding criminal investigations, suspected criminals, outstanding warrants, etc., as well as drivers' license and vehicle registration information, using computers installed in their patrol vehicles.)

4. Applies the statutes administered by the Law Enforcement Standards Board (LESB) to GLIFWC wardens who agree to accept the duties of law enforcement officers under the laws of this state. This makes a GLIFWC warden who agrees to do so subject to the rules and certification procedures of the LESB. Also, it is a prerequisite for exercising the authority to make arrests for violations of state law and to render aid and assistance to state peace officers, as created by this bill.

5. Authorizes GLIFWC to receive from the Department of Transportation (DOT) monthly compilations of vehicle registration information, drivers license and identification card photographs,

and other identifying information in the same manner that sheriffs and chiefs of local police departments, among others, currently receive this information.

Authority to Arrest and Assist

The bill authorizes a GLIFWC warden to make an arrest for a violation of state law in the ceded territory if the warden is responding to either: (1) an emergency situation that poses a significant threat to life or of bodily harm; or (2) acts that the warden believes, on reasonable grounds, constitute a felony. The bill also authorizes a GLIFWC warden to render aid or assistance to a Wisconsin peace officer in an emergency or at the request of the Wisconsin peace officer. A GLIFWC warden may take these actions only if all of the following conditions are met:

1. The warden is on duty and on official business.
2. The warden meets the training standards for state and local law enforcement officers and has agreed to accept the duties of law enforcement officers under the laws of this state.
3. GLIFWC has adopted and implemented written policies regarding making felony arrests under state law and rendering aid or assistance to state or local officers.
4. GLIFWC maintains liability insurance that does all of the following:
 - a. Covers GLIFWC's liability up to a limit of not less than \$2,000,000 per occurrence for the acts and omissions of its wardens acting under this authority.
 - b. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to that limit.

Also, GLIFWC wardens may take these actions only if GLIFWC has presented evidence to DOJ of this insurance. When this evidence is provided, the bill requires DOJ to notify the sheriff of each county in the ceded territory that GLIFWC has met this insurance criterion.

The bill also authorizes GLIFWC wardens to engage in fresh pursuit in Wisconsin beyond the ceded territory under specified circumstances.

2007 Assembly Bill 199 and 2007 Senate Bill 98, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils

Background

Under current Wisconsin statutes, tribally-operated schools are dealt with only in subch. IV, ch. 115, Stats., relating to the American Indian language and culture education program. (Categorical aid for that program was eliminated by 2003 Wisconsin Act 33.) Currently, three schools in Wisconsin come under the tribally-operated schools component of that program. They are the: Menominee Tribal School; Oneida Nation of Wisconsin Schools; and Lac Courte Oreilles Tribal School.

Most state kindergarten to grade 12 (K-12) education laws likely would be considered by the courts to be civil regulatory laws. In general, state civil regulatory laws do not apply to a tribe or a member of that tribe on the tribe's reservation or off-reservation trust land unless an act of Congress, a treaty, or case law (that is, decisions by the courts) provides that a state law is applicable. It appears that neither an act of Congress nor any treaty has authorized the state to apply its civil regulatory education laws to a tribal school that is located on a tribe's reservation or off-reservation trust land. As

for whether case law does so, court decisions suggest that, if a matter were litigated, a court would apply a balancing of interests test and hold that a state civil regulatory education law applies to a tribal school only if the state interests outweigh the tribal and federal interests. That analysis depends on the facts surrounding each individual statute; thus, there is no universal answer as to whether a state civil regulatory law applies to a tribal school.

However, in general, it appears that, with respect to most state K-12 education laws, the state does not have authority to impose such laws on tribal schools. Moreover, a tribe may choose to assert sovereign immunity if a legal action were filed against the tribal school or tribal school officials to enforce any such law.

Current law defines private school, imposes various requirements on private schools, and provides certain benefits and protections to private schools and their pupils and staff. Tribal schools are neither private schools nor public schools, and statutes referring only to private schools and public schools do not apply to tribal schools.

The Menominee Indian Tribe of Wisconsin recommended developing legislation to provide the same benefits to tribal schools and tribal school pupils that are provided to private schools and private school pupils.

An ad hoc Working Group on Tribal Schools consisting of representatives of the Menominee Tribe, tribal schools, the Department of Public Instruction (DPI), and the committee met on March 18, 2005 to review preliminary drafts. The 2004-06 Special Committee recommended a draft based on discussions at that meeting and on additional information provided following the meeting.

The JLC introduced the recommendation as companion bills 2005 Assembly Bill 637 and 2005 Senate Bill 300. Neither the standing committees to which the bills were referred nor either house held a vote on either bill.

The 2006-08 Special Committee recommended that the proposal again be recommended to the JLC. The changes from the prior bills primarily relate to accounting for the fact that several of the affected statutes were amended by 2005 Acts. The substantive changes relate to adding references to tribal schools in two provisions that were created by 2005 Acts to refer to private schools: one related to having DPI provide information about meningococcal disease to public and private schools, and the other related to immunity relating to the use of inhalers for asthmatic pupils at private schools.

2007 Assembly Bill 199 and 2007 Senate Bill 98

The bill defines a "tribal school" as an institution with an educational program that has as its primary purpose providing education in any grade or grades from K-12 and that is controlled by the elected governing body of a tribe or by a tribal educational authority established under the laws of a tribe. That definition then applies in chs. 115 to 121 (statutes relating to K-12 education) and, by cross-reference, to certain statutes outside chs. 115 to 121, Stats.

Private School References—Benefits

The bill proposes amendments to statutes that refer specifically to private schools, private school staff, or private school pupils and provide a benefit or protection to them, with the exception of statutes relating to: transportation; special education; eligibility for bonding for certain building projects through the Wisconsin Health and Educational Facilities Authority; and private schools in the Milwaukee School District.

In general, for such statutes, the bill adds references to tribal schools, tribal school staff, or tribal school pupils. Examples include: counting teaching experience in a tribal school under the teacher licensure law; authorizing a cooperative educational services agency to contract with a tribal school; including tribal schools in various DPI programs to assist schools, for example, suicide

prevention programs, alcohol or other drug abuse prevention programs, school milk, lunch, and breakfast programs, and protective behavior programs; including tribal school seniors in the Academic Excellence Higher Education Scholarship program; permitting certain tribal school pupils to serve as inspectors at polling places; permitting a representative of a tribal school to serve on DPI's Council on Special Education and DPI's Professional Standards Council for Teachers; permitting a tribal school representative and parent to serve on the county truancy committee; including tribal schools in the technology for educational achievement program; including tribal schools as schools for the purpose of statutes that prohibit hunting, having a cigarette vending machine, selling liquor, possessing certain drugs, committing certain violent crimes, and possessing firearms and other dangerous weapons (under certain circumstances) within a specified distance from schools; providing that one of the purposes of the technical college system includes working with tribal schools; providing that veterans are eligible for reimbursement for courses at a tribal school under certain circumstances; counting attendance at a tribal school as school attendance for purposes of the Learnfare program and truancy and dropout statutes; considering a tribal school to be a school for purposes of child labor laws; permitting a tribal school to have a driver's education program recognized by DOT; making tribal schools eligible for reimbursement for a food services plan for the elderly; making teachers at tribal schools who are certified by the National Board for Professional Teaching Standards and meet certain other criteria eligible for grants; providing that the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Program for the Deaf and Hard of Hearing may provide certain services to tribal schools; permitting tribal schools to request trees for Arbor Day observance; requiring DPI to provide information to tribal schools about meningococcal disease; requiring the erection of school warning signs; permitting a request to attend tribal school as a program or curriculum modification; allowing provision of health treatment services to tribal school pupils under certain circumstances; providing immunity under state law for several activities, including removing a pupil from school for suspicion of activities relating to controlled substances, administering certain drugs under certain circumstances, permitting use of an inhaler by an asthmatic pupil, attempting to prevent suicide, providing free care at an athletic event, and donating equipment or technology to a tribal school; providing eye safety information to tribal schools; permitting tribal schools to request information about persons on the sex offender registry; permitting a dental hygienist at a tribal school; prohibiting strip searches of tribal school pupils; and exempting tribal school staff from prosecution for certain crimes relating to exposing a child to harmful materials.

Private School References—Benefit Linked to Requirement

In some cases, the bill includes language relating to tribal schools that is not identical to current statutes relating to private schools. These relate to statutes in which a requirement is integrally linked to a benefit provided—for example, statutes allowing a private school to receive certain confidential records relating to child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS), or delinquency, but limiting redisclosure of the record. For such statutes, the bill generally extends the same benefit to a tribal school only if the tribe chooses to comply with conditions similar to those imposed on a private school. Also, if school attendance is required by a court order, the court is required to request that a tribal school report a violation to the court but does not have authority to require a tribal school to do so.

Private School References—Requirements

With respect to statutes that explicitly impose requirements on private schools unrelated to a benefit, the bill does not add a reference to tribal schools. Such statutes include requirements to: make a report to DPI about enrollment; report to DPI charges and convictions of certain crimes and dismissals and resignations related to immoral conduct of a person licensed by DPI and employed by the school; display the flag and offer the pledge of allegiance or national anthem; have a first aid kit; conduct fire drills; establish school safety zones; prohibit the use of a pupil's social security number as a pupil identification number; have periodic lead inspections in kindergarten; and abide by restaurant regulations if food is brought in under contract. (As discussed above, it is unlikely that the state has authority to impose such civil regulatory laws on tribal schools.)

Generic School References

The bill amends several statutes that refer generically to schools without explicitly referring to public schools, private schools, or tribal schools to make clear that if a benefit applies to a school, the benefit also applies to tribal schools. The bill does not amend statutes that impose a requirement generically on schools, including private schools, to impose the requirement on tribal schools, for example, statutes relating to excluding children who have not met the immunization or waiver of immunization requirements. Whether such a statute applies to tribal schools is an issue to be resolved by the courts on a case-by-case basis.

Committee and Joint Legislative Council Votes

Special Committee Votes

The following drafts were recommended by the 2006-08 Special Committee on State-Tribal Relations to the JLC for introduction in the 2007-08 Session of the Legislature.

The votes on the drafts were as follows:

- LRB-1915/1, relating to liability for the actions of tribal law enforcement officers when enforcing state law. The motion to recommend WLC: 0053/1, with amendments, passed on a vote of Ayes, 10 (Reps. Musser, Boyle, and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 5 (Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor). It was subsequently redrafted as WLC: 0053/2 and then redrafted as LRB-1915/1.
- LRB-1916/1, relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission. The motion to recommend WLC: 0054/1, with amendments, passed on a vote of Ayes, 10 (Reps. Musser, Boyle, and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 5 (Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor). It was subsequently redrafted as WLC: 0054/2 and then redrafted as LRB-1916/1.
- LRB-1646/2, relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils. The motion to recommend WLC: 0052/1 passed on a vote of Ayes, 9 (Reps. Boyle and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 6 (Rep. Musser; Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor). It was subsequently redrafted as LRB-1646/2.

Joint Legislative Council Vote

At its March 14, 2007 meeting, the Joint Legislative Council voted as follows on the recommendations of the Special Committee:

Sen. Risser moved, seconded by Sen. Coggs, that the three drafts recommended by the Special Committee on State-Tribal Relations be voted on en masse and introduced as companion bills in the 2007-08 Legislative Session. The motion passed on a roll call vote as follows: Ayes, 18 (Reps. Wieckert, Ballweg, Berceau, Fitzgerald, Gottlieb, Pocan, Rhoades, and Schneider; and Sens. Risser, Carpenter, Coggs, Darling, Decker, Fitzgerald, Harsdorf, Lasee, Miller, and Robson); Noes, 0; and Absent, 4 (Reps. Huebsch, Kaufert, and Kreuser; and Sen. Breske).

(LRB-1915/1 was subsequently introduced as companion bills 2007 Assembly Bill 197 and 2007 Senate Bill 96; LRB-1916/1 was subsequently introduced as companion bills 2007 Assembly Bill 198 and 2007 Senate Bill 97; and LRB-1646/2 was subsequently introduced as companion bills 2007 Assembly Bill 199 and 2007 Senate Bill 98.)

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

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

Co-Chair

STEVE WIECKERT
Representative
1 Weatherstone Drive
Appleton, WI 54914

SENATORS

RONALD W. BROWN
1112 Violet Avenue
Eau Claire, WI 54701

DAN KAPANKE
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La Crosse, WI 54603

DALE SCHULTZ
Majority Leader
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Richland Center, WI 53581

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6803 Lora Lee Lane
Schofield, WI 54476

MARK MILLER
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Monona, WI 53716

DAVID ZIEN
President Pro Tempore
1716 63rd Street
Eau Claire, WI 54703

SCOTT FITZGERALD
N4692 Maple Road
Juneau, WI 53039

FRED A. RISSER
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GLENN GROTHMAN
111 South 6th Avenue
West Bend, WI 53095

JUDY ROBSON
Minority Leader
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West Salem, WI 54669

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Wisconsin Rapids, WI 54494

PEDRO COLON
338 West Walker Street
Milwaukee, WI 53204

DEAN KAUFERT
1360 Alpine Lane
Neenah, WI 54956

DAVID TRAVIS
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Waunakee, WI 53597

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310 East North Street
Dodgeville, WI 53533

JIM KREUSER
Minority Leader
3505 14th Place
Kenosha, WI 53144

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

ANN NISCHKE
202 W. College Avenue
Waukesha, WI 53186

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

Joint Legislative Council

[Current Joint Legislative Council Members Who Received Committee Report]

Co-Chair

FRED RISSER

Senate President
5008 Risser Road
Madison, WI 53705

Co-Chair

STEVE WIECKERT

Representative
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SENATORS

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Milwaukee, WI 53215

G. SPENCER COGGS

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SHEILA HARSDORF

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MARK MILLER

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JUDY ROBSON

Majority Leader
2411 E. Ridge Road
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JOAN BALLWEG

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Markesan, WI 53946

TERESE BERCEAU

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MARK GOTTLIEB

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Kenosha, WI 53144

MARK POCAN

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Madison, WI 53703

KITTY RHOADES

708 4th Street
Hudson, WI 54016

MARLIN SCHNEIDER

3820 Southbrook Lane
Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs 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

Representative Terry M. Musser, Chair
W13550 Murray Road
Black River Falls, WI 54615

Senator G. Spencer Coggs
3732 North 40th Street
Milwaukee, WI 53216

Senator Robert W. Wirch
3007 Springbrook Road
Pleasant Prairie, WI 53158

Howard Bichler
St. Croix Chippewa Indians of Wisconsin
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Webster, WI 54893

Ken Fish
Menominee Indian Tribe of Wisconsin
P.O. Box 173
Keshena, WI 54135

Doug Huck
Stockbridge-Munsee Band of Mohican Indians
N8476 Moheconnuck Road
Bowler, WI 54416

Dee Ann Mayo
Lac du Flambeau Band of Lake
Superior Chippewa Indians
P.O. Box 67
Lac du Flambeau, WI 54538

Mr. Louis Taylor
Lac Courte Oreilles Tribal Governing Board
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
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Hayward, WI 54843

Representative Frank Boyle
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Superior, WI 54880

Representative Gary Sherman
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Port Wing, WI 54865

John Alloway
Forest County Potawatomi Community
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Crandon, WI 54520

Vince DelaRosa
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

Jon Greendeer
Ho-Chunk Nation
P.O. Box 667
Black River Falls, WI 54615

Donna Lynk
Tribal Council Secretary
Bad River Band of Lake Superior
Chippewa Indians
P.O. Box 39
Odanah, WI 54861

Mark Montano
Red Cliff Band of Lake Superior
Chippewas
88385 Pike Road, Hwy. 13
Bayfield, WI 54814

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.]

15 MEMBERS: 2 Senators, 3 Representatives, and 10 Public Members.

LEGISLATIVE COUNCIL STAFF: Joyce L. Kiel, Senior Staff Attorney; David L. Lovell, Senior Analyst; Julie Learned, Support Staff.

Appendix 4

Technical Advisory Committee

TOM BELLAVIA
Department of Justice
Assistant Attorney General
17 W. Main St., Rm. 707
INTER-D

GWEN CARR
Department of Transportation
Division of Transportation
System Development
Bureau of Equity & Environmental
Services
4802 Sheboygan Avenue, Rm. 451
INTER-D

J.P. LEARY
Department of Public Instruction
101 South Webster LS/5
INTER-D

MICHAEL LUTZ
**Department of Natural
Resources**
125 South Webster St., 4th Flr.
INTER-D

RACHELLE ASHLEY
Department of Workforce Development
201 East Washington Ave., Rm. E200
INTER-D

THOMAS D. OURADA
Department of Revenue
2135 Rimrock Rd., #624A
INTER-D

JIM WEBER
Department of Health and Family Services
1 West Wilson St., Rm. 618
INTER-D

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
 (Copies of documents are available at www.legis.state.wi.us/lc)

Recommendations to the Joint Legislative Council (March 14, 2007)

- [Results of JLC Meeting](#)
- Proposed [Report](#) to the Legislature
- [LRB-1915/1](#), relating to liability for the actions of tribal law enforcement officers when enforcing state law
- [LRB-1916/1](#), relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission
- [LRB-1646/2](#), relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils

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- [Memo No. 4, Legislative History of Previous Resolutions Similar to WLC: 0034/1, Relating to State Recognition of Tribal Sovereignty](#) (December 28, 2006)
- [Memo No. 5, Use of American Indian Mascots, Logos, Names, or Nicknames by Public Schools](#) (January 8, 2007)
- [Memo No. 6, Lobbying Activity on Bills Introduced in the 2005-06 Legislative Session at the Recommendation of the 2004-06 Special Committee](#) (December 29, 2006)
 - [Table, 2005-06 Session Bills Recommended by the Special Committee on State-Tribal Relations, Positions and Lobbying Activity Reported by Lobbying Principals to the Wisconsin Ethics Board](#)
- [Memo No. 7, History of Legislation Recommended by the Special Committee Regarding State-Tribal Relations](#) (January 5, 2007)
- [WLC: 0034/1](#), relating to state recognition of the sovereign status of federally recognized American Indian tribes and bands
- [WLC: 0052/1](#), relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils and making an appropriation
- [WLC: 0053/1](#), relating to liability for the actions of tribal law enforcement officers when enforcing state law
 - Alternative [language](#) regarding liability insurance
- [WLC: 0054/1](#), relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission
 - Alternative [language](#) regarding liability insurance
- [WLC: 0055/1](#), relating to participation of tribal law enforcement officers in the Wisconsin Retirement System
- [Letter](#), to Representative Leah Vukmir from Representative Terry Musser (November 17, 2006), regarding charter school authorizers
- [Memorandum, Wisconsin Retirement System Coverage of Tribal Police Officers](#), from Representative Terry Musser, Chair, to Members of the Special Committee on State-Tribal Relations (November 21, 2006)
- [Letter](#), to Governor James E. Doyle, Members of the Wisconsin State Legislature, and Members of the Special Committee on State-Tribal Relations from Attorney General Peggy A. Lautenschlager, regarding cooperative county-tribal law enforcement program

- Letter, to Representative Terry Musser, Special Committee on State-Tribal Relations, from Robert Chicks, President, Stockbridge-Munsee Community, regarding Wisconsin Retirement System coverage of tribal police officers (December 8, 2006)
- Report Highlights, A Review: State Economic Development Programs, submitted by the Legislative Audit Bureau (August 2006). Full report available at <http://www.legis.wisconsin.gov/lab/PastReportsByDate.htm>
- Letter from the Internal Revenue Service regarding eligibility of Mille Lacs Band of Chippewa Indians tribal police officers under the Minnesota pension plan (November 19, 2002)
- Comments regarding WLC: 0055/1, An Act to Allow Tribal Law Enforcement Officers to Participate in the Wisconsin Retirement System, distributed by Vince Dela Rosa (January 18, 2007)
- Small Business Technical Assistance Program, submitted by Jerry Rayala, Program Director, Great Lakes Inter-Tribal Council
- Tribal School Bill, AB-637, distributed by Ken Fish
- Excerpt from Legislative Audit Report 06-9, *Economic Development Programs Targeting all Minority-Owned Businesses*, distributed by Paul Stuiber, Deputy State Auditor for Program Evaluation, Legislative Audit Bureau (August 2006)
- Excerpt from Legislative Audit Report 06-9, *Economic Development Programs Funded With Tribal Gaming Revenue*, distributed by Paul Stuiber, Deputy State Auditor for Program Evaluation, Legislative Audit Bureau (August 2006)
- Memorandum to Jamie Wali, Administrator, Division of Business Development, from Landon T. Williams, Budget and Policy Analyst, Department of Commerce, *Departmental Programs Tribal Entities are Eligible to Apply for* (November 12, 2004)

November 14, 2006 Meeting

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- Memo No. 1, Legislation Recommended by the 2004-06 Special Committee on State-Tribal Relations (November 3, 2006)
 - RL 2005-14, Special Committee on State-Tribal Relations, Report to the Legislature (August 13, 2005)
 - Table, Recommendations of the 2004-06 Special Committee on State-Tribal Relations Introduced by the Joint Legislative Council in the 2005-06 Legislative Session
- Memo No. 2, Retirement Plan Coverage for Tribal Police Officers (November 7, 2006)
 - Enclosure
- Memo No. 3, Authority of Tribal Law Enforcement Officers to Enforce Criminal Laws (November 13, 2006)
 - Enclosure, Criminal Jurisdiction in Indian Country
- Handout, 2005-07 Tribal Gaming Revenue Appropriations, from Art Zimmerman, Legislative Fiscal Bureau
- Presentation, Strengthening Government to Government Relations, by Laura Arbuckle, Department of Administration
- Presentation, Legislative Fiscal Bureau





MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

SB-98 TESTIMONY October 18, 2007 Senate Education Committee

Good Morning Chairman Lehman and committee members.

My name is Regina Washinawatok. I am one of nine members of the Menominee Tribal Legislature, the governing body of the Menominee Indian Tribe. We appreciate the opportunity to testify here today in support of SB-98.

As I hope each of you know the Menominee Tribe is one of the 11 Indian tribes in the state. Our Reservation is located about 15 miles north of Shawano. Our reservation is the largest Indian reservation in the state.

Our Tribe is also the oldest in Wisconsin. The Menominee Tribe currently has over 8,400 members, making our tribe the 2nd largest in population in the state. The Oneida are the largest.

About half our members reside on the Reservation and the remainder live off-reservation scattered throughout the state. There are probably Menominee residing in each of your Senate districts.

And “Yes” Menominee does have a casino located on our reservation in Keshena. All 11 Wisconsin tribes have at least one casino. There is just one off-reservation casino in Wisconsin and that of course is in Milwaukee. We are the Tribe that hopes to someday soon build a casino in Kenosha.

Unfortunately we are also one of the poorest tribes in the state.

Despite that, our tribal government struggles to provide numerous services to our members. We have our own police department, jail and court system. We operate a comprehensive health clinic and we provide housing for many of our members. We provide social services, employment services and many others.

One of our greatest interests is in the education of our young people. That begins with Head Start and continues through college.

Though we lack financial resources, we do place an emphasis on education because we know it is the way out of poverty for many of our members.

Among the proudest of our achievements as a Tribe is the creation of the College of the Menominee Nation. It is one of 2 Indian colleges in Wisconsin. We currently have an enrollment of over 500 students.

On our Reservation is a public K-12 school system called Menominee Indian School District. Again it is a public school.

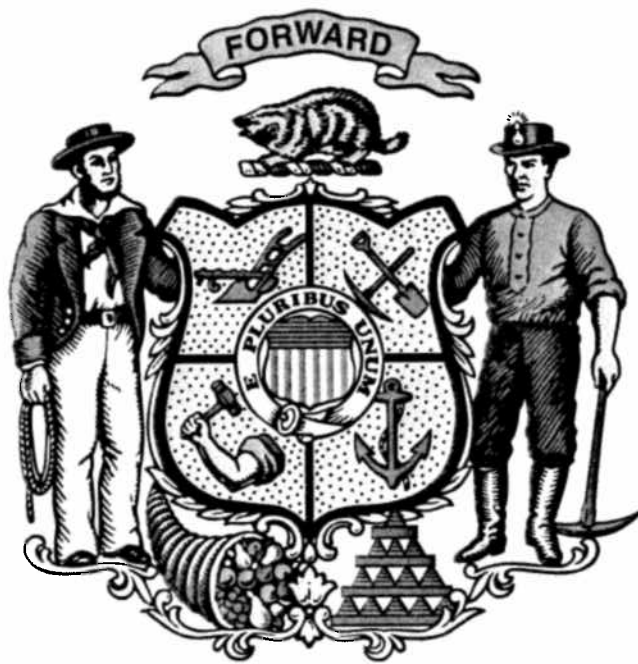
In addition to this public school system, the Tribe itself operates its own primary school for our young people.

With me is Robert Tucker, the Administrator of our tribal school. He will tell you more about our school and why we support SB-98 and why we think it is important to address some of the oversights in the current State Statutes.

Based on what you have already heard and what you will still hear, I hope you realize that SB-98 does not provide major new resources for our tribal school but rather it provides an acknowledgement that tribal schools do exist and that the students that attend them deserve the same opportunities the State Statutes provide all other school children in Wisconsin, be they in public or private schools.

We doubt there was ever an intent to exclude Indian schools or students of Indian schools from certain benefits but rather it was an honest oversight when these statutes were first written.

Thank you for your time and now here is Mr. Tucker.





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON EDUCATION REFORM

FROM: ^{SLW} Joyce L. Kiel, Senior Staff Attorney

RE: Information Requested About 2007 Assembly Bill 199, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils

DATE: January 10, 2008

2007 Assembly Bill 199 (and its companion, 2007 Senate Bill 98), relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils, was introduced by the Joint Legislative Council on the recommendation of the Joint Legislative Council's Special Committee on State-Tribal Relations.

At the public hearing held by the Assembly Committee on Education Reform on the bill, Representative Nass requested information about three issues: (1) a list of the benefits and protections provided to tribal schools, tribal school pupils, and tribal school staff in the bill; (2) the approximate cost of making seniors at tribal schools eligible for the Academic Excellence Higher Education Scholarship; and (3) the approximate cost of making teachers at a tribal school who are certified by the National Board for Professional Teaching Standards and meet other criteria eligible for grants on the same basis as public and private school teachers. This memorandum provides brief background information and then discusses these three issues.

BRIEF BACKGROUND

Assembly Bill 199 defines a "tribal school" as an institution with an educational program that has as its primary purpose providing education in any grade or grades from kindergarten to 12 and that is controlled by the elected governing body of a federally recognized American Indian tribe or band in Wisconsin or by a tribal educational authority established under the laws of a federally recognized American Indian tribe or band in Wisconsin. That definition then applies in chs. 115 to 121, Stats. (statutes relating to K-12 education), under s. 115.001 (intro.), Stats. The bill then uses the same definition by cross-reference in statutes outside chs. 115 to 121, Stats.

There are currently three schools in Wisconsin that would be considered tribal schools under this definition: the Menominee Tribal School; the Oneida Nation of Wisconsin Schools; and the Lac Courte Oreilles Tribal School.

Private School References--Benefits

In general, the bill amends statutes that refer specifically to private schools, private school pupils, or private school staff and provide a benefit or protection to them by adding references to tribal schools, tribal school pupils, or tribal school staff--with the exception of statutes relating to: transportation; special education; eligibility for bonding for certain building projects through the Wisconsin Health and Educational Facilities Authority; and statutes in ch. 119, Stats., that refer to private schools (since ch. 119 relates only to the Milwaukee Public Schools).

With respect to statutes that explicitly impose requirements on private schools unrelated to a benefit or protection, the bill does not add a reference to tribal schools. A list of such statutes is included in the PREFATORY NOTE to the bill.

Private School References--Benefit Linked to Requirement

In some cases, the bill includes language relating to tribal schools that is not identical to current statutes relating to private schools. These relate to statutes in which a requirement is integrally linked to a benefit provided--for example, statutes allowing a private school to receive certain confidential records but prohibiting redisclosure of the record. For those statutes, the bill generally extends the benefit to a tribal school that chooses to comply with the required provision.

Generic School References

The bill amends several statutes that refer generically to schools without explicitly referring to public schools, private schools, or tribal schools to make clear that if a benefit applies to a school, the benefit also applies to tribal schools. The bill does not amend statutes that impose a requirement generically on schools, including private schools, to impose the requirement on tribal schools.

LIST OF BENEFITS AND PROTECTIONS EXTENDED TO TRIBAL SCHOOLS, TRIBAL SCHOOL PUPILS, AND TRIBAL SCHOOL STAFF

The benefits and protections extended in the bill to tribal schools, tribal school pupils, and tribal school staff are briefly listed below in each of these categories. Each listing is followed by a reference to the SECTION number in the bill. These provisions of the bill are further explained in the NOTE following each SECTION of the bill. In some cases, a benefit or protection could have been included in more than one category because of overlapping considerations (for example, permitting disclosure to tribal schools of certain confidential police records could ultimately benefit the tribal school, tribal school pupils, and tribal school staff). However, each provision in the bill is included in only one category, namely, what appeared to be the most pertinent category.

Benefits or Protections Provided to Tribal Schools

The bill includes the following benefits or protections provided to tribal schools:

1. Permits a tribal school to ask the municipal clerk to conduct voter registration at the high school. [SECTION 1.]
2. Permits representatives of tribal schools to serve on the Department of Public Instruction (DPI) Council on Special Education. [SECTION 3.]
3. Permits the Governor to nominate a representative to the Educational Communications Board who may represent either a tribal school or private school. [SECTION 5.]
4. Requires the Department of Administration (DOA) to include tribal schools in the educational telecommunication access program under s. 16.997, Stats., which provides access to data lines and video links under certain conditions to certain educational agencies (including private schools) at certain costs. This program is the part of the Technology for Educational Achievement (TEACH) program that applies to private schools. The bill permits DOA to provide telecommunications services to tribal schools that DOA considers appropriate and permits DOA to charge for such services. [SECTIONS 6, 7, 8, 9, 11, and 12.]
5. Exempts a motor vehicle transporting tribal school pupils to a state park or recreational area from the requirement to display a state park admission receipt. [SECTION 13.]
6. Extends to tribal schools the requirement that the Department of Natural Resources create boating safety courses and offer them in cooperation with, among others, schools. [SECTION 16.]
7. Requires the Board of Regents of the University of Wisconsin (UW) System to direct the UW schools of education to work with tribal schools, among others, on researching improving school safety and reducing school discipline problems and to share with tribal schools the results of such research. [SECTION 17.]
8. Provides that the purposes of the Technical College System (TCS) include contracting, coordinating, and cooperating with tribal schools; requires the TCS Board to work with tribal schools on researching improving school safety and reducing school discipline problems and to share with tribal schools the results of such research; and authorizes a technical college district board to contract with tribal schools, among others, to provide educational services or fiscal and management services. [SECTIONS 18, 19, 20, and 21.]
9. Clarifies that a tribal school is not required to obtain a day care license. [SECTION 32.]
10. Requires the Department of Health and Family Services (DHFS) to cooperate with various entities, including tribal schools, to establish alcoholism prevention and treatment programs and to prepare curriculum materials on this subject. [SECTION 36.]
11. Establishes a process by which driver education courses offered in a tribal school can be accepted by the Department of Transportation for purposes of obtaining a driver's license under certain circumstances. [SECTIONS 46, 93, 94, and 95.]
12. Provides that tribal schools are eligible for the school lunch program, school breakfast program, school day milk program, and food services plan for the elderly. [SECTIONS 47, 48,

- 49, and 50.] (According to DPI staff, tribal schools currently receive funds for the school lunch program and school breakfast program, and no tribal schools currently offer the school day milk program or food services plan for the elderly.)
13. Includes tribal schools in DPI's programs to assist schools in developing: alcohol and other drug abuse programs; suicide prevention programs; and protective behavior programs. [SECTIONS 51, 52, and 53.]
 14. Includes tribal schools with those groups to which the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing may provide technical assistance and consultation services and other specified services. [SECTIONS 56, 57, 58, and 59.]
 15. Authorizes cooperative educational service agencies (CESAs) to facilitate communication and cooperation among public, private, and tribal schools, agencies, and organizations that provide services to pupils; subject to certain conditions, authorizes a CESA to contract with a tribal school. [SECTIONS 60 and 61.]
 16. Specifies that tribal schools may request trees from the state forest nursery for Arbor Day observance; also provides that tribal school pupils may be included in the distribution to school pupils by state forest nurseries of planting stock to celebrate Arbor Day. [SECTIONS 14 and 62.]
 17. Requires DPI to provide information to tribal schools about meningococcal disease. [SECTION 63.]
 18. Requires the authority in charge of a street or highway to erect school warning signs, including signs for tribal schools. [SECTION 64.]
 19. Provides for the disclosure of certain confidential records to tribal schools under certain circumstances if enforceable protections are in place to ensure that tribal school officials will not disclose the records except under the same situations that private schools may do so. This includes: police and law enforcement records in a ch. 48, Stats. (Children's Code), proceeding; public school records in certain circumstances; records of the DHFS, a county department of human services or county department of social services, a licensed child welfare agency, or a licensed day care center, or of the Department of Corrections in a ch. 938, Stats. (Juvenile Justice Code), proceeding; records of a juvenile court in a ch. 938 proceeding; and law enforcement records in a ch. 938 proceeding. [SECTIONS 31, 33, 65, 67, 105, 106, 107, 108, and 109.]
 20. Adds to the county committee that advises on school districts' truancy plans: (a) a representative of each tribal school in the county; and (b) a parent of a tribal school pupil. [SECTION 73.]
 21. Requires the annual school district report submitted by the school district clerk to DPI to include certain information about tribal schools and tribal school pupils, if the information is voluntarily provided to the school district by the tribal school. [SECTION 81.]

22. Requires the State Superintendent of Public Instruction (State Superintendent) to include tribal schools in the category of entities to which information about eye safety is provided. [SECTION 90.]
23. Adds tribal schools to the list of entities that may request information about persons on the sex offender registry; also amends the definition of "student" for the purpose of the sex offender registration law to also include students at a tribal educational institution, which would include tribal colleges as well as tribal schools. [SECTIONS 91 and 92.]
24. Permits a dental hygienist to be employed at or independently contract with a tribal school. [SECTION 96.]

Benefits or Protections Provided to Tribal School Pupils

The bill includes the following benefits or protections provided to tribal school pupils:

1. Permits certain tribal school pupils to serve as inspectors at a polling place under certain conditions. [SECTION 2.]
2. Includes seniors at a tribal high school in the Academic Excellence Higher Education Scholarship Program, as further discussed below. [SECTIONS 22, 23, and 24.]
3. Provides that a veteran is eligible for reimbursement for a course taken at a tribal high school under certain circumstances. [SECTION 25.]
4. Includes a tribal school in the list of schools that may serve a person relocated home by DHFS from a state center for the developmentally disabled. [SECTION 26.]
5. Provides that in entering a child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS), or delinquency dispositional order, a court may order a child to attend a tribal school *if* the school district has a contract with the tribal school for such placements and also requires the court to order the supervising agency to disclose information to the tribal school necessary to assure appropriate educational services in such cases. The bill also provides that, in such cases, the educational placement at a tribal school must be paid for by the school district. [SECTIONS 27, 28, 29, 83, 84, 85, 99, 100, and 101.]
6. If a CHIPS, JIPS, delinquency, or truancy or habitual truancy municipal ordinance dispositional order includes attendance at a tribal school as a condition of the order, requires that the court order request that a tribal school notify the court within five days of a violation of the condition. [SECTIONS 30, 103, and 104.]
7. Counts attendance at a tribal school for purposes of the Learnfare Program. [SECTIONS 34 and 35.]
8. Provides that minors doing fund raising by selling for a tribal school are exempt from the statutes relating to minors working in the street trades or fund raising on the same basis as minors doing fund raising for public or private schools. [SECTIONS 37, 38, 39, 40, 41, 42, and 43.]

9. Permits a child who has completed tribal high school to be employed during school hours. [SECTION 44.]
10. Clarifies that when a pupil transfers from a public school to a tribal school, the school district is required to transfer records to the tribal school. [SECTION 66.]
11. Permits a tribal school to file with DPI information about the elementary school course of study which entitles a pupil having completed that course of study to be admitted to a public high school. [SECTION 68.]
12. Permits a tribal school pupil who has met the standards for admission to high school to take up to two courses each semester at a public high school in the school district in which the pupil resides if the school board determines that there is sufficient space in the classroom. [SECTION 68.]
13. Explicitly provides that attendance at a tribal school satisfies the compulsory school attendance laws and provides that a child attending tribal school is not a "dropout." The bill also requires a school attendance officer to request information about the attendance of a child between the ages of six and 18 who is a resident of the school district and who claims or is claimed to be attending a tribal school. [SECTIONS 69, 71, and 72.]
14. Permits a child's parent or the child to request that a school board provide a program or curriculum modification to attend a tribal school. *If* the school board approves, the bill also provides that, in such cases, the educational placement at a tribal school must be paid for by the school district. [SECTIONS 70, 82, 83, 84, and 86.]
15. Permits school boards, CESAs, and county children with disabilities education boards to provide health treatment services to tribal school pupils at tribal schools under certain circumstances. [SECTION 74.]
16. Adds tribal schools to the definition of "school" for purposes of the statute that provides that it is a Class H felony for school staff at a public or private school to have sexual contact or sexual intercourse with a child who is age 16 or 17. [SECTION 112.]
17. Adds tribal schools to the definition of "school" for purposes of the statute that provides a criminal penalty for strip searches of pupils by school employees. [SECTION 114.]
18. Adds tribal schools to the definition of "school" for purposes of the statutes that: restrict possession of alcohol beverages on school premises; generally restrict the location of premises that have a Class A or Class B liquor license from being within 300 feet from the main entrance of a school; prohibit hunting within 1,700 feet of certain facilities, including a school; that prohibit a retailer from placing a vending machine that dispenses cigarettes within 500 feet of a school; provide a criminal penalty for possessing (subject to certain exceptions) certain dangerous weapons other than firearms on school premises; prohibit (subject to certain exceptions) possession of a firearm in or on the grounds of a school or within 1,000 feet of a school (school zone) and provide certain criminal penalties under certain circumstances for the discharge of a firearm in a school zone; and specify additional consequences for a delinquency disposition for firearms violation on school premises.

[SECTIONS 15, 75 (cross-referenced definition of school in s. 134.66 (1) (h), Stats.), 87, 88, and 115.]

25. Provides that the criminal penalty for possession of certain controlled substances on or within 1,000 feet of the premises of a school also applies to tribal schools and also extends the penalty enhancement to such violations. [SECTIONS 102, 116, and 117.]
19. Applies penalty enhancement for violent crimes committed in a school zone to tribal schools. [SECTION 110.]

Benefits or Protections Provided to Tribal School Staff

The bill includes the following benefits or protections provided to tribal school staff:

1. Permits a licensed teacher employed by a tribal school to serve on the DPI Professional Standards Council for Teachers. [SECTION 4.]
2. Includes tribal school teachers in the DOA program to facilitate the purchase of computers by school teachers. [SECTION 10.]
3. Provides that, although state law does not require that teachers in tribal schools have a state license, a state license may be issued if the applicant who teaches in a tribal school meets the state license criteria. Further provides that appropriate experience in a tribal school is counted in determining teaching experience under the state licensure law. [SECTION 46.]
4. For the alternative education program license, specifies that, like a private school, an alternative educational program does not include a tribal school. [SECTION 46.]
5. Makes teachers employed at a tribal school eligible for grants if they are certified by the National Board for Professional Teaching Standards or (under 2007 Wisconsin Act 20, are licensed as a master educator) and meet other criteria, as discussed below. [SECTIONS 54 and 55.]
6. Extends immunity from liability protections under several state laws to certain tribal school officials and others, including: for removing a pupil from school premises or from school-sponsored activities for suspicion of certain activities relating to controlled substances; for administering certain drugs to pupils under certain circumstances; for rendering emergency care; for permitting or prohibiting use of asthma inhaler under certain circumstances; for a good faith attempt to prevent suicide; for rendering free health care by certain health care providers at an athletic event at a tribal school; and for death or injury caused by the donation by certain individuals of commercial equipment or technology to a tribal school. [SECTIONS 75, 76, 77, 78, 79, 80, 97, and 98.]

Extending immunity under state law does not affect whatever right to immunity may be provided under the laws of a tribe.

7. Includes tribal school employees and certain health care providers who provide free health care at a tribal school athletic event in the category of persons who, when significantly

exposed to an individual (for example, by contact with the individual's blood) may require testing of that individual for human immunodeficiency virus and receive the results of the test. [SECTIONS 89 and 97.]

8. Provides that an employee, member of the board of directors, or trustee of a tribal school, while in his or her capacity as such, may not be prosecuted under s. 944.21 (crimes relating to obscene materials or performance) or 948.11, Stats. (crimes relating to exposing a child to harmful material or harmful descriptions or narrations). [SECTIONS 111 and 113.]

ACADEMIC EXCELLENCE HIGHER EDUCATION SCHOLARSHIP PROGRAM

Representative Nass requested information about the approximate cost of extending eligibility for a scholarship under the Academic Excellence Higher Education Scholarship Program to tribal school pupils.

Current Law

Under current law, the Higher Educational Aids Board (HEAB) administers the Academic Excellence Higher Education Scholarship Program under which HEAB awards scholarships to certain designated scholars (designated on the basis of highest grade point average) who enroll, on a full-time basis, in a public or private institution of higher education in Wisconsin that is participating in the program. The number of scholarships potentially awarded with respect to each public and private high school is based on the size of the high school as follows:

- 80 to 499 pupils--one senior.
- 500 to 999 pupils--two seniors.
- 1,000 to 1,499 pupils--three seniors.
- 1,500 to 1,999 pupils--four seniors.
- 2,000 to 2,499 pupils--five seniors.
- 2,500 or more pupils--six seniors.

For high schools with fewer than 80 pupils, no more than 10 scholarships are awarded on a statewide basis.

If a scholarship recipient enrolls in an institution within the UW System or the TCS, the recipient is exempt from all tuition and fees, up to \$2,250 per academic year, for up to four years in the UW System and three years in the TCS if the recipient continues to be enrolled full-time, achieves at least a 3.0 grade point average, and makes satisfactory progress toward an associate or bachelor's degree. This exemption from tuition and fees also applies to a scholar enrolled in a full-time vocational diploma program approved by the TCS Board.

If a scholarship recipient enrolls in a participating private institution of higher education, HEAB pays an amount equal to 50% of the tuition and fees charged a resident undergraduate at the UW-

Madison in the same academic year, subject to a maximum amount of \$1,125 per academic year, with the private institution of higher education to match the amount paid by HEAB.

Bill Provision

The bill extends eligibility for the scholarship to seniors at a tribal high school on the same basis as seniors at a public or private school.

Approximate Cost

Currently, only three tribes operate tribal schools. Currently, only two of the tribal schools operate high school grades. Estimates of the number of high school pupils for the current school year are 102 at the Oneida Nation of Wisconsin Schools and 83 at the Lac Courte Oreilles Tribal School. Based on the current statutory formula for awarding the scholarship (high school with 80 to 499 pupils), only one senior from each of these tribal schools would be eligible. If both seniors accepted the scholarship and attended UWS or TCS and maintained eligibility, this would cost approximately \$4,500 each fiscal year (\$2,250 times two students).

In the future, if all of the scholarship recipients enrolled in the UWS for four years, as many as eight recipients could be enrolled in a given year (two students in each class). If that occurred, the cost would be \$2,250 times eight students or \$18,000 as a maximum that could be paid out in a given year. If all of the scholarship recipients attended a participating private college in the state, the cost would be \$1,125 times eight students or \$9,000 as a maximum that could be paid out in a given year.

Thus, the approximate cost under current statutes and conditions if the bill were fully implemented could be as high as \$9,000 to \$18,000 per year but likely would be less because not all persons eligible for the scholarship typically choose to accept it and attend school in Wisconsin.

If additional tribal schools with a high school population exceeding 80 were created in the future, there would be an increase in the cost.

GRANTS FOR NATIONAL TEACHER CERTIFICATION OR MASTER EDUCATOR LICENSE

Representative Nass requested information about the approximate cost of extending eligibility for grants for teachers achieving certification by the National Board for Professional Teaching Standards to teachers at a tribal school.

Current Law

Initial Grant

Under current law, a teacher is eligible for an initial grant that cannot exceed \$2,000 if the person: (a) becomes certified by the National Board for Professional Teaching Standards; and (b) is licensed as a teacher by the State Superintendent *or* is employed as a teacher in a private school in the state.

Annual Grant

Additionally, under current law, DPI awards nine grants of \$2,500 for each year if the person: (a) maintains this national certification; (b) maintains his or her license from the State Superintendent *or* remains employed in a private school in the state; and (c) remains employed as a teacher in the state.

2007 Wisconsin Act 20

2007 Wisconsin Act 20 (the 2007-09 Biennial Budget Act) expanded this eligibility by changing the first criteria under the initial and annual grant eligibility—namely by making persons eligible if they either had the national certification *or* were licensed by the State Superintendent as a master educator under ch. PI 34, Wis. Admin. Code. (The other criteria remain the same.) In addition, Act 20 modified the program to provide that the yearly grant of \$2,500 would be \$5,000 for a school year in which the recipient is employed in a school in which at least 60% of the pupils enrolled are eligible for a free or reduced-price lunch under federal law.

Bill Provision

The bill provides eligibility for the grant to a teacher who meets the other eligibility criteria and: (a) is a teacher who is (for the initial grant) or maintains (for the yearly grant) his or her license issued by the State Superintendent; *or* (b) is (for the initial grant) or remains (for the yearly grant) employed in a private school *or tribal school* located in the state. The bill simply adds the reference to tribal school under this second option for fulfilling this eligibility criterion.

Approximate Cost

All of the teachers at the three tribal school systems in Wisconsin currently are licensed by the State Superintendent. Such licensure is not required by state law but is required under current regulations of the federal Bureau of Indian Affairs (BIA) which provides some level of funding to each of these schools. This means that all of the tribal school teachers are already eligible for these initial and continuing grants under current law if they achieve national certification or are licensed as a master educator as they already have a license from the State Superintendent and (for the continuing grant) are employed as teachers in the state.

Therefore, there would be no additional cost to including this provision in the bill under current conditions.

However, should a tribe in the future establish a tribal school that is not funded by the BIA and does not have the requirement for state licensure imposed by the BIA and if the tribe itself does not choose to require that its teachers have a license issued by the State Superintendent, the provision in the bill would permit such a teacher who received national certification and teaches in such a tribal school to be eligible on the same basis as a teacher who received national certification and teaches in a private school. Such a scenario is speculative and, should it occur, the number of teachers at such a tribal school is likely to be very small. In addition, it should be noted that only a very small percentage (less than 1%) of teachers has the national certification. Moreover, it is expected that some of the teachers at such a tribal school would voluntarily be licensed by the State Superintendent (and thus be eligible for the grant under current law), even if they are not required to be. Therefore, if such a tribal school were

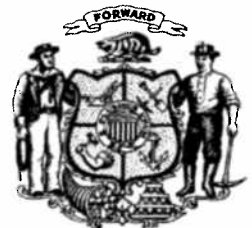
created, it seems very unlikely that a significant number (possibly none) of the teachers who are not voluntarily licensed by the State Superintendent would choose to achieve national certification and be eligible for the grant.

If you have any questions, feel free to contact me directly at the Legislative Council staff offices.

JLK:ksm



WISCONSIN STATE LEGISLATURE



Menominee Tribal School Bio

Menominee Tribal School is operated by the Menominee Indian Tribe of Wisconsin and is a Bureau of Indian Education grant school located in the Village of Neopit on the Menominee Indian Reservation in Northeast Wisconsin. Menominee Tribal School originally opened as St. Anthony's Catholic School in 1953. The parish was planning to close the school in the summer of 1991 due to financial difficulties. Parents approached the Tribe about requesting funding from the Bureau of Indian Affairs to keep the school operational as a Tribal School. The Tribe was successful in its attempt and opened doors as grades K-8 school in August 1991 as the Menominee Tribal School. The school itself has had two additions since the original building was constructed. The additions were built in 1992 that included an additional nine classrooms, a library, and cafeteria. The latest addition was built in 2004 and included four classes and a counselor's office.

Currently, the school has 195 students attending and has two kindergarten classrooms, one 1-5 grade classrooms, and two classes of each 6-8 grade. The school has a staff of 53 with about 50% being Native American. Besides its regular academic classes of reading, writing, math, science, and social studies, the school requires students to attend Menominee Language and Culture classes as core subjects. Students also attend specials classes such as physical education, art, computers, and library at least twice a week. The school also offers extra curricular activities such as girls' volleyball, girls and boys basketball, flag football, tackle football, girls softball, coed golf, cross country, and soccer. The school also offers an after school tutoring program along with singing and drumming and hoop dancing. The school also has students participating in cultural events such as wild ricing and maple sugar camp.

Because we are a federal grant school, we receive our funding through federal grants which is based on the student's enrollment or Certificate of Indian Blood (CIB's). If a student has a blood quantum of 25% of a federally recognized tribe or combination of tribes, we receive federal funding for that student. If the student does not have the necessary 25% we need to charge tuition, which is \$1,000 per year. The school receives approximately \$4,200 per student who is enrolled. This is a far cry from the students located at the Menominee Indian School District (MISD), which is recognized as a state public school district. Those students receive close to \$17,000 per student.