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(FORM UPDATED: 08/11/2010)

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

**2009-10**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on ... Transportation, Tourism,  
Forestry, and Natural Resources (SC-TTFNR)**

**COMMITTEE NOTICES ...**

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

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

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

## Senate

### Record of Committee Proceedings

#### **Committee on Transportation, Tourism, Forestry, and Natural Resources**

##### **Senate Bill 287**

Relating to: transferring ownership and jurisdiction of a municipality's highways to an American Indian tribe or agency of the United States government.

By Senators Vinehout, Holperin, Taylor, Lassa, Schultz, Coggs and Olsen; cosponsored by Representatives Radcliffe, Soletski, Danou, Schneider, Ziegelbauer, Huebsch, Hilgenberg and Mursau.

September 14, 2009 Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

September 30, 2009 **PUBLIC HEARING HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

##### Appearances For

- Joel Nilsestuen — on behalf of Senator Vinehout (D-31)
- Jon Schrader — Ho-Chunk Nation
- David Greendeer — Ho-Chunk Nation
- Garrett Blackdeer — Ho-Chunk Nation

##### Appearances Against

- None.

##### Appearances for Information Only

- None.

##### Registrations For

- None.

##### Registrations Against

- None.

##### Registrations for Information Only

- None.

October 15, 2009 **EXECUTIVE SESSION HELD**

Present: (7) Senators Holperin, Sullivan, Plale, Hansen, Leibham, Kedzie and Grothman.

Absent: (0) None.

Moved by Senator Sullivan, seconded by Senator Hansen that **Senate Bill 287** be recommended for passage.

Ayes: (6) Senators Holperin, Sullivan, Plale, Hansen, Leibham and Grothman.

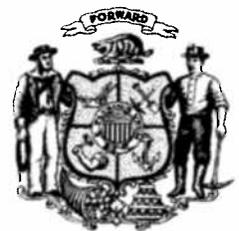
Noes: (1) Senator Kedzie.

PASSAGE RECOMMENDED, Ayes 6, Noes 1

Elizabeth Novak  
Committee Clerk



# WISCONSIN STATE LEGISLATURE





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# KATHLEEN VINEHOUT

## STATE SENATOR

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**Testimony in support of SB 287**  
**Committee on Transportation, Tourism, Forestry and Natural Resources**  
**Wednesday, September 30, 2009**

Good morning Chairman Holperin and members of the Committee. Thank you for the hearing today on SB 287 transferring ownership and jurisdiction of a municipality's highways to an American Indian tribe or agency of the United States government.

Rep. Mark Radcliffe and I drafted this bill at the request of Brockway Township and the Ho-Chunk Nation.

Mission Road is a town road in Brockway Township. It is a primary thoroughfare for members of the Ho-Chunk Nation to access one of the Nation's housing developments. Mission Road is in disrepair and unfortunately as is all too common for our towns, Brockway does not have the necessary resources to make the necessary improvements.

Brockway Township and the Ho-Chunk Nation have worked together on an agreement to repair the road. Under this agreement, Brockway would voluntarily transfer custody and jurisdiction of Mission Road to the Ho-Chunk Nation, who will then make the necessary improvements.

The Ho-Chunk Nation plans to fund this project through the Federal Indian Reservation Roads Program and funds have been encumbered for this year. However, the Bureau of Indian Affairs determined that state law does allow such a transfer to take place. Without SB 287, Mission Road will remain in disrepair to the benefit of none.

SB 287 remedies this situation by authorizing a municipality to voluntarily transfer ownership and jurisdiction to a federally recognized American Indian Tribe or agency of the United States government. Brockway will be able to transfer the roadway to the Ho-Chunk Nation and will have additional resources freed for other roads in need of maintenance. Mission Road will receive much needed improvements. Members of the Ho-Chunk Nation will have a safer and more efficient access to the housing development.

Thank you for your time and attention to this matter.



Date ?

## TESTIMONY BEFORE THE SENATE COMMITTEE ON TRANSPORTATION

Good morning/afternoon Chairman Holperin and committee members. I am David Greendeer, executive administrative officer to the President of the Ho-Chunk Nation. I am here today to urge you to support SB-287 on behalf of the hundreds of tribal members that live at the "Mission" housing development on Ho-Chunk trust land in the town of Brockway in Jackson County.

The main access route to these residences is Mission Road which intersects State Highway 54 just east of Black River Falls. The first mile of Mission Road after the intersection with Highway 54 is owned by the Town of Brockway. This section of the road is in desperate need of reconstruction. It poses an extreme safety hazard to anyone who travels it and the Ho-Chunk Nation wants to ensure that this road is improved. The Town of Brockway however simply does not have the resources to accomplish this. As an elected representative of the Nation, I get calls about this road constantly asking, when is it going to be fixed, and how can we let this road get so bad. I am sure that Committee members can appreciate those types of calls from constituents.

Brockway is a predominantly rural township that has a large percentage of land area under the state Managed Forest Lands program and therefore has a diminished tax base. The Ho-Chunk Nation has been working with the Town and the Bureau of Indian Affairs (BIA) to find a solution and SB-287 is part of that solution.

The Ho-Chunk Nation, with the cooperation and support of the BIA, and in agreement with the Town of Brockway, would like to take responsibility for Mission Road by having the Town transfer its ownership of the road to the Nation. The road would be held in trust for the Nation by federal government through the BIA. However, current state statutes do not specifically allow for a municipality to transfer ownership of a road to an Indian tribe or an agency of the United States. SB-287 would allow this transfer to occur and for the road to finally be fixed properly.

The key word here is "allow". Under SB-287, both a municipality and tribal government would have to agree to such a transfer; if a municipality and a tribal government can not agree to the terms of a transfer, it would not occur. The transfer is strictly voluntary. Although it is required to occur to receive funding, it is voluntary.

It is my understanding that these types of transfers had taken place in Wisconsin and other states until last year. Recently, the BIA encountered issues with transfers in other states and in 2008 began conducting more due diligence before allowing transfers to take place. As part of that due diligence, the BIA indicated that Wisconsin Statutes did not specifically state that municipalities had the authority to transfer ownership and they recommended that a statutory change would correct that problem.

Without this type of transfer, the Ho-Chunk and Town of Brockway would not be eligible for the federal resources necessary to repair and maintain Mission Road. Also, we do not anticipate this type of transfer occurring very often. Ho-Chunk has never done this before and the current example with Brockway only involves a one mile stretch of road. But one area that the federal government has really come through for tribes is in its support of road funding. All tribes in Wisconsin participate in the Indian Reservation Roads Program (IRR). Through this program tribes can access funding for road construction and maintenance projects. The Ho-Chunk Nation has the ability, if SB-287 becomes law, to assist the Town of Brockway to acquire the resources necessary to repair and maintain Mission Road.

In short, SB-287 will allow for a cooperative agreement between local units of government and tribal governments where both, and only where both agree that such an agreement is in their best interest to leverage federal funds for needed repairs and maintenance of roadways in Wisconsin. Please join the Ho-Chunk Nation and the Town of Brockway in supporting this very limited measure that will provide increased and needed resources to this Road for the safety and betterment of our state, local, and tribal communities.

Thank you for your time.





Date?

## HO-CHUNK NATION SUPPORTS SB-287

### Background

The Ho-Chunk Nation has been working with the town of Brockway in Jackson County on transferring one mile of town roadway to the federal government to be held in trust for the Nation. This stretch of road leads to a significant housing development for the tribe and the town has been unable to come up with the necessary funding for a number of years to make critical repairs. The road serves only tribal members. Brockway is predominantly rural and has a large percentage of land area under the Managed Forest Land (MFL) program, and thus has a diminished tax base.

Up until last year (2008) the BIA allowed these transfers to occur in Wisconsin and other states with little or no questions asked. This allowed tribes in Wisconsin to place transferred roadways into the federal Indian Reservation Roads Program (IRR) inventory and receive annual funding for construction and maintenance. As mentioned, the tribes take ownership of these roads in name only, it is actually the federal government that will own the roads and hold it in trust for the tribes. This is how any reservation or trust land is owned by tribes. These transfers did not happen on a frequent basis and not all tribes have been a party to a transfer.

In 2008, the BIA began conducting more due diligence before accepting these transfers. BIA was concerned that state statutes may not authorize municipalities to transfer and they were worried that tribes would take over these roads, spend the money to completely reconstruct them, and then the municipalities would want them back. An analysis of Wisconsin statutes by the BIA resulted in the suggestion that legislation be offered to correct this situation.

### IRR Program

The Indian Reservation Roads program has been in existence since 1928. *"The purpose of the IRR Program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and communities for Indians and Alaska Natives, visitors, recreational users, resource users, and others, while contributing to economic development, self-determination, and employment of Indians and Alaska Natives."* 25 CFR Part 170. The program is part of the Federal Lands Highway Program and is jointly administered by the BIA and FHWA. Every tribe in Wisconsin participates to one degree or another in this program. Funding from this program is stable, has usually been increased during federal transportation reauthorization, and has never been decreased.

### Mission Road in the Town of Brockway

Hundreds of tribal members live at the "Mission" housing development on Ho-Chunk trust land in the Town of Brockway in Jackson County. The main access route to these residences is Mission Road which intersects State Highway 54 just east of Black River Falls. The first mile of Mission Road after the intersection with Highway 54 is owned by the Town of Brockway. This section of the road is in desperate need of reconstruction. It poses an extreme safety hazard to anyone who travels it and the Ho-Chunk Nation wants to ensure that this road is improved.

The Town of Brockway, however, simply does not have the resources to accomplish the repair and maintenance of Mission Road. Elected representatives of the Nation have fielded many complaints regarding when it will be fixed, and there is much concern regarding safety and what can be done to repair the road.

### Executive Offices

W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615  
(715) 284-9343 Fax (715) 284-3127 (800) 294-9343

The Ho-Chunk Nation has been working with the Town and the Bureau of Indian Affairs (BIA) to find a solution and SB-287 is part of that solution.

The Ho-Chunk Nation, with the cooperation and support of the BIA, and in agreement with the Town of Brockway, would like to take responsibility for Mission Road by having the Town transfer its ownership of the road to the Nation. The road would be held in trust for the Nation by federal government through the BIA. However, current state statutes do not specifically allow for a municipality to transfer ownership of a road to an Indian tribe or an agency of the United States. SB-287 would allow this transfer to occur and for the road to finally be fixed properly.

The key word here is "allow". Under SB-287, the municipality, any municipality, would have to agree to such a transfer; if a municipality and a tribal government can not agree to the terms of a transfer, it would not occur. Without this type of transfer, the Ho-Chunk and Town of Brockway may not be eligible for the federal resources necessary to repair and maintain Mission Road.

The federal government has really come through for tribes in its support of road funding. All tribes in Wisconsin participate in the Indian Reservation Roads Program (IRR). Through this program tribes can access funding for road construction and maintenance projects. The Ho-Chunk Nation has the ability, if SB-287 becomes law, to repair and maintain Mission Road.

In short, SB-287 will allow for a cooperative agreement between local units of government and tribal government where both, and only where both agree, that such an agreement is their best interest to leverage federal funds for the repair and maintenance of needed roadways in Wisconsin.

Please join the Ho-Chunk Nation and the Town of Brockway in supporting this very limited measure that will provide increased and needed resources to this road for the safety and betterment of our state, local, and tribal communities.



IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Midwest Regional Office

Bishop Henry Whipple Federal Building

One Federal Drive, Room 550

Ft. Snelling, MN 55111



**ENGINEERING/ROADS**

DEC 02 2008

Honorable Wilfrid Cleveland  
President, Ho-Chunk Nation  
Attn: Garrett Blackdeer, IRR Program  
W9814 Airport Road, P.O. Box 667  
Black River Falls, Wisconsin 54615

RE: Roads Agreement between the BIA, the Ho-Chunk Nation and the Town of Brockway, Wisconsin.

Dear President Cleveland:

We have reviewed the proposed Road Agreement between the Town of Brockway, the Ho-Chunk Nation, and the United States Department of the Interior, which was received by this office on July 10, 2008. We understand that there has been a great effort put into this agreement by all parties and that the Tribe and the Township have addressed many of the issues that the BIA has brought forward in previous meetings. We apologize for the delays that our review has caused in the development of this project and understand your frustration.

Transfers of road jurisdiction and rights-of-way of BIA facilities have become nationwide issues over the past six months. Unfortunately, there is no federal regulation or guidance pertaining to the transfer of road rights-of-way across Fee Land to the Federal Government. Each state has their own statutes that govern the ability for state, county & local entities to transfer road rights-of-way to another governmental entity.

While the Great Lakes Agency and the Midwest Region have processed rights-of-way transfers like this in the past through simple transfer agreements, recent legal complications have resulted in the inability to utilize these agreements. The issue that has been raised nationally is that most state statutes are not written to allow the respective state, or the counties and townships within said state to transfer roads and the associated rights-of-way directly to a tribe or the Federal Government.

Some states have amended their statutes recently to allow for these types of transfers. Minnesota has amended their statutes pertaining to "Powers Related to Highways" to allow a county to transfer jurisdiction and ownership of a county highway to an agency of the United States or an Indian tribe. A copy of the State of Minnesota statute was

given to representatives of the Tribal Roads Department and Legislative Council during their August 22<sup>nd</sup> meeting.

At this point, our legal staff will not allow us to sign the agreement until the Town's authority has been established. This issue has been discussed on several occasions with tribal program and legal staff. However, to date, neither the Tribe nor the Township has been able to identify the Wisconsin statute that provides the Town of Brockway the authority to transfer the referenced road rights-of-way to the United States.

This is the first, and largest, issue that needs to be addressed. Once the Town's authority has been determined, the next steps can be planned. If the authority does not exist, the proposed agreement no longer is applicable.

If it is determined that the Township does have the authority to transfer the roads and their respective rights-of-way to the United States, then there are a few minor adjustments that will need to be made to the proposed agreement before it can be finalized. At this time, we feel that it is premature to spend any more time amending the current agreement until the Town's authority to transfer right-of-way has been determined.

If the tribal attorneys know of any Wisconsin State Statutes that may be pertinent to this issue, please have them contact our office.

It appears that the Tribe and Township agree that the referenced roads are in need of urgent attention. Therefore, it is recommended that the right-of-way transfer be put on hold, and that the project proceeds as a standard cooperative agreement. If the Tribe and the Township choose to go forward with the project with the Township retaining jurisdiction, the Tribe can utilize the same standard agreement that they have entered into with state, county and local entities on past projects.

If you should have any questions on this issue, please do not hesitate to call Todd Kennedy, Regional Road Engineer, at 612-725-4551.

Sincerely,



Acting Regional Director

Enclosures:





SB 287  
folder

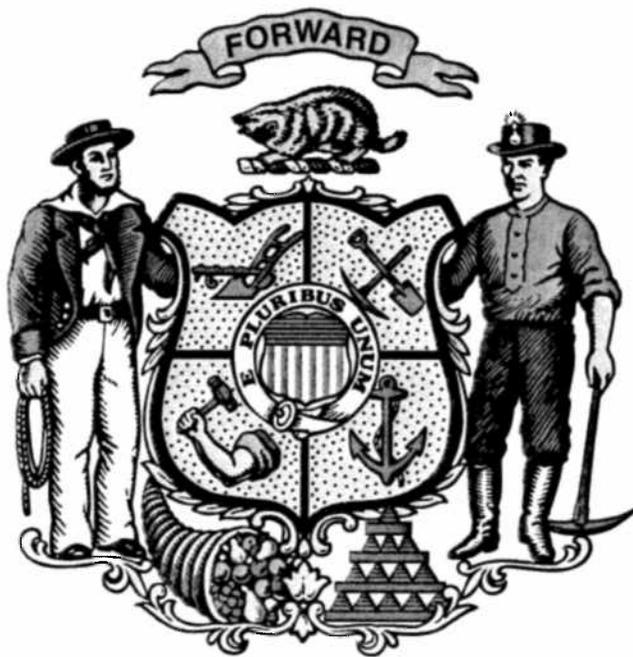
Whyte Hirschboeck Dudek S.C.

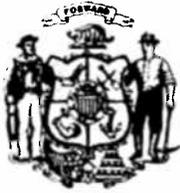
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**Tom Springer**

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State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-3278/1  
EVM:bjk:jf

2009 BILL 207

W/Notes

1 AN ACT *to create* 86.257 of the statutes; **relating to:** transferring ownership and  
2 jurisdiction of a municipality's highways to an American Indian tribe or agency  
3 of the United States government.

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*Analysis by the Legislative Reference Bureau*

Under this bill, a city, village, or town (municipality) may transfer jurisdiction and ownership of a highway that is owned by the municipality and is under the jurisdiction of the municipality to a federally recognized American Indian tribe or band in this state or an agency of the United States government by entering into a jurisdictional transfer agreement with the tribe or agency.

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

4 SECTION 1. 86.257 of the statutes is created to read:  
5 **86.257 Transfer of municipality's highways.** A municipality, as defined in  
6 s. 82.01 (6), may transfer jurisdiction and ownership of a highway that is owned by  
7 the municipality and is under the jurisdiction of the municipality to a federally  
8 recognized American Indian tribe or band in this state or an agency of the United

and

amend

**BILL**

1 States government by entering into a jurisdictional transfer agreement with the  
2 tribe or agency.

3 (END)

*public access  
added @  
end subject  
to Towns rules  
- could be closed w/ Towns  
approval*