



2005 ASSEMBLY BILL 138

February 24, 2005 – Introduced by Representative MUSSER. Referred to Committee on State Affairs.

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

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health and Family Services (DHFS) may not license, certify, issue a certificate of approval to, or register a person to operate a child welfare agency, foster home, treatment foster home, group home, shelter care facility, day care center, or any other facility, organization, or service, such as a hospital, a personal care worker agency, or a supportive home care agency, that provides direct care or treatment services to clients (entity) or to operate a temporary employment agency that provides caregivers to an entity; a county department of human services or social services (county department) or a child welfare agency may not license a person to operate a foster home or treatment foster home; a county department may not certify a person as a day care provider for purposes of reimbursement under the Wisconsin Works Program; and a school board may not

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contract with a person to operate a day care program; if the person has been convicted of certain serious crimes, has abused or neglected a client or misappropriated the property of a client, has abused or neglected a child, or has credentials that are not current or that are limited so as to restrict the person from providing adequate care to a client. Similarly, an entity may not employ or contract with a caregiver or permit a nonclient to reside at the entity if any of those factors apply to the caregiver or nonclient resident.

Current law, however, permits DHFS, a county department, a child welfare agency, a school board, or an entity to license, certify, issue a certificate of approval to, register, employ, contract with, or permit to reside at an entity a person to whom any of those factors apply if the person demonstrates that the person has been rehabilitated. Current law permits DHFS, a county department, a child welfare agency, or a school board to conduct rehabilitation reviews. Current law also permits a person or body designated by a tribe to conduct rehabilitation reviews of an entity that is located within the boundaries of the tribe's reservation if the tribe submits a rehabilitation review plan to DHFS and DHFS approves the plan.

This bill extends a tribe's rehabilitation review authority to entities located within the tribe's trust land, which is defined as land held in trust by the federal government for the benefit of the tribe or a member of the tribe. The bill also permits a tribe to request DHFS to grant the tribe the authority to conduct rehabilitation reviews with respect to some, but not all, entities within the boundaries of the tribe's reservation or trust land. In addition, the bill permits a tribe to request DHFS to grant the tribe the authority to conduct rehabilitation reviews with respect to an entity located outside the boundaries of the tribe's reservation or trust land that is owned or operated by the tribe or a tribal enterprise (tribal entity). The bill requires DHFS, in evaluating a tribe's request for the authority to conduct rehabilitation reviews of a tribal entity, to consider factors such as the proximity of the tribal entity to the reservation or trust land and the population to be served by the tribal entity, and permits DHFS to grant that authority if DHFS determines that the conduct of rehabilitation reviews by the tribe with respect to the tribal entity is rationally related to the protection of clients.

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

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

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

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

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

2 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 2.

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

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

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

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

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

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

23 2. A tribe may request the department to grant the tribe the authority to
24 conduct rehabilitation reviews under sub. (5) with respect to some, but not all,

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1 entities on the tribe's reservation or trust land. The department shall grant that
2 authority if the criteria established by rule under sub. (7) (bm) are satisfied.

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

4 50.065 (5d) (d) A tribe whose rehabilitation plan has been approved by the
5 department may request the department to grant the tribe the authority to conduct
6 rehabilitation reviews under sub. (5) with respect to an entity located outside the
7 boundaries of the tribe's reservation or trust land that is owned or operated by the
8 tribe or a tribal enterprise. The department shall evaluate the tribe's request,
9 considering factors such as proximity of the tribal entity to the reservation or trust
10 land and the population to be served by the tribal entity. If the department
11 determines that the conduct of rehabilitation reviews by the tribe with respect to the
12 tribal entity is rationally related to the protection of clients, the department may
13 authorize the tribe to conduct rehabilitation reviews with respect to the tribal entity.

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

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

19 (END)