

1 **AN ACT** *to amend* 20.505 (8) (hm) (intro.); and *to create* 20.255 (2) (t), 20.505 (8)
2 (hm) 23. and 115.455 of the statutes; **relating to:** providing state aid to tribal schools
3 for certain pupils and creating an appropriation.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on state-tribal relations. The committee heard presentations by John Wilhelmi, Program Attorney, Menominee Indian Tribe of Wisconsin, and Dr. Donna Powless, Administrator, Menominee Tribal School, recommending that Wisconsin statutes be changed to: (1) provide the same benefits to tribal schools and tribal school pupils as the benefits provided to private schools and private school pupils; and (2) provide state funding to tribal schools. WLC: 0176/1 addresses the first topic. This draft addresses the second topic.

GENERAL BACKGROUND

WLC: 0176/1 and this draft define 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.

Currently, 4 schools in Wisconsin would come under that definition. They are the: Menominee Tribal School; Oneida Nation of Wisconsin Schools; Lac Courte Oreilles Tribal School; and Mashkiisiibii (Bad River) Tribal School. The first 3 have contracts with and are funded, in full or in part, by the bureau of Indian affairs (BIA). A tribe also may provide funding to its tribal school. The last school is funded by the Bad River Tribal Council and does not have a contract with or receive a grant from the BIA.

BIA FUNDING OF TRIBAL SCHOOLS

The BIA provides funding to those tribal schools with which the BIA has a contract or to which the BIA provides a grant. In general, the funds provided by the BIA to a BIA contract or grant school include:

1. An amount determined under the BIA's Indian student equalization program (ISEP) by multiplying a base unit value for the basic instructional program (for the 2004-05 school year, \$3,996) by the weighted student unit count of ISEP-eligible pupils (which factors in average daily membership determined during the tribal school's pupil count week and assigns weights to certain pupils under certain circumstances). An ISEP-eligible pupil is a pupil who is a member of a federally recognized American Indian tribe or has at least 1/4 degree of Indian blood, is enrolled in a BIA contract or grant school during the tribal school's pupil count week, is not enrolled in any other school during the count week, and actually attends the tribal school at least one full day during the count week.
2. Additional amounts under the ISEP program based on additional weighting; adjustments for small schools; and funding for contingencies, school board training, pupil transportation, interim maintenance and minor repairs, administrative costs, prekindergarten programs, and operation and maintenance.
3. Additional amounts under specific federal education programs, such as: special education funding under Part B of the individuals with disabilities education act (IDEA) or funding under various titles of the elementary and secondary education act (ESEA).

All of the tribal schools in Wisconsin currently permit non-ISEP eligible (non-ISEP) pupils to attend the tribal school, although some limit the number of such pupils. Non-ISEP pupils are not counted in determining federal aid to the tribal school and do not generate federal funding for the tribal school under the portion of ISEP formula that multiplies the base unit value (currently \$3,996) times the weighted pupil unit count. Estimates of the non-ISEP pupils enrolled in Wisconsin tribal schools currently are: Menominee Tribal School—8; Oneida Nation of Wisconsin Schools—20; Lac Courte Oreilles Tribal School—40; and Mashkiisiibii (Bad River) Tribal School—26. (All the pupils at the Mashkiisiibii Tribal School are non-ISEP pupils because that school does not have a contract with or receive a grant from the BIA.)

COMMENT: Additional information about funding of tribal schools is included in the memorandum "State Funding of Tribal Schools" addressed to the working group on tribal schools for the committee

(March 17, 2005), a copy of which is being provided to committee members.

THE DRAFT

This draft addresses the second topic suggested by the Menominee Tribe, that is, to provide state funding to tribal schools. The draft does the following:

1. Provides state aid to a tribal school in an amount that is calculated by multiplying the ISEP base unit value determined by the BIA for the prior school year times the number of non-ISEP eligible pupils at the tribal school during the tribal school's pupil count week in a school year. The general purpose is, for each non-ISEP eligible pupil, to pay each tribal school (including a tribal school that does not have a contract with or receive a grant from the BIA) approximately the amount that would have been allotted to the tribal school by the BIA under ISEP for the basic educational program if the the pupil were ISEP eligible.

2. Creates an appropriation to the department of public instruction (DPI) to fund this payment. The appropriation uses state gaming revenues paid to the state. The draft provides an appropriation of \$375,700, which is based on the current estimate of the number of non-ISEP pupils enrolled in tribal schools (96) multiplied by the ISEP base unit value for the 2004-05 school year of \$3,996, rounded to the next \$100. The draft provides for prorating the amount if the funds are not sufficient in a school year.

3. Includes a payment schedule and requires submission to DPI of information about the non-ISEP pupils. The draft also creates a mechanism to verify the information about the non-ISEP pupils.

1 **SECTION 1.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the
2 following amounts for the purposes indicated:

3				2005-06	2006-07
4	20.255	Public instruction, department of			
5	(2)	AIDS FOR LOCAL EDUCATIONAL PROGRAMMING			
6	(t)	Aid to tribal schools	PR-S A	\$0	\$375,700

NOTE: Appropriates to DPI the amount in the schedule for payment of aid to tribal schools from tribal gaming revenues paid to the state as described in s. 115.455, below.

COMMENT: *Did the committee want to recommend that a different amount be appropriated?*

1 **SECTION 2.** 20.255 (2) (t) of the statutes is created to read:

2 20.255 (2) (t) *Aid to tribal schools.* The amounts in the schedule for the payment of aid
3 to tribal schools under s. 115.455. All moneys transferred from the appropriation account
4 under sub. (8) (hm) 23. shall be credited to this appropriation. Notwithstanding s. 20.001 (3)
5 (a), the unencumbered balance on June 30 of each year shall revert to the appropriation
6 account under sub. (8) (hm).

7 **SECTION 3.** 20.505 (8) (hm) (intro.) of the statutes is amended to read:

8 20.505 (8) (hm) *Indian gaming receipts.* (intro.) All moneys required to be credited
9 to this appropriation under s. 569.06, all moneys transferred under 2001 Wisconsin Act 16,
10 sections 9201 (5mk), 9205 (1mk), 9210 (3mk), 9223 (5mk), 9224 (1mk), 9225 (1mk), 9231
11 (1mk), 9237 (4mk), 9240 (1mk), 9251 (1mk), 9256 (1mk), 9257 (2mk), and 9258 (2mk), and
12 all moneys that revert to this appropriation account from the appropriation accounts specified
13 in subds. 1c. to ~~19.~~ 23, less the amounts appropriated under par. (h) and s. 20.455 (2) (gc), for
14 the purpose of annually transferring the following amounts:

15 **SECTION 4.** 20.505 (8) (hm) 23. of the statutes is created to read:

16 20.505 (8) (hm) 23. The amount transferred to s. 20.255 (2) (t) shall be the amount in
17 the schedule under s. 20.255 (2) (t).

NOTE: SECTIONS 2 to 4 provide that the appropriation is funded by tribal
 gaming revenues paid to the state.

18 **SECTION 5.** 115.455 of the statutes is created to read:

19 **115.455 Aid to tribal schools. (1)** In this section:

20 (a) “Non–ISEP pupil” means a pupil at a tribal school who was enrolled and present
21 at the tribal school during the pupil count week in a school year, was not enrolled in any other

1 school during that pupil count week, attended the tribal school at least one full day during the
2 pupil count week, and was not eligible to be counted in determining the weighted student unit
3 count for the purpose of determining the amount of federal aid under the basic program under
4 the Indian school equalization program of the bureau of Indian affairs under 25 CFR Part 39
5 in that school year.

6 (b) "Pupil count week" means the week in which a tribal school counts its pupils under
7 25 CFR 39.30 (b) or 39.34 or would count its pupils under 25 CFR 39.30 (b) if the tribal school
8 were eligible for funding under the Indian school equalization program.

NOTE: The pupil count week under the ISEP regulations is the last full week in September. However, 25 CFR 39.34 also permits a tribal school to petition the BIA's director of the office of Indian education programs to substitute another week in September under certain circumstances.

9 (c) "Tribal school" means an institution with an educational program that has as its
10 primary purpose providing education in any grade or grades from kindergarten to 12 and that
11 is controlled by the elected governing body of a federally recognized American Indian tribe
12 or band in Wisconsin or by a tribal educational authority established under the laws of a
13 federally recognized American Indian tribe or band in Wisconsin.

NOTE: Creates the same definition of tribal school as in WLC: 0176/1.

14 (2) Subject to subs. (3) and (4), in each school year the state superintendent shall pay
15 each tribal school, from the appropriation under s. 20.255 (2) (t), an amount equal to the
16 number of non-ISEP pupils in grades kindergarten to 12 enrolled in the tribal school during
17 the pupil count week in that school year multiplied by the base unit value referred to in 25 CFR
18 39.10 (e) for the basic program as defined by 25 CFR 39.11 (b) under the Indian school
19 equalization program of the bureau of Indian affairs under 25 CFR Part 39 in the previous

1 school year. The state superintendent shall pay 50% of the total amount under this subsection
2 in November and 50% in May.

COMMENT: *Is disbursement in November and May appropriate?*

The ISEP base unit value for the previous school year is used, as information about that value in the current school year likely would not be available at the time the first payment is to be made.

3 (3) If the appropriation under s. 20.255 (2) (t) in any school year is insufficient to pay
4 the full amount of aid under this section, state aid payments shall be prorated among the tribal
5 schools entitled to such aid based on the number of non-ISEP pupils identified in the tribal
6 school's pupil count week in proportion to the number of non-ISEP pupils identified in the
7 pupil count week of all tribal schools applying for aid under this section for that school year.

8 (4) No tribal school may receive aid under this section for a school year unless all of the
9 following apply:

10 (a) A tribal school official certifies to the state superintendent by October 31 of that
11 school year, on a form specified by the state superintendent, the names and grade levels of
12 non-ISEP pupils determined during the pupil count week.

13 (b) The tribal school agrees that the state superintendent may either conduct an audit of
14 pupil enrollment and attendance records of the non-ISEP pupils or require the tribal school
15 to submit a statement by an independent auditor, approved by the state superintendent, that
16 the pupil enrollment and attendance records of the non-ISEP pupils are accurate.

17 (5) Any overpayment which is not refunded to the department will be deducted from
18 a future payment.

19 **SECTION 6. Initial applicability.** The treatment of s. 115.455 first applies in the school
20 year that begins on or after the effective date of this section.

1 **SECTION 7. Effective date.** This act takes effect on the day after publication, or on the
2 2nd day after publication of the 2005–07 biennial budget act, whichever is later.

3 (END)