



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

417 North (the G.A.R. Room)
State Capitol

May 9, 2005
1:00 p.m. - 4:50 p.m.

[The following is a summary of the May 9, 2005 meeting of the Special Committee on State-Tribal Relations. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Musser called the meeting to order at 1:00 p.m. The roll was called. A quorum was not present initially but was later in the meeting.

COMMITTEE MEMBERS PRESENT: Rep. Terry Musser, Chair; Reps. Garey Bies, Terri McCormick, Mark Pettis, and Gary Sherman; Sen. David Zien; and Public Members Gary Besaw, Vince Dela Rosa, Doug Huck, Mark Montano, and Louis Taylor.

COMMITTEE MEMBERS EXCUSED: Sens. Ronald Brown and Spencer Coggs; and Public Members John Alloway, Howard Bichler, Carol Brown, Jon Greendeer, and Donna Lynk.

TECHNICAL ADVISORY

COMMITTEE MEMBERS PRESENT: Thomas Ourada, Department of Revenue; and Jim Weber, Department of Health and Family Services.

COUNCIL STAFF PRESENT: David L. Lovell, Senior Analyst, and Joyce L. Kiel, Senior Staff Attorney.

APPEARANCES: Tom Ourada, Department of Revenue (DOR) and Jennifer J. Miller, Property Assessment Practices Specialist, DOR; Jennifer Kammerud, Legislative Liaison and Bob Soldner, Director, School Management Services, Division for Finance and Management, Department of Public Instruction; and Wendy Helgemo, Tribal Counsel, Department of Justice, Ho-Chunk Nation (attending in place of Jon Greendeer).

**Approval of the Minutes of the April 15, 2005
Meeting of the Special Committee**

Representative McCormick moved, seconded by Representative Bies, to approve the minutes of the April 15, 2005 meeting of the committee. The motion passed on a voice vote.

Description of Materials Distributed

Ms. Kiel briefly described the materials noted on the agenda that had been distributed to committee members before the meeting. She also noted that another bill draft, WLC: 0069/5, was distributed at the meeting for discussion during the meeting.

**Tax Treatment of Non-Trust Lands Owned By a Tribe
and Used For Governmental Purposes**

Chair Musser asked Technical Advisory Committee member Tom Ourada, Department of Revenue (DOR) and Jennifer J. Miller, Property Assessment Practices Specialist, DOR, to sit at the table while the committee discussed this topic.

Ms. Kiel noted that, at the last meeting, the committee had approved WLC: 0069/3 but had requested that the draft be changed to include “tribal housing” as one of the governmental purposes for which tribal property held in fee would be exempt from property tax. She explained that WLC: 0069/4 reflected this change and had been distributed to the committee.

Mr. Ourada indicated that DOR might have some concerns about the broad wording of some exemptions listed in the draft. However, he also explained that some of the governmental purposes in the draft may already qualify property owned by a tribe for a tax exemption under current law. He distributed the DOR Property Tax Exemption Request form on which an application for exemption may be made. Ms. Miller encouraged people to contact her if there are questions about this. (She has provided contact information: Jennifer J. Miller, Department of Revenue, P.O. Box 8933, Madison, WI 53708-8933; telephone 608-266-1332; email jmiller5@dor.state.wi.us.)

However, it was noted that while some of the current statutory exemptions refer to uses that are covered by the draft (e.g., property owned and used exclusively for an “educational institution,”) the current statutory exemption may not technically apply if a tribe owns the property (e.g., because the owner of the property is not an “educational institution”). While DOR may interpret some uses of tribal property as qualifying for an exemption under current law, some committee members thought it would be preferable to have the statutes specify this, as provided in the draft, so that a local assessor would clearly understand that the exemption applied.

It was observed that, under the draft, a tribe would have to notify the assessor of the tribe's use of the property in order for the property to be taken off the tax roles. Ms. Kiel noted that the draft's analysis indicates that, under current law (which is unchanged by the draft), the assessor must be notified on or before March 1 for a given year.

Chair Musser explained that with the Wisconsin Supreme Court's decision in *Columbus Park Housing Association v. City of Kenosha* [267 Wis. 2d 59 (2003)] and the Joint Legislative Council's appointment of the Special Committee on Tax Exemptions for Residential Property, the issue of tax exemptions for housing is currently a prominent issue for the Legislature.

Ms. Kiel said that WLC: 0069/5 had been drafted to provide options for committee consideration to define "tribal housing" for purposes of this exemption, noting that the draft referred to "tribal housing" as meaning "residential facilities [for low-income or elderly persons] provided under a housing program operated by an American Indian tribe or band in this state for members of that tribe or band or by a tribal housing authority or tribally designated housing entity of such a tribe or band for members of that tribe or band." She also stated that the draft does not limit the proposed exemption to property on a reservation.

Responding to a question, she noted that the options provided in WLC: 0069/5 were patterned after the tax law in the State of Washington which: (a) provides a property tax exemption for property owned by a tribe and used for "essential government services"; (b) defines "essential governmental services" without including housing; and (c) has a separate statute on tax exemption for housing authorities, including a tribal housing authority, which is defined as meaning a tribe or tribal agency that operates and administers housing programs for low income persons or senior citizens.

Several committee members noted that tribal housing authorities may serve individuals who are not tribal members. Thus, it was suggested that the portion of the proposed definition in WLC: 0069/5 indicating that a tribal housing program was to provide residential facilities for members of that tribe be deleted. After extensive discussion, the committee also agreed that the optional language in brackets defining tribal housing as being for low-income or elderly persons should not be included in the draft.

Mr. Montano asked if idle land owned by a tribe would be included as tax exempt in the draft, stating that he thought all land owned in fee by a tribe should be tax-exempt, regardless of its use. It was noted that the draft does not provide an exemption for idle land. Several committee members explained why they consider it to be appropriate to limit the exemption to property that provides traditional governmental services.

Chair Musser stated that if the Joint Legislative Council introduces the draft, it will have to be referred to the Joint Survey Committee on Tax Exemptions, which will make a recommendation to the Legislature about the proposal.

Representative Pettis moved, seconded by Mr. Montano, to rescind the recommendation approving WLC: 0069/4. The motion passed on a vote of Ayes, 11 (Reps. Musser, Bies, McCormick, Pettis, and Sherman; Sen. Zien; and Public Members Besaw, Dela Rosa, Huck, Montano, and Taylor); Noes, 0; and Absent 7 (Sens. Brown and Cogg; and Public Members Alloway, Bichler, Brown, Greendeer, and Lynk).

Mr. Besaw moved, seconded by Representative Pettis, that the committee recommend WLC: 0069/5, as modified in the preceding discussion, to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 11 (Reps. Musser, Bies, McCormick, Pettis, and Sherman; Sen. Zien; and Public Members Besaw, Dela Rosa, Huck, Montano, and Taylor); Noes, 0; and Absent 7 (Sens. Brown and Coggs; and Public Members Alloway, Bichler, Brown, Greendeer, and Lynk).

Treatment in Wisconsin Statutes of Tribal Schools

Chair Musser asked Jennifer Kammerud, Legislative Liaison and Bob Soldner, Director, School Management Services, Division for Finance and Management, Department of Public Instruction (DPI), to sit at the table while the committee discussed this and the following two agenda items.

Ms. Kiel described WLC: 0176/1, relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils. She said that current statutes include requirements and benefits that apply to public schools and requirements and benefits that apply to private schools, but those statutes do not apply to tribal schools because tribal schools do not fit into either category.

She explained that WLC: 0176/1 defines tribal schools and provides benefits and protections to tribal schools, tribal school staff, and tribal school pupils that are similar to the benefits and protections provided to private schools. However, she noted that the draft does not provide similar treatment regarding special education and transportation because the Working Group on Tribal Schools, which had helped develop most of the provisions in WLC: 0176/1, had not reached agreement on how to address those issues—largely due to the fact that tribal schools funded by the Bureau of Indian Affairs (BIA) receive special education and transportation funding from the BIA.

She noted that the draft imposes no requirements on tribal schools but does condition some benefits on a tribal school's voluntary compliance with certain conditions—for example, providing a tribal school with access to confidential court, law enforcement, or social service agency records under certain circumstances if the tribal school has an enforceable mechanism to protect the confidentiality of the records in the same manner required of public and private schools.

Ms. Kiel also noted that J.P. Leary, the DPI's Technical Advisory Committee member, had earlier suggested that the issue of the access of tribal schools to state pupil tests be reviewed, but the Working Group had not agreed on what should be done and DPI had subsequently raised several questions about the issue. Ms. Kiel noted that a comparable provision did not apply to private schools, and there was no provision in the draft about this topic. In response to a question from Mr. Besaw, Mr. Soldner said that, while the draft does not address the issue, he thought that tribal schools should be able to contract with testing companies to obtain the tests that are available to private schools.

Ms. Kammerud said that DPI has no technical concerns about the draft. After further discussion, the committee voted on the draft.

Mr. Dela Rosa moved, seconded by Representative Bies, that the committee recommend WLC: 0176/1 to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 11 (Reps. Musser, Bies, McCormick, Pettis, and Sherman; Sen. Zien; and Public Members Besaw, Dela Rosa, Huck, Montano, and Taylor); Noes, 0; and Absent 7 (Sens. Brown and Coggs; and Public Members Alloway, Bichler, Brown, Greendeer, and Lynk).

State Funding for Tribal Schools

Ms. Kiel described WLC: 0177/1, relating to providing state aid to tribal schools for certain pupils. She noted that a memorandum prepared for the Working Group on Tribal Schools about funding of tribal schools had been distributed to the committee earlier. She also noted that the Working Group had not reached a consensus on state funding of tribal schools and that Chair Musser had provided drafting instructions for WLC: 0177/1 as a starting place for committee discussion.

She explained that while the BIA provides an amount for base instructional funding for each qualified pupil under the BIA Indian Student Equalization Program (ISEP), not all pupils at tribal schools are ISEP eligible, and, thus, do not generate this base funding for the tribal school they attend. She said the draft provides for determining the prior year BIA base instructional funding amount (which is determined annually) and multiplying it by the number of non-ISEP eligible pupils to determine the amount of state aid to a tribal school. Mr. Dela Rosa said that the amount of aid provided in the draft seemed to be a good start.

The committee discussed the fact that the draft imposes no requirements on tribal schools and provides no standards for them, and it was noted that the Minnesota law providing funding to tribal schools requires that, in order to be eligible for state funding, the tribal school must comply either with BIA requirements or Minnesota education laws. It was observed that while the BIA would monitor BIA contract or grant schools, the BIA would not monitor other tribal schools to which the BIA does not provide funding, such as the Bad River school. However, it was also observed that, if the draft were amended to impose requirements on tribal schools, assigning a role to the state to monitor compliance may be problematic as an interference with tribal sovereignty. After further discussion, the committee did not request that the draft impose requirements on tribal schools as a condition of receiving funding.

Ms. Kammerud noted that while the draft provides for counting pupils during the tribal school count week under federal law, it would be possible for a pupil to be counted at a public school on the third Friday in September for state aid purposes and also be counted at the tribal school during the tribal school count week in the last week of September. The committee requested a change to the draft to eliminate the possibility of double counting.

Mr. Dela Rosa moved, seconded by Representative McCormick, that the committee recommend WLC: 0177/1, as modified by the preceding discussion, to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 11 (Reps. Musser, Bies, McCormick, Pettis, and Sherman; Sen. Zien; and Public Members Besaw, Dela Rosa, Huck, Montano, and Taylor); Noes, 0; and

Absent 7 (Sens. Brown and Coggs; and Public Members Alloway, Bichler, Brown, Greendeer, and Lynk).

Creating a Tribal Charter School Authorizing Board and Permitting Establishment of Charter Schools by That Board

Representative Terri McCormick presented LRB-2840/P1, which she had previously had drafted to create a Tribal Charter School Authorizing Board and permit that board to establish independent charter schools. She suggested that the draft be modified to eliminate the provision in current law that generally only a pupil who lives in the school district in which an independent charter school is located may attend the charter school. It was suggested that the board establish an attendance area for each such independent charter school.

Mr. Soldner noted that independent charter schools are funded by reducing the state general school aids paid to all school districts. He also noted that DPI has taken the position that the statutes would not require that transportation be provided to such an independent charter school. Ms. Kammerud noted that such a charter school would be a public school and subject to state requirements that apply to independent charter schools.

In response to a question from Mr. Besaw, Representative McCormick indicated that she also has had a bill draft prepared that would authorize tribal colleges to contract to establish independent charter school, but she did not request that the committee take action on that draft.

Ms. Kiel noted that LRB-2840/P1 provides that the proposed board would be an independent state agency, governed by state laws, such as open meetings, open records, and records retention laws, even though the board members would be nominated by tribes. It was observed that while the board is to consist of a representative of each tribe, some tribes might not, or at least might not immediately, appoint a member. Representative McCormick suggested that the draft be modified to provide that a quorum of the board consists of the persons representing a majority of participating tribes.

Mr. Montano moved, seconded by Mr. Taylor, that the committee recommend LRB 2840/P1, as modified by the preceding discussion, to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 10 (Reps. Musser, Bies, McCormick, and Pettis; Sen. Zien; and Public Members Besaw, Dela Rosa, Huck, Montano, and Taylor); Noes, 1 (Rep. Sherman); and Absent 7 (Sens. Brown and Coggs; and Public Members Alloway, Bichler, Brown, Greendeer, and Lynk).

Eligibility of Tribal Employees to Participate in the State Retirement System

Mr. Lovell provided background information and described WLC: 0203/P1. He noted that one of the requirements before a tribe or tribal agency could be covered under the Wisconsin Retirement System (WRS) is that the tribe or tribal agency obtain a ruling from the Internal Revenue Service (IRS) that the tribe or tribal agency is an instrumentality of the state. He noted that several tribes in Minnesota had obtained such an IRS ruling with respect to tribal law enforcement officers who were authorized by state law to also enforce state criminal law and were covered under the Minnesota state pension system. Tribal law enforcement officers are authorized to enforce state criminal law in Wisconsin under certain

circumstances. In light of the necessity of obtaining an IRS ruling that a tribe or tribal agency is an instrumentality of the state, committee members suggested that this might be very difficult except with respect to tribal police departments. Thus, several committee members suggested that the draft be limited to cover only the employees of tribal police departments.

Mr. Lovell indicated that a method would have to be devised to ensure that a tribe paid assessments to the state. He also noted that current law requires participating employers to continue participation in the WRS in perpetuity. He noted that the draft provided for both bonds and deduction of state payments to a tribe if required payments were not made. Representative Sherman indicated that, if the provision regarding bonds is retained, it should be revised to reflect how bonds function.

Mr. Lovell noted that the draft was preliminary and would not be included in the package of recommendations that the committee is making to the Joint Legislative Council at its upcoming meeting.

Other Business

Chair Musser noted that the committee's recommendations would be presented to the Joint Legislative Council on June 1.

Plans for Future Meetings

The next meeting of the committee was not scheduled. Ms. Kiel noted that two projects selected by Chair Musser for future study involve: (1) providing direct funding to tribes for child welfare services; and (2) concurrent state and tribal criminal jurisdiction on reservations subject to Public Law 280. She observed that it would take some time to develop proposals to present to the committee.

Adjournment

Chair Musser adjourned the meeting at 4:50 p.m.

JLK:tlu