



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Room 411 South, State Capitol
Madison, Wisconsin

November 14, 2006
10:00 a.m. – 12:45 p.m.

[The following is a summary of the November 14, 2006 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>.]

Call to Order and Roll Call

Chair Musser called the meeting to order. The roll was called and it was found that a quorum was lacking; a quorum was achieved later.

COMMITTEE MEMBERS PRESENT: Rep. Terry Musser, Chair; Sen. Robert Wirth; and Reps. Frank Boyle and Gary Sherman; and Public Members Howard Bichler, Vince Dela Rosa, Ken Fish, Jon Greendeer, Doug Huck, Dee Ann Mayo, and Louis Taylor.

COMMITTEE MEMBERS EXCUSED: Sens. Ronald Brown, G. Spencer Coggs, and David Zien; Rep. Mark Pettis; and Public Members John Alloway, Donna Lynk, and Mark Montano.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Tom Bellavia, Department of Justice; Gwen Carr, Department of Transportation; J.P. Leary, Department of Public Instruction; Thomas Ourada, Department of Revenue; and Jim Weber, Department of Health and Family Services (DHFS).

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

APPEARANCES: Terry C. Anderson, Director, Legislative Council; Mark Mitchell, Manager, Legislative and Policy Consultation Section, Division of Children and Families, DHFS; Laura Arbuckle, Administrator, Division of Inter-Governmental Relations, Department of Administration; and Art Zimmerman, Fiscal Analyst, and Jere Bauer, Program Supervisor, Legislative Fiscal Bureau.

Opening Remarks

Terry C. Anderson, Director of the Legislative Council staff, made opening remarks to the committee. He described the Joint Legislative Council (JLC) and its purpose and described the Special Committees that the JLC creates. He described the web page of the study committee and encouraged members to make use of it. He explained the process for public members to obtain reimbursement for travel expenses associated with attending committee meetings. Mr. Anderson noted that, as a result of the fall election, three members of the committee would be leaving the committee and that, under the statutes, the JLC will need to replace one Republican Senator, at a minimum.

Introduction of Committee Members and Technical Advisory Committee Members

Members of the Special Committee and the Technical Advisory Committee introduced themselves.

Description of Materials Distributed

Joyce Kiel mentioned that Memo No. 1, *Legislation Recommended by the 2004-06 Special Committee on State-Tribal Relations*, and Memo No. 2, *Retirement Plan Coverage for Tribal Police Officers*, had been distributed to the committee members and would be discussed under later agenda items.

Ms. Kiel then described Memo No. 3, *Authority of Tribal Law Enforcement Officers to Enforce Criminal Laws*. She said this was a revision of a memorandum written for the 2004-06 Special Committee, revised to reflect changes in the law made by 2005 Wisconsin Act 414. She noted that this pertains to several issues before the committee, including issues related to the authority of tribal law enforcement officers and, potentially, their eligibility under the Wisconsin Retirement System (WRS). She explained that Act 414 authorizes off-duty law enforcement officers, including tribal law enforcement officers, to make arrests and render aid and assistance outside their territorial jurisdiction under certain conditions. Under the act, the state accepts liability for the actions of officers acting under its provisions. She noted that this assumption of liability appears to conflict with current s. 165.92, Stats., which authorizes tribal law enforcement officers to enforce state law on the reservation of the employing tribe, under certain conditions but specifies that the employing tribe is liable for the actions of tribal officers acting under that authority. She said that the apparent conflict is because linkage to s. 165.92 is essential to the authority created by Act 414.

Briefings

Recommendations of the 2004-06 Special Committee on State-Tribal Relations

Ms. Kiel noted that Memo No. 1 summarized the status of recommendations made by the 2004-06 Special Committee. She said that only one of the bills recommended by the committee was enacted, that being legislation to treat elected tribal officials under the state lobbying law in the same manner that local elected officials are treated. In response to a question from Representative Sherman, Ms. Kiel said that none of the bills developed by the 2002-04 Special Committee which had failed to pass in an earlier session but had been reintroduced by Chair Musser in the 2005-06 Legislative Session had passed.

Chair Musser asked staff to summarize the bills described in Memo No. 1. David Lovell described 2005 Assembly Bill 628 and Senate Bill 297, relating to the liability of tribal law enforcement officers when enforcing state laws on the reservation of their employing tribe under s. 165.92. He said the bill allows a tribe to maintain liability insurance coverage of not less than \$1 million in lieu of waiving sovereign immunity for the purpose of enforcing its liability. The bill did not pass. He noted that the treatment of liability under current law and under the bill is not consistent with the provisions of Act 414, discussed earlier, and that a revised version of this bill could be a vehicle for reconciling the two. Representative Sherman noted that previously it was standard practice for county governments to carry approximately \$1 million in liability insurance coverage but that that has now increased to approximately \$2 million. Chair Musser asked staff to look further into the amount of liability insurance coverage typically carried by county governments and to redraft the bill including options for various levels of liability insurance coverage.

Mr. Lovell then summarized 2005 Assembly Bill 629 and Senate Bill 298, regarding the county-tribal cooperative law enforcement program. Chair Musser indicated that he would like to move slowly on this piece of legislation, because of opposition expressed by sheriffs to this bill. He said this would likely improve the chances of passing legislation regarding tribal law enforcement, described above, and legislation affecting Great Lakes Indian Fish and Wildlife Commission (GLIFWC) wardens, described below. Mr. Dela Rosa said he would like to see this bill debated by the Joint Legislative Council. Mr. Taylor concurred, saying he would like the bill moved faster, but not to unfavorable committees. Chair Musser explained that committee chairs would be named in early December for the 2007-08 Legislature. He said he would like to reconsider committee action on some of these bills after that time. Representative Sherman suggested that staff be directed to redraft all bills recommended by the 2004-06 Special Committee that had not passed and that the committee could consider which of them to take up and which to hold until a later date.

Next, Mr. Lovell described 2005 Assembly Bill 630 and Senate Bill 299, relating to GLIFWC wardens. He noted again that the liability insurance limit issue applies to this bill, as well as to the previously discussed bills. Chair Musser directed staff to redraft this bill, with revisions to the liability insurance provisions and other technical refinements, as needed.

Next, Ms. Kiel described 2005 Assembly Bill 637 and Senate Bill 300, relating to tribal schools. She explained that the bill gives tribal schools similar treatment to those of private schools except with respect to transportation, special education, and Wisconsin Housing and Education Financing Authority bonding. She said that the bill does not impose requirements on tribal schools unless a benefit is conditioned on some action. She noted that, other than a committee hearing, the Legislature took no action on this bill in the 2005-06 Legislative Session. Chair Musser directed staff to redraft this bill for consideration by the committee.

Next, Ms. Kiel described 2005 Assembly Bill 638 and Senate Bill 301, relating to funding for tribal schools. Chair Musser said that he would like to work with the executive branch with regard to this bill, perhaps seeking to have it inserted in the 2007-09 Biennial Budget.

Next, Ms. Kiel described 2005 Assembly Bill 631 and Senate Bill 302, regarding creating the Tribal Charter School Authorizing Board as a state agency that could establish charter schools. She explained that the bill had been proposed by Representative McCormick to the 2004-06 Special Committee and that Representative McCormick later authored different legislation in the 2005-06

Session that would have allowed tribal colleges to create charter schools. She noted that there is currently a Joint Legislative Council Special Committee on Charter Schools which is discussing what entities may establish a charter school. Chair Musser noted that this is a very controversial concept. He said that he would send a letter to Representative Vukmir, Chair of the Special Committee on Charter Schools, to ask that that committee consider including tribes or tribal colleges as entities permitted to establish charter schools under state law at its next meeting. He suggested that the committee wait to see what the other study committee recommends before addressing this.

Ms. Kiel next described 2005 Assembly Bill 640 and Senate Bill 304, regarding property tax exemption for land owned by a tribe and used for governmental purposes. She noted that the Legislature took no action on this bill in the 2005-06 Session.

Mr. Bichler asked what information is available regarding who opposed each of the bills described. Chair Musser indicated that there probably is no paper trail to indicate such information. Mr. Lovell suggested that lobbying records could be examined for some information on the subject. Chair Musser directed staff to summarize information in the lobbying records regarding the bills described above.

Project Relating to Concurrent Criminal Jurisdiction on Public Law 280 Reservations

Ms. Kiel said that Lac Courtes Oreilles Judge James Mohr had raised the question of how to deal with concurrent criminal jurisdiction of the state and tribes on reservations covered by Public Law 280 (P.L. 280). She explained that P.L. 280 is a federal law that ceded from the federal government to certain states criminal jurisdiction on certain Indian reservations and that P.L. 280 applies to all reservations in Wisconsin except the Menominee Reservation.

Ms. Kiel said that Chair Musser had directed her to form a work group of interested parties to consider whether the state should establish procedures for coordinating the exercise of criminal jurisdiction with tribal law enforcement agencies and courts. She reported that she had discussed this topic at a meeting of the State-Tribal Justice Forum, which is a group of tribal and county judges organized by the Wisconsin Supreme Court and tribal courts, and had asked the Forum for volunteers to participate in the work group. She also asked members of the Special Committee for volunteers for the work group; Representative Sherman volunteered, noting that he is a participant in the State-Tribal Justice Forum.

Department of Health and Family Services and Tribal Initiatives Regarding the Indian Child Welfare Act and Funding for Tribal Child Welfare Services

Mark Mitchell, Manager, Legislative and Policy Consultation Section, Division of Children and Families, DHFS, said that a work group of tribal staff and DHFS staff is developing a proposal for legislation to incorporate the provisions of the federal Indian Child Welfare Act (ICWA) into the Wisconsin statutes. He noted that no federal agency has responsibility for enforcing ICWA and that ICWA has no mechanism, other than litigation, to allow tribes to ensure that its requirements are followed. He said that codification in state law would inform circuit courts of what is required under ICWA and should promote better compliance with ICWA when a case is handled in the state courts.

Mr. Mitchell next discussed issues relating to funding child welfare services provided by tribes, including out-of-home placements of Indian children under tribal court orders under so-called "161

agreements.” He described one case in which the cost of such a placement was extraordinarily high and said DHFS is looking at mechanisms to assist in funding high-cost placements. He said DHFS is also looking at policies to allow 161-type agreements between the state and tribes, rather than between counties and tribes. Similar ideas are being explored at the federal level, he said, to allow federal funding to be provided directly to tribes, rather than through the states. He said that DHFS is assembling a work group to study these issues and develop recommendations and that Ms. Kiel will be participating in that work group.

Invited Presentation: State Budget Process and Allocation of Tribal Gaming Revenues Paid to the State

Art Zimmerman, Fiscal Analyst, and Jere Bauer, Program Supervisor, Legislative Fiscal Bureau, briefed the committee on how the state uses the gaming revenues that tribes pay to the state and the budget process by which the state determines how it will use the revenues. First, Mr. Zimmerman reviewed the history of gaming compacts and payments by the tribes to the state, as described in the January 2005 Legislative Fiscal Bureau’s Information Paper No. 81, beginning in the early 1990s with payments intended only to reimburse the state for the cost of regulating tribal gaming and growing to very substantial payments under amendments to the compacts. He said payments in the current fiscal year are estimated at about \$82 million.

Mr. Zimmerman next described the state’s biennial budget process, as described in the January 2005 Legislative Fiscal Bureau’s Information Paper No. 67, saying that the allocation of gaming revenues is made through this process. He emphasized that the process is incremental; the base level of funding for individual programs continues unchanged in the following budget unless the Legislature changes it. He said that gaming revenues provide base funding for 42 state programs in the current state budget, providing \$28.3 million annually. He distributed a document itemizing these appropriations. The remainder is allocated to the general fund.

Mr. Zimmerman described memoranda of understanding that were negotiated with the state by a number of tribes as addenda to their compacts. Some of these agreements specified preferred uses for gaming revenues and committed the Governor to make his best effort to ensure that the revenues were used in that manner, recognizing that it is the Legislature that ultimately determines the use. He noted that the agreements serve as guidelines but do not constrain the Legislature.

Invited Presentation: Executive Branch Activities to Improve Communications with Tribal Governments

Laura Arbuckle, Administrator, Division of Inter-Governmental Relations, Department of Administration (DOA), described Governor Doyle’s Executive Order No. 39, which recognizes the sovereignty of tribal governments and the importance of government-to-government relationships between the state and tribal governments. She said that the order directs the 15 state agencies under the Governor to: (1) consult with tribal governments on issues and policies that affect them; (2) create a dispute resolution process; (3) annually, draft action plans; and (4) hold annual meetings with each tribe. She said that the DOA serves as an “air traffic controller” in this process, assembling and maintaining information regarding tribal governments, educating the agencies about the tribes and tribal governments, and assisting in preparing recommendations regarding the budgeting of gaming revenues

paid to the state. She encouraged committee members to visit her Division's state-tribal website, at www.witribes.wi.gov, and to contact her or her staff with any questions.

Ms. Arbuckle reported that she had met the previous day with tribal leaders to discuss their priorities for the budgeting of gaming revenues paid to the state.

Retirement Plan Coverage for Tribal Police Officers

Mr. Dela Rosa said that coverage of tribal police officers in the WRS is of concern for several tribes. He said that Memo No. 2 raises several important issues related to this idea and describes several alternative to that proposal. He said that the tribes need to consider these issues and determine whether they are interested in participating in the WRS. He suggested that he and the other public members on the committee discuss Memo No. 2 and related issues with their tribal leaders. If a majority of tribes indicate an interest, he suggested taking up the subject in January and quickly resolving the issue. Chair Musser concurred.

Discussion of Recommendations of Topics for Study by the Special Committee

Ms. Kiel reported that Chair Musser had contacted all tribal chairs as well as the Great Lakes Inter-Tribal Council (GLITC) and GLIFWC to solicit suggestions for topics the committee should address in the coming session. She said that the only reply came from GLIFWC, which requested that the committee recommend reintroduction of 2005 Assembly Bill 630 and Senate Bill 299, relating to GLIFWC wardens.

Representative Boyle asked that the committee take up the issue of school mascots and logos that inappropriately depict American Indians. He noted that there have been several bills on the topic over 18 years and, while some things have changed, the issue remains important to tribal leaders. He asked that the committee be given a briefing on the topic. Chair Musser directed staff to prepare background information on the topic for the next meeting.

Representative Sherman noted that the committee is discussing several significant bills and has a significant project on the retirement topic, and suggested that it not take on additional topics at this time.

Mr. Bichler reported that the St. Croix Tribal Council supports reintroduction of all of the bills from the preceding session. He also suggested that the committee review state economic development programs, noting that programs that rely on tax credits, for example, generally do not benefit tribal businesses or governments. He noted that a recent audit by the Legislative Audit Bureau reviewed 152 programs of the Department of Commerce and suggested the committee take this opportunity to consider how to strengthen economic development in Indian Country. Mr. Dela Rosa and Mr. Fish supported this suggestion.

Mr. Huck noted that Executive Order No. 39, described earlier by Ms. Arbuckle, originated in this committee several sessions earlier. He asked that the committee reconsider other proposals related to state-tribal relations, that were developed by the earlier committee. Mr. Greendeer supported this suggestion. Mr. Fish asked that the committee revisit in particular the proposal to seat tribal representatives in the State Legislature. Chair Musser directed staff to brief the committee on this set of

legislative proposals at its next meeting. Mr. Huck expressed particular interest in the resolution relating to state recognition of tribal sovereignty, and Chair Musser asked staff to redraft that resolution.

Plans for Future Meetings

The next meeting of the Special Committee on State-Tribal Relations will be held on Friday, January 19, 2006, at the Menominee Indian Reservation.

Adjournment

The meeting adjourned at 12:45 p.m.

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