



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Ada Deer Room
Menominee Nation Casino, Bingo, and Hotel
Keshena, Wisconsin

January 19, 2007
10:00 a.m. – 3:30 p.m.

[The following is a summary of the January 19, 2007 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 determined that a quorum was present.

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

COMMITTEE MEMBERS EXCUSED: Sen. G. Spencer Coggs; and Public Members John Alloway, Donna Lynk, and Louis Taylor.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: J.P. Leary, Department of Public Instruction; and Rachele Ashley, Department of Workforce Development.

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

APPEARANCES: Karen Washinawatok, Chairperson, Menominee Indian Tribe of Wisconsin; Paul Stuibler, Deputy State Auditor for Program Evaluation, Legislative Audit Bureau; Gloria Cobb, Deputy Director for Economic Development, and Jerry Rayala, Small Business Technical Assistance Program Director, Great Lakes Inter-Tribal Council; and Troy Swallow, Native American Economic Development Consultant, Bureau of Minority Business Development, Department of Commerce.

Welcoming Remarks--Ken Fish and Karen Washinawatok, Chairperson, Menominee Indian Tribe of Wisconsin

Mr. Fish welcomed the committee to the Menominee Nation. Later during the meeting, Karen Washinawatok, Chairperson, Menominee Indian Tribe of Wisconsin, also welcomed the committee.

As committee member Louis Taylor was unable to attend the meeting, Chair Musser noted that Agnes Fleming, Lac Courte Oreilles Tribal Council member, was sitting in his place in a nonvoting capacity. Kris Goodwill, Lac Courte Oreilles tribal attorney, later joined Ms. Fleming.

Approval of the Minutes of the November 16, 2006 Meeting

Representative Boyle moved, seconded by Representative Sherman, to approve the minutes of the November 16, 2006 meeting. The motion carried on a voice vote.

Description of Materials Distributed

Ms. Kiel noted that all but two of the items listed on the agenda as Materials Distributed would be discussed later in the meeting. She said that the two were: (a) the annual report from the Department of Justice about the cooperative county-tribal law enforcement grant program; and (b) a copy of the letter Chair Musser had sent to Representative Leah Vukmir, Chair of the Special Committee on Charter Schools, requesting that the Special Committee on Charter Schools include in its recommendations a provision that a tribe or an entity established by a tribe is permitted to establish an independent charter school on a reservation or off-reservation trust land.

With respect to the latter item, Ms. Kiel noted that Representative Vukmir indicated at the November 28, 2006 meeting of the Special Committee on Charter Schools that she was disinclined to do as Chair Musser's letter requested because it was her impression, from hearing remarks made about bills introduced in the 2005-06 Legislative Session related to this matter, that tribes had little interest in being included as authorizers of independent charter schools.

Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law; WLC: 0053/1

Mr. Lovell described WLC: 0053/1, relating to liability for the actions of tribal law enforcement officers when enforcing state laws. He also distributed alternative language to replace the material from page 3, line 12 to page 4, line 2.

Mr. Lovell explained that liability policies for law enforcement agencies typically are written with a limit on a per occurrence basis.

Chair Musser asked unanimous consent that the limit should apply to any "occurrence" as referred to on line 6 of the alternative language. There was no objection.

Mr. Lovell explained that typical liability policy limits are: for tribes--\$1,000,000; for the Great Lakes Indian Fish and Wildlife Commission (GLIFWC)--\$2,000,000; for municipalities other than counties--\$1,000,000 to \$5,000,000, with \$2,000,000 being common; and for counties--\$5,000,000 to \$10,000,000. He also noted that costs do not go up significantly for raising the liability limit, for example, the premium for a \$2,000,000 limit is much less than twice what a \$1,000,000 limit would be. Mr. Lovell said he was providing information based on information he had received about premiums per law enforcement officer for different policy limits.

Chair Musser noted that the bills introduced in the 2005-06 Legislative Session on this subject on the recommendation of the 2004-06 Special Committee had included a limit of \$1,000,000. He stated that concerns had been expressed to him by other legislators that the limit was too low.

Representative Sherman asked unanimous consent that \$2,000,000 be inserted on line 6 of the alternative language. There was no objection.

Mr. Bichler expressed concern about the provision in lines 11 to 13 of the alternative language (which is cross-referenced in line 14 of the alternative language), that the submission to the Department of Justice must state that, in defending a claim against the policy, the tribe will not raise the defense of sovereign immunity up to the policy limits. He said that the language is not necessary as Wisconsin law provides for direct action against an insurer and that lines 8 to 9 provide that the insurer may not raise the defense of sovereign immunity of the insured up to the policy limits.

Chair Musser asked unanimous consent that this language on lines 11 to 13 and the cross-reference on line 14 of the alternative language be deleted. There was no objection.

Mr. Bichler moved, seconded by Mr. DelaRosa, to recommend WLC: 0053/1, as modified by the changes noted above relating to insurance, 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, Boyle, and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 5 (Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor).

Chair Musser encouraged committee members to contact local law enforcement officers to encourage them to support the recommendation when it is presented to the Joint Legislative Council and, if introduced by the Joint Legislative Council, when it is considered by the Legislature. Several committee members requested a list of the current members of the Joint Legislative Council.

Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission; WLC: 0054/1

Mr. Lovell described WLC: 0054/1, relating to conservation wardens employed by GLIFWC. He also distributed alternative language to replace the material from page 9, lines 7 to 13, relating to insurance provisions in the draft and to insert additional material following page 9, line 19 of the draft.

In response to a question from Representative Sherman, James Zorn, Executive Administrator, GLIFWC, spoke from the audience and indicated that it would be acceptable to him if the same changes regarding insurance were made to WLC: 0054/1 as had been agreed to by the committee with respect to WLC: 0053/1.

Representative Sherman asked unanimous consent that the same changes regarding insurance agreed to by the committee with respect to WLC: 0053/1 also be made to WLC: 0054/1. There was no objection.

Mr. Zorn explained that GLIFWC currently has 22 wardens, 12 to 15 of whom are stationed in Wisconsin. He said that seven or eight of these wardens have credentials from the Department of Natural Resources. Mr. Zorn provided background information about the need for passage of the proposal.

Mr. Bichler moved, seconded by Representative Boyle, to recommend WLC: 0054/1, as modified by the changes noted above relating to insurance, 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, Boyle, and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 5 (Sen. Cogg; and Public Members Alloway, Lynk, Montano, and Taylor).

Applicability of State Economic Development Programs to American Indians and American Indian Tribes

Paul Stuiber, Deputy State Auditor for Program Evaluation, Legislative Audit Bureau (LAB), described the LAB and its functions. He described the August 2006 audit (06-9) which reviewed state economic development programs. He distributed the Report Highlights document for this audit and noted that the full report of the audit is available on the LAB's website. Mr. Stuiber also distributed and explained two spreadsheets--the first titled "Economic Development Programs Funded with Tribal Gaming Revenue," and the second titled "Economic Development Programs Targeting All Minority-Owned Businesses." He explained that none of the 16 programs listed on the second spreadsheet is funded by tribal gaming revenues paid to the state.

Mr. Stuiber also explained that the Department of Commerce has been asked to report to the Joint Audit Committee by February 15, 2007, with proposals to respond to the recommendations made in the audit report.

Gloria Cobb, Deputy Director for Economic Development, and Jerry Rayala, Small Business Technical Assistance Program Director, Great Lakes Inter-Tribal Council (GLITC), explained the role of GLITC in helping businesses. Mr. Rayala distributed a document titled "Small Business Technical Assistance Program" and explained that the purpose of the program is to provide technical assistance for economic development on reservations. Mr. Rayala noted that the Wisconsin Entrepreneurs' Network (WEN) can be useful. He also indicated that tourism is a good economic development tool for tribes and provides good microbusiness opportunities for American Indians. He distributed tourism promotional literature about tribes.

Mr. Rayala explained that GLITC had received a federal grant to help with coordinating training for tribes. He said GLITC then helped set up videoconferencing capability for all of the tribes, which makes it easier to conduct training. He suggested that state funding be made available for this small business training initiative when federal funding runs out.

Chair Musser announced that he had to leave the meeting to attend a funeral. He asked Representative Sherman to chair the remainder of the meeting.

Troy Swallow, Native American Economic Development Consultant, Bureau of Minority Business Development, Department of Commerce, explained that the Secretary of Commerce is working on a response to the LAB audit, including preparing proposals for the Joint Audit Committee. He explained his role in working with tribes on economic development. He referred to a Department of Commerce memorandum written by Landon Williams describing which Department of Commerce programs tribes are eligible to apply for. He indicated that he would provide a copy of the memorandum to the committee. (The memorandum is now posted on the committee's website.) He explained that WEN works with business startups and that the Department of Commerce largely works with capacity building.

In response to questions, Mr. Swallow discussed minority business programs and minority business certification and bidding.

In response to Representative Sherman's question about recommended action by the committee, Mr. Rayala suggested that, in addition to his earlier comment about providing state funding for GLITC's small business training center, the \$10,000 limit on payment to GLITC under the Wisconsin Community Action Program be eliminated so that GLITC is eligible for funding on the same basis as others. Mr. DelaRosa requested that staff prepare a memorandum about the latter suggestion.

State Recognition of Tribal Sovereignty; Memo No. 4 and WLC: 0034/1

Ms. Kiel described WLC: 0034/1, which is a draft of a resolution relating to state recognition of the sovereign status of federally recognized American Indian tribes and bands. She also noted that Memo No. 4 described the legislative history of very similar resolutions that had been introduced but not adopted in the 2001-02, 2003-04, and 2005-06 Legislative Sessions. She noted that WLC: 0034/1 is identical, with the exception of two minor edits, to 2005 Assembly Joint Resolution 17, which Chair Musser had introduced in the 2005-06 Legislative Session.

A motion was made to have the committee recommend this resolution to the Joint Legislative Council but it was later withdrawn based on Representative Boyle's suggestion that individual legislators instead introduce this resolution. Representatives Boyle and Sherman indicated that they would discuss this approach with Chair Musser and ask him to coordinate arranging for cosponsors of the resolution.

Representative Boyle suggested that staff prepare a report for the committee before each meeting about the status of all proposals recommended by the committee. It was also suggested that this include lobbying activity on each proposal.

Ms. Kiel noted that current information about the status of any legislative proposal is available on the Legislature's website and that committee members and the public can sign up for the

Legislature's notification service on that website to receive email notification about activity on any legislative proposal. She also noted that committee staff sends a notice to committee members when a hearing is scheduled on any proposal recommended by the committee.

Treatment in Wisconsin Statutes of Tribal Schools; WLC: 0052/1

Ms. Kiel described WLC: 0052/1, relating to the treatment of tribal schools in the Wisconsin statutes. She explained that it was a redraft of legislation recommended by the 2004-06 Special Committee which had been revised to account for modifications in the statutes by 2005 Acts. She said that the substantive changes from the prior bill relate to adding references to tribal schools in two provisions that were created by 2005 Acts to refer to private schools: one related to having the Department of Public Instruction (DPI) provide information about meningococcal disease to public and private schools, and the other related to immunity relating to the use of inhalers for asthmatic pupils at public and private schools.

She explained that the draft was developed by a working group last session which included representatives of tribal schools, DPI staff, and others. She said the draft extended the same benefits and protections with respect to tribal schools as provided in the statutes for private schools, except with respect to: special education, transportation, bonding for buildings, and provisions unique to the Milwaukee school district. She further explained that when a benefit was linked to a requirement, the draft extends the benefit to a tribal school that chooses to comply with the requirement. However, she noted that the draft does not impose on tribal schools any requirements that apply to private schools.

Mr. Fish distributed a document listing 20 of the elements that had been included in 2005 Assembly Bill 637, the bill introduced on the recommendation of the 2004-06 Special Committee. Ms. Kiel noted that the draft includes other benefits as well.

Ms. Goodwill asked if the proposal to help fund tribal schools that had been recommended by the 2004-06 Special Committee was included in this draft. Ms. Kiel explained that that had been a separate proposal which had been introduced as separate legislation in the 2005-06 Legislative Session. She said that that funding proposal was not included in WLC: 0052/1. Mr. DelaRosa suggested that the funding issue be considered by the committee at its next meeting. Representative Sherman indicated that his suggestion would be passed along to Chair Musser for consideration.

Senator Wirch moved, seconded by Mr. DelaRosa, to recommend WLC: 0052/1, to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 9 (Reps. Boyle and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 6 (Rep. Musser; Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor).

Participation of Tribal Law Enforcement Officers in the Wisconsin Retirement System; WLC: 0055/1

Prior to the meeting, Chair Musser had sent a memorandum to all committee members requesting that they ask their tribal chairs and councils about their level of interest in an effort to develop a proposal to include tribal law enforcement officers in the Wisconsin Retirement System (WRS). The

response from the Stockbridge-Munsee Community Band of the Mohican Indians was included in the materials distributed prior to the meeting. At the meeting, Mr. DelaRosa distributed written comments explaining that the Oneida Tribe of Indians of Wisconsin had adopted a pension plan for its tribal law enforcement officers. However, he indicated that the Oneida Tribe would support the efforts of other tribes to forward a proposal to have tribal law enforcement officers included in the WRS.

Mr. Lovell briefly described WLC: 0055/1, relating to participation of tribal law enforcement officers in the WRS. Representative Sherman explained that he serves on the Employee Trust Funds (ETF) Board, which is obligated to make sure that the WRS maintains its tax-exempt status as a qualified governmental plan. Senator Wirch noted that he is the cochair of the Joint Survey Committee on Retirement Systems, to which bills relating to the WRS are referred. He cautioned that any technical concerns about the proposal would have to be worked out with ETF.

Committee members discussed the WRS as a large and secure fund. Representative Sherman noted that employers participating in the WRS have always been required to enroll all employees and that proposing to enroll only a subset of employees may be a point of resistance.

Mr. Bichler asked about the cost of participating in the WRS. It was noted that the cost information (a percentage of payroll) was provided in Memo No. 2. It was also noted that if a participating employer entering the WRS elects to fund prior service of its employees (for the time prior to the employer's joining the WRS), this will significantly add to the cost.

Committee members discussed specific provisions in the draft as follows:

a. With respect to the definition of "tribal law enforcement officer" (page 4, lines 12 to 18), it was noted that a tribal police department would have to be the state or a political subdivision of the state or an agency or instrumentality of either in order for the WRS to retain its status as a qualified governmental plan under federal law if tribal law enforcement officers were included in the WRS. The consensus was that only law enforcement officers empowered to act under s. 165.92 (2) (a), Stats. (authority to enforce state laws under certain circumstances), be included in the draft as there would be a closer connection to state or state subdivision functions. Ms. Goodwill requested a copy of the ruling that the Internal Revenue Service (IRS) had made on this point with respect to the Mille Lacs Band of Chippewa Indians and participation by their law enforcement officers in the Minnesota retirement plan. (That letter is now posted on the committee's website.) Mr. DelaRosa suggested that tribes that were interested in this matter immediately seek a ruling from the IRS.

b. With respect to having a mechanism to ensure that payments are made to the WRS, the issue of withholding state aids payable to a tribe was discussed. Mr. Fish asked about a process to deal with any disagreement as to the amount that was due. Representative Sherman said that a tribe could discuss any such issues with ETF staff and could appeal to the ETF Board if agreement could not be reached.

c. With respect to a waiver of tribal sovereign immunity to enforce in state courts compliance by a tribe with its obligations under the WRS as a participating employer, Mr. Fish said that having the Menominee Tribe be in state court might raise issues as the Menominee Reservation is not subject to Public Law 280. Mr. Bichler and Mr. Fish expressed concern about the language relating to a "permanent" waiver of sovereign immunity. Mr. Bichler asked if a waiver should instead be for the term of the contract. Ms. Kiel noted that there is no term of a contract under current law as an

employer's election to participate in the WRS is a continuing decision and employers are not allowed to drop out of the WRS. Ms. Goodwill asked what happens if a participating employer ceases to exist. Representative Sherman explained that that employer's employees who were enrolled in the WRS would continue to be in the WRS. Ms. Mayo and Mr. Greendeer also expressed concern about the waiver of sovereign immunity. Mr. Greendeer asked if language about waiver of sovereign immunity could be included in a contract, rather than in the statutes. Mr. Bichler said that any waiver would have to be limited.

d. With respect to what the bond amount should be (page 7, line 13), staff indicated that very preliminary comments from ETF staff were that the bond should also cover interest and any unfunded prior service liability and that twelve months might be the most appropriate number of months. Mr. DelaRosa suggested that 12 months be selected. Representative Sherman asked if there was consensus on that matter, and no objection was made.

e. With respect to what the period of time of failure to make the required contribution should be to trigger withdrawal from the bond (page 7, line 18), three months was suggested and appeared to be the consensus.

f. With respect to what the period of time should be to replenish the bond (page 7, line 21), Mr. DelaRosa suggested one month and Mr. Bichler thought this would be acceptable. However, Ms. Goodwill indicated that three months may be more workable. She said that she is making a presentation to the Lac Courte Oreilles Tribal Council the week following the meeting about the issue of WRS participation and indicated that this may be a concern. Ms. Fleming asked why the bond withdrawal provision was included in the draft. Representative Sherman said that it is necessary to have a mechanism to collect payments in order to protect the WRS. He said that for participating municipalities, the WRS can simply withhold state aids to collect money should the need arise but that this may not provide the necessary resources if a participating tribe did not make timely payments.

Representative Sherman suggested that the draft be revised in light of this discussion and that the matter be held over for discussion at the next committee meeting.

Staff Briefings

Ms. Kiel briefly described Memo No. 5, relating to the use of American Indian mascots, logos, nicknames, and names by public schools. She noted that the memo included the history of legislative proposals introduced in the past 16 years, none of which had been enacted.

Representative Boyle indicated that he is interested in the approach of the bill he has introduced in the past four legislative sessions, but he noted that the bill failed to be enacted each session. Legislative members of the committee explained that a legislator could introduce the concept as a bill again this legislative session. Representative Sherman said that Chair Musser could be asked to schedule this topic for the agenda of the next committee meeting, unless an individual legislator had already introduced a bill in the meantime. Representative Boyle encouraged all committee members to get actively involved on lobbying on this issue, and he suggested that public members of the committee encourage their tribal chairs to ask that this topic be included in the upcoming State of the Tribes address to the Legislature.

Barbara Munson, Chair of the “Indian” Mascot and Logo Taskforce, asked to be recognized in the audience. She explained why she thought the use of American Indian mascots and logos should be banned from schools and noted that research indicates that using an American Indian mascot is harmful to American Indian children. She said that she supported enacting legislation and also adopting a legislative resolution, and she encouraged everyone to get involved in this issue.

Mr. Lovell briefly described Memo No. 6, relating to lobbying activity on legislation recommended by the 2004-06 Special Committee. He noted that the information in the memorandum was derived from the website of the Ethics Board. He explained that information is readily available to the public on this website, including for matters pending in the current legislative session. He also explained that principals and lobbyists are permitted to record their hours and their position on legislation for posting on the website but that not all choose to do so.

Mr. Lovell briefly described Memo No. 7, which provides the legislative history of legislation relating to state-tribal relations that was proposed by the committee and its predecessor committee following the 2001 Leadership Conference on State-Tribal Relations.

Ms. Kiel noted that she had made inquiries about seeking volunteers for a workgroup to develop a proposal for the committee to deal with concurrent criminal jurisdiction on Public Law 280 reservations. She said that, while a state court judge, a tribal court judge, a legislative member of the committee, and staff of the Great Lakes Indian Law Center have volunteered, it would be useful to include a tribal and a county prosecutor and a tribal and municipal or county law enforcement officer. She asked committee members to contact her with recommended names or possible contacts for the workgroup in these categories.

Plans for Future Meetings

The next meeting of the Special Committee on State-Tribal Relations will be held at the call of the chair.

Adjournment

The meeting adjourned at 3:30 p.m.

JLK:jal