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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS  
FROM: Representative Terry Musser, Chair, Special Committee on State-Tribal Relations  
RE: Wisconsin Retirement System Coverage of Tribal Police Officers  
DATE: November 21, 2006

Over the past few years, several tribal police departments have sought legislation to allow their officers to enroll in the Wisconsin Retirement System (WRS). The 2004-06 Special Committee on State-Tribal Relations considered the proposal but did not complete its work before the events of the 2005-06 Legislative Session overtook it. At the November 14, 2006 meeting of the 2006-08 Special Committee, staff presented Memo No. 2, *Retirement Plan Coverage for Tribal Police Officers* (November 7, 2006), which reviews the earlier committee's work, describes programs in three other states, and outlines issues that must be considered in deciding how to proceed.

A threshold question regarding this proposal, discussed in Memo No. 2, is whether the WRS can remain a qualified governmental plan if it is expanded to include tribal police officers. Under federal law, a state plan can only cover employees of the state and its political subdivisions (such as counties and municipalities), and agencies or instrumentalities of these. To protect the status of the WRS, before admitting tribal police officers to the plan, the state would require a determination by the federal Internal Revenue Service (IRS) that a tribal police department is sufficiently under the control of the state or one of its subdivisions to be considered an agency or instrumentality of the state or subdivision of the state. The Memo addresses this and other issues that the state must address if it chooses to allow tribal police to participate in the WRS, and issues that tribal governments must address in deciding whether they want to allow their police officers to do so.

As you can see, it would take a significant effort to fully develop this proposal. As I stated at the meeting, before proceeding further, I would like to receive input from individual tribal governments as to whether they would be likely to take advantage of the opportunity to enroll their police officers in the WRS if legislation to allow this were enacted. In asking for this, I am distinguishing between the interests of tribal police departments and those of tribal governments, meaning tribal chairs, tribal councils, and, in some cases, the general tribal membership. This is important because this proposal presents some difficult decisions for a tribal government that do not necessarily apply to the police department alone. In particular, a tribal government would have to decide whether it is willing to:

- Commit to participating in a system it does not control and to abiding by the rules of that system and the rulings of its policy boards.
- Commit itself and future tribal governments to participating in that system in perpetuity.
- Waive sovereign immunity to allow the system to enforce its rules and rulings in state courts.

As a practical matter, a tribal government would also have to consider the cost of participating in the WRS. As Memo No. 2 indicates, for 2007, participation without Social Security coverage requires monthly contributions to the Wisconsin Retirement Fund of 14.2% of payroll; the employer's share is 10.8% of payroll and the employee's share is 3.4%. At this contribution rate, for a tribal police department with an annual payroll of \$250,000, the employer's share over a year would be \$27,000 and the employees' shares would total \$8,500. (Note that, under collective bargaining agreements, it is not uncommon that employers pay their employees' contributions.)

Another practical consideration of potential concern to a tribe as an employer is that enrolling its police officers in the WRS would give them a benefit that is not offered to the rest of the tribe's employees. (Note that the option of opening the WRS to all employees of a tribe, discussed by the 2004-06 Special Committee, is not realistic because it is highly unlikely that the IRS would find a tribal government to be an agency or instrumentality of the state.)

Again as I said at the last meeting, I would like to enlist the assistance of the tribal representatives on the Special Committee. Please present this information to your respective governments and provide what feedback you can before our next meeting. Please discuss with your chair and your council the ramifications for the tribal government of participating in the WRS so that they can give me guidance as to whether this proposal is of interest to them.

Note that I have tentatively scheduled the next meeting of the committee for *Friday, January 19, 2007* at Menominee. Staff will send a formal notice at a later date. David Lovell, Legislative Council Senior Analyst, will compile your feedback regarding the WRS proposal, to present at that meeting. Please get information to him by January 5, if possible, so that he can include it in the mailing to the Special Committee on January 12. Of course, I am more than happy to discuss this with you, as well.

If you have any questions, please feel free to contact me directly or to contact the Legislative Council staff assigned to the Special Committee, David Lovell, Senior Analyst (608-266-1537) and Joyce Kiel, Senior Staff Attorney (608-266-3137).

TM:jal