



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Legendary Waters Resort and Casino
Red Cliff, WI

September 25, 2012
10:00 a.m. – 3:15 p.m.

[The following is a summary of the September 25, 2012 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

Representative Rivard called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Reps. Janet Bewley, Nick Milroy, Roger Rivard, and Duey Stroebel; Sen. Jim Holperin; and Public Members Dee Ann Allen, Melinda Danforth, Marvin Defoe, Gregg W. Duffek, Jordan Martinson, Chris McGeshick, and William Morrow.

COMMITTEE MEMBER EXCUSED: Rep. Jeffrey Mursau, Chair; Sen. Kathleen Vinehout, Vice-Chair; Rep. Jim Steineke; Sen. Schultz; and Public Members Gary Besaw and Jon Greendeer.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: David O'Connor, Department of Public Instruction; Quinn Williams, Department of Natural Resources; Kelly Jackson, Department of Transportation; and Thomas Ourada, Department of Revenue.

TECHNICAL ADVISORY COMMITTEE MEMBER EXCUSED: Tom Bellavia, Department of Justice; Margaret McGrath, Department of Workforce Development; and John Tuohy, Department of Children and Families.

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

APPEARANCES: J.P. Wieske, Legislative Liaison and Communications Director, and Ashley Natysin, Tribal Liaison, Office of the Commissioner of Insurance; Walter Cox, Director, Department of Conservation, Menominee Indian Nation of Wisconsin; Chris McGeshick, Tribal Judge, Sokaogon Band of Lake Superior Chippewa Indians; Quinn Williams, Natural Resources Section Chief, Bureau of Legal Services, and David Zebro, Chief Warden, Northern Region, Department of Natural Resources; and Eric Chapman, Sr., Chief Conservation Officer, Lac du Flambeau Band of Lake Superior Chippewa Indians.

Welcome and Opening Ceremony by Brian Goodwin, Tribal Elder, Red Cliff Band

Public Member Marvin Defoe introduced Nathan Gordon, Vice-Chair of the Red Cliff Band. Mr. Gordon welcomed the committee to Red Cliff and introduced Brian Goodwin, a Red Cliff tribal elder. Mr. Goodwin conducted a tobacco ceremony and offered a prayer encouraging the committee members to work together for the common good.

Representative Rivard asked committee members to introduce themselves. Myrna Warrington, Vice-Chair of the Menominee Indian Tribe of Wisconsin, stated that she was attending on behalf of Public Member Gary Besaw. Robert Mann, Ho-Chunk Nation, stated that he was attending on behalf of Public Member Jon Greendeer.

Approval of the Minutes of the July 18, 2012 Meeting

David Lovell, Legislative Council staff, requested the minutes of the July 18, 2012 meeting be amended to reflect that Kris Goodwill had attended on behalf of Public Member Bill Morrow and Lisa Summers had attended on behalf of Public Member Melinda Danforth.

Briefing by the Office of the Commissioner of Insurance

J.P. Wieske, Legislative Liaison and Communications Director, and Ashley Natysin, Tribal Liaison, Office of the Commissioner of Insurance

Mr. Wieske and Ms. Natysin told the committee that the Office of the Commissioner of Insurance (OCI) has identified the strengthening of the relationship between the insurance industry in the state and the tribes as a priority. Mr. Wieske explained that OCI has identified affordability, geographic location of the tribes, and perceived legal issues with respect to insuring tribes as the major issues that have impeded this relationship. Mr. Wieske and Ms. Natysin explained that one way the state could address tribes' insurance needs is to include tribal governments within the definition of local government for the purposes of participation in the local government property insurance fund.

Off-Reservation Transport of Game

Walter Cox, Director, Department of Conservation, Menominee Indian Nation of Wisconsin

Mr. Cox explained that current state law with respect to transporting game off-reservation is burdensome to the tribes because it requires tribal members who take game lawfully on the reservation and want to transport the game elsewhere in the state to register the game with both the tribe and the state. This also creates extra obligations for the tribal conservation wardens who must complete paperwork and maintain records for the state in addition to administering tribal tagging and registration requirements. By contrast, game taken lawfully out of state and transported into Wisconsin does not generally need to be separately registered. Mr. Cox requested that the committee develop and recommend legislation that would treat game lawfully taken on a reservation in substantially the same way current law treats game taken in another state.

Chris McGeshick, Tribal Judge, Sokaogon Band of Lake Superior Chippewa Indians

Mr. McGeshick told the committee that the off-reservation transport of game is not a significant issue for the Sokaogon Band. He said that, within its own territory, the Sokaogon Band does not require tagging by either its own members or nonmembers. Mr. McGeshick stated that as a matter of fairness and out of deference to the sovereign status of the tribes, the state should not condition off-reservation transportation of game on the tribe implementing any registration or tagging system.

Quinn Williams, Natural Resources Section Chief, Bureau of Legal Services, and David Zebro, Chief Warden, Northern Region, Department of Natural Resources

Mr. Williams and Mr. Zebro emphasized the interest of the Department of Natural Resources (DNR) in enforcing state conservation laws and ascertaining whether game was taken legally. Mr. Williams then explained his recommendations for how WLC: 0002/1, relating to the transportation in this state of game taken in another state or on Indian land, could be modified to address DNR's enforcement concerns. Mr. Williams distributed a memorandum containing these recommendations to the committee.

Memo No. 2, Transport of Game Taken in Another State or on an Indian Reservation (September 17, 2012):

- WLC: 0002/1, relating to the transportation in this state of game taken in another state or on Indian land.
- WLC: 0003/1, relating to the transportation in this state of game taken on Indian land.
- WLC: 0004/1, relating to the transportation in this state of game taken on Indian land.

Mr. Lovell explained the legislative options described in Memo No. 2 and expressed in bill drafts WLC: 0002/1, WLC: 0003/1, and WLC: 0004/1. He told the committee that he held a meeting of tribal conservation wardens, DNR staff, and other interested parties at the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) on Monday September 24 to discuss which option would best address both the tribes' and DNR's concerns. Mr. Lovell reported that no consensus was reached.

Following committee discussion, Representative Rivard suggested that the public members discuss these options with their tribes, attempt to reach a consensus with respect to the preferred option, and prepare to discuss their preferences at the committee's next meeting.

Intoxicated Driver Program

WLC: 0005/1, Relating to Tribal Facilities' Participation in the Intoxicated Driver Program

Mr. Lovell explained bill draft WLC: 0005/1, which would allow any enrolled member of a federally recognized Indian band or tribe to obtain the assessment required under the intoxicated driver program at an approved tribal assessment facility. Mr. Lovell reviewed the bill draft and asked the committee members to comment on any areas in which they would like to modify the draft.

Mr. McGeshick proposed that the proposed legislation authorize relatives and family members of enrolled tribal members to obtain a required assessment at a tribal treatment facility. The committee

agreed. The committee also agreed that the bill draft should specify that if a treatment plan requires treatment at an approved tribal treatment facility, the plan may include traditional tribal treatment modes.

Senator Holperin moved, seconded by Mr. Duffek, to recommend that the Joint Legislative Council introduce WLC: 0005/1, as revised in the preceding discussion, in the 2013 Legislative Session. The motion passed on a vote of Ayes 11; Noes 1.

Withdrawal of Tribal Lands From Forest Tax Programs

WLC: 0006/1, Relating to an Exemption From Withdrawal Taxes and Fees for Tribal Land Withdrawn From the Forest Cropland or Managed Forest Land Program

Mr. Lovell explained that the committee had been asked at prior meetings to explore developing legislation that would authorize tribes to withdraw land from the managed forest and forest cropland programs without paying a withdrawal tax or penalty. Chair Rivard told the committee it was not clear that legislation was needed to address this issue because a buyer who does not want an encumbrance on land it acquires may require the seller to either remove the encumbrance or sell the land at a price that takes the encumbered status of the land into account.

Kris Goodwill, attorney for the Lac Courte Oreilles Band, told the committee that, following the federal General Allotment Act of 1887, many tribes lost much of the land that was originally reserved for them and as a result many reservations are a checkerboard of jurisdictions. She explained that many tribes are working to re-acquire lands lost through the General Allotment Act and place them back into trust. However, the U.S. Department of the Interior will not take into trust land that is subject to encumbrances such as the restrictions provided by the managed forest or forest cropland programs. Ms. Goodwill stated that exempting tribally owned land from these programs' withdrawal taxes and fees is appropriate because it would help rectify the consequences of the General Allotment Act.

Dave Ujke, attorney for the Red Cliff Band, also spoke in favor of exempting tribally owned land from withdrawal fees and taxes. He told the committee that Chair Rivard's analysis was generally correct, but that the tribe's task in reassembling their reservations is uniquely difficult and the state could ameliorate some of these difficulties by granting fee and tax exemptions.

Committee members and other members of the public in attendance commented on this subject.

Representative Rivard suggested that there might be alternate options for addressing the tribes concerns, which could be discussed at the next meeting.

Authorizing Tribal Conservation Wardens to Enforce State Conservation Laws

Eric Chapman, Sr., Chief Conservation Officer, Lac du Flambeau Band of Lake Superior Chippewa Indians

Mr. Chapman told the committee that tribal conservation departments are dedicated to protecting the natural resources within their reservations. But he said that their ability to do this is impeded by

their lack of jurisdiction to enforce state conservation laws against nonmembers on nontribally owned portions of reservations. He also said that their lack of jurisdiction of over nonmembers limits their authority to respond to requests for assistance from state peace officers. Mr. Chapman requested that the committee consider developing legislation analogous to s. 175.40, Stats., which authorizes GLIFWC wardens to make arrests and assist Wisconsin peace officers in certain circumstances, and s. 165.92, which authorizes tribal law enforcement officers to enforce state law against nonmembers on the reservation.

Mr. Williams told the committee DNR would not object to legislation authorizing tribal wardens to enforce state conservation laws as long as the law contained training, assumption of liability, and waiver of sovereign immunity requirements analogous to those in ss. 165.92 and 175.40, Stats.

Representative Rivard asked that committee staff draft legislation on this issue for the committee to consider at the next meeting.

Other Business

Representative Stroebel suggested that the committee consider addressing how the state and the tribes share information with respect to OWI convictions.

Plans for Future Meetings

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

Adjournment

The meeting was adjourned at 3:15 p.m.

DM:jal