



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

FROM: David Moore, Staff Attorney

RE: Authorizing Tribal Conservation Wardens to Enforce State Conservation Laws on Reservations and on Off-Reservation Trust Lands

DATE: November 2, 2012 (Revised November 7, 2012)

At the September 25, 2012 meeting of the Special Committee on State-Tribal Relations, Eric Chapman, Sr., Chief Conservation Warden for the Lac du Flambeau Band of Lake Superior Chippewa Indians, delivered a presentation on the difficulties tribal conservation wardens experience protecting the natural resources within their reservations due to their lack of jurisdiction over nonmembers. He requested that the committee develop legislation that would authorize tribal conservation wardens to enforce state conservation laws on reservations and on off-reservation trust land. Following the meeting, Chair Mursau directed staff to brief the committee on issues related to Mr. Chapman's request.

This Memo presents background information and legislative options related to authorizing tribal conservation wardens to enforce state conservation laws. Please note that the options included are not exhaustive; committee members should feel free to advance options not identified in this Memo.

BACKGROUND

In Wisconsin, tribes generally may not exercise jurisdiction over nonmembers. Historically, then, tribes' authority to carry out their law enforcement functions, even within their own reservations, has been limited.

The Legislature has, in a series of enactments developed by this committee, expanded the scope of tribes' authority to carry out their law enforcement functions in certain circumstances. For example, 1993 Wisconsin Act 407 authorized tribal law enforcement officers that meet certain criteria to enforce state laws on the tribe's reservation and on off-reservation trust lands. More recently, 2007 Wisconsin Act 27 authorized conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) to exercise state jurisdiction in certain circumstances and to provide assistance

to Wisconsin peace officers. Additionally, 2009 Wisconsin Act 264 authorized tribal law enforcement agencies and officers to both request assistance from state, county, and municipal law enforcement agencies and to respond to requests for assistance from such agencies.

At the committee's September 25, 2012 meeting, various committee members and speakers noted that the statutes expanding the scope of tribes' authority to carry out their law enforcement functions have benefited both the tribes and the state. Among the benefits discussed were that such statutes have enhanced tribes' law enforcement capabilities and facilitated law enforcement cooperation between tribes and the state. Quinn Williams, Natural Resources Section Chief of the Department of Natural Resources' (DNR) Bureau of Legal Services, told the committee that DNR currently engages in such cooperation, under a memorandum of understanding (MOU) with GLIFWC, by issuing deputy warden credentials to GLIFWC wardens who meet certain requirements. Wardens with these credentials may enforce state conservation laws.

OPTIONS FOR LEGISLATION

There appeared to be general agreement among the committee members that extending some state jurisdiction to tribal conservation wardens could, like the legislative enactments and MOU noted above, provide benefits to both the tribes and the state. Accordingly, the committee discussed developing legislation that authorizes tribal conservation wardens to enforce state conservation laws. This Memo addresses the following aspects of such authority:

- Geographical parameters.
- Training and certification requirements.
- The scope of laws tribal conservation wardens may enforce.
- The liability of a tribe with respect to the actions of a warden it employs.
- The authority of tribal conservation wardens to respond to requests for assistance from state, county, and municipal law enforcement agencies and officers.

This Memo also describes an option related to an issue that was not discussed at the September 25, 2012 meeting--authorizing GLIFWC wardens, by statute, to enforce state conservation laws--but that could be incorporated into legislation pertaining to tribal conservation wardens.

Geographic Parameters

Section 165.92, Stats., authorizes tribal law enforcement officers to enforce state law "on the reservation of the tribe or on trust lands held for the tribe or for a member of the tribe that employs the officer." The committee discussed authorizing tribal conservation wardens to enforce state laws on the same lands identified in s. 165.92, Stats.

However, ss. 165.92 and 175.41, Stats., contain additional provisions the committee may also wish to consider incorporating into this legislation. Section 165.92, Stats., authorizes a tribal law enforcement officer to transport a person arrested under the authority of the statute to the jail or other

detention facility of the county in which the arrest took place. Section 175.41, Stats., authorizes a GLIFWC warden, when in fresh pursuit, to follow any person anywhere in the state and make arrests under certain circumstances.

Option 1

Authorize tribal conservation wardens to enforce state law only on reservations or on off-reservation trust land.

Option 2

Authorize tribal conservation wardens to enforce state law on reservations or on off-reservation trust lands, and authorize tribal conservation wardens to do either or both of the following:

- Transport an arrested person to the jail or other detention facility of the county in which the arrest took place.
- Follow a person, when in fresh pursuit, anywhere in the state to enforce a violation observed on a reservation or off-reservation trust land.

Training and Certification Requirements

No statute explicitly sets forth the training requirements for state conservation wardens. The statutes authorizing tribal law enforcement officers and GLIFWC officers to enforce state law in certain circumstances, however, both cross-reference the statute prescribing training and annual recertification requirements for other law enforcement officers.

Accordingly, a GLIFWC warden or tribal law enforcement officer may only enforce state law if he or she successfully completes training and annual certification currently required of other law enforcement officers and meets the employment qualifications established by the Department of Justice (DOJ) Law Enforcement Standards Board. These are the same requirements that other law enforcement officers in the state must meet. In addition, the warden or officer must accept the duties of a law enforcement officer under the laws of this state.

The MOU under which DNR issues deputy warden credentials to GLIFWC wardens also specifies minimum requirements a GLIFWC warden must meet to enforce state conservation laws. Under the MOU, a GLIFWC warden may not receive deputy warden credentials unless he or she does all of the following:

- Satisfactorily completes a training program established by DNR for a total of 68 hours, including both field work and sessions on DNR policies and state conservation laws.
- Furnishes proof of satisfactory completion of the Law Enforcement Standards Board recruit training, which is currently 400 hours.
- Works a minimum of 40 hours with a DNR warden prior to issuance of Deputy Warden Credentials.

- Passes a complete background investigation by DNR.
- Possesses current certification from the Law Enforcement Standards Board.

Option 1

Codify the training and certification requirements currently contained in the MOU between DNR and GLIFWC.

Option 2

Codify a modified version of these requirements.

Option 3

Specify that tribal conservation wardens must meet training and certification requirements specified by DNR rule.

Scope of State Laws

The committee discussed developing legislation that would give tribal conservation wardens authority to enforce state conservation laws in certain circumstances. Legislation that refers only to “conservation laws,” however, is unspecific and could be narrower than the committee intends. For example, ch. 23, Stats., is titled “Conservation,” whereas most of the hunting and fishing laws are contained in ch. 29, Stats. Further, the committee may wish to authorize tribal conservation wardens to enforce certain laws that DNR wardens enforce but are not included within the chapter on hunting and fishing, for example, the prohibition against timber theft (ch. 26, Stats.), and laws related to all-terrain vehicle or snowmobile operation (chs. 23 and 350, Stats.), among others.

Legislation that gives tribal conservation wardens the same powers and duties as state conservation wardens, however, could be broader than the committee intends because DNR’s enforcement authority extends beyond enforcing conservation laws. For example, DNR is also charged with enforcing environmental regulations.

Option 1

Specify that tribal conservation wardens shall have the same powers as DNR wardens.

Option 2

Designate a subset of laws that tribal conservation wardens are authorized to enforce, and direct committee staff to work with interested parties to develop a proposed list of laws for consideration at the next meeting.

Liability of Tribes

Section 165.92, Stats., which authorizes a tribal law enforcement officer to enforce state laws on a reservation or on off-reservation trust lands, specifies that a tribe that employs a law enforcement officer acting under the authority of the statute is liable for the acts and omissions of the officer while acting within the scope of his or her employment. The statute also contains provisions requiring the tribe to take measures that allow the enforcement of this liability. Specifically, a tribe may either:

- Adopt a resolution specifically stating that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement of its liability or another resolution that the DOJ determines has the equivalent effect; or
- Maintain liability insurance that: (1) covers the tribal law enforcement for the liability of its law enforcement officers; (2) has a limit of coverage of not less than \$2,000,000 for any occurrence; and (3) provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to the limits of the policy.

Section 175.41, Stats., authorizing GLIFWC wardens to enforce state laws under certain circumstances contains identical provisions.

Option

Incorporate the liability provisions described in ss. 165.92 and 175.41, Stats., into legislation authorizing tribal conservation wardens to enforce state laws.

Assistance to State Law Enforcement Agencies

Under current law, both GLIFWC wardens and tribal law enforcement officers who meet training and certification requirements and accept the duties of a law enforcement officer under the laws of this state are authorized to arrest a person for a violation of state law or to provide aid or assistance to a Wisconsin peace officer if the officer or warden is responding to:

- An emergency situation that poses a significant threat to life or a significant threat of bodily harm; or
- Acts that the officer or warden believes, on reasonable grounds, constitute a felony.

Additionally, current law authorizes both GLIFWC wardens and tribal law enforcement officers to render aid or assistance to a Wisconsin peace officer in an emergency or at the request of a Wisconsin peace officer.

Generally, a GLIFWC warden may only exercise the above authority within GLIFWC's territorial jurisdiction, the ceded territory. The exception is when the warden leaves the territory in fresh pursuit of an offender. A GLIFWC warden may also only exercise this authority when on duty. However, a tribal law enforcement officer may exercise the above authority outside of his or her territorial jurisdiction and may exercise this authority when off duty under certain circumstances.

Option 1

Create a provision applicable to tribal conservation wardens paralleling the authority currently applicable to GLIFWC wardens.

Option 2

Create a provision applicable to tribal conservation wardens paralleling the authority currently applicable to tribal law enforcement officers.

Authorize GLIFWC Wardens to Enforce State Law

As noted above, DNR currently issues deputy warden credentials, which authorize GLIFWC wardens to enforce state conservation laws, to GLIFWC wardens who meet certain requirements. DNR currently issues these credentials under an MOU with GLIFWC.

Option 1

If the committee chooses to develop legislation authorizing tribal conservation wardens to enforce state conservation laws, the legislation could also extend this authority to GLIFWC officers. Under this option, the requirements for a GLIFWC warden to exercise this authority would be the same as for a tribal conservation warden. The geographic area in which the authority could be exercised, however, would be GLIFWC's present jurisdiction, the ceded territory, exclusive of reservations.

Option 2

If the committee chooses not to develop legislation authorizing tribal conservation wardens to enforce state conservation laws, it could nevertheless develop legislation that largely codifies the current MOU between DNR and GLIFWC.

DM:jal