

# Report to the Joint Legislative Council

## Special Committee on State-Tribal Relations



February 6, 2013

LCR 2013-09

Wisconsin Legislative Council  
One East Main Street, Suite 401  
Madison, WI 53703-3382  
Phone: (608) 266-1304  
Fax: (608) 266-3830

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# SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

Prepared by:  
David L. Lovell, Senior Analyst, and David Moore, Staff Attorney  
February 6, 2013

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# PART I

## KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

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The Special Committee on State-Tribal Relations recommends the following bill drafts to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature.

### **LRB-0778/2, RELATING TO THE TRANSPORTATION IN THIS STATE OF GAME TAKEN IN ANOTHER STATE OR ON INDIAN LAND**

This draft establishes rules governing the transportation, possession, or control of game that was legally taken in another state or on Indian lands in this state at a time or in a manner that would be a violation of this state's conservation laws if it had been taken in this state and not on Indian lands. The rules are similar, but not identical, to the current rules regarding game taken in another state. Under the draft, a member of an American Indian tribe or band can transport, possess, or control game taken on Indian lands if: (a) the game was lawfully taken on and lawfully transported from that person's tribe's lands; and (b) the game bears a tag with specified information. Under the draft, similar requirements apply to a person who took game in another state; in addition, such a person must hold the appropriate license of the other state and must observe certain requirements regarding the transportation of deer.

### **LRB-0793/1, RELATING TO ALLOWING AMERICAN INDIAN TRIBES AND BANDS TO INSURE PROPERTY UNDER THE LOCAL GOVERNMENT PROPERTY INSURANCE FUND**

A local unit of government may insure its property in the local government property insurance fund, administered by the Office of the Commissioner of Insurance. This draft allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issued to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

### **LRB-0794/1, RELATING TO TRIBAL FACILITY PARTICIPATION IN THE INTOXICATED DRIVER PROGRAM**

This draft authorizes a treatment facility that is operated by a tribe and approved by the Department of Health Services to perform an assessment of a member or relative of a member of an American Indian tribe who has been convicted of operating while intoxicated and to prepare treatment plans for such a person if the facility agrees to perform all the functions of a treatment facility under the Intoxicated Driver Program.



# PART II

## COMMITTEE ACTIVITY

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### ASSIGNMENT

The Joint Legislative Council established the Special Committee on State-Tribal Relations and appointed the chairperson by an April 24, 2012 mail ballot. The committee was directed to study issues relating to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

Membership of the Special Committee was appointed by May 31, 2012 and September 18, 2012 mail ballots. The final committee membership consists of five Representatives, two Senators, and 10 public members. A list of committee members is included as *Appendix 3* to this report.

### SUMMARY OF MEETINGS

The Special Committee held three meetings during the time period covered by this report, on the following dates:

July 18, 2012 (Menominee Indian Reservation)  
September 25, 2012 (Red Cliff Indian Reservation)  
November 9, 2012 (Oneida Indian Reservation)

At the July 18, 2012 meeting, the committee heard presentations from invited speakers on several topics.

The Director of the Conservation Department of the Menominee Indian Tribe of Wisconsin described regulations that apply to the transportation in this state of wild game taken in another state and contrasted these regulations to the regulations that apply to the transportation of wild game taken on an Indian reservation. He asked that the latter situation be regulated in the same manner as the former. Staff from the Department of Natural Resources (DNR) also addressed the committee on this subject, and the committee members engaged the speakers in a detailed discussion of current practices and policy options.

DNR staff also briefed the committee regarding the forest tax law (FTL) and managed forest land (MFL) programs. The briefing focused on the penalty a participant must pay if the participant withdraws land from one of these programs before the end of the enrollment period for the land, and proposals from Indian tribes to waive the penalty in cases in which a tribe has bought enrolled land with the intention of placing the land in trust for the tribe with the U.S. Department of the Interior.

The committee heard presentations from two individuals involved in the intoxicated driver program (IDP), the mental health coordinator for a tribal clinic and the IDP coordinator for three northern counties, regarding the IDP, generally, the role that tribal clinics play in it, and an expanded role they could play. The committee discussed an options paper regarding expanding the role of tribal clinics in the IDP and related matters, and gave drafting instructions to staff.

In addition to the preceding briefings and discussions, the committee discussed topics for future study. The meeting was preceded by a tour of the campus of the College of the Menominee Nation, where the meeting was held.

At the September 25, 2012 meeting, the committee was briefed by staff of the Office of the Commissioner of Insurance (OCI) regarding consultations they have held with tribal governments to identify ways to strengthen the relationship between the insurance industry in the state and the tribes. The OCI staff recommended, based on these consultations, that the committee develop legislation to allow tribal governments to participate in the local government property insurance fund. The committee directed staff to prepare draft legislation on this topic.

The committee continued its discussion of the off-reservation transportation of game taken on a reservation by a tribal member and reviewed three drafts presenting alternative approaches to address the topic, but did not reach consensus on any one approach.

The committee reviewed draft legislation relating to expanding the role of tribal clinics in the IDP and gave staff instructions for a revised draft.

The committee continued its discussion of the proposal to waive the penalty for the early withdrawal of land from the MFL and FTL programs in cases in which a tribe has bought enrolled land with the intention of placing the land in trust, but did not reach consensus on this topic.

The committee heard a presentation from the chief conservation officer of the Lac du Flambeau Band of Lake Superior Chippewa Indians, who discussed the jurisdiction of tribal conservation wardens and suggested that tribal wardens be given the power to enforce state conservation laws on reservations. The committee discussed this proposal, along with DNR staff, and directed staff to prepare materials for further discussion of this issue at its next meeting.

At the November 9, 2012 meeting, the committee was briefed by staff of the Department of Transportation regarding the current program for recognizing motor vehicle license plates issued by tribes and making information regarding such license plates available to law enforcement.

The committee reviewed and revised draft legislation allowing tribes to participate in the local government property insurance fund. The committee voted to recommend introduction of WLC: 0025/2 (later redrafted as LRB-0793/1).

The committee reviewed and revised draft legislation expanding the role of tribal clinics in the IDP. The committee voted to recommend introduction of WLC: 0005/2 (later redrafted as LRB-0794/1).

The committee reviewed and revised draft legislation regarding the off-reservation transportation of game taken on a reservation by a tribal member. The committee voted to recommend introduction of WLC: 0002/3 (later redrafted as LRB-0778/2).



The committee discussed the proposal to grant tribal conservation wardens the authority to enforce state conservation laws on reservations and agreed to not pursue the topic at that time.



# PART III

## RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

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### **LRB-0778/2, RELATING TO THE TRANSPORTATION IN THIS STATE OF GAME TAKEN IN ANOTHER STATE OR ON INDIAN LAND**

#### **Background**

Under current law, to legally transport, possess, or control any game that was taken in another state at a time or in a manner that would be a violation of this state's conservation laws if it had been taken in this state, all of the following must apply:

1. The game must have been taken legally under the laws of the other state.
2. The person transporting, possessing, or controlling the game must hold a license issued by the other state authorizing him or her to transport, possess, or control the game.
3. If the game is a cervid (member of the family that includes deer), the person must transport, possess, or control the cervid in compliance with rules promulgated by the DNR.

Under current law, the transportation of game taken on an Indian reservation or off-reservation trust land is partially addressed in a DNR rule. The rule applies to a large variety of animal species taken on an Indian reservation during the state's closed season for that species. To enable its members to comply with the rule, a tribe may either participate in the DNR's tagging system or operate its own tagging system under a memorandum of understanding with the DNR.

#### **Description**

This draft expands the statute relating to the transport of game from another state to apply as well to game taken by a tribal member on that person's tribe's reservation or off-reservation trust land (termed "Indian land" in the draft). It establishes requirements that are similar, but not identical, for the two situations. Specifically, the draft retains the provisions of current law regarding game taken in another state and does the following:

1. Requires that game taken by a tribal member on Indian land and transported off that land must have been taken legally under the laws of the tribe.
2. Creates a tagging requirement that applies to both game taken in another state and game taken on a reservation. Specifically, if the game is of a species for which the DNR has a tagging requirement, the following apply:
  - a. The game must bear a tag issued by the other state or the tribe, or by the DNR, identifying the department or tribe that issued the tag. To be valid, the department

or tribe that issued the tag must have recorded the name and address of the person to whom the tag was issued.

- b. The tag may not be removed until the time of butchering or, in the case of a fur-bearing animal, until the time the carcass is prepared for preservation, mounting, or tanning.
- c. If the person who possesses the game gives all or part of it to another person, the other person is not required to have a tag.

## **LRB-0793/1, RELATING TO ALLOWING AMERICAN INDIAN TRIBES AND BANDS TO INSURE PROPERTY UNDER THE LOCAL GOVERNMENT PROPERTY INSURANCE FUND**

### **Background**

Currently, a local governmental unit (including a general purpose or special purpose unit of government) may insure its property in the local government property insurance fund, administered by the OCL. The governing body of the governmental unit must adopt a resolution authorizing insurance of its property in the fund. With certain exceptions, a governmental unit that participates in the fund must insure all of its insurable property in the fund.

### **Description**

This draft allows American Indian tribes and bands in this state to insure their property in the fund under terms substantially similar to the terms that apply to local governmental units. It requires the governing body of a tribe to adopt a resolution authorizing the insurance and agreeing to abide by the rules and terms of the program and any policy issued to the tribe. It does not allow the insurance of tribal casinos or associated facilities in the fund.

## **LRB-0794/1, RELATING TO TRIBAL TREATMENT FACILITY PARTICIPATION IN THE INTOXICATED DRIVER PROGRAM**

### **Background**

The intoxicated driver program (IDP) is designed to provide education or treatment to persons convicted of operating a motor vehicle while intoxicated (OWI), with the intent of reducing recidivism. In brief, upon conviction, the court orders the offender to be assessed by an agency operated or contracted by the county for this purpose. Based on the results of the assessment, the offender is referred either to an educational program or to an approved public treatment facility. The plan for an individual's treatment at an approved public treatment facility is termed a "driver safety plan."

## Description

This draft does all of the following:

1. Directs the Department of Health Services (DHS) to authorize a tribal facility, termed an "approved tribal treatment facility" in the draft, to conduct assessments and prepare driver safety plans if the tribal facility agrees to notify the county assessment agency of each case it receives and to execute the duties of a treatment facility under the IDP for those cases.
2. Allows an offender who is a tribal member or a family member of a tribal member to receive assessment services from a tribal facility.
3. Specifies that a tribal facility may both conduct assessments and provide treatment services under the IDP. (Current DHS rules regarding conflicts of interest prohibit this, in general.)
4. Expressly states in the statutes that traditional practices may be included in treatment plans.
5. Directs the DOT, at the request of an accredited tribal college, to certify the college as a traffic safety school program if the college meets all of the requirements of such a program. This requirement applies to traffic safety schools related to any traffic violation.
6. Specifies that a county must remit to a tribal facility the county's share of any driver improvement surcharge paid by an OWI offender who receives treatment at the facility.
7. Specifies that a tribal facility is eligible for a supplemental grant from DHS in proportion to the number of OWI offenders who receive treatment at a facility of the tribe. Under current law, only counties receive such grants.



## COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts were recommended by the Special Committee on State-Tribal Relations to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature.

### SPECIAL COMMITTEE VOTE

The Special Committee voted to recommend the following three drafts to the Joint Legislative Council for introduction in the 2013-14 Session of the Legislature. The votes on the drafts are as follows:

- WLC: 0002/3, relating to the transportation in this state of game taken in another state or on Indian land, passed on a vote of Ayes, 13 (Reps. Mursau, Bewley, Milroy, and Stroebel; Sens. Vinehout, Holperin, and Schultz; and Public Members Besaw, Defoe, Greendeer, Martinson, McGeshick, and Morrow); Noes, 0; Absent, 4 (Reps. Rivard and Steineke; and Public Members Allen and Duffek); and Not Voting, 1 (Public Member Danforth). [WLC: 0002/3 subsequently became LRB-0778/2.]
- WLC: 0005/2, relating to tribal facilities' participation in the intoxicated driver program, passed on a vote of Ayes, 13 (Reps. Mursau, Bewley, and Milroy; Sens. Vinehout, Holperin, and Schultz; and Public Members Besaw, Danforth, Defoe, Greendeer, Martinson, McGeshick, and Morrow); Noes, 1 (Rep. Stroebel); and Absent, 4 (Reps. Rivard and Steineke; and Public Members Allen and Duffek). [WLC: 0005/2 subsequently became LRB-0794/1.]
- WLC: 0025/2, relating to allowing American Indian tribes and bands to insure governmental facilities under the local government property insurance fund, passed on a vote of Ayes, 14 (Reps. Mursau, Bewley, Steineke, and Stroebel; Sens. Vinehout, Holperin, and Schultz; and Public Members Besaw, Danforth, Defoe, Greendeer, Martinson, McGeshick, and Morrow); Noes, 0; and Absent, 4 (Reps. Milroy and Rivard; and Public Members Allen and Duffek). [WLC: 0025/2 subsequently became LRB-0793/1.]





## JOINT LEGISLATIVE COUNCIL

[s. 13.81, Stats.]

### **SENATE MEMBERS**

**LUTHER OLSEN, Co-Chair**  
1023 Thomas Street  
Ripon, WI 54971

**ALBERTA DARLING**  
1325 West Dean Road  
River Hills, WI 53217

**PAUL FARROW**  
Room 3 South  
State Capitol

**SCOTT FITZGERALD**  
N4692 Maple Road  
Juneau, WI 53039

**CHRIS LARSON**  
3261 S. Herman Street  
Milwaukee, WI 53207

**JOE LEIBHAM**  
3618 River Ridge Drive  
Sheboygan, WI 53083

**MARK MILLER**  
4903 Roigan Terrace  
Monona, WI 53716

**JERRY PETROWSKI**  
720 North 136th Avenue  
Marathon, WI 54448

**FRED A. RISSER**  
100 Wisconsin Avenue  
Unit 501, Madison, WI 53703

**JENNIFER SHILLING**  
2608 Main Street  
La Crosse, WI 54601

**DALE SCHULTZ**  
515 North Central Avenue  
Richland Center, WI 53581

### **ASSEMBLY MEMBERS**

**JOAN BALLWEG, Co-Chair**  
170 W. Summit Street  
Markesan, WI 53946

**PETER BARCA**  
1339 38 Ave.  
Kenosha, WI 53144

**TERESE BERCEAU**  
4326 Somerset Lane  
Madison, WI 53711

**BILL KRAMER**  
2005 Cliff Alex Ct. South, #3  
Waukesha, WI 53189

**AMY LOUDENBECK**  
10737 S. State Rd. 140  
Clinton, WI 53525

**CORY MASON**  
3611 Kinzie Ave  
Racine, WI 53405

**JOHN NYGREN**  
N2118 Keller Rd.  
Marinette, WI 54143

**SANDY PASCH**  
6301 N. Berkeley Blvd.  
Whitefish Bay, WI 53217

**JEFF STONE**  
5535 Grandview Drive  
Greendale, WI 53129

**SCOTT SUDER**  
102 South 4th Avenue  
Abbotsford, WI 54405

**ROBIN VOS**  
960 Rock Ridge Road  
Burlington, WI 53105

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

*Terry C. Anderson, Director, Legislative Council Staff  
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536*



COMMITTEE LIST

<b>Special Committee on State-Tribal Relations</b>	
<p><b>Chair Jeffrey Mursau</b>, Representative 4 Oak Street Crivitz, WI 54114</p> <p><b>Dee Ann Allen</b> Lac du Flambeau Band of Lake Superior Chippewa Indians P.O. Box 67 Lac du Flambeau, WI 54538</p> <p><b>Laura Arbuckle</b> Bad River Band of Lake Superior Chippewa 6901 North Beech Tree Lane Glendale, WI 53209 (resigned September 19, 2012)</p> <p><b>Gary Besaw</b>, Menominee Tribal Legislator Menominee Indian Tribe of Wisconsin P.O. Box 1179 Keshena, WI 54135</p> <p><b>Janet Bewley</b>, Representative 810 Chapple Avenue Ashland, WI 54806</p> <p><b>Melinda Danforth</b> Oneida Tribe of Indians of Wisconsin P.O. Box 365 Oneida, WI 54155</p> <p><b>Marvin Defoe</b> Red Cliff Band of Lake Superior Chippewa Indians 88385 Pike Road, Highway 13 Bayfield, WI 54814</p> <p><b>Gregg Duffek</b> Stockbridge-Munsee Economic Support P.O. Box 70 Bowler, WI 54416</p> <p><b>Harold G. Frank</b> Forest County Potawatomi Community P.O. Box 340 Crandon, WI 54520</p> <p><b>Jon Greendeer</b>, President Ho-Chunk Nation 701 Sommers Street Stevens Point, WI 54481</p>	<p><b>Vice-Chair Kathleen Vinehout</b>, Senator W1490 Cesler Valley Road Alma, WI 54610</p> <p><b>Jim Holperin</b>, Senator 3575 Monheim Road Conover, WI 54519 (served from May 31, 2012 to January 6, 2013)</p> <p><b>Jordan S. Martinson</b> St. Croix Chippewa Indians of Wisconsin Office of Tribal Attorney 24663 Angeline Avenue Webster, WI 54893</p> <p><b>Chris McGeshick</b> Sokaogon Chippewa Community 3160 Indian Route 10 Crandon, WI 54520</p> <p><b>Nick Milroy</b>, Representative 4543 South Sam Anderson Road South Range, WI 54874</p> <p><b>William Morrow</b> Lac Courte Oreilles Tribal Governing Board 13394 West Trepania Road Hayward, WI 54843</p> <p><b>Roger Rivard</b>, Representative 2680 17th Avenue Rice Lake, WI 54868 (served from May 31, 2012 to January 6, 2013)</p> <p><b>Dale Schultz</b>, Senator 515 North Central Avenue Richland Center, WI 53581</p> <p><b>Jim Steineke</b>, Representative Room 304 North State Capitol P.O. Box 8953 Madison, WI 53708</p> <p><b>Duey Stroebel</b>, Representative 2428 Covered Bridge Road Saukville, WI 53080</p>

STUDY ASSIGNMENT: The Special Committee is directed to study issues relating to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

17 MEMBERS: 5 Representatives; 2 Senators; and 10 Public Members.

LEGISLATIVE COUNCIL STAFF: David L. Lovell, Senior Analyst, David Moore, Staff Attorney, and Julie Learned, Support Staff.



# APPENDIX 4

## COMMITTEE MATERIALS LIST

[Copies of documents are available at [www.legis.wisconsin.gov/lc](http://www.legis.wisconsin.gov/lc)]

Next Meeting of the Special Committee	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none"> <li>• <a href="#">WLC: 0002/3</a>, relating to the transportation in this state of game taken in another state or on Indian land.</li> <li>• <a href="#">Unnumbered draft</a> illustrating the development of WLC: 0002/3.</li> <li>• <a href="#">WLC: 0025/2</a>, relating to allowing American Indian tribes and bands to insure governmental facilities under the local government property insurance fund.</li> <li>• <a href="#">Memorandum</a>, <i>Topics for Committee Study</i>, from Representative Jeffrey Mursau, Chair, Special Committee on State-Tribal Relations (November 30, 2012).</li> </ul>				
November 9, 2012 Meeting (Oneida)	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio a.m.</a> <a href="#">Audio p.m.</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Memorandum</a> to Members of the Special Committee on State-Tribal Relations, from Representative Jeffrey Mursau, Chair, <i>Committee Discussion Relating to Forest Tax Programs</i> (October 29, 2012).</li> <li>• <a href="#">Memo No. 3</a>, Authorizing Tribal Conservation Wardens to Enforce State Conservation Laws on Reservations and on Off-Reservation Trust Lands (November 2, 2012).</li> <li>• <a href="#">WLC: 0002/2</a>, relating to the transportation in this state of game taken in another state or on Indian land.</li> <li>• <a href="#">WLC: 0005/2</a>, relating to tribal facilities' participation in the intoxicated driver program.</li> <li>• <a href="#">WLC: 0029/1</a>, an amendment to WLC: 0005/2.</li> <li>• <a href="#">WLC: 0025/1</a>, relating to allowing American Indian tribes and bands to insure governmental facilities under the local government property insurance fund.</li> <li>• <a href="#">Letter</a>, from James E. Zorn, Executive Administrator, Great Lakes Indian Fish and Wildlife Commission, to Representative Jeffrey Mursau, Chair, Special Committee on State-Tribal Relations (November 6, 2012).</li> </ul>				
September 25, 2012 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Memo No. 2</a>, <i>Transport of Game Taken in Another State or on an Indian Reservation</i> (September 17, 2012). <ul style="list-style-type: none"> <li>◦ <a href="#">WLC: 0002/1</a>, relating to the transportation in this state of game taken in another state or on Indian land.</li> <li>◦ <a href="#">WLC: 0003/1</a>, relating to the transportation in this state of game taken on Indian land.</li> <li>◦ <a href="#">WLC: 0004/1</a>, relating to the transportation in this state of game taken on Indian land.</li> </ul> </li> <li>• <a href="#">WLC: 0005/1</a>, relating to tribal facilities' participation in the intoxicated driver program.</li> <li>• <a href="#">WLC: 0006/1</a>, relating to an exemption from withdrawal taxes and fees for tribal land withdrawn from the forest cropland or managed forest land program.</li> </ul>				

- [Memo](#), submitted to Members of the Special Committee on State-Tribal Relations, from Quinn Williams, Natural Resources Section Chief, Bureau of Legal Services, Tom Van Haren, Natural Resources Policy and Law Officer, Bureau of Law Enforcement, David Zebro, Northern Region Regional Warden, Bureau of Law Enforcement, Byron Goetsch, North-Eastern Region Regional Warden, Bureau of Law Enforcement, Department of Natural Resources, relating to transport of game taken in another state or on an Indian reservation (September 25, 2012).

July 18, 2012 Meeting	<a href="#">Map of Meeting Location</a>	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
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- [Memo No. 1](#), *Tribal Participation in the Intoxicated Driver Program: Issues and Options for Legislation* (July 10, 2012).
  - [Memorandum](#), from Dale Simon, Alcohol and Drug Review Unit and Tribal Participation in Intoxicated Driver Program (June 4, 2012).
- Wisconsin Legislator Briefing Book 2011-12, [Chapter Q](#), State-Tribal Relations.
- [Letter](#), from Attorney General J.B. Van Hollen, to Governor Scott Walker and Members of the Special Committee on State-Tribal Relations, regarding cooperative county-tribal law enforcement programs (January 6, 2012).
- [Memo](#), from Dee Mayo to Representative Mursau, regarding state-tribal relations study topics from Lac du Flambeau (June 29, 2012).
- [Memo](#), from Eric Chapman, Sr., Chief Conservation Officer, Lac du Flambeau Band of Lake Superior Chippewa Indians, to Dee Allen, Tribal Representative to the Special Committee on State-Tribal Relations, regarding topic for legislative consideration to the Joint Legislative Council.
- [Memo](#), from Margaret M. McGrath, Bureau Director, General Services, Department of Workforce Development, to Representative Mursau, regarding DWD issues for the Special Committee on State-Tribal Relations (July 2, 2012).
- [Letter](#), to Representative Jeff Mursau, Chair of the Special Committee on State-Tribal Relations, from John Tuohy, Director, DCF Regional Operations, regarding study topics for the Special Committee (July 9, 2012).
- [Letter](#), from Melinda Danforth, Councilwoman, Oneida Tribe of Indians of Wisconsin, to Representative Jeffrey Mursau, Chair, Special Committee on State-Tribal Relations, regarding topics for discussion (September 12, 2011).
- [Resolution No. 12-58](#), Supporting Statutory Amendment in the Intoxicated Driver Program, Lac Courte Oreilles Tribal Governing Board.
- [Material](#) distributed by Quinn Williams, Natural Resources Section Chief, Bureau of Legal Services, Department of Natural Resources (DNR).
- [Handout](#), *Managed Forest Law Tax Exempt Withdrawals Under Wis. Stat. s. 77.885*, submitted by Quinn Williams, Natural Resources Section Chief, Bureau of Legal Services, DNR.