



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

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

FROM: David L. Lovell, Senior Analyst

RE: Retirement Plan Coverage for Tribal Police Officers

DATE: November 7, 2006

The 2004-06 Special Committee on State-Tribal Relations investigated the subject of participation in the Wisconsin Retirement System (WRS) by tribal police officers. At its February 25, 2005 meeting at Oneida, Wisconsin, the Special Committee heard presentations by Lac du Flambeau Police Chief Kathryn Makowski and Oneida Police Chief Rick Cornelius, who requested that the WRS be expanded to allow participation by their officers. They cited the difficulty of retaining experienced officers as the principal reason for their request. They said that the WRS is a valuable employment benefit, which tribal police departments cannot match. According to them, officers routinely receive training and experience in a tribal department and then find work with state and local law enforcement agencies that are part of the WRS.

The committee also heard from John Vincent, Administrator (then Acting Administrator), Division of Trust Finance and Employer Services, Department of Employee Trust Funds (ETF). Mr. Vincent described a number of issues related to this proposal, indicating that it would be necessary to adequately address each issue before the proposal could be implemented. In a March 25, 2005 memorandum to committee staff, Mr. Vincent elaborated on his testimony and identified steps that would be required to address each issue. A copy of that memorandum is enclosed.

This Memo updates and expands upon the information presented in Memo No. 5 to the 2004-06 Special Committee. It is in three parts. The first part briefly identifies alternative approaches to providing retirement benefits for tribal police officers. The second part describes programs in other states that allow tribal police officers to participate in those states' retirement systems. The third part addresses the specific proposal to allow tribal police officers to participate in the WRS. It discusses each issue identified in the March 25, 2005 ETF memorandum and presents legislative options, including the steps identified in the ETF memorandum and alternatives to those steps, for the committee's consideration.

ALTERNATIVE APPROACHES TO PROVIDING RETIREMENT BENEFITS TO TRIBAL POLICE OFFICERS

There are multiple ways in which a tribe could ensure retirement benefits for its police officers. One is the proposal presented to the 2004-06 Special Committee, to include them in the WRS. Alternatives to this approach include creation of a retirement plan by the tribe that employs the officers and the creation of an inter-tribal or non-tribal multiple employer plan. This part of the Memo identifies some of the principal advantages and disadvantages of each. The purpose is not to fully analyze the alternative approaches but to present the alternatives for the committee's information and compare them in general terms. Because the first approach was specifically recommended to the 2004-06 Special Committee, it is given a fuller analysis in the remainder of the Memo.

Participation in a State Plan

The WRS is an established retirement plan, well administered by the ETF, and its resources are well managed by the State of Wisconsin Investment Board (SWIB). The plan is fully funded, meaning that annuity payments are covered completely by employer and employee contributions to the Public Employee Trust Fund (the fund) and by earnings on the investment of the fund by SWIB. It is generally considered one of the best run state retirement systems in the country.

The third part of this Memo discusses a number of issues the ETF has identified that must be resolved if the WRS is to be expanded to include tribal police officers. Important among these is the need for the ETF to be able to enforce the rules and requirements of the WRS on participating tribal governments as it does on all other participating employers. These include the need to ensure that employer and employee contributions to the fund are paid to the ETF timely and in full and the rule that, once participating in the WRS, an employer may not withdraw. Options presented in this Memo to address these concerns include waivers of sovereign immunity, a step that is never taken lightly by a tribal government or any other government. Options for ensuring payment of required contributions include bonds, but a waiver of immunity would most likely be needed for enforcement of the bond requirement.

Also, while a tribal employer participating in the WRS is subject to the rules of the WRS, the tribe has no control over what the rules say. The rules are established by the state, through a variety of policy boards attached to the ETF, and apply to all participating employers. This could be viewed simply as a disadvantage to a participating tribal government or as a further infringement on a tribe's sovereignty in exchange for participation in the WRS.

Another major consideration regarding participation in the WRS is the cost. Along with the benefits offered by the plan come substantial employer and employee contributions to the fund. For 2007, the cost of participation in the WRS in a protective service occupation with Social Security coverage, is 13.3% of payroll, the employer contribution being 8.2% and the employee contribution being 5.1%; without Social Security coverage, the cost is 14.2% of payroll, the employer contribution being 10.8% and the employee contribution being 3.4%. Based on collective bargaining agreements, an employer may make the employee's contribution. A newly participating employer would face an additional, and potentially large, cost in the payment of back contributions if it chose to cover its employees' years of service prior to the time the employer joined the WRS.

Creation of a Tribal Plan

A second alternative is for a tribe to create its own retirement plan. While a tribe could administer a plan for itself, financial institutions commonly administer retirement plans for individual employers, including tribal governments. The Wells Fargo Senior Vice-President for Native American Banking Services indicates that Wells Fargo, for example, administers plans for numerous tribal governments, primarily in the form of 401(k) and 403(b) plans. Advantages of this approach include independence from a state government and protection of tribal sovereignty. The disadvantages are the converse of the advantages of participating in the WRS, principally the loss of the opportunity to participate in a large, established retirement system. A survey of the tribes in Wisconsin indicates that many, if not all, of these tribes offer 401(k) plans for their employees, some including full or partial employer matching of employee contributions. In researching this Memo, no instance was found in Wisconsin or elsewhere in which a tribe has created a defined benefit retirement plan. (The WRS is a defined benefit plan; 401(k) and 403(b) plans are defined contribution plans.)

Recently, some tribal governments have been reluctant to create their own retirement plans due to uncertainty whether the plan would be treated as a governmental plan under federal law. Governmental plans receive two very significant benefits. First, the investment earnings of a governmental plan are not subject to state or federal taxation, and participants' contributions to the plans are deductible for income tax purposes. Second, governmental plans are not subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Through 2003, the Internal Revenue Service (IRS) issued explicit determinations that individual tribal plans were governmental plans. In January 2004, the IRS stopped this practice, creating uncertainty whether a new tribal plan would be treated as a governmental plan.

This uncertainty was removed by the Federal Pension Protection Act of 2006 (PPA), which included provisions explicitly defining tribal retirement plans as governmental plans for purposes of the Internal Revenue Code (IRC) and ERISA. The governmental plan designation applies to plans administered for tribes by financial institutions as well as plans administered by tribes themselves. The designation applies only if participation is limited to employees "substantially all of whose services...are in the performance of essential governmental functions...." However, it does *not* apply to a plan that includes any employees "whose services...[are] in the performance of commercial activities (whether or not an essential governmental function)." This excludes plans that cover employees at casinos, retail outlets, and other commercial ventures that provide revenue to a tribal government. [Sec. 906, Pension Protection Act of 2006, PL 109-280.]

Creation of an Inter-Tribal or Non-Tribal Group Plan

A third approach is to create a multiple employer plan. However, Wells Fargo does not have any tribal clients that have chosen to combine their retirement plans with those of other tribes. The Senior Vice-President attributes this in part to the general practice of tribal governments to protect their financial information, whereas a group retirement plan would expose some such information to other employers in the plan.

A nongovernmental organization could sponsor a plan for some or all employees of member tribes or tribal agencies. In the last year, the National Native American Law Enforcement Association has offered a credit card service to its member tribal law enforcement agencies, through the Justice

Federal Credit Union (JFCU). It has considered developing a retirement plan for the officers of its member agencies, also through the JFCU, but has not done so yet.

TRIBAL POLICE OFFICERS IN OTHER STATES' RETIREMENT SYSTEMS

At least three states, Minnesota, Florida, and Arizona, and possibly others allow tribal police officers to participate in their state retirement plans. This part of the Memo briefly describes those programs and tribal participation in them.

Minnesota

The Minnesota Public Employees Retirement Association (PERA, referred to below as "the Minnesota program") is administered as two parallel programs. One program, the Minnesota Police and Fire Retirement Plan (referred to below as "the Police and Fire Plan") covers police officers and fire fighters. (Other police and fire department personnel may participate in this program, as well, although under different terms than the police and fire fighters.) The other program covers all other public employees.

In 2000, the Minnesota Legislature enacted a new law authorizing tribal police officers to participate in the Police and Fire Plan. [s. 353.64, subd. 11, Minn. Stats.] It applies to officers who exercise powers granted by the state to enforce state laws under statutes similar to the Wisconsin statute on that subject. [ss. 626.90 to 626.93, Minn. Stats., and s. 165.92, Wis. Stats.] A tribal police department may petition the retirement plan administrator to make certain findings regarding the department's officers and to admit them to the plan. The administrator is required to grant such a petition if the IRS makes a ruling that all of the following apply:

- The tribal police department is an agency or instrumentality of the state for purposes of enforcing state law.
- Contributions by the department to the fund on behalf of the officers are considered contributions to a governmental plan within the meaning of s. 414 (d) of the IRC.

When a petition is approved, the police department is required to immediately enroll all eligible officers in the plan. Thereafter, it must deduct and submit the employee's contribution to the fund and submit the employer's contribution to the fund. In addition, the police department is required to comply with certain reporting requirements.

The Mille Lacs Band of Chippewa Indians was instrumental in developing the Minnesota program as it applies to tribal police, and it was the first tribe to enroll its police officers in the Police and Fire Plan. As required by the new law, the Mille Lacs Police Department sought and received a private letter ruling from the IRS in 2002. The ruling states that the tribal police department is an agency or instrumentality of the state for purposes of s. 414 (d), IRC, and that its participation in the Police and Fire Plan does not adversely affect the status of that plan as a government plan within the meaning of that section.

The IRS based its ruling on an analysis of tribal officers' enforcement of state laws. Based on the facts presented, the IRS found that the state and county exercised a significant degree of control over the operation of the tribal police department with regard to this function. It noted that the authority of

tribal officers to enforce state laws is granted by the state and can be revoked by the state. It noted also that the exercise of the authority is regulated by the state, at both the state and local levels, through officer licensing, criminal background checks of officers, emergency dispatch, control of crime scenes and criminal investigations, and detention and prosecution of all persons arrested.

As of April 2005, 64 police officers of five tribal police departments participated in the Police and Fire Plan, and several more tribes were in the process of enrolling their officers.

Florida

The State of Florida has created two special improvement districts, coterminous with the reservations of the Seminole and Miccosukee Tribes, and designated the governing bodies of the tribes as the governing bodies of the districts. By giving certain powers or state resources to the districts, the state is essentially giving them to the tribes.

In an example of how the state has used this mechanism, the Florida Statutes authorize the governing bodies of the Seminole and Miccosukee Special Improvement Districts to employ law enforcement personnel. [s. 285.18 (2) (c), FL Stats.] While the tribes could do this on their own authority, the statute goes on to specify that such law enforcement personnel shall be considered peace officers and have the authority to engage in all aspects of law enforcement, including enforcement of state criminal laws, within their respective districts (reservations). It also grants them privileges, protections, and benefits other peace officers receive under Florida law. It requires only that the officers meet state training standards. Another statute specifies that the law enforcement agencies of the tribes, not the districts, have the authority of "criminal justice agencies" under Florida law. [s. 285.18 (3), FL Stats.]

The Florida Statutes allow the districts (tribes) to apply for coverage of their employees under the Florida State Retirement System subject only to "necessary action by the districts to pay employer contributions into the state retirement fund." [s. 285.18 (2) (d), FL Stats.] The statute does not impose additional conditions on a district's (tribe's) participation or require IRS assurances that the state plan's status as a governmental plan will not be affected. (It would not be necessary to require the latter as, under Florida law, the district is an instrumentality of the state.)

Neither tribe has elected to exercise this option, instead administering their own retirement plans.

Arizona

For some 20 years, tribal governments in Arizona have been allowed to participate in the Arizona State Retirement System. [s. 38-851, AZ Stats.] As conditions to participation, an American Indian tribe must, by resolution of the governing body, do all of the following:

- Agree that all disputes involving interpretation of Arizona Statutes involving the system, will be resolved through the Arizona state court system.
- Agree to be bound by state statutes and laws that regulate and interpret the provisions of the system, including eligibility to membership in the system, service credits and the rights of any claimant to benefits and the amount of such benefits.

- Agree to meet any requirement that the fund manager may prescribe to ensure timely payment of member and employer contributions and any other amounts due from the employer to the system.
- Include in the joinder agreement any other provision deemed necessary by the fund manager for the administration or enforcement of the agreement.

Although not stated as such in the statute, the agreement documents between the state and a participating tribe make explicit that the tribe waives its sovereign immunity to the extent necessary for enforcement of the agreements. Counsel for the state program said that there has been no occasion to sue for enforcement of an agreement or program rules. He was confident that the state could obtain a court judgment to enforce an agreement, but expressed some concern regarding the ultimate ability of the state to collect on a judgment.

The statute does not require IRS assurances that the state plan's status as a governmental plan will not be affected. Counsel for the state program indicated that the state had never even considered the question prior to the provision in the PPA on this topic, and acknowledged that this could become a concern for the program.

Currently, 16 of the 22 American Indian tribes in Arizona have enrolled their police officers and fire fighters in the Public Safety Plan of the state retirement program. Because of the high cost of that plan, due to very generous benefits under the plan, tribal participation is limited to those tribes with successful gaming operations.

PARTICIPATION OF TRIBAL POLICE OFFICERS IN THE WRS: ISSUES AND OPTIONS

This part of the Memo discusses the issues raised in Mr. Vincent's February 25 testimony and the March 25, 2005 ETF memorandum. It briefly describes each issue and then presents the action steps recommended by ETF, followed by additional options, as appropriate.

Internal Revenue Service

Issues

The ETF is directed by statute to ensure that the WRS complies with the IRC as a "qualified plan" for income tax purposes and is otherwise administered in a manner consistent with the IRC. [s. 40.03 (1) (am), Stats.] The importance of this is that income from funds invested by a qualified plan are exempt from taxation, a very significant benefit. One condition of a qualified plan is that it must be a "government plan," which the IRC defines, in pertinent part, as:

... a plan established and maintained for its employees by the government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of the foregoing.... [s. 414 (d), IRC.]

To maintain the WRS's status as a governmental plan, then, it may not cover any employees not described in the preceding definition. Stated differently, in order to add tribal police officers to the WRS, the ETF must be certain that those officers' employer, be it the tribal police department or the

tribe itself, falls within that definition, specifically, that it is a political subdivision, agency, or instrumentality of the United States, or of the State of Wisconsin. This is the reason that the Minnesota program requires that a tribal police department obtain a ruling from the IRS on this subject before its officers may enroll in the Police and Fire Plan.*

The conditions for enforcement of state laws by tribal officers in Wisconsin are very similar to those in Minnesota. Although the IRS ruling obtained by the Mille Lacs Band states that it may not be cited as precedent, a similar argument could be made by a tribal police department in Wisconsin and might lead to a similar response from the IRS.

Options

ETF Recommendation: The ETF memorandum recommends that a tribe or a tribal police department wanting to participate in the WRS be required to first obtain an IRS ruling stating that: (a) the tribe or the tribal police department is an agency or instrumentality of the state for this purpose; and (b) its participation in the WRS will not adversely affect the WRS's status as a public plan. Legislation could make this a statutory requirement.

Alternative: Legislation could be silent on this issue on the assumption that, if the WRS's status as a public plan were questioned, the IRS would make findings regarding a tribal police department in Wisconsin similar to its findings regarding the Mille Lacs Police Department. Note, however, that under its fiduciary responsibility to ensure the tax-exempt status of the Employee Trust Fund, the ETF Board most likely would raise a legal challenge to the inclusion of tribal police in the WRS if that were done without first obtaining the IRS ruling recommended by the ETF.

Social Security Administration

Issues

The ETF is the state administrator of Social Security under what is termed a "section 218 agreement" between ETF and the Social Security Administration (SSA). With limited exceptions, all participants in the WRS are required to participate in Social Security through the state's s. 218 agreement. [s. 40.41 (4), Stats.] The ETF cites SSA guidance documents indicating that tribal governments are not treated as states for purposes of s. 218 of the Social Security Act. It asserts that, before a tribe could participate in Social Security through the state's s. 218 agreement, it would be necessary to determine whether the SSA would amend the s. 218 agreement for this purpose.

The ETF's comments are not pertinent to the proposal before the committee. Participation in the WRS is determined by state statute. The general rule that WRS participants must participate in Social Security under the state's s. 218 agreement is state policy and can be modified by the state. Under current law, police already fall within one of the exceptions to the requirement that all WRS participants participate in Social Security. [s. 40.41 (6) (e), Stats.] The SSA's willingness to amend the s. 218

* The Minnesota statute was enacted prior to the enactment of the PPA. However, it appears that the requirement for a finding that a tribe or tribal police department is an instrumentality of the state is still pertinent. The PPA provision states only that a tribe's pension plan is given the same treatment as a state's; it does not affect the requirement that a state's plan include only employers that are subdivisions or instrumentalities of the state.

agreement to include tribal police officers would be determinative only if the proposal were to allow tribal police officers to participate in Social Security under the agreement but, again, that is not the proposal before the committee.

Options

ETF Recommendation: The ETF memorandum recommends that a tribe or a tribal police department wanting to participate in the WRS be required to first obtain an SSA ruling stating that: (a) the tribe or the tribal police department is a separate legal jurisdiction for the purposes of Social Security administration; (b) the SSA is willing to amend the s. 218 agreement for this purpose; and (c) the SSA is satisfied by an opinion of the Wisconsin Attorney General that the tribe meets the definition of "employer" for purposes of the WRS. Legislation could make this a statutory requirement.

Alternatives: 1. Legislation could be silent on this subject on the understanding that Social Security participation is not a prerequisite of participation by tribal police in the WRS.

2. Legislation could require the SSA ruling recommended by the ETF memorandum if a tribe petitions for inclusion in the ETF's Social Security coverage group.

3. With regard to participation in either the WRS or Social Security, legislation could omit the requirement for an Attorney General's opinion if the definition of "employer" is amended as discussed in the following section of this Memo.

Definition of "Employer" in Wisconsin Statutes

Issue

Participation in the WRS is employment-based. An employer may elect to participate, and every employee of that employer is then included in the WRS. All agencies of the state are required to participate, and other employers may elect to participate. No person can participate in the WRS unless he or she is employed by a participating employer. "Employer" is defined as:

...the state, including each state agency, any county, city, village, town, school district, other governmental unit or instrumentality of 2 or more units of government now existing or hereafter created within the state, any federated public library system established under s. 43.19 whose territory lies within a single county with a population of 500,000 or more, a local exposition district created under subch. II of ch. 229 and a family care district created under s. 46.2895, except as provided under ss. 40.51 (7) and 40.61 (3) and subch. X. "Employer" does not include a local cultural arts district created under subch. V of ch. 229. Each employer shall be a separate legal jurisdiction for OASDHI purposes. [s. 40.02 (28), Stats.]

The salient feature of this definition is that it relates only to the state, subdivisions of the state, and certain special purpose units of government created under the authority of the state. It includes the term "other governmental unit," which, could be argued, includes tribal governments. However, the ETF views that term in the context of the definition as a whole, focused on the state and entities created

by it. It concludes that, for purposes of the WRS, "employer" does not include tribal governments or tribal agencies and that tribal governments are not eligible to participate in the WRS for this reason.

Options

ETF Recommendations: The ETF memorandum recommends that:

1. A tribe or a tribal police department wanting to participate in the WRS be required to first obtain an opinion of the Wisconsin Attorney General stating that: (a) the tribe meets the definition of "employer" for purposes of the WRS; and (b) there is no constitutional bar to including tribal police in the WRS. The ETF did not identify any specific constitutional issue about which it is concerned.
2. If the policy decision is made to include tribal police in the WRS, the definition of "employer" be amended to include tribal governments.

Alternatives: 1. Legislation could pursue the second ETF recommendation, but not the first.

2. With regard to the second ETF recommendation, the definition of "employer" could be expanded to include one or more of the following:

- Tribal governments.
- Agencies of tribal governments.
- Tribal police departments.

The specific proposal before the committee, to allow tribal police officers to participate in the WRS, would be accomplished by adding only tribal police departments to the definition. However, as alternatives, legislation could be drafted more broadly to refer to agencies of tribal governments or to tribal governments themselves. Referring to tribal agencies would give tribes the greatest flexibility if at some time in the future there were an interest to enroll the employees of other units of tribal government in the WRS. Referring only to tribal governments, without a separate reference to agencies of tribal governments, would most likely be construed as requiring that any tribe participating in the WRS enroll *all* of its employees. On this policy choice, see also the discussion of inclusion of all employees of a participating employer, in the following section.

Note that if the committee chooses to expand the definition of "employer" to include either tribal governments or agencies thereof, it will be necessary to define those terms.

Coverage of All Employees

Issue

As noted above, once an employer elects to participate in the WRS, all of its eligible employees must participate. Mr. Vincent's February 25, 2005 testimony noted several reasons for this. First, he raised the issue of adverse selection. If one group of participants in a retirement (or insurance) pool imposes higher costs on the pool than other members, i.e., receives benefits that cost more than the benefits received by others, some of the cost of the plan is shifted from these members to the other

members. However, inclusion of only tribal police and not other tribal employees would not have that effect. This is because "protective service employees," a category that includes police, are treated separately from all other employees. The calculation of their required contributions to the WRS is based on actuarial assumption specific to that category. Adding only tribal police to the WRS would have no effect on the costs for non-protective service participants.

Apart from adverse selection, *per se*, the testimony raised the possibility that tribal police officers would cost the system more than other protective service participants, increasing costs for all in that category. However, there is no evidence to suggest this would be the case, and in fact tribal police could prove to be less expense to the WRS. In any event, any effect would be very small, because there are very few tribal police compared to the large number of current protective service participants.

The testimony also noted the potential for administrative confusion when tribal employees move between covered and non-covered positions in the police department or in tribal government as a whole. It should be noted, though, that ETF has in place the means to track other employees who move in and out of public employment. Presumably, employees of a tribal police department would be tracked by the same mechanism and any additional administrative burden would be minimal. Finally, the testimony indicated that research is needed to determine whether covering some but not all employees of a tribe would conflict with federal laws governing qualified public pension systems.

Options

ETF Recommendation: The ETF memorandum recommends that, if the policy decision is made to allow tribes to enroll only tribal police in the WRS, the statutes be amended to allow this.

Alternatives: 1. Legislation could be written more broadly to state that a tribal government may enroll any subset of its employees.

2. Legislation could remain silent on this question, with the result that current law would apply to whatever entity is the participating employer, be it the police department or the tribe itself. Note that, under this option, if the police department were the participating employer, all department employees would be required to enroll, not only the officers; if the tribe were the participating employer, all tribal employees would be required to enroll. (However, as noted above, the basis on which the IRS ruled that tribal police officers in Minnesota could be covered under the Minnesota program was that they were enforcing state laws and the state and county exercised a significant degree of control over them. Since this analysis would not apply to other than police officers, it is unlikely that the IRS would rule that a tribe was an instrumentality of the state because the state does not exercise control over tribal government.)

3. Legislation could apply either of the options involving a statutory change to all participating employers, not just tribes. Note that while this option would treat all participating employers the same, it would be a major policy change with potentially far-reaching ramifications for the WRS. It may be inappropriate for this committee to recommend a policy change that goes that far beyond the committee's charge and expertise.

Enforcement of Applicable Laws

Issue

The ETF administers the WRS, meaning, among other things, that it sets and enforces rules for participants. In addition, several boards set policies and rule on individual cases. The ETF rules and board rulings are enforced in the state court system. Both to ensure efficient administration and to maintain the fiscal integrity of the WRS, it is necessary that all participating employers be subject to effective enforcement of these rules and rulings. Examples of rules include the current rule that all eligible employees must be enrolled, the rule that participating employers may not withdraw from the WRS, the requirement that participating employers submit periodic reports to ETF, the powers to subpoena witnesses and request information from participating employers, and many others.

Also, to maintain the fiscal integrity of the WRS, it is imperative that ETF be able to enforce participating employers' obligation to remit required employee and employer contributions. Obviously, the WRS cannot pay out retirement benefits to annuitants if active participants are not paying in. Since all employers currently in the WRS are directly related to the state, the state has considerable control over them. The Legislature has given ETF the power to collect unpaid agency contributions directly from the agency's appropriations, and to collect unpaid contributions of a municipality from the municipality's state aid. Some mechanism would be required to ensure collection of contributions from a tribal employer, as well.

In his February 25, 2005 testimony, Mr. Vincent also raised the importance that tribal courts respect and enforce state court orders, such as divorce decrees ordering the assignment of retirement benefits, and that state courts respect and enforce similar tribal court orders. It would appear that this concern is adequately addressed by s. 806.245, Stats., which grants full faith and credit in state courts to all tribal court and tribal legislative actions and orders if reciprocal full faith and credit is granted by the tribe to state court and legislative actions and if certain other requirements are met.

Options

1. Legislation could condition participation of a tribal government or agency in the WRS upon receipt from the tribe of evidence that the tribe waives its sovereign immunity to the extent necessary for the state to enforce all rules relating to participating employers in the WRS and all ruling of the state boards having a role in the WRS.

2. Regarding collection of any contributions that a tribe fails to make, as an alternative or in addition to the preceding option, legislation could condition participation of a tribal government or agency upon maintenance by the tribe of a performance bond from which the state is authorized to withdraw funds to cover unpaid contributions.

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Enclosure