



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Upper Dells Ballroom C and D
Ho-Chunk Casino, Convention Center, and Hotel
Wisconsin Dells, WI

August 13, 2014
12:00 p.m. – 4:30 p.m.

[The following is a summary of the August 13, 2014 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

Chair Mursau called the committee to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Jeffrey Mursau, Chair; Sen. Kathleen Vinehout, Vice Chair; Rep. Janet Bewley; Sen. Dale Schultz; and Public Members Dee Ann Allen, Aimee Awonohopay, Gary Besaw, Jon Greendeer, and Chris McGeshick.

COMMITTEE MEMBERS EXCUSED: Rep. Nick Milroy; and Public Members Rusty Barber, Marvin Defoe, Melinda Danforth, and Harold Frank.

COUNCIL STAFF PRESENT: David Lovell, Principal Analyst; and David Moore, Staff Attorney.

APPEARANCES: LeeAnn Cooper, Intoxicated Driver Program Coordinator, Department of Health Services; Dale Simon, Supervisor, Bureau of Driver Services, Alcohol and Drug Review Unit, Department of Transportation; Todd Schaller, Chief Warden, Department of Natural Resources; Randall Keys, Chief Legal Counsel, and Therese Durkin, Attorney, Department of Children and Families; and Mary Husby, Social Services Director, Menominee Indian Tribe of Wisconsin; and Nicole Homer, Attorney, Department of Justice, Ho-Chunk Nation.

Welcome and Opening Remarks

Ryan Greendeer, Director of Government Relation, Ho-Chunk Nation, welcomed the committee and Eliot Funmaker, Ho-Chunk tribal elder, offered an invocation.

Chair Mursau thanked the Ho-Chunk Nation for hosting the meeting.

Introduction of Committee Members

Committee members introduced themselves and made brief statements.

Status of 2013 Legislation Recommended by this Committee

Committee staff reported that, in the 2013 Legislative Session, the Joint Legislative Council had introduced three bills recommended by this committee, with the following results:

- 2013 Assembly Bill 30, relating to the transportation in this state of game taken in another state or on Indian land: passed and enacted as 2013 Wisconsin Act 85.
- 2013 Assembly Bill 31, relating to allowing American Indian tribes and bands to insure property under the local government property insurance fund: failed to pass.
- 2013 Assembly Bill 32, relating to tribal treatment facility participation in the intoxicated driver program: passed and enacted as 2013 Wisconsin Act 246.

Implementation of New Law Relating to Tribal Participation in the Intoxicated Driver Program (2013 Wisconsin Act 246)

LeeAnn Cooper, Intoxicated Driver Program Coordinator, Department of Health Services

Ms. Cooper reported that the Department of Health Services (DHS) is currently developing a rule-making package to conform the existing rules to the provisions of 2013 Wisconsin Act 246, but that the rule-making process will not delay implementation of the new law. She described various implementation activities undertaken to date, including the development of an intoxicated driver assessment training program specifically designed for tribal clinic staff, which will be held early in the fall. She said that tribal clinics are preparing to participate in the program, but inform her that they are not yet ready to submit applications to the DHS.

Dale Simon, Supervisor, Bureau of Driver Services, Alcohol and Drug Review Unit, Department of Transportation

Mr. Simon said that, like the DHS, the Department of Transportation (DOT) is prepared to implement the act when tribal clinics are ready to take on the new responsibilities the act allows them. He said that the DOT is coordinating with the DHS in presenting necessary

training for tribal clinic staff. Mr. Simon said that the DOT is also ready to receive applications from any tribal colleges that want to provide driver safety courses ordered by courts to violators of state traffic laws. Finally, he indicated that the DOT is adding to the court form given to persons convicted of operating while intoxicated a statement that tribal members and their family members may seek assessment services from a tribal clinic, as required by the law.

Implementation of New Law Relating to the Transport of Game (2013 Wisconsin Act 85)

Todd Schaller, Chief Warden, Department of Natural Resources

Mr. Schaller said that implementation of 2013 Wisconsin Act 85 has been very straight forward, consisting primarily of educating wardens about the new law and training them in its implementation. No rule-making was required. He said that the new law has improved the efficiency of enforcing hunting regulations.

Mr. Besaw observed that, as a result of this law, members of the Menominee Tribe are seeing the benefit of using the tribe's game tags, and so the tribe is seeing improved compliance with its hunting regulations, also.

Funding of Tribal Colleges

Joe Strohl, representing the Menominee Indian Tribe of Wisconsin, was invited to the table. He said that about 30% of the students enrolled in the Lac Courte Oreilles Ojibwa Community College and about 40% of the students at the College of the Menominee Nation are not Indians. In addition, he observed that, while the colleges receive funding from the federal Bureau of Indian Education (BIE) to fund a portion of the cost of educating each Indian student enrolled, they receive no funding for non-Indian students. He said that the College of the Menominee Nation is requesting that the committee recommend legislation to provide funding for each non-Indian student enrolled in a tribal college in an amount that is half the amount that the BIE provides for Indian students.

In discussing the justification for providing funding for tribal colleges when the state does not provide funding to other private colleges, it was generally agreed that tribal colleges function more like public colleges, but have no property tax base to support them. It was also noted that the state does provide funding to at least two private schools that are perceived to provide a needed public function, the Medical College of Wisconsin and the School of Dentistry at Marquette University.

The committee generally agreed that the proposed funding should be from revenues that tribes pay to the state under gaming compacts, in particular, any increase in such revenues over previous years.

Mr. McGeshick moved, seconded by Senator Schultz, that the chair write to:

- 1. The Governor to request that he include the proposal of the College of the Menominee Nation for funding tribal colleges in the proposed 2015-16 Biennial Budget that he presents to the Legislature.*
- 2. The co-chairs of the Joint Committee on Finance to request that they include this proposal in the budget that the committee recommends to the full Legislature.*

The motion passed on a voice vote.

Tribal Participation in the Parental Choice (School Voucher) Program

Memo No. 14-1, Parental School Choice (School Voucher) Programs (July 6, 2014)

Mr. Lovell described the Wisconsin Parental Choice Program (WPCP), summarizing the information in Memo No. 14-1 and providing additional information. He gave particular attention to the way in which schools get into the program and the way in which seats are allocated in the program. He observed that it would be unlikely that a tribal school, or any other school, would get into the program after the next school year because all seats will have been allocated by then. He noted, though, that legislation to allow tribal schools to participate could include a provision to create new seats in the program, available to all schools or reserved for tribal schools. He also described some of the requirements the program imposes on participating schools.

James Schlender, Jr., and Jason Kekek Stark, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, were invited to the table. Mr. Schlender said that the band is studying the potential impact on the band of participation in the parental choice program. He discussed the importance of treating tribal schools and tribal students under the law the same and allowing the same opportunities as private schools and private school students. Jennifer Kammerud and Tricia Collins, Department of Public Instruction, were invited to the table to respond to questions from committee members. Chair Mursau stated the committee could, if it chose, develop legislation to add reference to tribal schools, along with private schools, in the parental choice statutes.

Mr. Stark said that the Lac Courte Oreilles band also asks the committee to consider two other proposals, both modeled on Minnesota law. First, he explained that the LCO tribal school operates a charter school under contract with the Hayward School District. He noted that pupils enrolled in the school are included in the pupil count of the school district, for aid purposes. However, he said that only a portion of the aid the district receives for those pupils is turned over to the tribal school. He asked that there be a direct pass-through of those funds to the tribal school. Second, he asked that tribal colleges be permitted to authorize charter schools. Chair Mursau said that the committee could explore these topics at a later meeting.

“Safe Haven” Law and Indian Child Welfare Act

Randall Keys, Chief Legal Counsel, and Therese Durkin, Attorney, Department of Children and Families

Mr. Keys provided background information, describing the provisions of both the state “Safe Haven” law and the federal Indian Child Welfare Act and its state counterpart, the Wisconsin Indian Child Welfare Act (ICWA). He described the purpose for which each law was enacted and provided information regarding the operation of each law.

Mary Husby, Social Services Director, Menominee Indian Tribe of Wisconsin; and Nicole Homer, Attorney, Department of Justice, Ho-Chunk Nation

Ms. Husby stated that the Safe Haven law conflicts with ICWA by preventing a court from discovering cases regarding the termination of parental rights of an Indian child or the placement of an Indian child in a foster or adoptive home. She illustrated problems that can arise in safe haven relinquishments involving Indian children by describing a particular case from Milwaukee County, involving a child with Menominee ancestry. Ms. Homer discussed legal as well as policy conflicts between the two laws. The two speakers asked that the committee recommend legislation to make the safe haven law conform to the requirements of ICWA, offering specific language included in legislation from the 2013 Legislative Session.

Following committee discussion, Chair Mursau asked staff to arrange presentations for the next meeting by some of the parties that the committee did not hear from at this meeting, hospitals and counties in particular. He also directed staff to prepare materials for the committee, in consultation with interested parties, that:

- Describe the safe haven law and ICWA and the conflicts between them.
- Describe how safe haven laws in other states address the requirements of ICWA.
- Present options for legislation to address any conflicts between the safe haven law and ICWA.

Discussion of Topics for Committee Study

Mr. Schlender and Mr. Stark were invited back to the table. They noted that the committee had received a letter from the Great Lakes Indian Fish and Wildlife Commission asking that the committee take up the following topics:

- Reform of the ferrous mining law.
- Water quality standards to protect ceded territory natural resources like wild rice.
- The state’s bag limit adjustment rule.
- Tribal court jurisdiction over violations of tribal boating regulations.

Mr. Besaw noted that several topics discussed by the committee in the last biennium remain unfinished:

- Tribal representation on regional planning commissions.
- Retrocession to the federal government of jurisdiction in Indian country transferred to the state by Public Law 83-280.
- Requirements created by 1989 Wisconsin Act 31 that public schools include instruction relating to tribal culture, history, and sovereignty in their curriculum.

Jim Tenuta, representing the Oneida Tribe of Indians of Wisconsin, said that a number of tribal representatives on the committee are discussing additional topics for committee study, which they will present to the committee at a later time.

President Greendeer suggested that the committee invite the National Congress of American Indians to brief it on matters related to inter-tribal trade.

Ms. Awonohopay suggested that the committee look at the adequacy, and possible increase, of tourism promotion funds focused on attracting visitors to Indian reservations in Wisconsin.

Other Business

There was no other business.

Plans for Future Meetings

The committee will meet at the call of the chair. Chair Mursau said that the next meeting likely would be in early October.

Adjournment

The meeting was adjourned at 4:30 p.m.

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