

Report to the Joint Legislative Council

Special Committee on State-Tribal Relations



March 3, 2015

LCR 2015-07

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

www.legis.wisconsin.gov/lc

SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

Prepared by:
David L. Lovell, Principal Analyst; and David Moore, Staff Attorney
March 3, 2015

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on State-Tribal Relations recommends the following bill drafts to the Joint Legislative Council for introduction in the 2015-16 Session of the Legislature.

LRB-0359/3, RELATING TO STATE FUNDING FOR TRIBAL COLLEGES AND MAKING AN APPROPRIATION

LRB-0359/3 provides a grant to tribal colleges to subsidize the education of non-Indian students who are residents of the state that is equivalent to a grant the federal government provides to tribal colleges to subsidize the education of Indian students.

LRB-0927/1, RELATING TO TRIBAL IDENTIFICATION CARDS

LRB-0927/1 provides that an identification card issued by an American Indian tribe or band must be accepted as sufficient proof of identity for the purpose of any law that requires a person to present identification if the card includes the full name, address, and birth date of the card holder, a photograph of the card holder, and any other information required by the law.

LRB-1441/1, RELATING TO AUTHORIZING A TRIBAL COLLEGE TO ESTABLISH OR INITIATE A CHARTER SCHOOL

LRB-1441/1 authorizes a tribal college or one or more American Indian tribes or bands to establish and operate a charter school or initiate a contract for the operation of a charter school.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee on State-Tribal Relations and appointed the chairperson by a March 19, 2014 mail ballot. The committee was directed to study issues relating to American Indians and the American Indian tribes and bands in this state and to develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

Membership of the Special Committee was appointed by a May 21, 2014 mail ballot. The final committee membership consisted of two 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:

August 13, 2014 (Wisconsin Dells)

October 16, 2014 (Shawano)

December 4, 2014 (Madison)

At the August 13, 2014 meeting, committee staff reviewed legislation recommended by the 2012 Special Committee on State-Tribal Relations and the committee discussed: (1) funding of tribal colleges; (2) the Wisconsin Parental Choice Program; and (3) the Indian Child Welfare Act (ICWA) and safe haven law.

Regarding 2013 legislation, staff reported that two of the 2012 committee's three recommendations had been passed into law in the 2013 Legislative Session. Staff from the Departments of Health Services and Transportation reported on the implementation of 2013 Wisconsin Act 246, the committee's recommended legislation relating to tribal treatment facility participation in the intoxicated driver program. Staff from the Department of Natural Resources reported on implementation of 2013 Wisconsin Act 85, the committee's recommended legislation relating to the transportation in this state of game taken in another state or on Indian land.

Regarding funding of tribal colleges, the committee heard a presentation from a representative of the Menominee Indian Tribe of Wisconsin. The committee was told 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. 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. The College of the

Menominee Nation requested 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, the committee members 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. Finally, committee members agreed that this should be accomplished through the state budget process.

Regarding the Wisconsin Parental Choice Program (WPCP), committee staff summarized the information in Memo No. 14-1, giving particular attention to the way in which schools get into the program and the way in which seats are allocated in the program and describing some of the requirements the program imposes on participating schools. Representatives of the Lac Courte Oreilles (LCO) Band of Lake Superior Chippewa Indians addressed the committee, saying that the band is studying the potential impact on the band of participation in the parental choice program and 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. The representatives of the LCO band also asked the committee to consider two other proposals, both modeled on Minnesota law: first, to create a direct pass-through of funds for operation of a tribal charter school; and second, to authorize tribes and tribal colleges to charter public schools.

Regarding ICWA and the safe haven law, Department of Children and Families legal staff provided background information, describing the provisions of each law. Representatives of the Menominee Indian Tribe of Wisconsin and the Ho-Chunk Nation also briefed the committee, stating 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. 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.

The meeting concluded with a discussion of topics for future committee study.

At the October 16, 2014 meeting, the committee discussed: (1) ICWA and the safe haven law; (2) provision of county library services by a tribal college; (3) charter schools; and (4) funding of tribal colleges.

Regarding ICWA and the safe haven law, the committee heard presentations from representatives of Safe Place for Newborns, the Wisconsin Hospital Association, and a county social services department, explaining what occurs when an infant is relinquished to the state under the safe haven law. Following committee discussion, Chair Mursau directed staff to convene a broader range of interested persons, such as tribal social services and legal staff, as well as those who had previously addressed the committee, to assist the committee in evaluating policy options on this

topic. (In response to this directive, a meeting of interested parties was held in Appleton on November 19, 2014.)

Regarding provision of county library services by a tribal college, staff from the Department of Public Instruction (DPI) and from the College of the Menominee Nation presented information to the committee regarding the closure of the public library in Keshena and the subsequent agreement between Menominee County and the College of the Menominee Nation for the college to provide library service both to the tribe and to other residents of Menominee County, and described provisions of state statutes that pose problems for integrating public libraries operated by tribes into regional public library systems.

Regarding charter schools, committee staff briefed the committee regarding the mechanisms that exist for establishment of charter schools and described the provisions of WLC: 0020/1, relating to authorizing a tribal college to sponsor a charter school. The committee requested revisions to the bill draft.

Regarding funding for tribal colleges, committee staff described LRB-0359/1, relating to state funding for tribal colleges and making an appropriation, explaining that the bill draft provides state grants to tribal colleges to subsidize the costs the colleges incur educating non-Indian students. The committee requested that the bill draft be amended to more closely parallel a federal grant that subsidizes the costs tribal colleges incur to educate Indian students.

At the December 4, 2014 meeting, the committee discussed: (1) charter schools; (2) funding for tribal colleges; (3) tribal identification cards; and (4) ICWA and the safe haven law.

Regarding charter schools, the committee discussed, revised, and voted to recommend introduction of WLC: 0020/2, relating to authorizing a tribal college or an American Indian tribe or band to sponsor a charter school.

Regarding funding for tribal colleges, the committee discussed, revised, and voted to recommend introduction of LRB-0359/3, relating to state funding for tribal colleges.

Regarding tribal identification cards, the committee discussed, revised, and voted to recommend introduction of WLC: 0046/1, relating to tribal identification cards.

Regarding ICWA and the safe haven law, committee staff summarized Memo No. 14-4, presenting policy options that were discussed at the November 19 meeting in Appleton. In addition, representatives of the Wisconsin Hospital Association and the Chippewa Federation presented memoranda to the committee with alternative policy proposals. Following committee discussion, noting a lack of consensus but an interest among committee members in continued discussion of the topic, Chair Mursau directed staff to arrange a second informal meeting of interested parties.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

LRB-0359/3, RELATING TO STATE FUNDING FOR TRIBAL COLLEGES AND MAKING AN APPROPRIATION

Background

Under federal law, the federal Bureau of Indian Education (BIE) provides grants to tribal colleges. The amount of the grants is based on the number of full-time equivalent Indian students who are enrolled at the college. "Indian student" is defined, by federal law as "a member of an Indian tribe; or a biological child of a member of an Indian tribe, living or deceased."

Currently, there are two tribal colleges in Wisconsin: The College of the Menominee Nation; and the Lac Courtes Oreilles Ojibwa Community College. Both colleges enroll non-Indian and Indian students. Approximately 40% of the College of the Menominee Nation's student body is non-Indian, and approximately 30% of the Lac Courtes Oreilles Ojibwa Community College's student body is non-Indian. Both colleges charge non-Indian students the same tuition they charge Indian students. The federal grants the colleges receive, then, pay for services the colleges provide to both Indian and non-Indian students, though the amount of the grants is based solely on the number of full-time equivalent Indian students the colleges enroll.

Description

This draft provides a grant to tribal colleges to subsidize educational services the colleges provide to non-Indian students who are residents of the state. Under the bill draft, the amount a tribal college receives for each non-Indian student is the same as the per-student amount the tribal college receives from the BIE for Indian students enrolled at the college. The bill draft provides that these grants are funded from the appropriation to the University of Wisconsin (UW) System.

LRB-0927/1, RELATING TO TRIBAL IDENTIFICATION CARDS

Background

Numerous laws require a person to present identification, for various purposes. Examples include the following:

1. Proof of residency for the purpose of voting. [s. 6.34 (3) (a), Stats.]
2. Proof of age for purchase of alcohol beverages. [s. 125.085 (1), Stats.]
3. Proof of identity for sales to scrap dealers, pawn brokers, and antique dealers. [ss. 134.405 (3) and 134.71, Stats.]

4. Proof of identity for a license to carry a concealed weapon. [s. 175.60, Stats.]
5. Proof of identity for purchase of Schedule II and III controlled substances. [s. 450.11, Stats.]

Description

This draft provides that an identification card issued by a federally recognized American Indian tribe or band in this state may be used as personal identification under any law that requires an individual to present personal identification if the card contains all of the following:

1. The full name, address, and birth date of the card holder.
2. A photograph of the card holder.
3. All other information required for personal identification under that law.

The draft provides that, if a person refuses to accept a tribal identification card as personal identification, as required under the draft, the card holder or the American Indian tribe or band that issued the card may bring an action for mandamus asking a court to order the person to accept the tribal identification card as personal identification. The draft directs the court to award reasonable attorney fees and other actual costs to the plaintiff if the plaintiff prevails in whole or in substantial part in such an action.

LRB-1441/1, RELATING TO AUTHORIZING A TRIBAL COLLEGE TO ESTABLISH OR INITIATE A CHARTER SCHOOL

Background

The statutes provide three mechanisms by which a charter school can be established.

Petition by Teachers

Teachers may petition their school board to create a charter school. The petition must be signed by at least 10% of the teachers of the district or at least 50% of the teachers of a school in the district. Certain information must be included in the petition, much of which constitutes a plan for the proposed charter school.

The school board must hold a hearing on the petition within 30 days of receiving the petition, and must act to grant or deny the petition within 30 days of holding the hearing.

A school board may grant a petition to convert all the schools in the district to charter schools if the petition is signed by at least 50% of the teachers in the district and the board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

School Board Initiative

A school board may establish a charter school. At least 30 days before entering into a contract with the proposed school operator, the school board must hold a hearing on the contract. The contract must include all the elements that must be in a petition, under the petition process, described above. At the hearing, the board must consider the level of parental and employee

support for the proposed school and the fiscal impact the school would have on the school district. If a school board converts all schools within the district to charter schools, it must provide alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

Initiative of Independent Authorizer

Four entities are authorized by statute to establish charter schools. They are commonly referred to as “independent authorizers.” They are:

- The common council of the City of Milwaukee.
- The chancellor of the UW-Milwaukee.
- On a pilot basis, the chancellor of the UW-Parkside.
- The Milwaukee area technical college district board.

Again, the contract establishing the school must include all the elements that must be in a petition, under the petition process, described above. It must also specify the effect of the establishment of the charter school on the liability of the contracting entity. The statutes include a number of requirements that apply specifically to the establishment of a charter school by each of these entities.

Description

This draft authorizes a tribal college or one or more American Indian tribes or bands to establish and operate or initiate a contract for the operation of a charter school. The draft defines “tribal college” as an accredited college operated or controlled by a federally recognized American Indian tribe or band in this state.

COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts were recommended by the Special Committee on State-Tribal Relations.

STUDY COMMITTEE VOTE

The Special Committee voted to recommend the following three drafts to the Joint Legislative Council for introduction in the 2015-16 Session of the Legislature. The vote on the drafts was as follows:

- WLC: 0020/2, relating to authorizing a tribal college to sponsor a charter school, passed on a vote of Ayes, 9 (Mursau, Vinehout, Bewley, Milroy, Schultz, Allen, Barber, Besaw, and Danforth); Noes, 0; and Absent, 7 (Awonohopay, Bainbridge, Defoe, Frank, Greendeer, McGeshick, and Miller). [WLC: 0020/2 subsequently became LRB-1441/1.]
- LRB-0359/2, relating to state funding for tribal colleges and making an appropriation, passed on a vote of Ayes, 9, (Mursau, Vinehout, Bewley, Milroy, Schultz, Allen, Barber, Besaw, and Danforth); Noes, 0; and Absent, 7 (Awonohopay, Bainbridge, Defoe, Frank, Greendeer, McGeshick, and Miller).
- WLC: 0046/1, relating to tribal identification cards, passed on a vote of Ayes, 9 (Mursau, Vinehout, Bewley, Milroy, Schultz, Allen, Barber, Besaw, and Danforth); Noes, 0; and Absent, 7 (Awonohopay, Bainbridge, Defoe, Frank, Greendeer, McGeshick, and Miller). [WLC: 0046/1 subsequently became LRB-0927/1.]

JOINT LEGISLATIVE COUNCIL

SENATE MEMBERS

MARY LAZICH, Co-Chair
4405 South 129th St.
New Berlin, WI 53151

ALBERTA DARLING
1325 West Dean Road
River Hills, WI 53217

SCOTT FITZGERALD
N4692 Maple Road
Juneau, WI 53039

RICK GUDEX
361 East Division St.
Fond du Lac, WI 54935

MARK MILLER
4903 Roigan Terrace
Monona, WI 53716

TERRY MOULTON
980 118th St.
Chippewa Falls, WI 54729

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

LENA TAYLOR
1518 West Capitol
Milwaukee, WI 53206

VAN WANGGAARD
1246 Blaine Ave.
Racine, WI 53405

ASSEMBLY MEMBERS

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

TYLER AUGUST
116 Evelyn Lane Unit 3A
Lake Geneva, WI 53147

PETER BARCA
1339 38 Ave.
Kenosha, WI 53144

DAN KNODL
N101 W14475 Ridgefield Ct.
Germantown, WI 53022

CORY MASON
3611 Kinzie Ave
Racine, WI 53405

JOHN MURTHA
2283 20th Ave.
Baldwin, WI 54002

JOHN NYGREN
N2118 Keller Rd.
Marinette, WI 54143

KATRINA SHANKLAND
5782 Sandpiper Dr.
Stevens Point, WI 54482

JIM STEINEKE
Room 115
State Capitol

CHRIS TAYLOR
306 West
State Capitol

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.

COMMITTEE LIST

Special Committee on State-Tribal Relations	
<p>Chair Jeffrey Mursau, Representative 4 Oak St. Crivitz, WI 54114</p>	<p>Vice Chair Kathleen Vinehout, Senator W1490 Cesler Valley Rd. Alma, WI 54610</p>
<p>Dee Ann Allen Lac du Flambeau Band of Lake Superior Chippewa Indians P.O. Box 67 Lac du Flambeau, WI 54538</p>	<p>Aimee Awonohopay, Council Member St. Croix Chippewa Indians of Wisconsin 24663 Angeline Ave. Webster, WI 54893</p>
<p>Bryan Bainbridge, Vice Chairman Red Cliff Band of Lake Superior Chippewa Indians 88385 Pike Road, Highway 13 Bayfield, WI 54814</p>	<p>Russell “Rusty” Barber, Vice President Lac Courte Oreilles Tribal Governing Board 13394 West Trepania Rd. Hayward, WI 54843</p>
<p>Gary Besaw, Tribal Legislator Menominee Indian Tribe of Wisconsin P.O. Box 1179 Keshena, WI 54135</p>	<p>Janet Bewley, Senator 810 Chapple Ave. Ashland, WI 54806</p>
<p>Melinda Danforth, Tribal Legislator Oneida Tribe of Indians of Wisconsin P.O. Box 365 Oneida, WI 54155</p>	<p>Harold “Gus” Frank, Chairman Forest County Potawatomi Community P.O. Box 340 Crandon, WI 54520</p>
<p>Jon Greendeer, President Ho-Chunk Nation 701 Sommers St. Stevens Point, WI 54481</p>	<p>Chris McGeshick, Chairman Sokaogon Chippewa Community 3160 Indian Route 10 Crandon, WI 54520</p>
<p>Wallace A. Miller, President Stockbridge-Munsee Community N8476 Moh He Con Nuck Road Bowler, WI 54416</p>	<p>Nick Milroy, Representative 4543 S. Sam Anderson Rd. South Range, WI 54874</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.]

14 MEMBERS: 2 Representatives; 2 Senators; and 10 Public Members.

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

COMMITTEE MATERIALS LIST

[Copies of documents are available at www.legis.wisconsin.gov/lc]

August 13, 2014 Meeting

- Memo No. 1, Parental School Choice (School Voucher) Program (July 6, 2014)
- Letter, from James E. Zorn, Executive Administrator, Great Lakes Indian Fish and Wildlife Commission (August 12, 2014)
- Outline: Implementation of New Law Relating to 2013 Wisconsin Act 246, Dale Simon, DOT
- Letter, from James E. Zorn, Executive Administrator of the Great Lakes Indian Fish and Wildlife Commission
- Memo, from Linda A Harris, Administrator, Division of Mental Health and Substance Abuse Services, Department of Health Services
- Proposed Amendment to Assembly Bill 405/Senate Bill 326

October 16, 2014 Meeting

- Bill Draft, WLC: 0020/1, relating to authorizing a tribal college to sponsor a charter school.
- LRB-0359/1, relating to state funding for tribal colleges and making an appropriation.
- Memo No. 2, "The Safe Haven Law and the Indian Child Welfare Act" (October 9, 2014)
- Memo No. 3, "Establishment and Operation of a Charter School by an American Indian Tribe or Band" (October 9, 2014)
- Testimony, from the Wisconsin Hospital Association, Inc., "Hospital Concerns with Policy Options Impacting WI's Safe Haven Law" (October 16, 2014)
- Handout, from the Department of Public Instruction, "Public Libraries: Issues and Background for the Special Committee on State-Tribal Relations" (October 16, 2014)
- Letter, from Jennifer Kammerud, Policy Initiatives Advisor, Department of Public Instruction (October 8, 2014)
- Attachment to October 8, 2014 Letter from Jennifer Kammerud, Department of Public Instruction.
- Briefing Paper, Menominee County Public Library and the College", College of Menominee Nation presentation (October 16, 2014)
- Letter, to Representative Jeff Mursau, from Tony Evers, PhD, State Superintendent, Wisconsin Department of Public Instruction (September 16, 2014)

December 4, 2014 Meeting

- WLC: 0020/2, relating to authorizing a tribal college to sponsor a charter school.
- WLC: 0046/1, relating to tribal identification cards.
- Handout, from Kyle O'Brien, Vice President Government Relations, "Response to State Tribal Relations Committee Memo No. 14-4" (December 4, 2014)
- Handout from the Chippewa Federation, "Wisconsin Safe Haven Law and the Indian Child Welfare Act" (November 21, 2014)
- Handout from Russell "Rusty" Barber, Vice-Chairman, Kekek Jason Stark, Legal Director/Tribal Attorney, and James Schlender Jr., Tribal Attorney, Lac Courte Oreilles, "Establishment and Operation of a charter School by an American Indian Tribe or Band
- LRB-0359/2, relating to state funding for tribal colleges and making an appropriation.
- Memo No. 14-4, "The Safe Haven Law and the Indian Child Welfare Act: Informal Discussion on November 19, 2014, and Further Options for Legislation" (November 25, 2014)