



# HO-CHUNK NATION

OFFICE OF THE PRESIDENT  
GOVERNMENT RELATIONS

September 16, 2024

Memorandum for the Members of the Special Study Committee on State-Tribal Relations

Regarding Discussion on Tribal Impact Statements

We are providing this discussion as a topic under consideration for Tribal Impact Statements. The study committee is especially suited to take up discussion on matters that are affecting the tribes, but we also must acknowledge that the passage of 272 Acts of legislation so far this session (267 in 2021-2022 session; 186 in 2019-2020 session; 370 in 2017-2018 session; 392 in 2015-2016 session) may have unintended consequences for tribes and tribal families throughout Wisconsin. Tribal resources are mostly dedicated to programs and services, so most tribes are unable to review each bill as they're introduced. A perfunctory review could help avoid unintended consequences and encourage stronger relations to best serve all of Wisconsin's communities.

1. Question: *If a tribal impact statement is required for any bill or administrative rule, what types of comments should be included in such a statement? In other words, how should "tribal impact" be measured and reported? For example, under joint legislative rules, the Legislative Reference Bureau determines if a fiscal estimate is required for a bill based on the standard mentioned above. Various other statements or reports required under ch. 13, Stats., are assigned to agencies with subject matter expertise based on a narrow standard that triggers agency work.*

A tribal impact statement is expected to raise awareness on WI legislative and agency actions that directly impact tribal nations and their respective tribal members. There is a complex historical and legal relationship between the U.S and tribes as well as Wisconsin and tribes. As a foundation, the question to be asked is "Does this action impact tribal relations?" with the anticipated response simply being "Yes" or "No" so that the drafter and the tribes would be prompted to engage further on the matter.

- A. Are there federal laws or regulations that are relevant to the subject of this bill or rule?

For example, the Wisconsin Indian Children's Welfare Act (2009 Wisconsin Act 94) and relevant rules/guidance is modeled closely with and in adherence to the Indian Child Welfare Act (25 U.S.C. ch. 21 § 1901 et seq; 43 U.S.C. ch. 33 §§ 1602, 1606). When legislation and rules are crafted, any federal references to the subject matter can be used to prevent contradictions in terminology or intent.

- B. Are there tribal laws or regulations that are relevant to the subject of this bill or rule?

Each tribe publishes their laws online ([Ho-Chunk Nation](#), [Bad River](#), [Forest County Potawatomi](#), [Lac Courte Oreilles](#), [Lac du Flambeau](#), [Menominee Tribe](#), [Stockbridge-Munsee](#), [Oneida Nation](#), [Red Cliff](#), [St. Croix Ojibwe](#), [Sokaogon Chippewa](#)). Legislation and rules in subject matter relevant to tribal laws may present variation in

application of law; the acknowledgement of applicable tribal laws can be an opportunity to align the legislation – whether it be on behalf of the state or the tribe(s).

- C. Does the implementation have a financial impact to a federally recognized Indian tribe?

Any actual financial impact may vary from tribe to tribe, but it is important to acknowledge that an action may have an adverse financial impact to a tribe (or many tribes).

2. Question: *Who should prepare these statements? For an administrative rule, the most obvious option would be the agency promulgating the rule, as agencies have a number of similar duties under current law. However, for a bill, the answer is less clear. Other similar requirements contained in ch. 13, Stats., generally task a state governmental agency with preparing a statement or report. [See ss. 13.095 to 13.099, Stats.]*

Tribal impact statements should be reported by the Legislative Reference Bureau. The LRB is a nonpartisan agency that already has the responsibility to provide legal information and research assistance to the Legislature; the agency is especially suited to provide unbiased information and references.

3. Question: *What is the goal of requiring a “Tribal Impact Statement” for a bill or administrative rule? These types of requirements are generally not enforceable in court and cannot serve as impediments to a piece of legislation being enacted by the Legislature because the Wisconsin Supreme Court has long declined to interfere with the Legislature’s action with respect to matters of legislative procedure or purely legislative matters, unless the action interferes with a constitutional provision or right. [See La Follette v. Stitt, 114 Wis. 2d 358 (1983); Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70 (2011).]*

The goal of requiring a tribal impact statement is to determine a bill or rule’s repercussions (positive or not) which may affect or be affected by the complex legal relationship of federally recognized Indian tribes, the United States government, and Wisconsin. The Supreme Court of the United States has established (and has long held) that Congress has plenary power in Indian Affairs [*Johnson v. M’Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); and *Worcester v. Georgia*, 31 U.S. 515 (1832)], and Congress enacted Public Law 83-280 [67 Stat. 588] to grant certain states criminal jurisdiction over American Indians on reservations and to allow civil litigation that had come under tribal or federal court jurisdiction to be handled by state courts; while the states maintain jurisdiction over Indians in non-reservation ceded territories.

For example, the Wisconsin Attorney General has convened a Missing and Murdered Indigenous Women (MMIW) Task Force which may bring recommendations to the Legislature on statutory or administrative rule changes that could prevent or improve outcomes for tribal members. The Oregon State Police published a [report on Missing and Murdered Native American Women](#) in 2020 which offered four recommendations, one of which is to establish a partnership between Oregon law enforcement and a

federal task force. A similar recommendation in Wisconsin might have the a tribal impact statement that reflects current federal statutory/regulatory framework and USAO guidance on investigating and prosecuting cases of specific importance, as well as tribal laws such as **4 HCC § 12 Children, Family, and Adult-at-Risk Welfare Code** which establishes enhanced protections for individuals having a physical or mental condition that substantially impairs their ability to care for themselves, or is experiencing/at risk of experiencing abuse, neglect, or exploitation.

We appreciate your thoughtful dialogue on this matter. I am available by email at [RyanGreendeer@ho-chunk.com](mailto:RyanGreendeer@ho-chunk.com) for further elaboration or if more questions arise. Thank you.



Ryan Greendeer  
Executive Government Relations Officer

