
Wisconsin Legislative Council

STUDY COMMITTEE MEMO



Memo No. 1

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

FROM: Steve McCarthy, Senior Staff Attorney, and Abby Gorzlancyk, Staff Attorney

RE: Topics of Committee Discussion

DATE: August 13, 2024

This memo provides a list of potential topics of discussion for the August 22, 2024 meeting of the Special Committee on State-Tribal Relations. Specifically, the list includes three bills selected by Chair Jeffrey Mursau for review and consideration by the committee, along with a summary of three ideas suggested to the chair by committee members.¹ All three bills were recommended by the Special Committee last session, but ultimately were not enacted. Very briefly, the bills address pupils wearing traditional tribal regalia at a graduation ceremony or school-sponsored event, authorization for a tribal government to copy certified copies of vital records for administrative use, and state licenses that authorize an individual to teach an American Indian language.

Where important for context, the memo provides background information and identifies issues that the committee may wish to take into consideration. However, the discussion of the bills and issues they may raise is not exhaustive; rather, this memo is intended to prompt discussion to determine where there is committee consensus and if the committee would like to request modifications or additional information on any or all of the bills or ideas for bill drafts.

BILL FOR REINTRODUCTION

Traditional Tribal Regalia

Background

Wisconsin law contains some general protections for a pupil's religious beliefs, ancestry, creed, race, and national origin. Specifically, schools must provide for the reasonable accommodation of a pupil's sincerely held religious beliefs with regard to all examinations and other academic requirements. Additionally, no student may be denied participation in, be denied the benefits of, or be discriminated against in any curricular, extracurricular, pupil services, recreational, or other program or activity because of race, religion, national origin, ancestry, or creed. However, current law does not explicitly address an American Indian student's right to wear traditional tribal regalia at a graduation ceremony or school-sponsored event.

¹ Copies of the bills are included as an attachment to this memo.

2023 Assembly Bill 210/2023 Senate Bill 199

The bill provides that school boards and charter schools may not prohibit a pupil who is a member of, a descendent of a member of, or eligible to be enrolled in, a federally recognized, whether currently or in the past, American Indian tribe or band from wearing traditional tribal regalia at a graduation ceremony or school-sponsored event. The bill defines “traditional tribal regalia” as a tribe’s traditional dress or recognized objects of religious or cultural significance, including tribal symbols, beads, and feathers.

Last legislative session, the bill was recommended for passage by the Assembly Committee on Education on a vote of Ayes, 15; Noes, 0, and passed the Assembly on a voice vote. However, the Senate took no action on the bill.

Copies of Certified Copies of Vital Records

Background

Under current law, a financial institution, state agency, county department, Wisconsin Works agency, service office, or long-term care district or an employee of any of these entities is exempt from penalties that would otherwise apply for copying a certified copy of a vital record if the copy is for use by the authorized entity and the copy is marked “FOR ADMINISTRATIVE USE.”

2023 Assembly Bill 211/2023 Senate Bill 200

The bill adds tribal governments of a federally recognized American Indian tribe or band in this state and employees of tribal governments to the list of entities and persons who are authorized to copy a certified copy of a vital record for administrative use by the authorized entity.

Last legislative session, the bill was recommended for passage by the Assembly Committee on State Affairs on a vote of Ayes, 11; Noes, 0, and passed the Assembly on a voice vote. The bill was recommended for passage by the Senate Committee on Government Operations on a vote of Ayes, 5; Noes, 0, but the full Senate did not take action on the bill.

Tribal Language Lifetime Teaching License

Background

Under current law, an individual who holds any provisional teaching license is eligible for a tier III lifetime license upon successfully completing six semesters of teaching experience. One such provisional teaching license is for a teacher participating in American Indian language programs. Current law also requires the Department of Public Instruction (DPI) to establish standards certifying the abilities of these teachers. Those standards require, among other things, that the applicant for the license must be certified as competent in the American Indian language by the applicable tribal council, tribal language division, or local American Indian parent advisory committee.

2023 Assembly Bill 214/2023 Senate Bill 203

The bill provides an option for a federally recognized American Indian tribe or band to decide whether each applicant for a lifetime license to teach the American Indian language associated with the tribe or band in an American Indian language program is qualified to receive the lifetime license. To exercise this option, an American Indian tribe or band must notify DPI in writing. If an American Indian tribe or band exercises this option, DPI may not issue a lifetime license to teach the associated American Indian language to an individual unless the tribe or band notifies the department that it has determined that

the individual is qualified for a lifetime license to teach the American Indian language in an American Indian language program.

Under the bill, if an American Indian tribe or band opts to review individual applicants for a lifetime license, DPI must notify the tribal government whenever an individual applies for a tier III lifetime license in the language that is associated with the tribal government. Upon receiving the notice from DPI, the tribal government must determine whether the applicant is highly skilled in the language, and notify the department of one of the following:

- If the associated tribal government determines that the individual is highly skilled in the language, that the tribal government endorses the individual for a tier III lifetime license in the language.
- If the associated tribal government determines that the individual is not highly skilled in the language, that the tribal government does not endorse the individual for a tier III lifetime license in the language but does endorse the individual to renew a tier II license in the language.

The bill also provides that DPI may grant a tier III lifetime license in an American Indian language only if the applicant satisfies certain other requirements needed for a tier III lifetime license and is endorsed for the tier III lifetime license by the tribal government associated with that language.

Last legislative session, the bill was recommended for passage by the Assembly Committee on Education on a vote of Ayes, 15; Noes, 0, and passed the Assembly on a voice vote. However, the Senate took no action on the bill.

NEW IDEAS FOR CONSIDERATION

Upon formation of the Special Committee, Chair Mursau solicited ideas for legislation from committee members and technical advisory staff, and a number of ideas were submitted for consideration as the committee begins its work for this biennium. Chair Mursau would like to learn more about the ideas presented below so he can consider whether the Special Committee should pursue converting these ideas into bill drafts for later consideration and discussion. In addition to a brief description of these ideas as presented to the Chair, below are some questions and considerations intended to spur discussion at the committee's first meeting.

Tribal Impact Statements

A number of committee members requested that any introduced bill or administrative rule include a "Tribal Impact Statement" similar to the requirement that certain bills receive a fiscal estimate under joint legislative rules. A fiscal estimate is required for any bill that makes an appropriation, increases or decreases an appropriation, or increases or decreases the revenues or fiscal liabilities of the state or a local unit of government. [See, generally, [Joint Rules 41 to 50.](#)]

Some discussion questions and considerations for this topic include:

- 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.

- 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.]
- 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).]

Tribal Office in Madison

Various committee members have requested that the Special Committee consider establishing a state-tribal resource office at or near the State Capitol in Madison by requiring the Department of Administration (DOA) to maintain a state-tribal relations office and enter into agreements with federally recognized tribes and bands to access the office space. The stated goal of the office would be to provide space for tribal leaders to conduct business, particularly with state agencies and officials, in Madison. The space would include workstations for each tribe and access to meeting and conference room space.

Under current law, DOA is required to provide information and assistance to American Indian tribes and bands with respect to problems or areas of concern to the tribes and bands. [s. [16.06](#), Stats.]

Some discussion questions and considerations for this topic include:

- Additional context or background for the requested space, including whether any tribe or band has requested such use of office space from DOA.
- Whether statutory authority is required for DOA to provide such office space, or if instead, this goal can be accomplished without statutory changes.

Tribal Law Enforcement Officers as Deputy Conservation Wardens

The third request by committee members for consideration is to add tribal law enforcement officers and Great Lakes Indian Fish and Wildlife Commission (GLIFWC)-certified conservation commission wardens to the definition of deputy conservation wardens under s. [29.941](#), Stats.

Under current law, “all sheriffs, deputy sheriffs, and other law enforcement officers are deputy conservation wardens, and shall assist DNR and its wardens with enforcement of [Chapter 29] whenever notice of a violation is given to the DNR or its wardens.” [s. [29.941](#), Stats.] For the purposes of this subsection and chapter generally, “other law enforcement officers” is not defined. However, tribal law enforcement officers, which include conservation wardens employed by GLIFWC who agree to accept the duties of a law enforcement officer of this state, have the same powers as a sheriff to enforce the laws of the state and make arrests, except that those powers may only be exercised on the reservation of the tribe or trust land held for the tribe. [s. [165.92](#), Stats.] Therefore, tribal law enforcement officers and GLIFWC wardens have the same powers as sheriffs on the reservation or trust land of the tribe, and would be deputy conservation wardens for purposes of s. [29.941](#), Stats., on the reservation or trust land of the tribe. The authority for tribal law enforcement officers and GLIFWC

wardens to be deputy conservation wardens does not extend beyond the tribe's reservation or trust land.

Some discussion questions and considerations for this topic include:

- Whether tribal law enforcement officers and GLIFWC wardens currently act as deputy conservation wardens.
- What, if any, memorandum of understanding exists between DNR and GLIFWC, and if so, what authority do GLIFWC officers have as deputy conservation wardens and where can they exercise that authority?
- The ultimate goals of this request in terms of any extension of power and jurisdiction of tribal law enforcement officers and GLIFWC wardens as deputy conservation wardens.

SM:AG:jal
Attachment



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-0012/1
FFK:skw

2023 ASSEMBLY BILL 210

April 20, 2023 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Education.

- 1 **AN ACT to create** 118.335 of the statutes; **relating to:** pupils wearing traditional
2 tribal regalia at a graduation ceremony or school-sponsored event.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

Wisconsin law contains some general protections for a pupil's religious beliefs, ancestry, creed, race, and national origin. Specifically, schools must provide for the reasonable accommodation of a pupil's sincerely held religious beliefs with regard to all examinations and other academic requirements. Additionally, no student may be denied participation in, be denied the benefits of, or be discriminated against in any curricular, extracurricular, pupil services, recreational, or other program or activity because of race, religion, national origin, ancestry or creed. However, current law does not explicitly address an American Indian student's right to wear traditional tribal regalia at a graduation ceremony or school-sponsored event.

This bill provides that school boards and charter schools may not prohibit a pupil who is a member of, a descendent of a member of, or eligible to be enrolled in, a federally recognized, whether currently or in the past, American Indian tribe or band from wearing traditional tribal regalia at a graduation ceremony or school-sponsored event. The bill defines "traditional tribal regalia" as a tribe's traditional dress or recognized objects of religious or cultural significance, including tribal symbols, beads, and feathers.



2023 ASSEMBLY BILL 211

April 20, 2023 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on State Affairs.

1 **AN ACT to amend** 69.30 (2); and **to create** 69.30 (1) (cm) of the statutes; **relating**
2 **to:** authorization for tribal governments to copy certified copies of vital records
3 for administrative use.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

Under current law, a financial institution, state agency, county department, Wisconsin Works agency, service office, or long-term care district or an employee of any of these entities are exempt from penalties that would otherwise apply for copying a certified copy of a vital record if the copy is for use by the authorized entity and the copy is marked "FOR ADMINISTRATIVE USE."

This bill adds tribal governments of a federally recognized American Indian tribe or band in this state and employees of tribal governments to the list of entities and persons who are authorized to copy a certified copy of a vital record for administrative use by the authorized entity.

4 **SECTION 1.** 69.30 (1) (cm) of the statutes is created to read:



2023 ASSEMBLY BILL 214

April 20, 2023 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Education.

1 **AN ACT** *to amend* 118.19 (18) (bg) 1.; and *to create* 118.19 (18) (bp) of the
2 statutes; **relating to:** a lifetime license that authorizes an individual to teach
3 an American Indian language in an American Indian language program and
4 modifying rules promulgated by the Department of Public Instruction.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations.

Under current law, an individual who holds any provisional teaching license is eligible for a tier III lifetime license upon successfully completing six semesters of teaching experience. This bill provides an option for a federally recognized American Indian tribe or band to decide whether each applicant for a lifetime license to teach the American Indian language associated with the tribe or band in an American Indian language program is qualified to receive the lifetime license. To exercise this option, an American Indian tribe or band must notify the Department of Public Instruction in

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writing. If an American Indian tribe or band exercises this option, DPI may not issue a lifetime license to teach the associated American Indian language to an individual unless the tribe or band notifies the department that it has determined that the individual is qualified for a lifetime license to teach the American Indian language in an American Indian language program.

Under this bill, if an American Indian tribe or band opts to review individual applicant's for a lifetime license, DPI must notify the tribal government whenever an individual applies for a tier III lifetime license in the language that is associated with the tribal government. Upon receiving the notice from DPI, the tribal government must determine whether the applicant is highly skilled in the language, and notify the department of one of the following:

1. If the associated tribal government determines that the individual is highly skilled in the language, that the tribal government endorses the individual for a tier III lifetime license in the language.

2. If the associated tribal government determines that the individual is not highly skilled in the language, that the tribal government does not endorse the individual for a tier III lifetime license in the language but does endorse the individual to renew a tier II license in the language.

The bill also provides that DPI may grant a tier III lifetime license in an American Indian language only if the applicant satisfies certain other requirements needed for a tier III lifetime license and is endorsed for the tier III lifetime license by the tribal government associated with that language.

1 **SECTION 1.** 118.19 (18) (bg) 1. of the statutes is amended to read:

2 118.19 (18) (bg) 1. The Except as provided in par. (bp), the department may
3 issue a lifetime license under this subdivision to an individual who obtained a
4 provisional license under par. (a) or (bc) if the individual has successfully completed
5 6 semesters of teaching, administrating, or pupil services experience, as defined by
6 the department by rule.

7 **SECTION 2.** 118.19 (18) (bp) of the statutes is created to read:

8 118.19 (18) (bp) Beginning on the effective date of this paragraph [LRB
9 inserts date], the department may not issue to an individual a lifetime license that
10 authorizes the individual to teach an American Indian language in an American
11 Indian language program if the federally recognized American Indian tribe or band
12 in this state that is associated with the American Indian language submits to the
13 department written notice that states that the tribe or band wishes to evaluate each
14 individual who applies for a lifetime license to teach the American Indian language

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1 in an American Indian language program. If a federally recognized American Indian
2 tribe or band in this state submits a written notice to the department under this
3 paragraph, the department may issue a lifetime license to the individual to teach an
4 American Indian language in an American Indian language program only if the tribe
5 or band notifies the department that it has determined that the individual is
6 qualified for a lifetime license to teach the American Indian language in an American
7 Indian language program.

8 **SECTION 3.** PI 34.055 (3) of the administrative code is created to read:

9 PI 34.055 (3) LIFETIME LICENSE; OPTIONAL APPROVAL PROCESS. (a) If a tribal
10 government associated with a language under sub. (1) submits a notice to the
11 department under s. 118.19 (18) (bp), Stats., the department shall notify the tribal
12 government whenever an individual applies for a tier III lifetime license in the
13 language under sub. (1) that is associated with the tribal government.

14 (b) If a tribal government receives notice under par. (a), the tribal government
15 shall determine whether the applicant is highly skilled in the language under sub.
16 (1), and notify the department of one of the following:

17 1. If the associated tribal government determines that the individual is highly
18 skilled in the language under sub. (1), that the tribal government endorses the
19 individual for a tier III lifetime license in the language.

20 2. If the associated tribal government determines that the individual is not
21 highly skilled in the language under sub. (1), that the tribal government does not
22 endorse the individual for a tier III lifetime license in the language but does endorse
23 the individual to renew a tier II license in the language under s. PI 34.040.

24 (c) The department may grant a tier III lifetime license in a language under
25 sub. (1) only if the applicant satisfies the requirements under s. PI 34.041 (3) (a) to

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SECTION 3

1 (c) and is endorsed for the tier III lifetime license by the tribal government associated
2 with that language.

3 (END)