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## WISCONSIN LEGISLATIVE COUNCIL

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### STATE-TRIBAL RELATIONS

Room 411 South, State Capitol  
Madison, Wisconsin

October 19, 2004  
10:00 a.m. - 3:00 p.m.

[The following is a summary of the October 19, 2004 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/2004studies.htm>.]

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#### Call to Order and Roll Call

Chair Musser called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Terry Musser, Chair; Sens. Ronald Brown, Spencer Coggs, and David Zien; Reps. Garey Bies and Terri McCormick; and Public Members John Alloway, Tana Aguirre, Gary Besaw, Howard Bichler, Jon Greendeer, Mark Montano, and Louis Taylor.

COMMITTEE MEMBERS EXCUSED: Rep. Gary Sherman; and Public Member Glory Allen.

TRIBAL CHAIRS PRESENT: Joan Delabreau, Menominee Nation.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Rachelle Ashley, Department of Workforce Development; J.P. Leary, Department of Public Instruction; Michael Lutz, Department of Natural Resources; Reggie Newson, Department of Transportation; Thomas Ourada, Department of Revenue; and Jim Weber, Department of Health and Family Services.

TECHNICAL ADVISORY COMMITTEE MEMBER EXCUSED: Maura Whelan, Department of Justice.

COUNCIL STAFF PRESENT: Joyce L. Kiel, Senior Staff Attorney; David L. Lovell, Senior Analyst; and Tracey Uselman, Support Staff.

APPEARANCES:

Terry C. Anderson, Director, Legislative Council; John Wilhelmi, Program Attorney, Menominee Indian Tribe of Wisconsin; Dr. Donna Powless, Tribal School Administrator, Menominee Indian Tribe of Wisconsin; J.P. Leary, American Indian Studies Consultant, Department of Public Instruction; Dr. Jonathan Gilbert, Wildlife Section Leader, Great Lakes Indian Fish and Wildlife Commission (GLIFWC); Dr. Robert Ehlenfeldt, State Veterinarian, Department of Agriculture, Trade, and Consumer Protection (DATCP); Alan Crossley, Chronic Wasting Disease (CWD) Project Manager, Department of Natural Resources (DNR); James Zorn, Attorney/Policy Analyst, GLIFWC; Thomas Dosch, Assistant Attorney General, Department of Justice (DOJ); and Michael Lutz, Attorney, DNR.

### **Opening Remarks**

**Terry C. Anderson**, Director of the Legislative Council, welcomed the committee and introduced the Legislative Council staff members assigned to work with the committee. He noted that the committee's meetings will be recorded and available on the Internet.

**Representative Terry Musser**, Chair, Special Committee on State-Tribal Relations, welcomed the committee and stated that the committee is an important link between the tribes and the state. He encouraged public members to discuss the committee's work with their tribal leaders and to bring issues of concern to their tribes to the committee. He also encouraged tribal leaders to bring issues directly to him.

### **Introduction of Committee Members and Technical Advisory Committee Members**

Chair Musser asked committee members, members of the Technical Advisory Committee (TAC), and tribal chairs present to introduce themselves.

### **Description Of Materials Distributed**

Ms. Kiel briefly described the materials noted on the agenda that had been distributed to the committee members before and at the meeting.

### **Legislation Recommended by the Special Committee on State-Tribal Relations to the 2003-04 Legislature (Memo No. 1)**

Mr. Lovell briefly summarized Memo No. 1. He noted that only one of the 2002-04 committee's recommendations was enacted into law, 2003 Assembly Bill 402 (2003 Wisconsin Act 284--incorrectly identified in the Memo as Act 283), relating to American Indian juveniles alleged to have committed a delinquent act under certain circumstances.

### **Committee Members' Recommendations of Issues for Committee Study (Memo No. 2)**

Ms. Kiel briefly described Memo No. 2. Chair Musser asked committee members to identify their one top priority for the committee to address, from the subjects identified in Memo No. 2 or

elsewhere. He indicated that the committee most likely would not be able to address all of the subjects that committee members raise but would address as many as time allows.

Mr. Bichler said that high priorities for the St. Croix Band are the issues of CWD and conservation wardens employed by GLIFWC, which were the subjects of later agenda items of this meeting.

It was noted that Carol Brown has been nominated by the Lac du Flambeau Band to serve on the committee (subject to a vote by the Joint Legislative Council) when Ms. Allen's resignation becomes effective. Ms. Brown attended the meeting and said that taxation issues are important to the Lac du Flambeau Band, particularly the concept of developing compacts to avoid jurisdictional conflicts. Thomas Ourada, representative of the Department of Revenue (DOR) on the TAC, referred members to DOR Publication No. 405 for information regarding DOR's positions on the applicability of state and local taxes in Indian country.

Mr. Besaw identified a number of issues of concern to the Menominee Indian Tribe of Wisconsin, including the statutory treatment of tribal schools (the subject of a later agenda item of this meeting), the enforcement of state fishing regulations against non-Indians fishing on the Menominee Reservation, the Menominee Tribe's directly receiving state and federal funding for child welfare services provided to American Indian children on the Menominee Reservation, and the disposition of alcohol tax revenues from sales made on reservations. Mr. Besaw and Ms. Kiel indicated that there would need to be changes to the statutes to allow the tribe to receive direct state funding to provide child welfare services. Chair Musser asked Jim Weber, representative of the Department of Health and Family Services (DHFS) on the TAC, to keep staff apprised of the progress of discussions between DHFS and the Menominee Tribe regarding funding for child welfare services.

Mr. Greendeer said that tribal gaming revenues are reaching a plateau but that the cost of providing health care continues to increase. He said that the Ho-Chunk Nation would like to see the establishment of a cooperative state-tribal program to address preventative health care.

Senator Zien noted that there are no national parks, monuments or battlefields in Wisconsin. He distributed a copy of his letter to the National Park Service (NPS) listing 17 sites in Wisconsin that have potential for designation as one of these entities, nine of which have ties to Native American history or communities. He suggested that the committee assist in the effort to have one or more of these sites designated by the NPS.

Senator Coggs said that the committee should continue its efforts to raise the profile of tribes in the Legislature, through such means as establishing tribal delegates to the Legislature.

Ms. Aguirre identified several issues of concern to the Oneida Nation. She suggested that legislation be developed to exempt elected tribal officials from the state Lobbying Law, as state and local elected officials are exempt, and to exempt fee (non-trust) land owned by a tribe and used for tribal governmental functions from property taxes, as land owned by local governments is exempt. She also requested resolutions of support relating to gaming issues, alcohol licensing, and the location of polling places on tribal land within the reservation. Chair Musser directed staff to prepare materials for the committee regarding the Lobbying Law and property tax issues.

Representative McCormick suggested that the committee examine the authority of tribes, including tribal colleges, to sponsor charter schools. She also suggested an examination of jurisdiction over American Indian juveniles in the juvenile justice system and of ways to provide incentives for investments to promote economic development and job creation.

Mr. Montano said that high priorities for the Red Cliff Band are issues of law enforcement, in particular the requirement that a tribe waive its sovereign immunity before its police officers may exercise powers under s. 165.92, Stats., and the County-Tribal Cooperative Law Enforcement program under s. 165.90, Stats. He also raised the issue of “legal liability” as it relates to what is covered by Medical Assistance. Mr. Weber said that he would provide information to the committee regarding the latter issue.

Mr. Taylor said that issues relating to law enforcement are a top priority for the Lac Courte Oreilles Band. Chair Musser directed staff to arrange for a briefing on issues related to law enforcement in Indian country at the next meeting.

Representative Bies said that he would be helped in his work on the committee if he could hear from individual American Indians regarding their views of state-tribal relations and related topics.

### **Treatment of Tribal Schools in Wisconsin Statutes**

**John Wilhelmi**, Program Attorney, Menominee Tribe, said that the statutes do not account for tribal schools in the same manner as private schools, although tribal schools are functionally very similar to private schools. He said that the statutes entitle private schools and private school pupils to certain benefits, to which tribal schools and their pupils are not entitled, such as transportation services. He said also that certain statutes do not appropriately consider tribal schools. For example, he said that pupils enrolled in private schools are excluded from the definition of “drop-out” but that pupils in tribal schools are not, with the result that pupils in tribal schools, technically, are considered drop-outs.

**Dr. Donna Powless**, Tribal School Administrator, Menominee Tribe, discussed the funding of tribal schools. She said that three tribal schools in Wisconsin (Menominee, Oneida, and Lac Courte Oreilles) operate under contracts with the U.S. Bureau of Indian Affairs (BIA). She said that the BIA partially funds the schools, but she noted that the BIA provides \$3,984 for each pupil, which she indicated is below the average state aid to public schools on a per pupil basis. She also said that this BIA aid is paid only for pupils who are enrolled in a federally recognized American Indian tribe and that about 200 of the approximately 1,100 pupils at the tribal schools are not enrolled and do not generate this aid payment. She requested that the committee recommend state funding to tribal schools. Dr. Powless noted that Minnesota has a school aid formula that includes tribal schools and suggested that the committee consider this model to provide state funding to tribal schools.

**J.P. Leary**, American Indian Studies Consultant, Department of Public Instruction (DPI), and representative of the DPI on the TAC, observed that the Menominee Tribe’s school is very good, offering high quality, culturally based education. He agreed with the issues raised by Mr. Wilhelmi and Dr. Powless, noting that there is ambiguity in the statutes. He said that it is unfortunate that the American Indian Language and Culture Education Board has been abolished, as this board had been helpful in the past in identifying statutes that either overlook or exclude tribal schools.

Following committee discussion, Chair Musser directed staff to work with the speakers and interested committee members to develop specific proposals for the committee to consider. Representatives Bies and McCormick volunteered to work with staff on this project

### **Protections Against the Spread of Chronic Wasting Disease to the Ceded Territory of Northern Wisconsin**

**James Zorn**, Attorney/Policy Analyst, GLIFWC, described the origins of GLIFWC in the litigation regarding the treaty rights of the Lake Superior Chippewa Indians to hunt, fish, and gather off their reservations in the portions of the state they ceded to the United States, commonly referred to as the “Voigt case.” He distributed copies of a Stipulation on Enforcement, which was incorporated into the final order in the Voigt case and which establishes the role of conservation wardens employed by the tribes and by GLIFWC in enforcement of tribal conservation codes throughout the ceded territory, on and off reservations.

**Dr. Jonathan Gilbert**, Wildlife Section Leader, GLIFWC, said that deer hunting is an integral part of the traditional culture and subsistence economy of the Chippewa Indians. Because many tribal members rely heavily on deer hunting, he said that the possible spread of CWD to the northern Wisconsin deer herd is an issue of great concern to these tribes. He described GLIFWC’s CWD surveillance program. He indicated that GLIFWC is concerned about the possibility of CWD being introduced to northern Wisconsin through the improper transportation or disposal of diseased deer or their parts or through contact between captive and wild deer at deer farms.

**Dr. Robert Ehlenfeldt**, State Veterinarian, DATCP, described DATCP’s activities to control the spread of CWD. He described the state’s CWD Herd Monitoring Program, which is likely to become a model for the nation, and the requirements in place for the transport of deer and elk within the state. He presented information, illustrated with maps and charts, regarding deer and elk farms in Wisconsin and across the country, the number of farms enrolled in the monitoring program, and the number of CWD tests performed on farm-raised deer. He discussed individual confirmed cases of CWD and the sources of those cases.

**Alan Crossley**, CWD Project Manager, DNR, described DNR’s activities to control the spread of CWD. He said that the DNR is committed to preventing its spread, but that the only way that can be accomplished is through eradication of deer from areas where the disease is present. He said that a national committee is working to develop guidelines regarding the transportation and disposal of deer and elk carcasses.

In response to questions, both Dr. Ehlenfeldt and Mr. Crossley said that the Legislature could help their efforts by passing legislation based on 2003 Assembly Bill 292, relating to the transportation and disposal of deer and elk carcasses, and related matters.

### **Role of GLIFWC Conservation Wardens**

Mr. Zorn said that the primary mission of conservation wardens employed by GLIFWC is the off-reservation enforcement of tribal conservation codes in the ceded territory. He described a community-based enforcement program, with 13 wardens stationed on the Chippewa reservations in Wisconsin. In addition, he said, the wardens provide mutual aid to other agencies, respond to medical

emergencies, and conduct search, rescue, and recovery operations. He said that the wardens receive the same basic police training as state officers, plus additional training including weapons qualification and use of force.

Mr. Zorn said that the statutes do not recognize GLIFWC wardens, leading some to question their authority to wear uniforms, carry firearms, stop suspected violators, etc. This also means that these wardens do not have access to law enforcement radio frequencies or the Transaction Information for the Management of Enforcement (TIME) System. He noted that, in addition to impeding the wardens in their work, these limitations can compromise the wardens' safety.

**Thomas Dosch**, Assistant Attorney General, DOJ, said that the state would benefit if barriers to the work of GLIFWC wardens were removed. He described the Voigt litigation and the central role of GLIFWC wardens in the enforcement of conservation regulations. He noted that these roles are enshrined in law as a result of the final order that concluded the Voigt case. Mr. Dosch said that Attorney General Lautenschlager expresses her appreciation of the enforcement contributions that GLIFWC wardens make and supports legislation to facilitate their work.

**Michael Lutz**, Attorney, DNR, and representative of the DNR on the TAC, described the close coordination and cooperation that exists between DNR wardens and GLIFWC wardens, but reiterated the concern that many of the protections that apply to DNR wardens are either lacking or ambiguous as applied to GLIFWC wardens. He said that the DNR supports an effort to identify the statutes that are inadequate and to amend them appropriately.

### **Other Business**

Chair Musser recognized **Laura Arbuckle** from the audience and asked her to introduce herself to the committee. Ms. Arbuckle said that she had recently taken the position as Administrator of the Division of Intergovernmental Relations in the Department of Administration. She said that, among other responsibilities, she is working to improve communications between the state and the tribes. Specifically, she is working with individual state agencies to help them comply with the requirements of Executive Order No. 39, which requires agencies to consult with tribes regarding proposed actions that may affect the tribes.

### **Plans for Future Meetings**

Chair Musser indicated that future committee meetings would likely be on Thursdays or Fridays, to minimize conflicts with the schedules of tribal councils, and would be held at reservations to the extent possible. He said that he would announce the date for the next meeting soon, and asked committee members to tentatively hold the dates of December 9, 10, 16, and 17.

### **Adjournment**

The meeting was adjourned at 3:00 p.m.

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