AN ACT ***to amend*** 165.92 (3) (b) 1.; and ***to create*** 165.92 (3) (c) of the statutes;

relating to: the powers of tribal law enforcement officers under state law.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft, prepared for the joint legislative council's special committee on state−tribal relations, addresses the liability of a law enforcement officer employed by an American Indian tribe or band in this state (a tribal law enforcement officer) when enforcing the laws of this state.

Background

Tribal law enforcement officers do not have the inherent power to enforce state laws but, in Wisconsin, may acquire this power in either of two ways. First, the state or a subdivision of the state may grant this power. Most commonly, this will be done by a county sheriff who makes qualified tribal law enforcement officers his or her deputies. Also, the department of natural resources deputizes qualified wardens employed by a tribe or by the great lakes indian fish and wildlife commission as state conservation wardens.

Second, s. 165.92, stats., authorizes a tribal law enforcement officer to enforce the laws of this state with respect to any person within the boundaries of the tribe's reservation, if the officer and the tribe meet each of several conditions.

In particular, a tribal law enforcement officer may not enforce the laws of this state unless the governing body of the tribe adopts a resolution waiving the tribe's sovereign immunity to the extent necessary to allow the enforcement of liability for its officers' actions in the courts of this state, or adopts another resolution that the Wisconsin department of justice (DOJ) determines has substantially the same result.

The Draft

The draft provides an alternative to the waiver of sovereign immunity by the tribe that is currently required for a tribal law enforcement officer to exercise the powers allowed by s. 165.92. It allows the tribe to instead maintain public liability insurance with a limit of at least $250,000 for any claim. It requires that the insurance policy provide that the insurer

may not raise the defense of tribal sovereign immunity in defending a claim against the policy. The $250,000 limit is the same as the limit under state law on claims recoverable from the state for damages or injury arising from the actions or negligence of a state officer, employee, or agent, established in s. 893.82 (6), stats. This alternative applies only if the tribe has provided evidence of the required insurance to DOJ.

SECTION 1. 165.92 (3) (b) 1. of the statutes is amended to read:

165.92 **(3)** (b) 1. ~~No~~ Except as provided in par. (c), no tribal law enforcement officer may exercise or perform the powers or duties described under sub. (2) (a) unless the governing body of the tribe that employs the officer adopts and has in effect a resolution under this paragraph. Except as provided in subd. 2., a resolution under this paragraph shall include a statement that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in the courts of this state of its liability under par. (a).

SECTION 2. 165.92 (3) (c) of the statutes is created to read:

165.92 **(3)** (c) 1. As an alternative to a resolution under par. (b), the tribe may maintain public liability insurance that does all of the following:

a. Covers the tribe's liability under par. (a) with a limit of not less than $250,000 for any claim.

b. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured.

2. This paragraph applies only if the tribe has presented evidence to the department of justice of the insurance required under subd. 1.

COMMENT: While a tribe may proceed under this alternative without an approval from DOJ, the draft requires that the tribe provide evidence of the insurance to DOJ. This serves, in part, to inform DOJ of what entities are exercising state law enforcement powers on the several Indian reservations in the state. Does the committee want to retain this provision? Should the tribe be required to provide a notice of some type to other local law enforcement agencies (i.e., county sheriffs and

municipal chiefs of police), to facilitate coordination of law enforcement efforts?

(END)