



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Oneida Business Committee Conference Room
Norbert Hill Center
Oneida, Wisconsin

February 25, 2005
10:00 a.m. - 2:30 p.m.

[The following is a summary of the February 25, 2005 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>.]

Call to Order and Roll Call

Chair Musser called the meeting to order at 10:00 a.m. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Terry Musser, Chair; Reps. Garey Bies, Terri McCormick, Mark Pettis, and Gary Sherman; and Public Members John Alloway, Gary Besaw, Howard Bichler, Vince Dela Rosa, Jon Greendeer, Doug Huck, and Louis Taylor.

COMMITTEE MEMBERS EXCUSED: Sens. Ronald Brown, Spencer Coggs, and David Zien; and Public Members Carol Brown, Donna Lynk, and Mark Montano.

TECHNICAL ADVISORY

COMMITTEE MEMBER PRESENT: Rachelle Ashley, Department of Workforce Development.

COUNCIL STAFF PRESENT: David L. Lovell, Senior Analyst.

APPEARANCES:

Paul Ninham, Oneida Business Committee; Rick Cornelius, Oneida Police Chief; Kathryn Makowski, Lac Du Flambeau Police Chief; and John Vincent, Acting Administrator, Division of Trust Finance and Employer Services, Department of Employee Trust Funds.

Opening Remarks

Paul Ninham, member of the Oneida Business Committee, welcomed the committee and offered a prayer.

Approval of the Minutes of the December 17, 2004 Meeting of the Special Committee

Representative Pettis moved, seconded by Representative McCormick, to approve the minutes of the December 17, 2004 meeting of the committee. The motion passed on a voice vote.

Description of Materials Distributed

Mr. Lovell briefly described the materials that had been distributed to committee members prior to the meeting. In addition, he noted two other items at members' places. The first was a letter from Michael Morgan, Secretary, Department of Revenue, regarding WLC: 0069/2, the committee's draft creating a property tax exemption for tribal governmental facilities. The second was a list of bills recently introduced by Chair Musser, all of which had been recommended by the 2002-04 Special Committee and had not passed the Legislature.

Tax Treatment of Non-Trust Lands Owned By a Tribe and Used For Governmental Purposes

Mr. Lovell summarized WLC: 0069/2, relating to creating a property tax exemption for real property owned by an American Indian tribe or band and used exclusively for governmental purposes. He also described Secretary Morgan's letter regarding the draft. He said that the letter raised two primary concerns. First, Secretary Morgan noted that the open-ended language "or any similar governmental purpose" in the draft is ambiguous and not in keeping with the drafting of other property tax exemptions. Second, Secretary Morgan expressed concern that a property tax exemption might be provided under the draft to a tribal entity that would compete with another entity providing the service in the private sector.

The committee had an extensive discussion of how to revise the draft to address Secretary Morgan's concerns. Committee members indicated that they have no interest in competing with the private sector and stated that day care and health care facilities, the types of facilities that Secretary Morgan gave as examples, require subsidies from the tribal governments in order to operate.

One option the committee considered was to limit the tax exemption to facilities whose activities do not produce any pecuniary profit for the tribe. It also discussed the pros and cons of defining governmental purposes either broadly or narrowly. Finally, the committee agreed that the exemption should apply to properties used for governmental purposes, and that the term "governmental purposes" should be defined as including a list of specific activities. Chair Musser directed staff to redraft the

proposal in that manner. He asked committee members to contact staff before April 1 with specific types of activities they would like to see included in that definition.

Authority of Tribal Law Enforcement Officers to Enforce State Criminal Laws

Mr. Lovell described WLC: 0110/1, relating to the powers of tribal law enforcement officers to enforce state laws. He said that a professional who specializes in liability for county governments advised that the liability insurance required under the draft be described as “general liability for negligent acts and public officials liability for acts and omissions.” The second term, he said, includes liability for intentional acts and for official misconduct. The committee agreed to modify the text as recommended. Mr. Lovell provided several options for the minimum amount of coverage for liability insurance. The committee agreed to set the limit at not less than \$1 million.

The committee discussed what notification requirements should be applied to a tribal police department that chooses to enforce state laws under the mechanism created by the draft. Several tribal police chiefs who were present indicated that no notification is required beyond the Department of Justice (DOJ) because the DOJ notifies appropriate local agencies. The committee agreed to require that the tribal police department notify DOJ and require that DOJ notify appropriate local law enforcement agencies. Chair Musser directed staff to redraft WLC: 0110/1 according to the committee’s discussion.

Representative McCormick moved, seconded by Mr. Dela Rosa, that the committee recommend that the Joint Legislative Council introduce the redraft (WLC: 0110/2) into the 2005-06 Session of the Wisconsin Legislature. The motion carried on a vote of Ayes, 12 (Reps. Musser, Bies, McCormick, Pettis, and Sherman; and Public Members Alloway, Besaw, Bichler, Dela Rosa, Greendeer, Huck, and Taylor); Noes, 0; and Absent (Sens. Brown, Coggs, and Zien; and Public Members Brown, Lynk, and Montano).

County-Tribal Cooperative Law Enforcement Program

Mr. Lovell described WLC: 0111/1, relating to the county-tribal cooperative law enforcement program, and noted several decision points within the draft for the committee to address. The committee agreed to require that a county and tribe that receive aid under this program meet not less than twice each year in which aid is received. The committee discussed the concept of maintenance of effort, under which the county sheriff is required to maintain the level of law enforcement services that the sheriff provided prior to receiving aid under the program. After discussion, the committee agreed to retain the maintenance of effort requirement, but to not make compliance with that requirement a condition of the county receiving aid. The committee also agreed to require that aid be disbursed directly to the tribe, unless the joint program plan specifies otherwise.

Chair Musser directed staff to redraft WLC: 0111/1 to reflect the decisions made by the committee, for consideration by the committee at its next meeting.

Eligibility of Tribal Law Enforcement Officers to Participate in the State Retirement System

Kathryn Makowski, Lac Du Flambeau Police Chief, and Rick Cornelius, Oneida Police Chief, addressed the committee regarding their recommendation that tribal law enforcement officers be made

eligible to participate in the Wisconsin Retirement System (WRS). They explained that tribal police departments hire many officers fresh from training and give these officers further training and experience, at a cost of approximately \$60,000 per new recruit. Very frequently, after gaining some experience, these officers leave the tribal police department to take jobs with the sheriff's department or a municipal police department. The principal reason the speakers cited for this is that county and municipal agencies are able to provide greater benefits to their employees, in particular, participation in the WRS. The constant turnover of staff is very expensive for tribal police departments and makes it difficult for them to develop a force of experienced officers with established community ties. In addition, they noted that their officers perform the same functions as county sheriff's deputies and municipal police officers, and they argued on equity principles that tribal officers should receive the same benefits as their county and municipal counterparts. The speakers requested that the committee develop legislation to allow tribal police officers to participate in the WRS to help them address this severe staffing problem and the issue of equity.

John Vincent, Acting Administrator, Division of Trust Finance and Employer Services, Department of Employee Trust Funds (DETF), identified five hurdles that must be cleared to allow tribal police officers to participate in the WRS:

- The employer must meet the statutory definition of employer for purposes of this program.
- The employer must include all eligible employees in the WRS.
- The employer must qualify as a separate legal jurisdiction for purposes of Social Security and resolve to provide Social Security coverage under the state's Section 218 Agreement with the Social Security Administration.
- The employer's participation must be acceptable to the Social Security Administration for purposes of amending the Section 218 Agreement.
- The employer must meet Internal Revenue Service guidelines for inclusion in a "qualified" pension plan.

Mr. Vincent explained that it is important to include all employees of a given employer in the WRS to prevent increasing the costs of the system by including only selected populations, particularly high-risk populations such as law enforcement officers. Mr. Vincent said that the DETF would not oppose including tribal governments in the WRS (though it would not support the proposal, either) if adequate protections were in place to protect the integrity of the Employee Trust Fund. He emphasized two protections. First, he said that there must be a mechanism to ensure that payments are made into the fund by the employer. If state and local governments do not pay their required contributions, the DETF can deduct the amounts owed from state agency appropriations or from state aids to municipalities. A similar mechanism to obtain required payments from tribal employers, such as a surety bond, would be necessary.

Second, he said that certain protections of the employees participating in the WRS would be needed as well. These include, for example, the recognition of administrative and judicial orders of the state in the courts of the tribes, and similar recognition of tribal court orders in the state system, with regard to the division of pension benefits in a divorce.

Mr. Vincent also gave information regarding the cost to a tribal employer to participate in the WRS. He gave estimates of the cost of participating in the system in a forward going basis expressed as percent of total payroll. He also gave estimates of the cost of “buying” credit for years of employment before joining the system. These estimates are in his prepared remarks, which were distributed to the committee.

In discussion, it was indicated that the State of Minnesota has included Minnesota tribes in its state retirement system. Chair Musser directed staff to work with Mr. Vincent to determine whether the issues raised by Mr. Vincent could be satisfactorily addressed, and to explore Minnesota’s program.

Role of Conservation Wardens Employed By the Great Lakes Indian Fish and Wildlife Commission

Mr. Lovell summarized WLC: 0127/1, relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission (GLIFWC).

James Schlender, Executive Administrator of GLIFWC, briefly addressed the committee. He described the training that GLIFWC wardens receive and the deputation of GLIFWC wardens by the Department of Natural Resources (DNR). Fred Maulson, Chief Warden of GLIFWC, also addressed the committee, describing the cooperative working relationship between GLIFWC wardens and DNR wardens.

Mr. Lovell pointed out several questions in the draft that the committee would need to answer. With regard to liability insurance, the committee agreed that the required insurance should be described as “general liability for negligent acts and public officials liability for acts and omissions” and should be at a limit of coverage of not less than \$2 million. In addition, the tribe should be required to provide evidence of the insurance supplied to DOJ, but not to other entities. The committee agreed to insert the words “up to the limit of insurance” on page 7, line 2. The committee also agreed to give separate treatment to each of the statutes listed in the note on pp. 12 and 13 of the draft, to apply these provisions to GLIFWC wardens.

Chair Musser directed staff to prepare a revision of the draft in consultation with DOJ and DNR legal staff.

Other Business

Chair Musser noted that the Working Group on Tribal Schools will meet to discuss the treatment under the statutes of tribal schools, on ***March 18, 2005, in the Legislative Council Conference Room.***

Chair Musser stated that, for the first time in Wisconsin history, a State of the Tribes address would be presented in the Assembly Chamber on March 8, 2005. He said that Ray DePerry, Tribal Chair, Red Cliff Band of Lake Superior Chippewa Indians, and President, Great Lakes Inter-Tribal Council, will make the address.

Plans for Future Meetings

The next meeting of the Special Committee will be held on ***Friday, April 15, 2005, at the Ho-Chunk Casino, Hotel, and Convention Center, S3214 Highway 12, Baraboo, Wisconsin.***

Adjournment

Chair Musser adjourned the meeting at 2:30 p.m.

DLL:tlu