



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Ho-Chunk Casino, Hotel, and Convention Center
Baraboo, Wisconsin

April 15, 2005

10:00 a.m. - 4:00 p.m.

[The following is a summary of the April 15, 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. Terri McCormick, Mark Pettis, and Gary Sherman; Sens. Ronald Brown, Spencer Coggs, and David Zien; and Public Members John Alloway, Gary Besaw, Vince Dela Rosa, Jon Greendeer, Donna Lynk, Mark Montano, and Louis Taylor.

COMMITTEE MEMBERS EXCUSED: Rep. Garey Bies; and Public Members Howard Bichler, Carol Brown, and Doug Huck.

TECHNICAL ADVISORY

COMMITTEE MEMBERS PRESENT: Rachelle Ashley, Department of Workforce Development; J.P. Leary, Department of Public Instruction; Thomas Ourada, Department of Revenue; and Tom Bellavia, Department of Justice.

COUNCIL STAFF PRESENT: David L. Lovell, Senior Analyst, and Melissa Schmidt, Legal Intern.

APPEARANCES:

Gloria Whitethunder and Dennis Funmaker, Ho-Chunk Nation elders; George Lewis, Ho-Chunk Nation President; Kelly Kennedy, County-Tribal Law Enforcement Grant Coordinator, Department of Justice; James Schlender, Executive Administrator, and James Zorn, Attorney/Policy Analyst, Great Lakes Indian Fish and Wildlife Commission; John Wilhelmi, Attorney, Menominee Indian Tribe of Wisconsin; and Donna Powless, Director, Menominee Tribal School.

Opening Remarks

Jon Greendeer, Executive Administrative Officer of the Ho-Chunk Nation and member of the Special Committee, welcomed the committee to this Ho-Chunk facility and introduced Gloria Whitethunder, a tribal elder. Ms. Whitethunder offered opening remarks and also welcomed the committee. Later in the meeting, George Lewis, Ho-Chunk Nation President, greeted the committee. Prior to lunch, Dennis Funmaker, a tribal elder, offered a blessing for the meal.

Chair Musser introduced and welcomed Donna Lynk, who was recently appointed to the committee to represent the Bad River Band of Lake Superior Chippewa.

Approval of the Minutes of the February 25, 2005 Meeting of the Special Committee

Representative Pettis moved, seconded by Mr. Greendeer, to approve the minutes of the February 25, 2005 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. He also noted that a new item, Memo No. 5, was at members' places.

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

Mr. Lovell summarized WLC: 0069/3, 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 focused on the definition of "governmental purpose." He noted that the list of purposes is illustrative only, meaning that the definition includes all the purposes listed, and other, similar purposes.

Ms. Lynk requested that tribal housing be listed as a governmental purpose in the definition. The committee agreed to make this change.

The committee discussed modifying the draft to refer to "governmental purposes *and programs*," and to phrase the definition as "including *but not limited to*." The committee concluded that those changes would not add meaning to the definition and should not be made.

Representative McCormick moved, seconded by Senator Brown, that the committee recommend WLC: 0069/3, as modified to include tribal housing in

the definition of “governmental purpose,” to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 14 (Reps. Musser, McCormick, Pettis, and Sherman; Sens. Brown, Coggs, and Zien; and Public Members Alloway, Besaw, Dela Rosa, Greendeer, Lynk, Montano, and Taylor); and Absent, 4 (Rep. Bies; and Public Members Bichler, Brown, and Huck).

Representative McCormick raised questions about the fiscal impact of the draft. Senator Brown noted that the draft would reduce property tax revenues collected by some local governments. He suggested that the proposal be phased in over several years, to avoid a single, large impact on local budgets.

Thomas Ourada, the Technical Advisory Council member representing the Department of Revenue (DOR), said that DOR estimates that the property tax revenues derived from fee land owned by American Indian tribes in Wisconsin is approximately \$3 million. He also said that DOR would appreciate receiving information from tribes regarding the fee land they own and their uses of that land.

Authority of Tribal Law Enforcement Officers to Enforce State Criminal Laws

Mr. Lovell explained that this item was included on the agenda in case the committee wanted to make technical changes to WLC: 0110/2, which it had previously recommended for introduction by the Joint Legislative Council. Chair Musser said that the committee would not take up this item.

County-Tribal Cooperative Law Enforcement Program

Mr. Lovell described WLC: 0111/2, relating to the County-Tribal Cooperative Law Enforcement Program, and noted a decision point in SECTION 5 of the draft for the committee to address. He said that, in that SECTION, the draft requires that a sheriff’s department participating in the program maintain its prior level of law enforcement effort on the reservation of the partnering tribe. He said that there is not a definition of “maintenance of effort,” nor is there an explicit mechanism for enforcing the requirement. Enforcement would most likely consist of the tribe raising the issue in negotiation of future joint program plans with the county and the Department of Justice raising it in reviewing program reports and applications for funding.

Kelly Kennedy, County-Tribal Law Enforcement Grant Coordinator, Department of Justice, said that measures of law enforcement effort include the number of calls to which an agency responds, time on patrol, etc. He said that maintenance of effort is something the program should address. Chair Musser agreed.

Mr. Lovell noted that the committee needed to decide whether the description of maintenance of effort should compare current effort to effort “prior to the program” or to effort “in the preceding year.” Chair Musser suggested using the latter option; the committee agreed.

Representative Sherman moved, seconded by Representative Pettis, that the committee recommend WLC: 0111/2, as modified in the preceding discussion, to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 14 (Reps. Musser,

McCormick, Pettis, and Sherman; Sens. Brown, Coggs, and Zien; and Public Members Alloway, Besaw, Dela Rosa, Greendeer, Lynk, Montano, and Taylor); and Absent, 4 (Rep. Bies; and Public Members Bichler, Brown, and Huck).

Treatment in Wisconsin Statutes of Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission

Mr. Lovell reviewed the origin of this issue. He said the authority of conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) to perform their job duties was questioned, due to the fact that the statutes that exempt peace officers, including conservation wardens, from many general restrictions (e.g., use of marked cars or carrying weapons) do not apply to GLIFWC wardens. Essentially, these wardens are in technical violation of numerous state laws whenever they are on duty. GLIFWC, with support from the Department of Justice (DOJ) and the Department of Natural Resources (DNR), had requested that the committee review this issue.

Mr. Lovell said that, to prepare the draft, he had identified provisions throughout statutes that address peace officers. Then, a working group consisting of the committee staff and staff from GLIFWC, DOJ, and DNR had reviewed each statute to determine which should be applied to GLIFWC wardens. The goal was to facilitate the wardens' performance of their jobs.

Mr. Lovell said that three types of statutes were identified: those that exempt peace officers from restrictions on various kinds of conduct; those that aid peace officers by either giving them access to law enforcement tools or protecting their physical safety; and those that establish obligations of them. For each statute, the working group recommended one of three treatments, generally parallel to the current treatment of DNR wardens. It recommended that statutes relating to general law enforcement practices and statutes that protect officers' physical safety be applied to all GLIFWC wardens. It recommended that most statutes regarding weapons use be applied to only those GLIFWC wardens who meet state law enforcement training standards. It recommended that statutes regarding particularly dangerous weapons or explosives not apply to any GLIFWC wardens. The working group's recommendations were the basis for WLC: 0127/3.

Mr. Lovell said that the draft also authorizes GLIFWC wardens to render assistance to peace officers upon request or in an emergency and, under certain circumstances, to make arrests for felonies. He said that this provision is based on the statute that grants such authority to federal agents and to peace officers acting outside their jurisdiction. He noted that, to exercise this authority, the draft requires that a GLIFWC warden meet state law enforcement standards and that GLIFWC carry insurance to cover the warden's liability for his or her actions, among other requirements.

James Schlender, Executive Administrator, and James Zorn, Attorney/Policy Analyst, GLIFWC, responded to questions regarding the functioning of GLIFWC. They explained that GLIFWC's jurisdiction is over Chippewa Indians when hunting, fishing, or gathering off their reservation. GLIFWC does not have jurisdiction on any reservation unless granted jurisdiction by that tribe. They explained that GLIFWC wardens are often the first on the scene of a crime or an accident. In a case in which a GLIFWC warden observes a non-Chippewa commit a state conservation violation, the warden will hold the suspect until a DNR warden or a local peace officer arrives to take appropriate enforcement action.

Mr. Dela Rosa moved, seconded by Mr. Montano, that the committee recommend WLC: 0127/3 to the Joint Legislative Council for introduction in the current session of the Legislature. The motion passed on a vote of Ayes, 14 (Reps. Musser, McCormick, Pettis, and Sherman; Sens. Brown, Coggs, and Zien; and Public Members Alloway, Besaw, Dela Rosa, Greendeer, Lynk, Montano, and Taylor); and Absent, 4 (Rep. Bies; and Public Members Bichler, Brown, and Huck).

Treatment in Wisconsin Statutes of Tribal Schools

Mr. Lovell described WLC: 0176/1. He noted that this draft is similar in concept to WLC: 0127/3, the draft the committee had just reviewed, in that it revises provisions throughout the statutes that were originally enacted without recognition of American Indian tribes. Also, like the previous draft, it is based on the recommendations of a working group, consisting of committee staff and members and representatives of the Department of Public Instruction (DPI), the Menominee Tribe, and tribal schools. The working group reviewed provisions throughout the statutes that relate to private schools to determine under which statutes tribal schools should be given parallel treatment to private schools.

In general, where a statute extends a benefit or privilege to private schools, the working group recommended extending the same benefit to tribal schools. For example, it allows tribal schools to receive aid for school breakfast, lunch, and milk programs and food service plans for the elderly to the same extent as private schools. He said that the draft does not make tribal schools subject to state rules or oversight and does not impose requirements on them, except in a few instances in which a tribal school receives a benefit or privilege only if it chooses to comply with certain provisions. For example, it provides that a tribal school drivers education class will be recognized for state drivers licensing purposes only if the class meets the same requirements as those that apply to private schools.

The draft creates a definition of “tribal school” as entities distinct from both public and private schools; a tribal school must be created and controlled by a tribe.

Representative McCormick expressed concern that the draft does not protect tribal sovereignty. She said that the draft should not define tribal schools as private schools and should not impose state requirements on them. In addition, she said it should address funding for tribal schools. As an alternative to the draft, she distributed LRB-2408/1, a draft she had prepared authorizing the College of the Menominee Nation to charter a school under the state charter schools law.

John Wilhelmi, Attorney, Menominee Tribe, said that the draft does not define tribal schools as private schools. Mr. Lovell confirmed this, reading the definition of tribal school from the draft. Mr. Wilhelmi said the draft does not impose state requirements on tribal schools and does not require any waiver of sovereign immunity by tribes. Mr. Lovell noted that WLC: 0176/1 is not incompatible with Representative McCormick’s proposal, but has a different purpose.

Donna Powless, Director, Menominee Tribal School, said that the main thing that the draft does is to recognize tribal schools as educational institutions in Wisconsin, distinct from both public and private schools. She said that the working group had chosen to keep this draft separate from other proposals regarding funding of tribal schools or authorizing new charter schools hoping this would improve its chances of passage by the Legislature.

J.P. Leary, American Indian Studies Consultant, DPI, and member of the Technical Advisory Committee, indicated that, at the end of the working group's meeting, there had been two issues on which DPI was not able to agree without further study. These relate to the administration of state standardized tests by tribal schools and payment of tuition costs for placement of special education pupils in tribal schools. He said that the issues were under discussion within DPI, but that he had not been informed of a department position.

Mr. Montano expressed concern about voting on such a long draft without further study to better understand all that it does. After further discussion, the committee moved on without taking action on WLC: 0176/1.

Mr. Lovell said that the next draft on the agenda, WLC: 0177/1, relates to state funding for tribal schools. He explained that the federal Bureau of Indian Affairs (BIA) supports tribal schools through the Indian Student Education Program (ISEP) and other aid programs. Three of the four tribal schools in Wisconsin receive ISEP funding to support the cost of some, but not all, pupils in those schools; the fourth tribal school does not receive any ISEP funding. He said that the draft provides state support for the pupils in those schools for whom the school receives no BIA funding. The amount of state aid a school would receive under the draft is the number of non-ISEP students in the school multiplied by the base per-pupil level of ISEP funding from the preceding year.

Ms. Lynk said that the Bad River Band of Lake Superior Chippewa started their tribal school after the BIA had put a moratorium on funding new tribal schools, and so receives no ISEP funding. She said that the Bad River Band struggles to keep the school open.

Dr. Powless said that she would like state aid to tribal schools to reflect more of the aid tribal schools receive from the BIA, rather than only the base funding level. However, she said, in light of fiscal and political realities in the State Capitol, the proposal in the draft seemed a good compromise.

The committee asked staff to investigate the per-pupil costs of public schools and charter schools, and the cost of special education services.

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

Mr. Lovell presented Memo No. 5, *Participation of Tribal Law Enforcement Officers in the Wisconsin Retirement System*, dated April 13, 2005. He noted that the Memo begins with a summary of the recently enacted Minnesota law that allows tribal officers to participate in that state's retirement system and a description of its implementation to date. Next, he said, the Memo presents five issues raised by the Department of Employee Trust Funds (ETF) in earlier testimony to the committee and options for the committee to consider regarding each issue, including the options recommended by the ETF.

Mr. Dela Rosa said that he has been discussing this subject with other governmental officials of the Oneida Tribe and that there are a number of issues that the tribe wants to consider before proceeding on this subject. He requested that action on this subject be deferred until the following meeting.

Chair Musser asked staff to prepare a draft on the subject for the following meeting, in case the committee wants to go forward with it then. The committee discussed Memo No. 5 and gave the following drafting instructions, following the outline of the Memo:

- Require that, before a tribe may bring its employees into the Wisconsin Retirement System (WRS), it must obtain a written ruling from the federal Internal Revenue Service (IRS) that the tribe is an agency or instrumentality of the state.
- Exclude tribal participants in the WRS from the general requirement that participating employers must also participate in the Social Security program through ETF.
- Amend the definition of “employer” to include a tribe or a tribal agency, making any tribe or tribal agency eligible to participate in the WRS (if the IRS ruling described above is obtained).
- Allow tribes or tribal agencies that participate in the WRS to specify the categories of their employees that will be enrolled.
- Create mechanism to enable the ETF to enforce the compliance by both tribal employers and employees with all rules and requirements of the WRS; in particular, create a mechanism by which the ETF can collect required contributions to the WRS from a tribal employer if the employer fails to submit the contributions.

Other Business

Chair Musser announced that a hearing had been scheduled by the Assembly Committee on State Affairs to hear testimony on five proposals developed by the Special Committee in previous sessions. The proposals had failed to pass and he had reintroduced them. He encouraged committee members to attend.

Plans for Future Meetings

The next meeting of the Special Committee will be held on *Monday, May 9, 2005, at 1:00 p.m., in Room 417 North (the G.A.R. Room), State Capitol, Wisconsin.*

Adjournment

Chair Musser adjourned the meeting at 4:00 p.m.

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