



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Room 411 South, State Capitol
Madison, Wisconsin

December 16, 2008
10:00 a.m. – 3:00 p.m.

[The following is a summary of the December 16, 2008 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>.]

Call to Order and Roll Call

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

COMMITTEE MEMBERS PRESENT: Rep. Jeffrey Mursau, Chair; Sens. Spencer Coggs, Dave Hansen, and Robert Jauch; Reps. Gary Sherman and James Soletski; and Public Members Andrew Adams, Ken Fish, Agnes Fleming, Patricia Ninham Hoeft, Dee Ann Mayo, Mark Montano, and Philip Shopodock.

COMMITTEE MEMBER EXCUSED: Sen. Scott Fitzgerald.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Rachelle Ashley, Department of Workforce Development; Tom Bellavia, Department of Justice; J.P. Leary, Department of Public Instruction; Michael Lutz, Department of Natural Resources; Thomas Ourada, Department of Revenue (DOR); and Jim Weber, Department of Health Services.

TECHNICAL ADVISORY COMMITTEE MEMBER EXCUSED: Gwen Carr, Department of Transportation.

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

APPEARANCES: Sen. Fred A. Risser, Co-Chair, Joint Legislative Council; Terry C. Anderson, Director, Legislative Council Staff; Tom Bellavia, Assistant Attorney General, Department of Justice; Dean Roland, Sheriff, Burnett County; Frank Taylor, Chief, St. Croix Tribal Police Department; Cyrus Behroozi, Administrator, Division of Safety and Permanence, Department of Children and Families (DCF), Mark S. Mitchell, Office of Legal Counsel, DCF; and Wendy White Eagle, Artley Skenandore, and other members of the Wisconsin Indian Business Alliance Executive Committee.

Opening Remarks

Senator Fred Risser, Co-Chair, Joint Legislative Council, welcomed the committee and gave a brief description of the Joint Legislative Council (JLC) and its function. He noted that one rule applicable to JLC special committees is that members must be present to vote at a meeting. **Terry C. Anderson**, Director of the Legislative Council staff, made opening remarks to the committee. He described the JLC and its purpose and described the Special Committees that the JLC creates. He described the web page of the Special Committee on State-Tribal Relations and encouraged members to make use of it. He explained the process for public members to obtain reimbursement for travel expenses associated with attending committee meetings.

Introduction of Committee Members and Technical Advisory Committee Members

Members of the Special Committee and the Technical Advisory Committee introduced themselves.

Description of Materials Distributed

- Memo No. 1, *Suggested Topics for Study by the 2008-10 Special Committee on State-Tribal Relations* (December 4, 2008).
- Memo No. 2, *Legislation Recommended by the 2006-08 Special Committee on State-Tribal Relations* (December 5, 2008).
- WLC: 0352/1, relating to providing benefits and protections to tribal schools and tribal school pupils and staff similar to those provided to private schools and private school pupils and staff and making an appropriation.
- WLC: 0354/1, relating to liability for actions of tribal law enforcement officers when enforcing state laws.
- WLC: 0355/1, relating to administration of grant funds under the county-tribal cooperative law enforcement program.
- Opinion of the Attorney General, OAG 8-08, dated October 1, 2008, relating to mutual assistance requests between a law enforcement agency operated by a Wisconsin Indian tribe and a law enforcement agency operated by the State of Wisconsin or a political subdivision of the state.
- Letter, dated January 15, 2008, from Attorney General Van Hollen, regarding the 2008 grants under the county-tribal cooperative law enforcement program.
- Table, posted to Department of Justice website on December 12, 2008, regarding the 2009 grants under the county-tribal cooperative law enforcement program.
- For committee members, Joint Legislative Council Study Committee Guidelines (2008).

Discussion of Committee Scope of Study and Timeline

Chair Mursau noted that the committee would not be able to address all the issues for study identified in Memo No. 1 and asked each member to identify his or her top priority.

Mr. Montano said that, in addition to the three drafts on the agenda, he would like the committee to consider funding for transportation services for tribal elders. He said also that he would like the committee to be given a role in reviewing legislation affecting American Indians.

Mr. Fish said that he would like the committee to address the codification in Wisconsin statutes of the Federal Indian Child Welfare Act (ICWA). He said also he would like the committee to address education issues, including the draft on the agenda.

Ms. Fleming asked that, in addressing education issues, the committee consider tribal colleges separately from other topics, especially regarding funding for non-Indian students enrolled in tribal colleges.

Mr. Adams said that he, too, would like the committee to address the codification of ICWA. He also asked that the committee address the issue of mutual assistance between tribal and county or municipal law enforcement agencies, as affected by the recent opinion of the Attorney General (OAG 8-08). In addition, he suggested that the committee develop legislation to allow tribes to charter schools, individually or in cooperation with a University of Wisconsin campus, and that the committee look at issues related to the protection of burial sites.

Ms. Hoeft supported the suggestions of others to address mutual assistance in law enforcement and to pursue codification of ICWA.

Senator Hansen requested that the committee address the inappropriate use by public schools of school mascots or logos depicting American Indians.

Senator Coggs concurred in Senator Hansen's request to take up the subject of school mascots and logos and supported the request of others to pursue codification of ICWA.

Representative Sherman noted that he is a member of the Wisconsin Supreme Court's State-Tribal Justice Forum and has served as a liaison between the forum and this committee. He suggested that the two hold a joint meeting.

Tribal Schools

- WLC: 0352/1, relating to providing benefits and protections to tribal schools and tribal school pupils and staff similar to those provided to private schools and private school pupils and staff and making an appropriation.

Ms. Kiel described the history of legislation developed by this committee to address the treatment of tribal schools in the Wisconsin statutes and summarized the substance of WLC: 0352/1. In response to questions, she said that the draft would have small fiscal impacts as a result of its treatment of two programs, which could lead to its reference to the Joint Committee on Finance. Chair Mursau stated that this likely would not be a major impediment to passage of the proposal.

In response to a question from Mr. Shopodock, Ms. Kiel said she thought the draft would be interpreted as applying to a school established jointly by two or more tribes, but that it could be amended to state this explicitly.

Mr. Fish moved, seconded by Representative Sherman, that the committee recommend that the Joint Legislative Council introduce WLC: 0352/1, as amended to explicitly state that it applies to a tribal school established jointly by two or more tribes. The motion passed on a vote of Ayes, 13 (Reps. Mursau, Sherman, and Soletski; Sens. Coggs, Hansen, and Jauch; and Public Members Adams, Fish, Fleming, Ninham Hoeft, Mayo, Montano, and Shopodock); Noes, 0; and Absent, 1 (Senator Fitzgerald).

Tribal Law Enforcement

- WLC: 0354/1, relating to liability for actions of tribal law enforcement officers when enforcing state laws.

Mr. Lovell described the history of legislation developed by this committee relating to liability for actions of tribal law enforcement officers when enforcing state law and summarized the substance of WLC: 0354/1. In response to questions, he said that the draft does not address the issues that have arisen following the Attorney General's opinion relating to mutual aid between tribal and county or municipal law enforcement agencies.

Mr. Lovell noted that, to complete the draft, the committee needed to decide on the amount of liability insurance that the draft would require a tribe to carry to cover acts or omissions by its officers when enforcing state laws as a condition of its officers being granted that power if a tribe chose the option of having insurance coverage rather than waiving tribal sovereign immunity. He presented information from the insurance industry concerning typical liability coverage carried by county governments and tribal police departments and the cost of such insurance. After discussion, the committee agreed that the draft should require a minimum of \$2 million liability insurance coverage.

Representative Sherman noted that the insurance requirement is an alternative to a waiver of sovereign immunity to allow suits in state court to enforce the liability of tribal officers when enforcing state laws. He further noted that the liability insurance option limited a tribe's exposure to \$2 million, allowing the defense of sovereign immunity for liability above that amount, but that the option of waiving sovereign immunity did not have a similar limit, and asked whether the two options should both be limited in the same manner.

Mr. Shopodock moved that the draft be amended to modify the option for a tribe to waive sovereign immunity so as to limit the waiver to claims up to \$2 million. The motion failed for lack of a second.

Mr. Fish moved, seconded by Senator Hansen, that the committee recommend that the Joint Legislative Council introduce WLC: 0354/1, as amended to set the amount of required insurance at \$2 million. The motion passed on a vote of Ayes, 13 (Reps. Mursau, Sherman, and Soletski; Sens. Coggs, Hansen, and Jauch; and Public Members Adams,

Fish, Fleming, Ninham Hoeft, Mayo, Montano, and Shopodock); Noes, 0; and Absent, 1 (Senator Fitzgerald).

County-Tribal Cooperative Law Enforcement Program

- WLC: 0355/1, relating to administration of grant funds under the county-tribal cooperative law enforcement program.

Mr. Lovell described the history of legislation developed by this committee relating to the County-Tribal Cooperative Law Enforcement program and summarized the substance of WLC: 0355/1.

Mr. Montano noted that versions of this proposal from earlier legislative sessions had required that grants be paid to the tribal partner in each joint program plan, but that he can accept the modification made in this draft to require that the joint program plan specify what portion of a grant is to be paid to the tribe and what portion is to be paid to the county.

Mr. Montano moved, seconded by Representative Sherman, that the committee recommend that the Joint Legislative Council introduce WLC: 0355/1. The motion passed on a vote of Ayes, 13 (Reps. Mursau, Sherman, and Soletski; Sens. Coggs, Hansen, and Jauch; and Public Members Adams, Fish, Fleming, Ninham Hoeft, Mayo, Montano, and Shopodock); Noes, 0; and Absent, 1 (Senator Fitzgerald).

Mutual Assistance Between Tribal and County or Municipal Law Enforcement Agencies; Invited Presentations and Committee Discussion

- Tom Bellavia, Assistant Attorney General, Department of Justice.

Mr. Bellavia summarized the recent opinion of Attorney General Van Hollen (OAG 8-08), relating to mutual assistance between tribal and county or municipal law enforcement agencies. He said that the opinion primarily addresses two questions:

1. Does s. 66.0313, Stats., relating to mutual assistance for law enforcement, apply to tribal police agencies? He said that the answer to this is no.
2. Are there other mechanisms by which tribal and county or municipal law enforcement agencies may provide mutual assistance to each other? He said that the answer to this is yes.

With regard to the first question, Mr. Bellavia noted that s. 66.0313, Stats., does two things. First, the statute allows law enforcement officers to act outside their geographic jurisdiction, under specified circumstances. While the statute does not apply to tribal law enforcement agencies, he noted that it does not limit other existing, legal mechanisms by which tribal law enforcement agencies can provide assistance to other law enforcement agencies. Second, the statute addresses issues related to liability and expenses incurred when providing assistance. Again, while the statute does not apply to tribal law enforcement agencies, he noted that it does not limit other existing, legal mechanisms by which tribal and non-tribal agencies can address these issues.

With regard to the second question, Mr. Bellavia noted that there are at least four mechanisms under which tribal and non-tribal law enforcement agencies can provide assistance to each other: s. 165.92, Stats., which allows certain tribal officers to enforce state law on the employing tribe's reservation, under specific conditions; P.L. 280, which grants state and local law enforcement officers law enforcement powers in all of Indian country, except the Menominee Reservation; s. 175.40, Stats., which allows officers, including tribal officers, to respond to emergencies or felonies in progress when on duty or off duty and outside their geographic jurisdiction, under specified conditions; and the authority of sheriffs to deputize individuals, including tribal officers.

Ms. Kiel also noted that the statutes (s. 59.28, Stats.) authorize a sheriff and certain others to call a person to their aid, and Mr. Bellavia indicated that this could be thought of as a type of deputization.

Mr. Bellavia stressed that while s. 66.0301, Stats., provides for intergovernmental agreements, including with tribes, it is his opinion that a governmental entity cannot increase its powers by agreement.

- Frank Taylor, Chief, St. Croix Tribal Police Department.

Chief Taylor said that the St. Croix Tribal Police Department was established in 2000 and, in the short time since then, has grown from three to 14 officers. The department's resources include two canine units, a drug investigator, a SWAT team, and various equipment. He said that the department has made these resources available on request to the sheriffs of the three counties in which the St. Croix Reservation is located but that, since the issuance of the Attorney General's opinion, requests for assistance have dropped sharply. He said his department had received 309 requests for assistance from the Burnett County Sheriff's Department in the first nine months of the year, preceding issuance of the opinion, but only 19 requests in the two and a half months since then; for the same periods, he said requests from the Barron County Sheriff's Department were 83 and then seven, and requests from the Polk County Sheriff's Department were 44 and then zero.

- Dean Roland, Sheriff, Burnett County.

Sheriff Roland said that he employs 12 deputies and that there are a total of 39 law enforcement officers employed in Burnett County. He described a history of close cooperation with the St. Croix Tribal Police Department, including deputization of their officers. He said that the two departments are now negotiating an agreement for future cooperation but that, on the advice of the county's insurer, he no longer deputizes tribal officers. He said that this is hurting the community and urged the committee to recommend an appropriate solution.

Following committee discussion, Chair Mursau directed staff to assemble a working group including committee members and others to develop recommendations for the committee's review. In response to a suggestion from Ms. Kiel, the committee agreed that the work group should look at similar statutes that address mutual aid between local health departments, fire departments, and emergency management programs as these statutes currently use inconsistent approaches with respect to tribes.

Briefing on the Department of Children and Families (DCF) and Tribal Workgroup on the Codification of the Federal Indian Child Welfare Act in the Wisconsin Statutes

- Cyrus Behroozi, Administrator, Division of Safety and Permanence, DCF, and Mark S. Mitchell, Office of Legal Counsel, DCF.

Mr. Behroozi said that, over a period of three years, the Department of Health and Family Services (DHFS), now DCF, and the 11 American Indian tribes and bands in Wisconsin had worked to develop a bill to codify the ICWA into the Wisconsin statutes. In explaining the importance and necessity of this, he noted that a federal review of out-of-home placements of American Indian children in Wisconsin found that compliance with the requirements of ICWA was very inconsistent and needed improvement. The goal of codifying ICWA into the statutes is to ensure that attorneys and courts in Wisconsin are informed of the requirements of ICWA.

Briefing on State Funding for High-Cost Out-of-Home Placements of American Indian Children by a Tribal Court

- Cyrus Behroozi, Administrator, Division of Safety and Permanence, DCF, and Mark S. Mitchell, Office of Legal Counsel, DCF.

Mr. Behroozi described the mechanism by which a county may pay the cost of certain out-of-home placements of children ordered by a tribal court under a written agreement known as a “161 agreement.” He said that some such placements are exceptionally expensive, taxing a county’s ability to pay the costs. In response, state funds were set aside as a “high-cost placement pool” to pay for placements costing more than 125% of the average placement costs for the previous three years. He said that two applications for these funds were made, but did not meet the eligibility criteria, even after DCF reduced the threshold to 100% of that average placement cost. He said that DCF is continuing to review the program in an effort to meet the needs of counties and tribes.

Briefing on the DCF and Tribal Workgroup on Alternative Funding for Tribal Child Welfare Programs

- Cyrus Behroozi, Administrator, Division of Safety and Permanence, DCF, and Mark S. Mitchell, Office of Legal Counsel, DCF.

Mr. Behroozi said that DHFS (now DCF) and the tribes had also established the Alternative Funding Work Group in June 2007 to explore, define, and recommend funding options for funding of certain tribal child welfare services, including the option of a direct pass-through of federal funds to tribes. He said that the work group will complete its work in 2009 and would share its report with this committee.

Briefing on the Wisconsin Indian Business Alliance (WIBA)

- Wendy White Eagle, WIBA Executive Committee.

Ms. White Eagle described the work of the Wisconsin Indian Business Alliance (WIBA), whose goal is to build native communities and economies. Objectives it has identified include building business owner resources, building tribal infrastructure, strengthening tribal governance, and developing

strategies for financing native business ventures. She introduced Artley Skenandore, who spoke of native businesses as resources for reservation economies and for the state, and emphasized the importance of these businesses being certified as minority or disadvantaged businesses. He noted that the Department of Commerce's tribal liaison position is vacant and suggested that the WIBA might possibly provide some of the function of that position.

Other Business

No other business was brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee on State-Tribal Relations will be held at the call of the Chair.

Adjournment

The meeting adjourned at 3:00 p.m.

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