



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Lac Courte Oreilles Ojibwa Community College
Hayward, WI

May 20, 2013
12:00 Noon – 4:20 p.m.

[The following is a summary of the May 20, 2013 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 committee to order. The roll was called and a quorum was lacking.

COMMITTEE MEMBERS PRESENT: Rep. Jeffrey Mursau, Chair; Reps. Janet Bewley, Nick Milroy, and Duey Stroebel; and Public Members Dee Ann Allen, Gary Besaw, and Jordan Martinson.

COMMITTEE MEMBER EXCUSED: Sen. Kathleen Vinehout, Vice-Chair; Sen. Dale Schultz; Rep. Jim Steineke; and Public Members Melinda Danforth, Marvin Defoe, Gus Frank, Jon Greendeer, Chris McGeshick, and William Morrow.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Loa Porter, Department of Children and Families (DCF); Thomas Ourada, Department of Revenue (DOR); Brent Pickard (for Kelly Jackson), Department of Transportation (DOT); and Tristan Cook, Department of Workforce Development (DWD).

TECHNICAL ADVISORY COMMITTEE MEMBER EXCUSED: Tom Bellavia, Department of Justice (DOJ); David O'Connor, Department of Public Instruction (DPI); and Quinn Williams, Department of Natural Resources (DNR).

COUNCIL STAFF PRESENT: David L. Lovell, Senior Analyst, and David Moore, Staff Attorney.

APPEARANCES: Tom Maulson, Chairman, Lac du Flambeau Band of Lake Superior Chippewa Indians; Gordon Thayer, Chairman, Lac Courte Oreilles (LCO) Band of Lake Superior Chippewa Indians; Myron Schuster, Director, Northwest Regional Planning Commission; Dr. Ray Burns, President, LCO Ojibwa Community College; and Dr. Verna Fowler, President, College of Menominee Nation.

Opening Remarks

Chair Mursau welcomed the committee members to the meeting and asked committee members and others participating in committee discussion to introduce themselves. Beth Paap, Interim Academic Dean, Lac Courte Oreilles Ojibwa Community College, welcomed the committee to the college.

Approval of the Minutes of the March 1, 2013 Meeting

The committee did not take action on the minutes of the March 1, 2013 meeting for lack of a quorum.

Participation of Tribal Police Officers in the Wisconsin Retirement System

WLC: 0078/1, relating to enrollment of tribal police officers in the Wisconsin Retirement System

David Lovell, Legislative Council Senior Analyst, provided a brief review of the proposal to authorize the enrollment of tribal police officers in the Wisconsin Retirement System (WRS). He said that at the last meeting, the committee instructed committee staff to redraft a proposal that had been drafted as part of the committee's work in 2006 and to solicit feedback from the Department of Employee Trust Funds (ETF) on the draft. Mr. Lovell summarized comments ETF provided on the redraft of this legislation, WLC: 078/1, and discussed these comments with the committee.

Mr. Lovell told the committee ETF recommended limiting participation to active-duty law enforcement officers who have authority to act under s. 165.92, Stats., the statute authorizing certain tribal police officers to enforce state law. Mr. Lovell also told the committee ETF supports including in the legislation a requirement that a tribe or tribal law enforcement agency seeking to participate in WRS request a written ruling from the Internal Revenue Service (IRS) confirming the tribe or tribal law enforcement entity may participate in WRS without jeopardizing WRS's tax-exempt status, and confirming which positions would be eligible for inclusion under the WRS. ETF also recommended the legislation include certain measures enabling ETF to enforce and administer the program with respect to tribes, including requiring the tribe or tribal law enforcement agency to maintain a performance bond sufficient to cover any unfunded liability for purchase of prior service and to waive sovereign immunity with respect to WRS's enforcement and administration of the program. Mr. Lovell presented information to the committee regarding the cost to an employer of covering protective service employees (such as active duty police officers) in the WRS, and the cost of "buying" back service (coverage for years of service worked before the employer entered the system).

Ms. Allen conveyed three aspects of the draft and ETF's comments that various public members of the committee would like changed. She told the committee that the tribes:

1. Would like the ability to opt out of WRS participation;
2. Would like the requirement relating to waiving of sovereign immunity removed; and
3. Do not want the legislation to require tribes to maintain a performance bond.

The committee discussed alternatives to a performance bond as a mechanism to ensure payment of a tribe's required contribution to the system. In particular, the committee discussed funds that tribes

receive from the state that could be garnished to cover unpaid contributions. Chair Mursau asked the public members to assist staff to identify specific revenue streams that could serve this purpose.

Chair Mursau asked the public members to solicit feedback with respect to whether any tribes remain interested in advancing legislation, in light of both the costs a tribe would incur if it were to participate in the program and the requirements participation would entail.

Retroceding Jurisdiction Acquired Under Public Law 83-280

Tom Maulson, Chairman, Lac du Flambeau Band of Lake Superior Chippewa Indians

Chairman Maulson asked the committee to develop legislation that would enable tribes to request the state retrocede jurisdiction it acquired under Public Law 83-280 (P.L. 280). Chairman Maulson emphasized that P.L. 280 was imposed without the tribes' consent and that tribes should be given the authority to make their own decisions with respect to affairs within their own jurisdictions.

Memo No. 6, Retroceding Jurisdiction Acquired Under Public Law 83-280

David Moore, Legislative Council Staff Attorney, reviewed Memo No. 6. Mr. Moore briefly described the origin of P.L. 280 and the mechanism available under federal law for states to retrocede the jurisdiction that law conferred. Mr. Moore also referred the committee to the Memo's discussion of the State of Washington's recent development of legislation establishing a process for tribes to request the state retrocede P.L. 280 jurisdiction.

Kris Goodwill, Attorney for the Lac Courte Oreilles Tribal Government, told the committee that P.L. 280 substantially interferes with the ability of tribes to control their own affairs. She said that one problem with the federal legislation that created the provision authorizing states to retrocede P.L. 280 jurisdiction is that it left the decision to do this with states. She said that tribes should be involved in this decision and that it therefore makes sense for this committee to investigate how Wisconsin might develop a process for retrocession that best meets the needs of the tribes.

Tribal Representation on Regional Planning Commissions

Gordon Thayer, Chairman, Lac Courte Oreilles Band of Lake Superior Chippewa Indian

Chairman Thayer told the committee he has questioned the Northwest Regional Planning Commission's policy of having one representative to represent all the tribes in the Commission's region, while each of the counties in that region have a representative. Chairman Thayer also told the committee that LCO objects to the planning commission including the tribe's name on its letterhead, because the tribe feels the planning commission does not adequately represent its interests. Chairman Thayer and planning staff from the tribe and from a collaborating agency described certain problems they had had in working with the Commission.

Myron Schuster, Director, Northwest Regional Planning Commission

Mr. Schuster provided the committee with a brief background on the Northwest Regional Planning Commission. He told the committee that certain tribes' names appear on the Planning Commission's letterhead because they fall within the geographic area the Planning Commission represents, not because the Planning Commission is purporting to speak for those tribes. Mr. Schuster

also described the Planning Commission's membership, which includes the chief elected official of each tribe within the Planning Commission's territory or the official's designee. The Planning Commission also has an executive committee; one of the seats on the executive committee is reserved for a representative of the five tribes within the Planning Commission's area. He explained that the reason the Planning Commission does not provide a seat for each of the tribes on the executive committee is that, unlike the counties, the tribes do not pay annual assessments to the Planning Commission. However, Mr. Schuster said that the Planning Commission has told these tribes that it would be open to discussing creating a seat on the executive committee for each tribe.

Funding of Tribal Colleges

Dr. Ray Burns, President, Lac Courte Oreilles Ojibwa Community College

Dr. Burns provided background on how tribal colleges are funded. He explained that the college's primary source of funding is the federal government, which pays the college a certain amount for each "beneficiary student." Beneficiary students are tribal members or descendants of tribal members. The other primary revenue streams are tuition and grants. Mr. Burns explained that the college intentionally keeps tuition low enough that a student can cover his or her tuition and expenses with a federal Pell grant because the college serves an economically disadvantaged population.

Dr. Burns told the committee that approximately 25% of the college's students are non-native students, who do not generate federal funding for the college. However, the college uses the federal funds it receives for the benefit of all the college's students, not just the students who generated the beneficiary subsidy. He also said that although the state subsidizes students at other two-year institutions and technical colleges, the tribal colleges do not receive this funding. He therefore asked that the state provide some funding to subsidize the non-native students the college serves.

Dr. Verna Fowler, President, College of Menominee Nation

Dr. Fowler told the committee about her background and the history of the College of the Menominee Nation. She also reiterated the funding concerns Dr. Burns raised and provided some information on the population the College of Menominee Nation serves and the college's funding sources. Dr. Fowler explained that 40% of the College of Menominee Nation's student body is non-native and therefore do not generate federal subsidies. She requested that the Legislature appropriate, from revenues paid to the state by the tribes under gaming compacts, \$1.4 million in annual operational support for the College of Menominee Nation and \$1 million in annual operational support for Lac Courte Oreilles Ojibwa Community College.

The committee discussed this proposal. There was general agreement to explore legislative options to enable the tribal colleges to receive state subsidies for non-native students.

Other Business

There was no other business before the committee.

Plans for Future Meetings

The next meeting will be held at the call of the chair.

Adjournment

The meeting was adjourned at 4:20 p.m.

DM:jal