



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Room 411 South, State Capitol
Madison, WI

September 26, 2013
9:00 a.m. – 3:45 p.m.

[The following is a summary of the September 26, 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; Sen. Kathleen Vinehout, Vice-Chair; Reps. Janet Bewley, Nick Milroy, and Jim Steineke; Sen. Dale Schultz; and Public Members Dee Ann Allen, Gary Besaw, Melinda Danforth, Gus Frank, Jon Greendeer, and Chris McGeshick.

COMMITTEE MEMBER EXCUSED: Rep. Duey Stroebel; and Public Members Marvin Defoe, Jordan Martinson, and William Morrow.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Tom Bellavia, Department of Justice (DOJ); Thomas Ourada, Department of Revenue (DOR); and Gail Nahwahquaw, Department of Health Services (DHS); and Loa Porter, Department of Children and Families (DCF).

TECHNICAL ADVISORY COMMITTEE MEMBER EXCUSED: David O'Connor, Department of Public Instruction (DPI); Tristan Cook, Department of Workforce Development (DWD); Kelly Jackson, Department of Transportation (DOT); and Quinn Williams, Department of Natural Resources (DNR).

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

APPEARANCES: Representative Joan Ballweg, Co-Chair, Joint Legislative Council; Carole Goldberg, Jonathan D. Varat Distinguished Professor of Law, UCLA School of Law; Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice; Darren Cruzan, Director, Office of Justice Services, Bureau of Indian Affairs, U.S. Department of the Interior; James Botsford, Director, Indian Law Office, Wisconsin Judicare (retired) and Associate Justice, Winnebago Supreme

APPEARANCES (cont.):

Court; Sam Thompson, Staff Counsel, Government Operations Committee, Washington State Senate; John Wilhelmi, Tribal Attorney, and Betty Jo Wozniak, Tribal Administrator, Menominee Indian Tribe of Wisconsin; and James B. Mohr, Vilas County Circuit Court Judge (retired), Wisconsin Reserve Judge, and Lac Courte Oreilles Tribal Court Judge.

OTHERS PRESENT:

Rusty Barber, Vice-Chair, Lac Courte Oreilles Band of Lake Superior Chippewas; Craig Corn, Chair, Menominee Indian Tribe of Wisconsin; Edward Delgado, Chair, Oneida Tribe of Indians of Wisconsin; Tom Maulson, Chair, Lac du Flambeau Band of Lake Superior Chippewas; and Joe Miller, Council Member, Stockbridge-Munsee Community.

Approval of the Minutes of the March 1, and May 20, 2013 Meetings of the Special Committee

Mr. McGeshick moved, seconded by Senator Vinehout, that the minutes of the March 1 and May 20, 2013, meetings be approved. The motion passed on a voice vote.

Opening Remarks

Representative Joan Ballweg, Co-Chair, Joint Legislative Council

Representative Ballweg welcomed the committee and guests to this meeting. She explained the purpose and function of study committees appointed by the Legislative Council and the history and role of this committee in particular. She thanked the public members for their service on this committee. She also thanked the speakers who would address this meeting.

Representative Jeff Mursau, Chair, Special Committee on State-Tribal Relations

Chair Mursau explained that the purpose of this meeting was to inform the members of the Special Committee and tribal leaders regarding Public Law 280 (P.L. 280), to aid in making informed decisions regarding retrocession of P.L. 280 jurisdiction. He noted that he had invited the chairs of all 11 tribes in Wisconsin to attend the meeting as guests of the Special Committee, and welcomed those tribal leaders seated at the table.

Introduction of Committee Members and Guests

The members of the Special Committee and the guests seated at the table introduced themselves.

Introduction to Public Law 280, its Origins, and Impacts

Carole Goldberg, Jonathan D. Varat Distinguished Professor of Law, UCLA School of Law

Professor Goldberg explained P.L. 280, describing the history of the law, what it does, what it does not do, and the concept of retrocession of P.L. 280 jurisdiction. She also described legal gaps and uncertainties that resulted from the law and discussed the exercise of concurrent jurisdiction under the law and “ways to cope with Public Law 280.” Professor Goldberg described her research regarding perceptions in Indian country of the adequacy of law enforcement and of whether retrocession of P.L.

280 jurisdiction is a good idea, contrasting P.L. 280 and non-P.L. 280 reservations. She also presented information illustrating the gap between the cost of law enforcement in Indian country and available federal funds for this purpose.

Wisconsin Statutes and Programs and Tribal Institutions Relating to Law Enforcement in Indian Country

David L. Lovell, Senior Analyst, Wisconsin Legislative Council

IM 2013-09, *Law Enforcement in Indian Country: Sovereignty and Jurisdiction* (September 23, 2013).

IM 2013-10, *Law Enforcement in Indian Country: State Laws and Programs* (September 23, 2013).

IM 2013-11, *Law Enforcement in Indian Country: Tribal Institutions* (September 23, 2013).

Mr. Lovell summarized information presented to the Special Committee in written form regarding state laws and programs to facilitate law enforcement in Indian country enacted by the Wisconsin Legislature since enactment of P.L. 280, and law enforcement institutions, primarily police departments and courts, developed by the tribes in Wisconsin in that period.

Retrocession and Resumption of Federal Jurisdiction Under Public Law 280

Tracy Toulou, Director, Office of Tribal Justice, U.S. Department of Justice

Mr. Toulou described the functions of the Office of Tribal Justice in the U.S. Department of Justice. He described federal jurisdiction in the non-P.L. 280 context, as affected by the Federal Tribal Law and Order Act of 2010. Finally, Mr. Toulou described the process by which a state may retrocede P.L. 280 jurisdiction to the federal government.

Darren Cruzan, Director, Office of Justice Services, Bureau of Indian Affairs (BIA), U.S. Department of the Interior

Mr. Cruzan discussed law enforcement in Indian country, including tribal law enforcement agencies operating under self-determination grants from the BIA. He indicated that current funding for such grants is estimated to meet approximately 40% of the need.

State and Tribal Perspectives

Retrocession of Federal Jurisdiction on the Winnebago Reservation in Nebraska: James Botsford, Director, Indian Law Office, Wisconsin Judicare (retired) and Associate Justice, Winnebago Supreme Court

Mr. Botsford described the experience of the Winnebago Tribe of Nebraska. He said that, under state jurisdiction, the tribe and tribal members suffered grievously at the hands of an abusive county sheriff and that retrocession of jurisdiction to the federal government was the only way the tribe escaped

those abuses. He characterized P.L. 280 as an anachronism and a product of the failed federal policy of the termination era.

Retrocession in Washington State: Sam Thompson, Staff Counsel, Government Operations Committee, Washington State Senate

Mr. Thompson described the process by which the Washington State Legislature moved away from the enactment of legislation for the retrocession of P.L. 280 jurisdiction on a tribe-by-tribe basis to the development of a process by which a tribe may petition the Governor for retrocession. He also discussed the first petition brought under that process, which was still pending at that time.

Observations From a Non-PL 280 Tribe: John Wilhelmi, Tribal Attorney, and Betty Jo Wozniak, Tribal Administrator, Menominee Indian Tribe of Wisconsin

Mr. Wilhelmi described some of the practical aspects of law enforcement on an American Indian reservation that is *not* subject to P.L. 280. He emphasized that there are not jurisdictional gaps, as is sometimes suggested, but rather gaps in enforcement resources. He noted, in particular, that federal marshals and federal prosecutors may not take action in certain cases, based on available resources and their priorities, resulting in some crimes not being investigated and some perpetrators not being prosecuted. He noted also that the Menominee Tribe is somewhat constrained in addressing juvenile offenders because its jail facility does not meet federal standards for holding juveniles.

Ms. Wozniak said that, contrary to what was said earlier, federal funding covers closer to 30% of the cost of law enforcement. She described the budgets of the Menominee Tribe for law enforcement, courts, conservation, legal services, and prosecution and probation services, in all cases indicating that federal funding covered substantially less than half of the budget. She said that tribal leaders considering if their tribes should pursue retrocession of P.L. 280 jurisdiction must ask themselves what price they are willing to pay for the self-determination that it might bring. She said also that tribal leaders should be prepared for ongoing jurisdictional issues, which will arise from time to time.

Reflection and Discussion

James B. Mohr, Vilas County Circuit Court Judge (retired), Wisconsin Reserve Judge, and Lac Courte Oreilles Tribal Court Judge

Judge Mohr stated the opinion that P.L. 280 works well in Wisconsin and that law enforcement on P.L. 280 reservations in Wisconsin is the best now that it ever has been. He gave credit for this to the development of professional tribal law enforcement agencies and a long series of enactments by the State Legislature to facilitate the work of those agencies. He predicted that these factors will lead to “*de facto* P.L. 280 retrocession,” meaning that tribes will take over enforcement of criminal law through the exercise of concurrent jurisdiction with the state.

James Botsford, Director, Indian Law Office, Wisconsin Judicare (retired) and Associate Justice, Winnebago Supreme Court

Mr. Botsford acknowledged the positive developments in Wisconsin identified by Judge Mohr, but stated that these developments are vulnerable to changing political winds in the State Legislature or the courts. He asserted that the control of conditions that comes with self-determination is invaluable,

and that such self-determination in relation to law enforcement can only be ensured through retrocession of P.L. 280 jurisdiction.

Plans for Future Meetings

Representative Mursau stated that the Special Committee will meet at the call of the chair.

Adjournment

The Special Committee adjourned at 3:45 p.m.

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