



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

Room 411 South
State Capitol
Madison, WI

September 12, 2018
10:00 a.m. – 1:07 p.m.

Call to Order and Roll Call

Chair Mursau called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Jeffrey Mursau, Chair; Sen. Kathleen Vinehout, Vice Chair (via phone); Reps. Dave Considine and James Edming; Sens. Janet Bewley, Tim Carpenter, Jerry Petrowski, and Lena Taylor; and Public Members Dee Ann Allen, Gary Besaw, Wilfrid Cleveland, Michael Decorah, Shannon Holsey, Richard Peterson, Lisa Summers, and Jason Weaver.

COMMITTEE MEMBERS EXCUSED: Public Members Ned Daniels, Jr. and Chris McGeshick.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Michele Allness, Department of Natural Resources; Stephanie Lozano, Department of Children and Families; Gail Nahwahquaw, Department of Health Services; and David O'Connor, Department of Public Instruction.

TECHNICAL ADVISORY COMMITTEE MEMBERS EXCUSED: Tom Bellavia, Department of Justice; Andrew Evenson, Department of Workforce Development; Kelly Jackson, Department of Transportation; and Thomas Ourada, Department of Revenue.

COUNCIL STAFF PRESENT: Jessica Karls-Ruplinger, Deputy Director; David Moore, Senior Staff Attorney, Rachel Snyder, Staff Attorney; and Julie Learned, Support Staff.

APPEARANCES:

Jessica Karls-Ruplinger, Deputy Director, Legislative Council Staff; David O'Connor, American Indian Studies Consultant, and Dee Pettack, Legislative Liaison, Department of Public Instruction (DPI); Judge Robert Collins, Oneida Judiciary; Judge James Schlender, Lac Courte Oreilles Tribal Court; John Wilhelmi, Attorney, Menominee Indian Tribe of Wisconsin; and Gary Besaw, Tribal Legislator, Menominee Indian Tribe of Wisconsin.

Opening Remarks

Jessica Karls-Ruplinger, Deputy Director, Legislative Council Staff, welcomed members and conveyed welcoming remarks from Representative Robert Brooks, Co-Chair, Joint Legislative Council, to the committee. Ms. Karls-Ruplinger provided additional information regarding the resources available to assist members in their work.

Introduction of Committee Members

Chair Mursau welcomed and thanked members, noting that he is looking forward to the work of the committee. Committee members introduced themselves.

Review of Committee Work From 2016 Interim

David Moore, Senior Staff Attorney, Legislative Council Staff, summarized the material in LC Study Committee Memorandum, "Recommendations of the Special Committee on State-Tribal Relations Enacted During the 2017-18 Session" (September 5, 2018). The memorandum generally describes the legislative enactments that resulted from the committee's work during the 2016 interim, comprised of 2017 Wisconsin Acts 226, 351, and 352.

Presentation on American Indian Studies Curriculum, Including Requirements Related to 1989 Wisconsin Act 31

Dee Pettack, Legislative Liaison, and David O'Connor, American Indian Studies Consultant, Department of Public Instruction

Ms. Pettack provided the committee with an overview of the Wisconsin public school system, including demographic information which reflects growing poverty and declining pupil enrollment in many school districts, especially rural school districts. Ms. Pettack also provided a brief, simplified explanation of school funding, noting that the contextual information is important as the committee considers making education-related changes.

Ms. Pettack then described DPI's recent efforts with respect to various requirements related to American Indian Studies instruction (often referred to as Act 31). Specifically, Ms. Pettack highlighted DPI's partnership with the state's 12 cooperative educational service agencies (CESAs) to provide annual educator professional development opportunities. The annual trainings are designed to provide educators with resources for integrating American Indian studies into the classroom. Ms. Pettack also discussed educational resources available on the website, www.wisconsinfirstnations.org, which is maintained by a partnership of organizations, including DPI, Wisconsin Public Television Education, and the University of Wisconsin-Madison School of Education.

DPI is also in the process of establishing a memorandum of understanding (MOU) with each of the 11 federally recognized tribes. According to Ms. Pettack, each MOU is designed to improve collaboration and cooperation between the state and the tribes in order to ensure that American Indian students are given what they need to become college and career ready.

Ms. Pettack also noted that DPI sees an opportunity for working with the tribes to improve school performance and equity under the Every Student Succeeds Act (ESSA). The state superintendent convened an Equity Council, which meets regularly across the state to assist with implementation of ESSA. Membership of the Equity Council includes the president of the Wisconsin Indian Education Association Board. Further, the statewide ESSA plan encourages local school districts to collaborate and consult with the tribes as they develop their own ESSA implementation plans.

Finally, Ms. Pettack explained that DPI has established a process for the regular, ongoing review and revision of the state model academic standards. There is a Standards Review Council comprised of legislators, educators, a member of the business community, and a member of the Wisconsin Indian Education Association. Ms. Pettack generally explained the review and revision process and noted that the social studies and environmental literacy and sustainability standards were recently revised with tribal member input to include issues of importance to the tribes and to strengthen the implementation of Act 31 requirements.

Ms. Pettack and Mr. O'Connor responded to a variety of questions from committee members. In response to committee questions about whether implementation of Act 31 is occurring as expected, Mr. O'Connor explained that he encourages school districts to teach about local history, which includes tribal history. Based on his experience, he believes that teachers generally want to teach about tribal history, but often feel that they lack the resources to do so, which is why DPI is working to raise awareness about the available resources. Ms. Pettack agreed with committee members that there is no specific mechanism under current law to measure and track progress towards implementing Act 31 and noted that creating a defined goal and measurement mechanism will take careful thought to establish a meaningful method of data collection.

Committee members expressed a desire to amend Act 31 to broaden the scope of tribal education that is required in public schools and expressed concern that educator preparation programs and public schools that follow the letter of the law do not provide enough education about the tribes. Committee members also expressed concern about the cultural competency of teachers in the classroom, the accuracy of educational resources that are made available to educators, and the fact that private schools that participate in the private school choice programs are not generally subject to the requirements of Act 31.

In response, Ms. Pettack and Mr. O'Connor provided a more in depth review of the online resources and agreed that DPI could work with partners to provide evidence of the material vetting process, but would need legislation to require that teachers use a particular curriculum. Ms. Pettack also noted that providing tribal education resources for pre-kindergarten through grade 12 and working with the tribes to improve educator preparation, including for teachers who become licensed via an alternative route, are good places to start in improving civility in a diverse world.

Presentation on Battery to an Officer of a Tribal Court

Judge Robert Collins, Oneida Judiciary, Judge James Schlender, Lac Courte Oreilles Tribal Court, and John Wilhelmi, Attorney, and Gary Besaw, Tribal Legislator, Menominee Indian Tribe of Wisconsin

2017 Wisconsin Act 272 provided that it is a Class H felony to intentionally cause or threaten to cause bodily harm to certain legal professionals if the act or threat is in response to an action taken by one of these specified types of legal professionals in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938, Stats. The professionals covered by this act are: a guardian ad litem (GAL); corporation counsel; or attorney.

Prior to the committee's first meeting, a suggestion was submitted to Chair Mursau that the committee explore expanding the scope of 2017 Wisconsin Act 272 to include threats or acts that may occur within the context of tribal court proceedings that are analogous to the types of proceedings listed in Act 272. Judge Collins, Judge Schlender, and Mr. Wilhelmi were invited to assist the committee in developing legislation to apply the substance of Act 272 to acts or threats that are in response to proceedings in tribal courts.

Judge Collins provided an overview of the court officers and others who are generally involved in the Oneida Judiciary's proceedings.

Judge Schlender thanked the committee for the changes made under 2017 Wisconsin Act 352 which expanded state law to make it a Class H felony to threaten or batter a tribal judge, tribal prosecutor, or tribal law enforcement officer, but said that he believes that the expansion is not enough because there are a variety of people who interact with the court system who are subjected to violence because of their positions. Judge Schlender advocated for providing enhanced penalties for acts or threats of battery that occur in connection with any tribal court proceeding against any tribal court officer or staff.

Mr. Wilhelmi explained that under 2017 Act 272, the protection for attorneys, GALs, and corporation counsel extends to those who participate in proceedings under specific state statutory chapters. A proceeding in the Menominee tribal court, however, is not a proceeding under one of those chapters, even though it is similar, and an attorney engaged in such a proceeding would not be covered under the law. Mr. Besaw requested the committee develop legislation, analogous to Act 272, but that includes acts of threats that occur within the context of tribal court proceedings.

Committee members expressed concern with suggestions that legislation be developed that would extend beyond proceedings and professionals analogous to those described in 2017 Wisconsin Act 272. Mr. Besaw emphasized that his suggestion is for equitable protection in tribal and state courts.

Mr. Moore engaged in a brief discussion with panel members to clarify whether there are any legal professionals operating in a tribal court who, although analogous in function to the professionals protected under current state law in state court, would not be adequately described by the terms used in the current statute. Mr. Moore also asked for clarification regarding the types of tribal court proceedings to which members would like the legislation to apply.

Committee Discussion

Chair Mursau invited committee members to discuss the information received and to make suggestions for future agenda topics. Senator Taylor would like the committee to consider Indigenous Peoples' Day legislation. Senator Bewley inquired about the reconciliation of the Indian Child Welfare Act and the safe haven issue. Mr. Moore explained that the committee had recommended draft legislation during the prior interim, but that the bill was not acted upon.

Mr. Besaw mentioned that the Menominee Indian Tribe is concerned about accessing funding for services provided by the tribe under agreements with the county. Mr. Weaver explained that Lac Courte Oreilles has had an issue with a county not pursuing a ch. 51 commitment when there was a need. He would like to discuss options for addressing this issue.

Plans for Future Meetings

Chair Mursau noted the committee's future meeting dates:

- October 10, 2018.
- November 15, 2018.
- December 13, 2018.

Adjournment

The meeting adjourned at 1:07 p.m.

DM:RES:jal

[The preceding is a summary of the September 12, 2018 meeting of the Special Committee on State-Tribal Relations, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]