



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

[2009 SENATE BILL 146 AND 2009 ASSEMBLY BILL 210;
2009 SENATE BILL 147 AND 2009 ASSEMBLY BILL 211; AND
2009 SENATE BILL 148 AND 2009 ASSEMBLY BILL 212]

April 16, 2009

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Special Committee on State-Tribal Relations

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Joint Legislative Council (JLC) has introduced the following legislation in the 2009-10 Session of the Legislature based on the recommendations of the 2008-10 Special Committee on State-Tribal Relations.

[Note: Each of the bills has been introduced in both houses as companion legislation. For clarity, this report refers to them in singular form as "the bill."]

2009 Senate Bill 146 and 2009 Assembly Bill 210, 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

For the most part, current statutes make no mention of tribal schools, although three operate in Wisconsin. The bill defines a "tribal school" and amends a wide range of statutes to extend to tribal schools and tribal school pupils and staff many benefits and protections provided to private schools and private school pupils and staff. The bill does not impose on tribal schools the requirements that apply to private schools but does provide certain benefits only if certain conditions are met.

2009 Senate Bill 147 and 2009 Assembly Bill 211, Relating to Administration of Grant Funds Under the County-Tribal Cooperative Law Enforcement Program

The bill makes explicit that a joint program plan under the County-Tribal Cooperative Law Enforcement Program must specify that either the county or the tribe is to receive and administer aid provided under the program, or that they are each to receive and administer a portion of the aid. It further clarifies that the Department of Justice (DOJ) must distribute the funds to the county, the tribe, or both, as specified in the plan.

2009 Senate Bill 148 and 2009 Assembly Bill 212, Relating to Liability for Actions of Tribal Law Enforcement Officers When Enforcing State Laws

Current law authorizes a tribal law enforcement officer to enforce the laws of this state with respect to any person within the boundaries of the tribe's reservation or off-reservation trust lands if, among other conditions, the tribal government adopts a resolution waiving the tribe's sovereign immunity to the extent necessary to allow the enforcement, in state courts, of liability for its officers' actions. The bill provides that, as an alternative to the waiver of sovereign immunity, the tribe may carry liability insurance that meets specified conditions.

PART II

COMMITTEE ACTIVITY

Assignment

The Special Committee on State-Tribal Relations is a permanent committee of the JLC established under s. 13.83 (3), Stats. The committee is directed by statute to:

...study issues related to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues.

The membership of the committee, appointed by the JLC, consists of not fewer than six nor more than 12 legislator members of the Senate and Assembly, including at least one member of the majority party and at least one member of the minority party from each house, and not fewer than six nor more than 11 members selected from names submitted by the federally recognized American Indian tribes and bands in this state (tribes) or the Great Lakes Inter-Tribal Council (GLITC), including not more than one member based on the recommendation of any tribe or GLITC. The committee is assisted by a Technical Advisory Committee (TAC) composed of a representative of each of the following state departments: Children and Families; Health Services; Justice; Natural Resources; Public Instruction; Revenue; Transportation; and Workforce Development. A list of the JLC membership, the committee membership, and the TAC membership are included as **Appendices 2, 3, and 4**, respectively.

Summary of Meetings

The 2008-10 Special Committee has held one meeting, on December 16, 2008, in the State Capitol.

At its December 16, 2008 meeting, the Special Committee reviewed and voted on two bill drafts that are very similar to bills that had been recommended by the 2004-06 and 2006-08 Special Committees on State-Tribal Relations and introduced by the JLC in the 2005-06 and 2007-08 Legislative Sessions, but not passed. The Special Committee also reviewed and voted on a bill draft that was based on one component of a bill that had been recommended by the 2004-06 Special Committee on State-Tribal Relations and introduced by the Joint Legislative Council in the 2005-06 Legislative Session, but not passed.

Also at this meeting, the Special Committee heard a number of briefings:

- **Tom Bellavia**, DOJ, briefed the Special Committee on an opinion of the Attorney General regarding mutual assistance between tribal and county or municipal law enforcement agencies; and **Dean Roland**, Sheriff, Burnett County, and **Frank Taylor**, Chief, St. Croix Tribal Police Department, described the impact of that opinion on cooperation between their agencies. The Special Committee discussed the topic and directed staff to convene a work group to explore possible legislative responses to the opinion.
- **Cyrus Behroozi** and **Mark Mitchell**, Department of Children and Families, briefed the Special Committee on work groups addressing the following topics: codification of the Federal Indian Child Welfare Act in the Wisconsin statutes; alternative funding for tribal child welfare programs; and state funding for high-cost out-of-home placements of American Indian children by a tribal court.

- **Wendy White Eagle** and **Artley Skenandore**, appeared with other members of the Wisconsin Indian Business Alliance (WIBA) Executive Committee and briefed the Special Committee on the purpose and activities of the WIBA.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the proposals recommended by the 2008-10 Special Committee on State-Tribal Relations for introduction in the 2009-10 Session of the Legislature and subsequently introduced by the JLC.

[Note: Each of the bills has been introduced in both houses as companion legislation. For clarity, this report refers to them in singular form as "the bill."]

2009 Senate Bill 146 and 2009 Assembly Bill 210, 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

Background

Current law defines private school, imposes various requirements on private schools, and provides certain benefits and protections to private schools and their pupils and staff. Tribal schools are neither private schools nor public schools, and statutes referring only to private schools and public schools do not apply to tribal schools.

Under current Wisconsin statutes, tribally-operated schools are dealt with only in subch. IV, ch. 115, Stats., relating to the American Indian language and culture education program, which previously provided state aid for such programs. However, aid for that program was eliminated by 2003 Wisconsin Act 33. Currently, three schools in Wisconsin come under the tribally-operated schools component of that program. They are the: Menominee Tribal School; Oneida Nation of Wisconsin Schools; and Lac Courte Oreilles Ojibwe School.

The Menominee Indian Tribe of Wisconsin recommended developing legislation to provide the same benefits to tribal schools and tribal school pupils that are provided to private schools and private school pupils. An ad hoc Working Group on Tribal Schools consisting of representatives of the Menominee Tribe, tribal schools, the Department of Public Instruction (DPI), and the 2004-06 Special Committee met on March 18, 2005 to review preliminary drafts. The 2004-06 Special Committee recommended a bill draft based on discussions at that meeting and on additional information provided following the meeting. The JLC introduced the recommendation as companion bills 2005 Assembly Bill 637 and 2005 Senate Bill 300. Neither the standing committees to which the bills were referred nor either house held a vote on either bill.

The 2006-08 Special Committee recommended that the JLC reintroduce the same proposal, updated to account for the fact that several of the affected statutes were amended by 2005 Acts and the fact that provisions were created by 2005 Acts to refer to private schools. The JLC introduced this updated draft as 2007 Assembly Bill 199 and 2007 Senate Bill 98. The Senate passed Senate Bill 98, but the Assembly did not consider either bill.

The Bill

The bill is very similar to 2007 Assembly Bill 199 and 2007 Senate Bill 98. The changes primarily relate to again accounting for the fact that several of the affected statutes were amended by 2007 Acts and the fact that provisions were created by 2007 Acts to refer to private schools.

The bill defines a “tribal school” as an institution with an educational program that has as its primary purpose providing education in any grade or grades from K-12 and that is: (a) controlled by the elected governing body of a tribe in Wisconsin; (b) jointly controlled by the elected governing bodies of two or more tribes in Wisconsin; (c) controlled by a tribal educational authority established under the laws of a tribe in Wisconsin; or (d) controlled by a tribal educational authority established jointly by two or more tribes in Wisconsin. That definition then applies in chs. 115 to 121 (statutes relating to K-12 education) and, by cross-reference, to certain statutes outside chs. 115 to 121, Stats.

Structure of Bill

Private School References—Benefits and Exceptions

The bill amends statutes that refer specifically to private schools, private school pupils, or private school staff and provides a benefit or protection to them, with the **exception** of statutes relating to: transportation; special education; eligibility for bonding for certain building projects through the Wisconsin Health and Educational Facilities Authority; and private schools in the Milwaukee School District. In general, for such statutes, the bill adds references to tribal schools, tribal school pupils, or tribal school staff.

Private School References—Benefit Linked to Requirement

In some cases, the bill includes language relating to tribal schools that is not identical to current statutes relating to private schools. These relate to statutes in which a requirement is integrally linked to a benefit provided—for example, statutes allowing a private school to receive certain confidential records relating to child in need of protection or services (CHIPS), juvenile in need of protection or services (JIPS), or delinquency proceedings, but limiting redisclosure of the record. For such statutes, the bill generally extends the same benefit to a tribal school only if the tribe chooses to comply with conditions similar to those imposed on a private school.

Private School References—Requirements

With respect to statutes that explicitly impose requirements on private schools unrelated to a benefit, the bill does not add a reference to tribal schools. (As discussed in the prefatory note in the bill, it is unlikely that the state has authority to impose such civil regulatory laws on tribal schools.) Thus, even though private schools must comply with the following requirements, tribal schools are not required to do any of the following: make a report to DPI about enrollment; report to DPI charges and convictions of certain crimes and dismissals and resignations related to immoral conduct of a person licensed by DPI and employed by the school; display the flag and offer the pledge of allegiance or national anthem; have a first aid kit; conduct fire, tornado, or other hazard drills and file reports on those drills with the Department of Commerce and chief of the local fire department; distribute information about meningococcal disease; annually inform professional staff about resources available regarding suicide prevention; establish school safety zones; prohibit the use of a pupil's social security number as a pupil identification number; have periodic lead inspections in kindergarten; or abide by restaurant regulations if food is brought in under contract.

Generic School References

The bill amends several statutes that refer generically to schools without explicitly referring to public schools, private schools, or tribal schools to make clear that if a benefit applies to a school, the benefit also applies to tribal schools. The bill does not amend statutes that impose a requirement

generically on schools, including private schools, to impose the requirement on tribal schools, for example, statutes relating to excluding children who have not met the immunization or waiver of immunization requirements. Whether such a statute applies to tribal schools is an issue to be resolved by the courts on a case-by-case basis.

Content of Bill

The benefits and protections provided in the bill to tribal schools, tribal school pupils, and tribal school staff are briefly listed below in each of these categories. (In some cases, a benefit or protection could have been included in more than one category because of overlapping considerations (for example, permitting disclosure to tribal schools of certain confidential police records could ultimately benefit the tribal school, tribal school pupils, and tribal school staff). However, each provision in the bill is listed in only one category below, namely, what appeared to be the most pertinent category.)

Benefits or Protections Provided to Tribal Schools

The bill provides the following benefits or protections to tribal schools:

1. Permits a tribal school to ask the municipal clerk to conduct voter registration at the high school.
2. Permits representatives of tribal schools to serve on the DPI Council on Special Education.
3. Permits the Governor to nominate a representative to the Educational Communications Board who may represent either a tribal school or private school.
4. Requires the Department of Administration (DOA) to include tribal schools in the educational telecommunication access program under s. 16.997, Stats., which provides access to data lines and video links under certain conditions to certain educational agencies (including private schools) at certain costs. This program is the part of the Technology for Educational Achievement (TEACH) program that applies to private schools. The bill permits DOA to provide telecommunications services to tribal schools that DOA considers appropriate and permits DOA to charge for such services.
5. Exempts a motor vehicle transporting tribal school pupils to a state park or recreational area from the requirement to display a state park admission receipt.
6. Extends to tribal schools the requirement that the Department of Natural Resources (DNR) create boating safety courses and offer them in cooperation with, among others, schools.
7. Requires the Board of Regents of the University of Wisconsin (UW) System to direct the UW schools of education to work with tribal schools, among others, on researching improving school safety and reducing school discipline problems and to share with tribal schools the results of such research.
8. Provides that the purposes of the Technical College System (TCS) include contracting, coordinating, and cooperating with tribal schools; requires the TCS Board to work with tribal schools on researching improving school safety and reducing school discipline problems and to share with tribal schools the results of such research; and authorizes a technical college district board to contract with tribal schools, among others, to provide educational services or fiscal and management services.
9. Requires the Department of Veterans Affairs to award a certificate of achievement and appreciation to a veteran who completes 20 hours of volunteer service in a tribal school in a school term if certain conditions are met.
10. Clarifies that a tribal school is not required to obtain a day care license.

11. Requires the Department of Health Services (DHS) to cooperate with various entities, including tribal schools, to establish alcoholism prevention and treatment programs and to prepare curriculum materials on this subject.

12. Establishes a process by which driver education courses offered in a tribal school can be accepted by the Department of Transportation (DOT) for purposes of obtaining a driver's license under certain circumstances.

13. Requires the State Superintendent to make online courses available for a reasonable fee, through a statewide web academy, to tribal schools located in Wisconsin.

14. Provides that tribal schools are eligible for the school lunch program, school breakfast program, school day milk program, and food services plan for the elderly. (According to DPI staff, tribal schools currently receive funds for the school lunch program and school breakfast program, and no tribal schools currently offer the school day milk program or food services plan for the elderly.)

15. Includes tribal schools in DPI's programs to assist schools in developing: alcohol and other drug abuse programs; suicide prevention programs; and protective behavior programs. The bill also requires DPI to provide a model notice to the governing body of a tribal school, which can be used to inform professional staff of the tribal school about suicide prevention services that DPI has developed and how to access those services.

16. Includes tribal schools with those groups to which the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Services Program for the Deaf and Hard of Hearing may provide technical assistance and consultation services and other specified services.

17. Authorizes cooperative educational service agencies (CESAs) to facilitate communication and cooperation among public, private, and tribal schools, agencies, and organizations that provide services to pupils; subject to certain conditions, authorizes a CESA to contract with a tribal school.

18. Specifies that tribal schools may request trees from the state forest nursery for Arbor Day observance. The bill also provides that tribal school pupils may be included in the distribution to school pupils by state forest nurseries of planting stock to celebrate Arbor Day.

19. Requires DPI to provide information to tribal schools about meningococcal disease.

20. Requires the authority in charge of a street or highway to erect school warning signs, including signs for tribal schools.

21. Provides for the disclosure of certain confidential records to tribal schools under certain circumstances if enforceable protections are in place to ensure that tribal school officials will not disclose the records except under the same situations that private schools may do so. This includes: police and law enforcement records in a ch. 48, Stats. (Children's Code), proceeding; public school records in certain circumstances; records of the Department of Children and Families (DCF), a county department of human services or county department of social services, a licensed child welfare agency, or a licensed day care center, or of the Department of Corrections in a ch. 938, Stats. (Juvenile Justice Code), proceeding; records of a juvenile court in a ch. 938 proceeding; and law enforcement records in a ch. 938 proceeding.

22. Adds to the county committee that advises on school districts' truancy plans: (a) a representative of each tribal school in the county; and (b) a parent of a tribal school pupil.

23. Requires the annual school district report submitted by the school district clerk to DPI to include certain information about tribal schools and tribal school pupils, if the information is voluntarily provided to the school district by the tribal school.

24. Requires the State Superintendent to include tribal schools in the category of entities to which information about eye safety is provided.

25. Adds tribal schools to the list of entities that may request information about persons on the sex offender registry; also amends the definition of "student" for the purpose of the sex offender registration law to also include students at a tribal educational institution, which would include tribal colleges as well as tribal schools.

26. Permits a dental hygienist to be employed at or independently contract with a tribal school.

Benefits or Protections Provided to Tribal School Pupils

The bill provides the following benefits or protections to tribal school pupils:

1. Permits certain tribal school pupils to serve as inspectors at a polling place under certain conditions.

2. Includes seniors at a tribal high school in the Academic Excellence Higher Education Scholarship Program.

3. Provides that a veteran is eligible for reimbursement for a course taken at a tribal high school under certain circumstances.

4. Includes a tribal school in the list of schools that may serve a person relocated to the community by DHS from a state center for the developmentally disabled.

5. Provides that in entering a CHIPS, JIPS, or delinquency dispositional order, a court may order a child to attend a tribal school *if* the school district has a contract with the tribal school for such placements and also requires the court to order the supervising agency to disclose information to the tribal school necessary to assure appropriate educational services in such cases. The bill also provides that, in such cases, the educational placement at a tribal school must be paid for by the school district.

6. If a CHIPS, JIPS, delinquency, or truancy or habitual truancy municipal ordinance dispositional order includes attendance at a tribal school as a condition of the order, requires that the court order request that a tribal school notify the court within five days of a violation of the condition.

7. Counts attendance at a tribal school for purposes of the Learnfare Program.

8. Provides that minors doing fund raising by selling for a tribal school are exempt from the statutes relating to minors working in the street trades or fund raising on the same basis as minors doing fund raising for public or private schools.

9. Permits a child who has completed tribal high school to be employed during school hours.

10. Clarifies that when a pupil transfers from a public school to a tribal school, the school district is required to transfer records to the tribal school.

11. Permits a tribal school to file with DPI information about the elementary school course of study which entitles a pupil having completed that course of study to be admitted to a public high school.

12. Permits a tribal school pupil who has met the standards for admission to high school to take up to two courses each semester at a public high school in the school district in which the pupil resides if the school board determines that there is sufficient space in the classroom.

13. Explicitly provides that attendance at a tribal school satisfies the compulsory school attendance laws and provides that a child attending tribal school is not a "dropout." The bill also requires a school attendance officer to request information about the attendance of a child between the ages of 6 and 18 who is a resident of the school district and who claims or is claimed to be attending a tribal school.

14. Permits a child's parent or the child to request that a school board provide a program or curriculum modification to attend a tribal school. *If* the school board approves, the bill also provides that, in such cases, the educational placement at a tribal school must be paid for by the school district.

15. Permits school boards, CESAs, and county children with disabilities education boards to provide health treatment services to tribal school pupils at tribal schools under certain circumstances.

16. Adds tribal schools to the definition of "school" for purposes of the statute that provides that it is a Class H felony for school staff at a public or private school to have sexual contact or sexual intercourse with a child who is age 16 or 17.

17. Adds tribal schools to the definition of "school" for purposes of the statute that provides a criminal penalty for strip searches of pupils by school employees.

18. Adds tribal schools to the definition of "school" for purposes of the statutes that: restrict possession of alcohol beverages on school premises; generally restrict the location of premises that have a Class A or Class B liquor license from being within 300 feet from the main entrance of a school; prohibit hunting within 1,700 feet of certain facilities, including a school; prohibit a retailer from placing a vending machine that dispenses cigarettes within 500 feet of a school; provide a criminal penalty for possessing (subject to certain exceptions) certain dangerous weapons other than firearms on school premises; prohibit (subject to certain exceptions) possession of a firearm in or on the grounds of a school or within 1,000 feet of a school (school zone) and provide certain criminal penalties under certain circumstances for the discharge of a firearm in a school zone; and specify additional consequences for a delinquency disposition for firearms violation on school premises.

19. Provides that the criminal penalty for possession of certain controlled substances on or within 1,000 feet of the premises of a school also applies to tribal schools and also extends the penalty enhancement to such violations.

20. Applies penalty enhancement for violent crimes committed in a school zone to tribal schools.

Benefits or Protections Provided to Tribal School Staff

The bill provides the following benefits or protections to tribal school staff:

1. Permits a licensed teacher employed by a tribal school to serve on the DPI Professional Standards Council for Teachers.

2. Includes tribal school teachers in the DOA program to facilitate the purchase of computers by school teachers.

3. Provides that, although state law does not require that teachers in tribal schools have a state license, a state license may be issued if the applicant who teaches in a tribal school meets the state license criteria. Further provides that appropriate experience in a tribal school is counted in determining teaching experience under the state licensure law.

4. For the alternative education program license, specifies that, like a private school, an alternative educational program does not include a tribal school.

5. Makes teachers employed at a tribal school eligible for grants if they are certified by the National Board for Professional Teaching Standards or are licensed by DPI as a master educator and meet other criteria.

6. Extends immunity from liability under several state laws to certain tribal school officials and others, including: for removing a pupil from school premises or from school-sponsored activities for suspicion of certain activities relating to controlled substances; for administering certain drugs to pupils under certain circumstances; for rendering emergency care; for permitting or prohibiting the use of an asthma inhaler under certain circumstances; for a good faith attempt to prevent suicide; for rendering free health care by certain health care providers at an athletic event at a tribal school; and for death or injury caused by the donation by certain individuals of commercial equipment or technology to a tribal school.

Extending immunity under state law does not affect liability under tribal law or whatever right a person may have to raise a defense of tribal sovereign immunity if sued.

7. Includes tribal school employees and certain health care providers who provide free health care at a tribal school athletic event in the category of persons who, when significantly exposed to an individual (for example, by contact with the individual's blood) may require testing of that individual for human immunodeficiency virus (HIV) and receive the results of the test.

8. Provides that an employee, member of the board of directors, or trustee of a tribal school, while in his or her capacity as such, may not be prosecuted under s. 944.21 (crimes relating to obscene materials or performance) or 948.11, Stats. (crimes relating to exposing a child to harmful material or harmful descriptions or narrations).

2009 Senate Bill 147 and 2009 Assembly Bill 211, Relating to Administration of Grant Funds Under the County-Tribal Cooperative Law Enforcement Program

Background

The County-Tribal Cooperative Law Enforcement Program, administered by DOJ, provides grants to improve law enforcement on Indian reservations by improving cooperation between county and tribal governments, including their law enforcement agencies. To be eligible for a grant, a county and a tribe located within that county must prepare a joint program plan that describes the proposed cooperative law enforcement program. In determining whether to approve a joint program plan and the amount of funding to grant to a program, the DOJ is required to consider the following: (a) the population of the reservation area to be served by the program; (b) the complexity of the law enforcement problems that the program proposes to address; and (c) the range of services that the program proposes to provide. The county and tribe must report to the DOJ regarding the use of the grant at the end of the grant year.

The current program was established in the 1980s, although similar DOJ programs date as far back as 1955. In 2008, the DOJ provided funding for 19 cooperative law enforcement programs, averaging approximately \$37,000.

At the recommendation of the 2004-06 Special Committee on State-Tribal Relations, the JLC introduced 2005 Assembly Bill 629 and 2005 Senate Bill 298, which made a number of changes to the statute governing the County-Tribal Cooperative Law Enforcement Program. One provision specified that the DOJ must disburse aid under the program to the tribal, rather than county, government. Both bills received hearings in the first house but did not pass.

The Bill

Current law requires that a joint program plan specify, among other things, “[t]he governmental unit that shall administer aid received and the method by which aid shall be disbursed.” Current law also directs DOJ to “distribute … to each eligible program the amount necessary to implement the plan …”. The bill clarifies the quoted language to make explicit that the plan must specify that either the county or the tribe is to receive and administer the aid, or that they are each to receive and administer a portion of the aid. It further clarifies that the DOJ must distribute the funds to the county, the tribe, or both, as specified in the plan.

2009 Senate Bill 148 and 2009 Assembly Bill 212, Relating to Liability for Actions of Tribal Law Enforcement Officers When Enforcing State Laws

Background

Tribal law enforcement officers (tribal officers) do not have the inherent power to enforce state laws but, in Wisconsin, may acquire this power in either of two ways. First, the state or a subdivision of the state may grant this power on an individual basis. For example, a county sheriff may deputize qualified tribal officers.

Second, state statutes may grant this power. The most notable such statute is s. 165.92, Stats., which authorizes a tribal officer to enforce the laws of this state with respect to any person within the boundaries of the tribe’s reservation or off-reservation trust lands, if the officer and the tribe meet several conditions. One condition is that the tribe must either: adopt a resolution waiving the tribe’s sovereign immunity to the extent necessary to allow the enforcement of liability for its officers’ actions in the courts of this state; or adopt another resolution that the DOJ determines has substantially the same result.

In addition, s. 175.40 (6) and (6m), Stats., gives peace officers authority to aid and assist and enforce certain state criminal laws outside their territorial jurisdiction under certain circumstances—the first when on-duty and the second when off-duty. Both apply to tribal officers, but only if the tribal officer is empowered to act under s. 165.92, Stats., and certain other conditions are met.

At the recommendation of the 2004-06 Special Committee, the JLC introduced, as companion bills, 2005 Assembly Bill 628 and 2005 Senate Bill 297, which would have provided an alternative to the waiver of sovereign immunity by a tribe. The bills would have allowed a tribe to instead maintain liability insurance with a limit of at least \$1,000,000 for any claim. Those bills required that the insurance policy provide that the insurer may not raise the defense of tribal sovereign immunity in defending a claim against the policy, up to the limits of the policy. This alternative would have applied only if the tribe provided evidence of the required insurance to DOJ. Neither bill was enacted, although Senate Bill 297 was passed by the Senate on a voice vote and then referred to the Assembly Committee on State Affairs, which recommended concurrence on a vote of Ayes, 9; Noes, 0. However, it was not scheduled for a vote by the Assembly.

When the 2006-08 Special Committee reviewed this issue, it recommended that the JLC introduce a variation of the prior proposal. In addition to several minor changes clarifying liability, the committee recommended that the minimum amount of insurance be \$2,000,000 per occurrence, instead of \$1,000,000 per claim. The JLC introduced this proposal as 2007 Assembly Bill 197 and 2007 Senate Bill 96. The Senate passed Senate Bill 96, but the Assembly did not take up either bill.

The Bill

The bill is substantively identical to 2007 Assembly Bill 197 and 2007 Senate Bill 96. It provides an alternative to the waiver of sovereign immunity by a tribe that is currently required for a tribal officer to exercise the powers allowed by s. 165.92 (and, by extension, the powers under s. 175.40, Stats.). It allows a tribe to instead maintain liability insurance with a limit of at least \$2,000,000 for any occurrence. It requires that the insurance policy provide that the insurer may not raise the defense of tribal sovereign immunity in defending a claim against the policy, up to the limits of the policy. This alternative applies only if the tribe has provided evidence of the required insurance to DOJ. When this evidence is provided, the bill requires DOJ to notify the sheriff of each county and chief of police of each municipality in which the tribe has a reservation or trust land that the tribe has met this criterion for s. 165.92 to apply.

The bill also clarifies that a tribe's liability for actions under s. 165.92 includes liability for errors and omissions when transporting a person after arrest. In addition, the bill clarifies that the liability provisions of s. 175.40 (6m), Stats. (off-duty officer acting outside his or her territorial jurisdiction under this statute is acting as an officer, agent, or employee of the state), apply to a tribal officer acting under that authority, rather than the liability provisions of s. 165.92.

Appendix 1

Committee and Joint Legislative Council Votes

Special Committee Votes

The following drafts were recommended by the 2008-10 Special Committee on State-Tribal Relations to the JLC for introduction in the 2009-10 Session of the Legislature.

The votes on the drafts were as follows:

- LRB-1241/1, relating to providing benefits to tribal schools and tribal school pupils and staff similar to those provided to private schools and private school pupils and staff. The motion to recommend WLC: 0352/1, with amendments, passed on a vote of Ayes, 13 (Reps. Mursau, Sherman, and Soletski; Sens. Coggs, Hansen, and Jauch; and Public Members Adams, Fish, Fleming, Ninhom Hoeft, Mayo, Montano, and Shopodock); Noes, 0; and Absent, 1 (Sen. Fitzgerald). It was subsequently redrafted as WLC: 0352/2 and then redrafted as LRB-1241/1.
- LRB-1366/1, relating to administration of grant funds under the county-tribal cooperative law enforcement program. The motion to recommend WLC: 0355/1 passed on a vote of Ayes, 13 (Reps. Mursau, Sherman, and Soletski; Sens. Coggs, Hansen, and Jauch; and Public Members Adams, Fish, Fleming, Ninhom Hoeft, Mayo, Montano, and Shopodock); Noes, 0; and Absent, 1 (Sen. Fitzgerald). It was subsequently redrafted as LRB-1366/1.
- LRB-1367/1, relating to liability for the actions of tribal law enforcement officers when enforcing state law. The motion to recommend WLC: 0354/1, with amendments, passed on a vote of Ayes, 13 (Reps. Mursau, Sherman, and Soletski; Sens. Coggs, Hansen, and Jauch; and Public Members Adams, Fish, Fleming, Ninhom Hoeft, Mayo, Montano, and Shopodock); Noes, 0; and Absent, 1 (Sen. Fitzgerald). It was subsequently redrafted as WLC: 0354/2 and then redrafted as LRB-1367/1.

Joint Legislative Council Vote

At its March 26, 2009 meeting, the Joint Legislative Council voted as follows on the recommendations of the Special Committee:

Co-Chair Schneider moved, seconded by Sen. Miller, that the following three drafts recommended by the Special Committee on State-Tribal Relations, be introduced by the Joint Legislative Council as companion bills:

LRB-1241/1, 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.

LRB-1366/1, relating to administration of grant funds under the county-tribal cooperative law enforcement program.

LRB-1367/1, relating to liability for actions of tribal law enforcement officers when enforcing state laws.

The motion passed on a roll call vote as follows: Ayes, 22 (Sens. Risser, Coggs, Darling, Decker, Fitzgerald, Harsdorf, Kreitlow, Miller, Robson, Schultz, and Wirch; and Reps. Schneider, Ballweg, Black, Berceau, Fitzgerald, Kaufert, Nelson, Pocan, Sheridan, Staskunas, and Vos); Noes, 0; and Absent, 0.

The drafts were subsequently introduced as follows:

- LRB-1241/ was subsequently introduced as companion bills 2009 Senate Bill 146 and 2009 Assembly Bill 210.
- LRB-1366/1 was subsequently introduced as companion bills 2009 Senate Bill 147 and 2009 Assembly Bill 211.
- LRB-1367/1 was subsequently introduced as companion bills 2009 Senate Bill 148 and 2009 Assembly Bill 212.

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

FRED RISSE

Senate President

5008 Risser Road

Madison, WI 53705

Co-Chair

STEVE WIECKERT

Representative

1 Weatherstone Drive

Appleton, WI 54914

SENATORS

ROGER BRESKE

8800 Hwy. 29

Eland, WI 54427

RUSSELL DECKER

Majority Leader

6803 Lora Lee Lane

Weston, WI 54476

ALAN LASEE

2259 Lasee Road

De Pere, WI 54115

TIM CARPENTER

President Pro Tempore

2957 South 38th Street

Milwaukee, WI 53215

SCOTT FITZGERALD

Minority Leader

N4692 Maple Road

Juneau, WI 53039

MARK MILLER

4903 Roigan Terrace

Monona, WI 53716

SPENCER COGGS

3732 North 40th Street

Milwaukee, WI 53216

SHEILA HARSDORF

N6627 County Road E

River Falls, WI 54022

JUDY ROBSON

2411 E. Ridge Road

Beloit, WI 53511

ALBERTA DARLING

1325 West Dean Road

River Hills, WI 53217

REPRESENTATIVES

JOAN BALLWEG

170 W. Summit Street

Markesan, WI 53946

DEAN KAUFERT

1360 Alpine Lane

Neenah, WI 54956

MARK POCAN

309 N. Baldwin Street

Madison, WI 53703

JEFF FITZGERALD

Majority Leader

910 Sunset

Horicon, WI 53032

JIM KREUSER

Minority Leader

3505 14th Place

Kenosha, WI 53144

KITTY RHOADES

708 4th Street

Hudson, WI 54016

MARK GOTTLIEB

Speaker Pro Tempore

1205 Norridge Trail

Port Washington, WI 53074

THOMAS NELSON

1510 Orchard Dr.

Kaukauna, WI 54130

MARLIN SCHNEIDER

3820 Southbrook Lane

Wisconsin Rapids, WI 54494

MICHAEL HUEBSCH

Speaker

419 West Franklin

West Salem, WI 54669

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Joint Legislative Council

[Current Joint Legislative Council Members Who Received Committee Report]

Co-Chair

FRED A. RISSE

Senate President

100 Wisconsin Avenue, Unit 501
Madison, WI 53703

Co-Chair

MARLIN D. SCHNEIDER

Representative

3820 Southbrook Lane
Wisconsin Rapids, WI 54494

SENATORS

SPENCER COGGS

7819 W. Potomac Avenue
Milwaukee, WI 53222

ALBERTA DARLING

1325 West Dean Road
River Hills, WI 53217

RUSSELL DECKER

Majority Leader
6803 Lora Lee Lane
Schofield, WI 54476

SCOTT FITZGERALD

Minority Leader
N4692 Maple Road
Juneau, WI 53039

SHEILA HARSDORF

N6627 County Road E
River Falls, WI 54022

PAT KREITLOW

President Pro Tempore
15854 93rd Avenue
Chippewa Falls, WI 54729

MARK MILLER

4903 Roigan Terrace
Monona, WI 53716

JUDY ROBSON

2411 E. Ridge Road
Beloit, WI 53511

DALE SCHULTZ

515 North Central Avenue
Richland Center, WI 53581

ROBERT WIRCH

3007 Springbrook Road
Pleasant Prairie, WI 53158

REPRESENTATIVES

JOAN BALLWEG

170 W. Summit Street
Markesan, WI 53946

TERESE BERCEAU

4326 Somerset Lane
Madison, WI 53711

SPENCER BLACK

5742 Elder Place
Madison, WI 53705

JEFF FITZGERALD

Minority Leader
910 Sunset
Horicon, WI 53032

DEAN KAUFERT

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Neenah, WI 54956

THOMAS NELSON

Majority Leader
1510 Orchard Drive
Kaukauna, WI 54130

MARK POCAN

309 N. Baldwin Street
Madison, WI 53703

MICHAEL SHERIDAN

Speaker
1032 Nantucket Drive
Janesville, WI 53546

TONY STASKUNAS

Speaker Pro Tempore
2010 South 103rd Court
West Allis, WI 53227

ROBIN VOS

4710 Eastwood Ridge
Racine, WI 53406

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Appendix 3

STATE-TRIBAL RELATIONS

[Membership of the Committee Making the Recommendations in this Report]

Representative Jeffrey Mursau, Chair
4 Oak Street
Crivitz, WI 54114

Representative Gary Sherman
P.O. Box 157
Port Wing, WI 54865

Senator Scott Fitzgerald
N4692 Maple Road
Juneau, WI 53039

Senator Robert Jauch
5271 South Maple Drive
Poplar, WI 54864

Ken Fish
Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, WI 54135

Dee Ann Mayo
Lac du Flambeau Band of Lake Superior
Chippewa Indians
P.O. Box 67
Lac du Flambeau, WI 54538

Patricia Ninham Hoeft
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

Senator Spencer Coggs, Vice-Chair
7819 West Potomac Avenue
Milwaukee, WI 53222

Representative James Soletski
496 Menlo Park Road
Green Bay, WI 54302

Senator Dave Hansen
920 Coppens Road
Green Bay, WI 54303

Andrew Adams III
General Counsel
St. Croix Chippewa Indians of Wisconsin
24663 Angeline Avenue
Webster, WI 54893

Agnes Fleming
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
13394 West Trepania Road
Hayward, WI 54843

Mark Montano
Red Cliff Band of Lake Superior
Chippewas
88385 Pike Road, Highway 13
Bayfield, WI 54814

Philip Shopodock
Forest County Potawatomi Community
P.O. Box 340
Crandon, WI 54520

STUDY ASSIGNMENT: The committee is directed to study issues relating to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

14 MEMBERS: 4 Senators, 3 Representatives, and 7 Public Members.

LEGISLATIVE COUNCIL STAFF: Joyce L. Kiel, Senior Staff Attorney; David L. Lovell, Senior Analyst; Julie Learned, Support Staff.

STATE-TRIBAL RELATIONS

*[Current Membership of the Committee Based on a January 8, 2009 Mail Ballot
and vote by the Joint Legislative Council on March 26, 2009]*

Senator Spencer Coggs, Chair
7819 West Potomac Avenue
Milwaukee, WI 53222

Representative Gary Sherman
P.O. Box 157
Port Wing, WI 54865

Senator Scott Fitzgerald
N4692 Maple Road
Juneau, WI 53039

Senator Robert Jauch
5271 South Maple Drive
Poplar, WI 54864

Daniel Brown
Vice-President
Ho-Chunk Nation
W9814 Airport Road
Black River Falls, WI 54615

Ken Fish
Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, WI 54135

Dee Ann Mayo
Lac du Flambeau Band of Lake Superior
Chippewa Indians
P.O. Box 67
Lac du Flambeau, WI 54538

Patricia Ninham Hoeft
Oneida Tribe of Indians of Wisconsin
P.O. Box 365
Oneida, WI 54155

Representative Jeffrey Mursau, Vice-Chair
4 Oak Street
Crivitz, WI 54114

Representative James Soletski
496 Menlo Park Road
Green Bay, WI 54302

Senator Dave Hansen
920 Coppens Road
Green Bay, WI 54303

Andrew Adams III
General Counsel
St. Croix Chippewa Indians of Wisconsin
24663 Angeline Avenue
Webster, WI 54893

Gregg Duffek
Director, Economic Support
Stockbridge-Munsee Band of Mohican
Indians
N8705 Moh He Con Nuck Road
Bowler, WI 54416

Agnes Fleming
Lac Courte Oreilles Band of Lake Superior
Chippewa Indians
13394 West Trepania Road
Hayward, WI 54843

Mark Montano
Red Cliff Band of Lake Superior
Chippewas
88385 Pike Road, Highway 13
Bayfield, WI 54814

Philip Shopodock
Forest County Potawatomi Community
P.O. Box 340
Crandon, WI 54520

STUDY ASSIGNMENT: The committee is directed to study issues relating to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

16 MEMBERS: 4 Senators, 3 Representatives, and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Joyce L. Kiel, Senior Staff Attorney; David L. Lovell, Senior Analyst; Julie Learned, Support Staff.

Appendix 4

Technical Advisory Committee

TOM BELLAVIA
Department of Justice
Assistant Attorney General
17 W. Main St., Rm. 707
INTER-D

J.P. LEARY
Department of Public Instruction
125 South Webster St., 4th Flr.
INTER-D

RACHELLE ASHLEY
Department of Workforce Development
201 East Washington Ave., Rm. E200
INTER-D

JIM WEBER
Department of Health Services
1 West Wilson St., Rm. 618
INTER-D

GWEN CARR
Department of Transportation
Division of Transportation System Development
Bureau of Equity & Environmental Services
4802 Sheboygan Avenue, Rm. 451
INTER-D

MICHAEL LUTZ
Department of Natural Resources
101 South Webster LS/5
INTER-D

THOMAS D. OURADA
Department of Revenue
2135 Rimrock Rd., #624A
INTER-D

TO BE ANNOUNCED
Department of Children and Families
Second Floor
201 East Washington Avenue
INTER-D

ASSIGNMENT: Established pursuant to s. 13.83 (3) (f), Stats., to assist the Special Committee on State-Tribal Relations in performing its statutory functions.

8 MEMBERS: One representative designated by the following departments: Children and Families; Health Services; Justice; Natural Resources; Public Instruction; Revenue; Transportation; and Workforce Development.

Appendix 5

Committee Materials List (Copies of documents are available at www.legis.state.wi.us/lc)

Recommendations to the Joint Legislative Council (March 26, 2009)				
December 16, 2008 Meeting	Notice	Agenda	Audio	Minutes
<ul style="list-style-type: none">● Results of the March 26, 2009 Meeting.● Proposed Report to the Legislature 2009-04, <i>Special Committee on State-Tribal Relations</i> (February 4, 2009).● LRB-1241/1, relating to providing benefits to tribal schools and tribal school pupils and staff similar to those provided to private schools and private school pupils and staff.● LRB-1366/1, relating to administration of grant funds under the county-tribal cooperative law enforcement program.● LRB-1367/1, relating to liability for the actions of tribal law enforcement officers when enforcing state law.				