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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural  
Resources (SC-ENR)

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR ... bills and resolutions** (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Mike Barman (LRB) (August 2012)

June-2014



- None.

Registrations for Information Only

- None.

May 29, 2007

**EXECUTIVE SESSION HELD**

Present: (5) Senators Miller, Jauch, Wirch, Kedzie and  
Schultz.

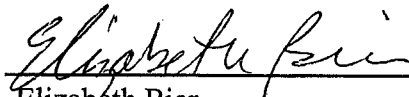
Absent: (0) None.

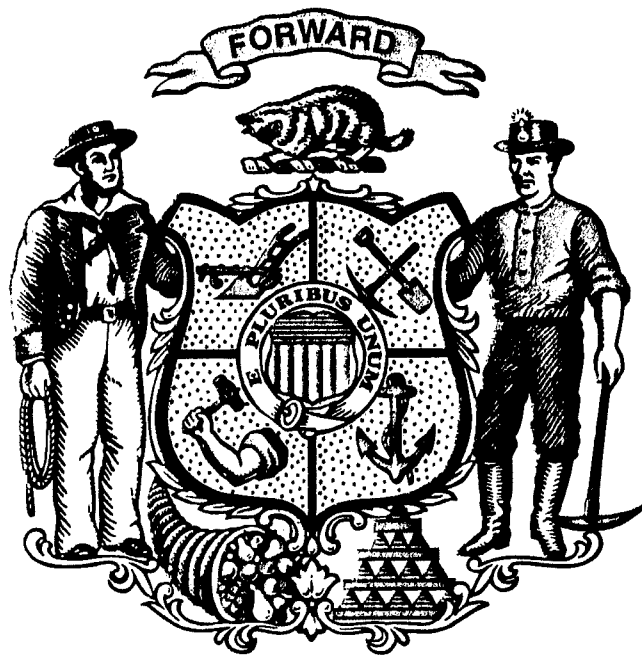
Moved by Senator Miller, seconded by Senator Wirch that **Senate  
Bill 97** be recommended for passage.

Ayes: (5) Senators Miller, Jauch, Wirch, Kedzie and  
Schultz.

Noes: (0) None.

PASSAGE RECOMMENDED, Ayes 5, Noes 0

  
Elizabeth Bier  
Committee Clerk



## Vote Record

### Committee on Environment and Natural Resources

Date: 5/29/07

Moved by: Miller

Seconded by: Robert Wirch

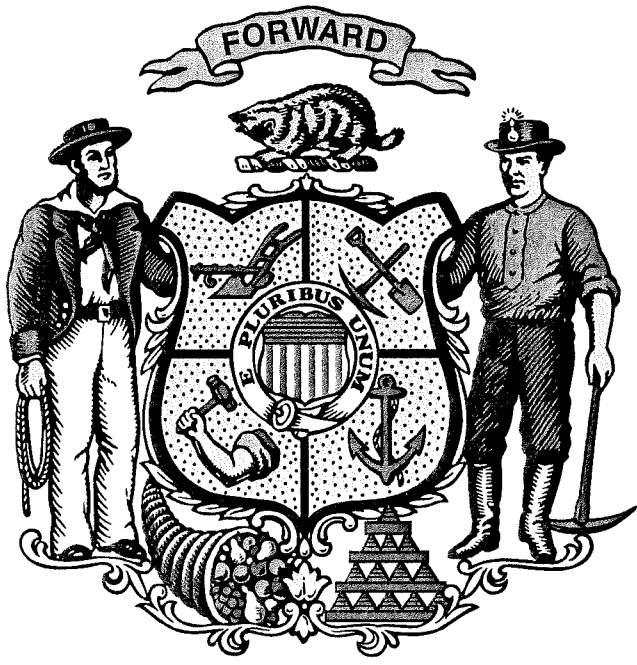
AB \_\_\_\_\_ SB 97 Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Mark Miller, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Robert Jauch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Robert Wirch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Neal Kedzie</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Dale Schultz</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>5</u>	<u>0</u>	_____	_____

Motion Carried                       Motion Failed



State of Wisconsin  
JOINT LEGISLATIVE COUNCIL

Co-Chairs

FRED A. RISSER  
President, State Senate

STEVE WIECKERT  
Representative, State Assembly



LEGISLATIVE COUNCIL STAFF  
Terry C. Anderson  
Director  
Laura D. Rose  
Deputy Director

TO: MEMBERS OF THE SENATE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

FROM: Terry C. Anderson, Director *TCA*

RE: Hearing on 2007 Senate Bill 97

DATE: May 16, 2007

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, RL 2007-02, dated March 22, 2007.

The following recommendation of the Special Committee on State-Tribal Relations has been referred to your committee:

- **2007 Senate Bill 97**, relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission.

Senate Bill 97 is scheduled to be considered by your committee at its meeting which will be held on **Wednesday, May 23, 2007, beginning at 10:00 a.m., in Room 400 Southeast, State Capitol.**

If you have any questions relating to the above report or bill, please feel free to contact Joyce L. Kiel, Senior Staff Attorney, at 266-3137, or David L. Lovell, Senior Analyst, at 266-1537.

TCA:wu  
Enclosure



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
STATE-TRIBAL RELATIONS

March 22, 2007

RL 2007-02



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# Special Committee on State-Tribal Relations

Prepared by:  
Joyce L. Kiel, Senior Staff Attorney, and David L. Lovell, Senior Analyst  
March 22, 2007

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## CONTENTS

<b>PART I - KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS.....</b>	<b>3</b>
2007 Assembly Bill 197 and 2007 Senate Bill 96, Relating to Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law .....	3
2007 Assembly Bill 198 and 2007 Senate Bill 97, Relating to Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission .....	3
2007 Assembly Bill 199 and 2007 Senate Bill 98, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils.....	3
<b>PART II - COMMITTEE ACTIVITY .....</b>	<b>5</b>
Assignment .....	5
Summary of Meetings .....	5
<b>PART III - RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL .....</b>	<b>7</b>
2007 Assembly Bill 197 and 2007 Senate Bill 96, Relating to Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law .....	7
2007 Assembly Bill 198 and 2007 Senate Bill 97, Relating to Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission .....	8
2007 Assembly Bill 199 and 2007 Senate Bill 98, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils.....	10
Appendix 1 - Committee and Joint Legislative Council Votes .....	15
Appendix 2 - List of Joint Legislative Council Members .....	17
Appendix 3 - List of Committee Members.....	19
Appendix 4 - List of Technical Advisory Committee Members .....	19
Appendix 5 - Committee Materials List.....	23

# PART I

## KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Joint Legislative Council (JLC) has introduced the following legislation in the 2007-08 Session of the Legislature based on the recommendations of the 2006-08 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."]

### **2007 Assembly Bill 197 and 2007 Senate Bill 96, Relating to Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law**

Current law authorizes a tribal law enforcement officer to enforce the laws of the 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.

### **2007 Assembly Bill 198 and 2007 Senate Bill 97, Relating to Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission**

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) employs conservation wardens to enforce the Chippewa Off-Reservation Conservation Code with regard to Chippewa Indians hunting, fishing, or gathering resources in the ceded territory but outside the boundaries of their reservations. The bill amends a wide range of statutes relating to peace officers to: (1) give GLIFWC wardens the same law enforcement tools and the same powers and privileges that current law gives to wardens of the Department of Natural Resources (DNR); and (2) give GLIFWC wardens the same protections of personal safety that current law gives to DNR wardens. The bill also authorizes a GLIFWC warden to aid or assist a peace officer and to make arrests for felony violations of state law in the ceded territory, in much the same way as current law gives these authorizations to a peace officer outside of his or her territorial jurisdiction.

### **2007 Assembly Bill 199 and 2007 Senate Bill 98, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils**

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.

## 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: Health and Family Services; Workforce Development; Justice; Natural Resources; Public Instruction; Revenue; and Transportation. 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 2006-08 Special Committee has held two meetings:

November 14, 2006	State Capitol
January 17, 2007	Menominee Reservation, Keshena, Wisconsin

At its November 14, 2006 meeting, the Special Committee heard a number of briefings:

- Committee staff briefed the committee on the status of legislation introduced in the 2005-06 Legislative Session by the JLC at the recommendation of the 2004-06 Special Committee.
- Committee staff briefed the committee on a project related to concurrent criminal jurisdiction of the state and the tribes on Indian reservations (with the exception of the Menominee Reservation, which is treated differently under federal law).
- **Mark Mitchell**, Department of Health and Family Services (DHFS), briefed the committee on DHFS initiatives related to the federal Indian Child Welfare Act and funding for tribal child welfare services.
- **Laura Arbuckle**, Department of Administration (DOA), briefed the committee on the on-going activities of Governor Doyle's administration to improve communications between the executive branch of state government and tribal governments.
- **Art Zimmerman** and **Jere Bauer**, Legislative Fiscal Bureau (LFB), briefed the committee on the state budget process and described how, within that process, the state allocates revenues it receives from the tribes under gaming compacts.

The committee discussed the possibility of expanding the Wisconsin Retirement System (WRS) to allow police officers employed by tribes to participate. Chairperson Musser discussed a number of

important questions a tribal government would have to consider before participating in the WRS, outlined in a staff memorandum, and asked the tribal representatives on the committee to discuss these issues with their tribal councils, to determine if there is interest on the part of tribal governments, as well as tribal police departments, to pursue this policy.

The meeting concluded with a discussion of topics for study by the committee. The committee discussed the possibility of recommending some of the 2005 bills for reintroduction in the 2007-08 Legislative Session. There was also interest in reviewing legislative ideas that came from a state and tribal leaders conference in 2001 to see whether any of those proposals warrant reconsideration. It was suggested as well that the committee look at how well certain state economic development programs work in Indian country.

At the January 19, 2007 meeting in Keshena, the Special Committee voted to recommend that the JLC introduce three bill drafts--the first relating to liability for the actions of tribal law enforcement officers when enforcing state laws; the second relating to conservation wardens employed by GLIFWC; and the third relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils. All three were amended versions of bills introduced by the JLC in the 2005-06 Legislative Session on the recommendation of the 2004-06 Special Committee that were not enacted. Committee members also asked legislative members of the committee to reintroduce a joint resolution on state recognition of tribal sovereignty similar to resolutions introduced in the past three legislative sessions.

**Paul Stuiber**, Legislative Audit Bureau (LAB), described the LAB's audit of state economic development programs and provided information about which were funded with tribal gaming revenues paid to the state. The committee heard testimony from **Gloria Cobb** and **Jerry Rayala**, GLITC, about their economic development programs and from **Troy Swallow**, Department of Commerce, regarding the department's role in working with tribes on economic development programs. Mr. Rayala suggested that the committee study two funding issues relating to economic development.

The committee also discussed a draft relating to participation of tribal law enforcement officers in the WRS and requested that a revised draft be prepared for discussion at its next meeting. The committee was also briefed about prior legislative and other initiatives regarding the use of American Indian mascots, logos, nicknames, and names by public schools.

## **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 2006-08 Special Committee on State-Tribal Relations for introduction in the 2007-08 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.”]

### **2007 Assembly Bill 197 and 2007 Senate Bill 96, Relating to Liability for the Actions of Tribal Law Enforcement Officers When Enforcing State Law**

#### **Background**

Tribal law enforcement 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. Most commonly, a county sheriff will deputize qualified tribal law enforcement officers.

Second, state statutes may grant this power. Section 165.92, Stats., 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 the officer and the tribe meet several conditions. One condition is that a tribal law enforcement officer may not enforce the laws of this state unless the governing body of the tribe adopts 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 adopts another resolution that the Wisconsin Department of Justice (DOJ) determines has substantially the same result.

Section 175.40 (6) and (6m), Stats., give 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 law enforcement officers, but only if the tribal law enforcement officer is empowered to act under s. 165.92, Stats., and certain other conditions are met.

The 2004-06 Special Committee recommended a draft which would have provided an alternative to the waiver of sovereign immunity by the tribe that is currently required for a tribal law enforcement officer to exercise the powers allowed by s. 165.92. It would have allowed the tribe to instead maintain liability insurance with a limit of at least \$1,000,000 for any claim. That draft 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.

That draft was introduced by the JLC as companion bills 2005 Assembly Bill 628 and 2005 Senate Bill 297. 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.

## **2007 Assembly Bill 197 and 2007 Senate Bill 96**

The bill provides an alternative to the waiver of sovereign immunity by the tribe that is currently required for a tribal law enforcement officer to exercise the powers allowed by s. 165.92. It allows the 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 the 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 law enforcement officer acting under that authority, rather than the liability provisions of s. 165.92.

## **2007 Assembly Bill 198 and 2007 Senate Bill 97, Relating to Treatment in the Statutes of Conservation Wardens Employed by the Great Lakes Indian Fish and Wildlife Commission**

### **Background**

In the 1970s and 1980s, litigation in federal court sought to determine the extent of rights for the harvest of natural resources retained by the Chippewa Indian bands in Wisconsin when the bands ceded territory to the United States in treaties in 1837 and 1842. In a series of orders, the court affirmed the bands' continuing rights to hunt, fish, and gather on off-reservation public lands and waters throughout the ceded territories in northern Wisconsin. Among other things, the court approved the Chippewa bands' proposal to adopt an off-reservation conservation code (off-reservation code) governing their members' exercise of those rights within the ceded territory but outside the boundaries of Chippewa reservations, and to form an inter-tribal agency to enforce that code. GLIFWC is the agency the Chippewa bands created for this purpose.

An incident in which a GLIFWC warden working off-reservation detained a non-Indian person for a state firearms violation and delivered the individual to the county sheriff called into question the authority of the warden to detain the individual, as well as the legality of other aspects of the warden's behavior, such as going armed in the uniform of a law enforcement officer in a vehicle with equipment, such as lights and siren, that are generally illegal.

This case brought to attention that much of what GLIFWC wardens do is not contemplated under the statutes and that, in fact, the statutes could be read as prohibiting GLIFWC wardens from doing many things that the federal court intended them to do. Similarly, many statutes that serve to protect the physical safety of law enforcement officers and others that serve to protect the interests of the public do not apply to GLIFWC wardens. These statutes *do* apply to DNR conservation wardens.

The 2004-06 Special Committee recommended a draft to address the matter which is very similar to the bill described below. That draft was introduced by the JLC as companion bills 2005 Assembly Bill 630 and 2005 Senate Bill 299. Senate Bill 299 was passed by the Senate on a voice vote,

then referred to the Assembly Committee on Natural Resources. That committee took no action on the Senate bill, and it did not pass. However, the Assembly Committee on Natural Resources had earlier recommended passage of the companion Assembly bill on a vote of Ayes, 12; Noes, 0. Neither the Assembly bill nor Senate bill was scheduled for a vote by the Assembly.

When the 2006-08 Special Committee reviewed this issue, it made minor changes in the proposal. The changes relate to liability insurance provisions (so that they are similar to the liability insurance coverage provisions described above regarding Assembly Bill 197 and Senate Bill 96) and to clarifying that a GLIFWC warden is not a peace officer under s. 175.40, as discussed above (since a GLIFWC warden is covered under a newly created section of the statutes, namely s. 175.41).

## **2007 Assembly Bill 198 and 2007 Senate Bill 97**

The bill is intended to accomplish two goals: first, to facilitate the work of GLIFWC and its wardens in enforcing the off-reservation code; and second, to enable GLIFWC wardens to assist state and local law enforcement agencies.

### **Facilitating the Work of GLIFWC Wardens**

To facilitate the work of GLIFWC wardens, the bill applies many provisions of the criminal code and the conservation and motor vehicle statutes to them. In general, the bill does the following:

1. Applies statutes regarding the protection of officers or interference with law enforcement to **all GLIFWC wardens**. Examples of the statutes treated in this manner are s. 940.20 (2), Stats., battery on a law enforcement officer, s. 941.21, Stats., disarming a peace officer, and s. 946.41, Stats., resisting or obstructing an officer. The bill also applies a number of other, miscellaneous statutes to all GLIFWC wardens, such as the requirement that a peace officer provide first aid to a person in custody (s. 940.291, Stats.), communicable diseases (ch. 252, Stats.), and the exception for peace officers to the prohibition on shining animals (s. 29.314, Stats.). The bill also applies to all GLIFWC wardens the exceptions enjoyed by peace officers to various aspects of the motor vehicle code, including exceptions to various rules of the road and various restrictions on vehicle equipment.
2. Applies most statutes regarding the possession or use of firearms and other weapons by peace officers to **GLIFWC wardens who meet state certification standards**. Examples of statutes treated in this manner are exceptions for peace officers to prohibitions against carrying concealed weapons (s. 941.23, Stats.) and the use of pepper spray (s. 941.26, Stats.). The bill does **not** apply statutes authorizing the possession or use of explosives or particularly dangerous weapons to **any** GLIFWC warden. Examples of statutes in this category are exceptions for peace officers to prohibitions against the possession or use of machine guns, short-barreled shotguns and rifles, explosives, and certain other weapons (ss. 941.26 (3), 941.27 (2), and 941.28 (4), Stats.).
3. Authorizes GLIFWC and its wardens to use the transaction information for management of enforcement (TIME) system if GLIFWC agrees to contribute information in its possession to DOJ for addition to the TIME system. (The TIME system allows officers in the field to access information regarding criminal investigations, suspected criminals, outstanding warrants, etc., as well as drivers' license and vehicle registration information, using computers installed in their patrol vehicles.)
4. Applies the statutes administered by the Law Enforcement Standards Board (LESB) to GLIFWC wardens who agree to accept the duties of law enforcement officers under the laws of this state. This makes a GLIFWC warden who agrees to do so subject to the rules and certification procedures of the LESB. Also, it is a prerequisite for exercising the authority to make arrests for violations of state law and to render aid and assistance to state peace officers, as created by this bill.
5. Authorizes GLIFWC to receive from the Department of Transportation (DOT) monthly compilations of vehicle registration information, drivers license and identification card photographs,

and other identifying information in the same manner that sheriffs and chiefs of local police departments, among others, currently receive this information.

### **Authority to Arrest and Assist**

The bill authorizes a GLIFWC warden to make an arrest for a violation of state law in the ceded territory if the warden is responding to either: (1) an emergency situation that poses a significant threat to life or of bodily harm; or (2) acts that the warden believes, on reasonable grounds, constitute a felony. The bill also authorizes a GLIFWC warden to render aid or assistance to a Wisconsin peace officer in an emergency or at the request of the Wisconsin peace officer. A GLIFWC warden may take these actions only if all of the following conditions are met:

1. The warden is on duty and on official business.
2. The warden meets the training standards for state and local law enforcement officers and has agreed to accept the duties of law enforcement officers under the laws of this state.
3. GLIFWC has adopted and implemented written policies regarding making felony arrests under state law and rendering aid or assistance to state or local officers.
4. GLIFWC maintains liability insurance that does all of the following:
  - a. Covers GLIFWC's liability up to a limit of not less than \$2,000,000 per occurrence for the acts and omissions of its wardens acting under this authority.
  - b. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to that limit.

Also, GLIFWC wardens may take these actions only if GLIFWC has presented evidence to DOJ of this insurance. When this evidence is provided, the bill requires DOJ to notify the sheriff of each county in the ceded territory that GLIFWC has met this insurance criterion.

The bill also authorizes GLIFWC wardens to engage in fresh pursuit in Wisconsin beyond the ceded territory under specified circumstances.

## **2007 Assembly Bill 199 and 2007 Senate Bill 98, Relating to Providing Benefits to Tribal Schools and Tribal School Pupils Similar to Those Provided to Private Schools and Private School Pupils**

### **Background**

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. (Categorical 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 Tribal School.

Most state kindergarten to grade 12 (K-12) education laws likely would be considered by the courts to be civil regulatory laws. In general, state civil regulatory laws do not apply to a tribe or a member of that tribe on the tribe's reservation or off-reservation trust land unless an act of Congress, a treaty, or case law (that is, decisions by the courts) provides that a state law is applicable. It appears that neither an act of Congress nor any treaty has authorized the state to apply its civil regulatory education laws to a tribal school that is located on a tribe's reservation or off-reservation trust land. As



for whether case law does so, court decisions suggest that, if a matter were litigated, a court would apply a balancing of interests test and hold that a state civil regulatory education law applies to a tribal school only if the state interests outweigh the tribal and federal interests. That analysis depends on the facts surrounding each individual statute; thus, there is no universal answer as to whether a state civil regulatory law applies to a tribal school.

However, in general, it appears that, with respect to most state K-12 education laws, the state does not have authority to impose such laws on tribal schools. Moreover, a tribe may choose to assert sovereign immunity if a legal action were filed against the tribal school or tribal school officials to enforce any such law.

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.

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 committee met on March 18, 2005 to review preliminary drafts. The 2004-06 Special Committee recommended a 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 proposal again be recommended to the JLC. The changes from the prior bills primarily relate to accounting for the fact that several of the affected statutes were amended by 2005 Acts. The substantive changes relate to adding references to tribal schools in two provisions that were created by 2005 Acts to refer to private schools: one related to having DPI provide information about meningococcal disease to public and private schools, and the other related to immunity relating to the use of inhalers for asthmatic pupils at private schools.

## **2007 Assembly Bill 199 and 2007 Senate Bill 98**

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 controlled by the elected governing body of a tribe or by a tribal educational authority established under the laws of a tribe. 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.

### **Private School References—Benefits**

The bill proposes amendments to statutes that refer specifically to private schools, private school staff, or private school pupils and provide 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 staff, or tribal school pupils. Examples include: counting teaching experience in a tribal school under the teacher licensure law; authorizing a cooperative educational services agency to contract with a tribal school; including tribal schools in various DPI programs to assist schools, for example, suicide

prevention programs, alcohol or other drug abuse prevention programs, school milk, lunch, and breakfast programs, and protective behavior programs; including tribal school seniors in the Academic Excellence Higher Education Scholarship program; permitting certain tribal school pupils to serve as inspectors at polling places; permitting a representative of a tribal school to serve on DPI's Council on Special Education and DPI's Professional Standards Council for Teachers; permitting a tribal school representative and parent to serve on the county truancy committee; including tribal schools in the technology for educational achievement program; including tribal schools as schools for the purpose of statutes that prohibit hunting, having a cigarette vending machine, selling liquor, possessing certain drugs, committing certain violent crimes, and possessing firearms and other dangerous weapons (under certain circumstances) within a specified distance from schools; providing that one of the purposes of the technical college system includes working with tribal schools; providing that veterans are eligible for reimbursement for courses at a tribal school under certain circumstances; counting attendance at a tribal school as school attendance for purposes of the Learnfare program and truancy and dropout statutes; considering a tribal school to be a school for purposes of child labor laws; permitting a tribal school to have a driver's education program recognized by DOT; making tribal schools eligible for reimbursement for a food services plan for the elderly; making teachers at tribal schools who are certified by the National Board for Professional Teaching Standards and meet certain other criteria eligible for grants; providing that the Wisconsin Center for the Blind and Visually Impaired and the Wisconsin Educational Program for the Deaf and Hard of Hearing may provide certain services to tribal schools; permitting tribal schools to request trees for Arbor Day observance; requiring DPI to provide information to tribal schools about meningococcal disease; requiring the erection of school warning signs; permitting a request to attend tribal school as a program or curriculum modification; allowing provision of health treatment services to tribal school pupils under certain circumstances; providing immunity under state law for several activities, including removing a pupil from school for suspicion of activities relating to controlled substances, administering certain drugs under certain circumstances, permitting use of an inhaler by an asthmatic pupil, attempting to prevent suicide, providing free care at an athletic event, and donating equipment or technology to a tribal school; providing eye safety information to tribal schools; permitting tribal schools to request information about persons on the sex offender registry; permitting a dental hygienist at a tribal school; prohibiting strip searches of tribal school pupils; and exempting tribal school staff from prosecution for certain crimes relating to exposing a child to harmful materials.

#### **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, 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. Also, if school attendance is required by a court order, the court is required to request that a tribal school report a violation to the court but does not have authority to require a tribal school to do so.

#### **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. Such statutes include requirements to: 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 drills; 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; and abide by restaurant regulations if food is brought in under contract. (As discussed above, it is unlikely that the state has authority to impose such civil regulatory laws on tribal schools.)

### **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.

## Appendix 1

### Committee and Joint Legislative Council Votes

#### Special Committee Votes

The following drafts were recommended by the 2006-08 Special Committee on State-Tribal Relations to the JLC for introduction in the 2007-08 Session of the Legislature.

The votes on the drafts were as follows:

- LRB-1915/1, relating to liability for the actions of tribal law enforcement officers when enforcing state law. The motion to recommend WLC: 0053/1, with amendments, passed on a vote of Ayes, 10 (Reps. Musser, Boyle, and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 5 (Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor). It was subsequently redrafted as WLC: 0053/2 and then redrafted as LRB-1915/1.
- LRB-1916/1, relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission. The motion to recommend WLC: 0054/1, with amendments, passed on a vote of Ayes, 10 (Reps. Musser, Boyle, and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 5 (Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor). It was subsequently redrafted as WLC: 0054/2 and then redrafted as LRB-1916/1.
- LRB-1646/2, relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils. The motion to recommend WLC: 0052/1 passed on a vote of Ayes, 9 (Reps. Boyle and Sherman; Sen. Wirch; and Public Members Bichler, DelaRosa, Fish, Greendeer, Huck, and Mayo); Noes, 0; and Absent, 6 (Rep. Musser; Sen. Coggs; and Public Members Alloway, Lynk, Montano, and Taylor). It was subsequently redrafted as LRB-1646/2.

#### Joint Legislative Council Vote

At its March 14, 2007 meeting, the Joint Legislative Council voted as follows on the recommendations of the Special Committee:

Sen. Risser moved, seconded by Sen. Coggs, that the three drafts recommended by the Special Committee on State-Tribal Relations be voted on en masse and introduced as companion bills in the 2007-08 Legislative Session. The motion passed on a roll call vote as follows: Ayes, 18 (Reps. Wieckert, Ballweg, Berceau, Fitzgerald, Gottlieb, Pohan, Rhoades, and Schneider; and Sens. Risser, Carpenter, Coggs, Darling, Decker, Fitzgerald, Harsdorf, Lasee, Miller, and Robson); Noes, 0; and Absent, 4 (Reps. Huebsch, Kaufert, and Kreuser; and Sen. Breske).

(LRB-1915/1 was subsequently introduced as companion bills 2007 Assembly Bill 197 and 2007 Senate Bill 96; LRB-1916/1 was subsequently introduced as companion bills 2007 Assembly Bill 198 and 2007 Senate Bill 97; and LRB-1646/2 was subsequently introduced as companion bills 2007 Assembly Bill 199 and 2007 Senate Bill 98.)

## Appendix 2

### Joint Legislative Council

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

#### Co-Chair

**ALAN LASEE**  
*Senate President*  
2259 Lasee Road  
De Pere, WI 54115

#### Co-Chair

**STEVE WIECKERT**  
*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

#### SENATORS

**RONALD W. BROWN**  
1112 Violet Avenue  
Eau Claire, WI 54701

**DAN KAPANKE**  
1610 Lakeshore Drive  
La Crosse, WI 54603

**DALE SCHULTZ**  
*Majority Leader*  
515 N. Central Avenue  
Richland Center, WI 53581

**RUSSELL DECKER**  
6803 Lora Lee Lane  
Schofield, WI 54476

**MARK MILLER**  
4903 Roigan Terrace  
Monona, WI 53716

**DAVID ZIEN**  
*President Pro Tempore*  
1716 63<sup>rd</sup> Street  
Eau Claire, WI 54703

**SCOTT FITZGERALD**  
N4692 Maple Road  
Juneau, WI 53039

**FRED A. RISSER**  
5008 Risser Road  
Madison, WI 53705

**GLENN GROTHMAN**  
111 South 6<sup>th</sup> Avenue  
West Bend, WI 53095

**JUDY ROBSON**  
*Minority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

#### REPRESENTATIVES

**JOHN AINSWORTH**  
W6382 Waukechon Road  
Shawano, WI 54166

**MICHAEL HUEBSCH**  
*Majority Leader*  
419 West Franklin  
West Salem, WI 54669

**MARLIN D. SCHNEIDER**  
3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**PEDRO COLON**  
338 West Walker Street  
Milwaukee, WI 53204

**DEAN KAUFERT**  
1360 Alpine Lane  
Neenah, WI 54956

**DAVID TRAVIS**  
5440 Willow Road  
Waunakee, WI 53597

**STEPHEN J. FREESE**  
*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**JIM KREUSER**  
*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**JOHN GARD**  
*Speaker*  
481 Aubin Street, P.O. Box 119  
Peshtigo, WI 54157

**ANN NISCHKE**  
202 W. College Avenue  
Waukesha, WI 53186

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 RISSER**

*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

#### **TIM CARPENTER**

*President Pro Tempore*  
2957 South 38<sup>th</sup> Street  
Milwaukee, WI 53215

#### **G. SPENCER COGGS**

3732 North 40<sup>th</sup> Street  
Milwaukee, WI 53216

#### **ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

#### **RUSSELL DECKER**

6803 Lora Lee Lane  
Weston, WI 54476

#### **SCOTT FITZGERALD**

*Minority Leader*  
N4692 Maple Road  
Juneau, WI 53039

#### **SHEILA HARSDORF**

N6627 County Road E  
River Falls, WI 54022

#### **ALAN LASEE**

2259 Lasee Road  
De Pere, WI 54115

#### **MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

#### **JUDY ROBSON**

*Majority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

### REPRESENTATIVES

#### **JOAN BALLWEG**

170 W. Summit Street  
Markesan, WI 53946

#### **TERESE BERCEAU**

4326 Somerset Lane  
Madison, WI 53711

#### **JEFF FITZGERALD**

*Majority Leader*  
910 Sunset  
Horicon, WI 53032

#### **MARK GOTTLIEB**

*Speaker Pro Tempore*  
1205 Noridge Trail  
Port Washington, WI 53074

#### **MICHAEL HUEBSCH**

*Speaker*  
419 West Franklin  
West Salem, WI 54669

#### **DEAN KAUFERT**

1360 Alpine Lane  
Neenah, WI 54956

#### **JIM KREUSER**

*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

#### **MARK POCAN**

309 N. Baldwin Street  
Madison, WI 53703

#### **KITTY RHOADES**

708 4th Street  
Hudson, WI 54016

#### **MARLIN SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

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

Representative Terry M. Musser, Chair  
W13550 Murray Road  
Black River Falls, WI 54615

Senator G. Spencer Coggs  
3732 North 40th Street  
Milwaukee, WI 53216

Senator Robert W. Wirch  
3007 Springbrook Road  
Pleasant Prairie, WI 53158

Howard Bichler  
St. Croix Chippewa Indians of Wisconsin  
24663 Angeline Avenue  
Webster, WI 54893

Ken Fish  
Menominee Indian Tribe of Wisconsin  
P.O. Box 173  
Keshena, WI 54135

Doug Huck  
Stockbridge-Munsee Band of Mohican Indians  
N8476 Moheconnuck Road  
Bowler, WI 54416

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

Mr. Louis Taylor  
Lac Courte Oreilles Tribal Governing Board  
Lac Courte Oreilles Band of Lake Superior  
Chippewa Indians  
13394 West Trepania Road  
Hayward, WI 54843

Representative Frank Boyle  
4900 East Tri-Lakes Road  
Superior, WI 54880

Representative Gary Sherman  
11800 Sherman Road  
Port Wing, WI 54865

John Alloway  
Forest County Potawatomi Community  
P.O. Box 340  
Crandon, WI 54520

Vince DelaRosa  
Oneida Tribe of Indians of Wisconsin  
P.O. Box 365  
Oneida, WI 54155

Jon Greendeer  
Ho-Chunk Nation  
P.O. Box 667  
Black River Falls, WI 54615

Donna Lynk  
Tribal Council Secretary  
Bad River Band of Lake Superior  
Chippewa Indians  
P.O. Box 39  
Odanah, WI 54861

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

**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.]

**15 MEMBERS:** 2 Senators, 3 Representatives, and 10 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

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

J.P. LEARY  
**Department of Public Instruction**  
101 South Webster LS/5  
INTER-D

MICHAEL LUTZ  
**Department of Natural  
Resources**  
125 South Webster St., 4<sup>th</sup> Flr.  
INTER-D

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

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

JIM WEBER  
**Department of Health and Family Services**  
1 West Wilson St., Rm. 618  
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.

**7 MEMBERS:** One representative designated by the following departments: Health and Family Services; Justice; Natural Resources; Public Instruction; Revenue; Transportation; and Workforce Development.



**Committee Materials List**  
 (Copies of documents are available at [www.legis.state.wi.us/lc](http://www.legis.state.wi.us/lc))

**Recommendations to the Joint Legislative Council (March 16, 2007)**

- Results of JLC Meeting
- Proposed Report to the Legislature
- LRB-1915/1, relating to liability for the actions of tribal law enforcement officers when enforcing state law
- LRB-1916/1, relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission
- LRB-1646/2, relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils

January 19, 2007 Meeting	Notice	Agenda	Airfile	Minutes
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- Memo No. 4, *Legislative History of Previous Resolutions Similar to WLC: 0034/1, Relating to State Recognition of Tribal Sovereignty* (December 28, 2006)
- Memo No. 5, *Use of American Indian Mascots, Logos, Names, or Nicknames by Public Schools* (January 8, 2007)
- Memo No. 6, *Lobbying Activity on Bills Introduced in the 2005-06 Legislative Session at the Recommendation of the 2004-06 Special Committee* (December 29, 2006)
  - Table, *2005-06 Session Bills Recommended by the Special Committee on State-Tribal Relations, Positions and Lobbying Activity Reported by Lobbying Principals to the Wisconsin Ethics Board*
- Memo No. 7, *History of Legislation Recommended by the Special Committee Regarding State-Tribal Relations* (January 5, 2007)
- WLC: 0034/1, relating to state recognition of the sovereign status of federally recognized American Indian tribes and bands
- WLC: 0052/1, relating to providing benefits to tribal schools and tribal school pupils similar to those provided to private schools and private school pupils and making an appropriation
- WLC: 0053/1, relating to liability for the actions of tribal law enforcement officers when enforcing state law
  - Alternative language regarding liability insurance
- WLC: 0054/1, relating to conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission
  - Alternative language regarding liability insurance
- WLC: 0055/1, relating to participation of tribal law enforcement officers in the Wisconsin Retirement System
- Letter, to Representative Leah Vukmir from Representative Terry Musser (November 17, 2006), regarding charter school authorizers
- Memorandum, *Wisconsin Retirement System Coverage of Tribal Police Officers*, from Representative Terry Musser, Chair, to Members of the Special Committee on State-Tribal Relations (November 21, 2006)
- Letter, to Governor James E. Doyle, Members of the Wisconsin State Legislature, and Members of the Special Committee on State-Tribal Relations from Attorney General Peggy A. Lautenschlager, regarding cooperative county-tribal law enforcement program

- Letter, to Representative Terry Musser, Special Committee on State-Tribal Relations, from Robert Chicks, President, Stockbridge-Munsee Community, regarding Wisconsin Retirement System coverage of tribal police officers (December 8, 2006)
- Report Highlights, *A Review: State Economic Development Programs*, submitted by the Legislative Audit Bureau (August 2006). Full report available at <http://www.legis.wisconsin.gov/lab/PastReportsByDate.htm>
- Letter from the Internal Revenue Service regarding eligibility of Mille Lacs Band of Chippewa Indians tribal police officers under the Minnesota pension plan (November 19, 2002)
- Comments regarding WLC: 0055/1, An Act to Allow Tribal Law Enforcement Officers to Participate in the Wisconsin Retirement System, distributed by Vince Dela Rosa (January 18, 2007)
- Small Business Technical Assistance Program, submitted by Jerry Rayala, Program Director, Great Lakes Inter-Tribal Council
- Tribal School Bill, AB-637, distributed by Ken Fish
- Excerpt from Legislative Audit Report 06-9, *Economic Development Programs Targeting all Minority-Owned Businesses*, distributed by Paul Stuber, Deputy State Auditor for Program Evaluation, Legislative Audit Bureau (August 2006)
- Excerpt from Legislative Audit Report 06-9, *Economic Development Programs Funded With Tribal Gaming Revenue*, distributed by Paul Stuber, Deputy State Auditor for Program Evaluation, Legislative Audit Bureau (August 2006)
- Memorandum to Jamie Wall, Administrator, Division of Business Development, from Landon T. Williams, Budget and Policy Analyst, Department of Commerce, *Departmental Programs Tribal Entities are Eligible to Apply for* (November 12, 2004)

#### November 14, 2006 Meeting

Notice

Agenda

Audio

Minutes

- Memo No. 1, *Legislation Recommended by the 2004-06 Special Committee on State-Tribal Relations* (November 3, 2006)
  - RL 2005-14, Special Committee on State-Tribal Relations, Report to the Legislature (August 13, 2005)
  - Table, *Recommendations of the 2004-06 Special Committee on State-Tribal Relations Introduced by the Joint Legislative Council in the 2005-06 Legislative Session*
- Memo No. 2, *Retirement Plan Coverage for Tribal Police Officers* (November 7, 2006)
  - Enclosure
- Memo No. 3, *Authority of Tribal Law Enforcement Officers to Enforce Criminal Laws* (November 13, 2006)
  - Enclosure, *Criminal Jurisdiction in Indian Country*
- Handout, *2005-07 Tribal Gaming Revenue Appropriations*, from Art Zimmerman, Legislative Fiscal Bureau
- Presentation, *Strengthening Government to Government Relations*, by Laura Arbuckle, Department of Administration
- Presentation, Legislative Fiscal Bureau