REMARKS OF REPRESENTATIVE JEFF MURSAU TO THE ASSEMBLY COMMITTEE ON NATURAL RESOURCES AND SPORTING HERITAGE

March 27, 2013

2013 Assembly Bill 30

2013 Assembly Bill 30, which relates to the transportation of game, was developed by the Special Committee on State-Tribal Relations. For those of you not familiar with it, the Joint Legislative Council is required by statute to create this committee in each biennium. The committee consists of legislators and public members nominated by the tribes. The committee is seen by many as a valuable tool for tribes to raise issues of concern to the Legislature. I am pleased to report that the committee is functioning very well. In particular, we are seeing the highest level of participation by the tribes in recent memory--the committee includes representatives of 10 of the 11 tribes in Wisconsin, and I am hoping to get a representative from the 11th tribe soon.

As you all know, states set their own hunting and fishing regulations, and they differ from state to state. For example, Illinois has

a year-round open sport fishing season on many waters. A person who caught sport fish species in Illinois and brought them into Wisconsin during our closed season would be in violation of our conservation laws. To address this situation, current law allows a person to possess game in violation of this state's regulations if the person can document that the game was taken legally in another state. The only documentation that is required is a valid hunting or fishing license from the state where the game was taken.

Like states, Indian tribes also set their own hunting and fishing regulations, which apply to the members of the tribe hunting or fishing on the tribe's reservation. Again, like other states, tribes' regulations do not necessarily match ours. DNR rules allow an Indian who takes game on his or her reservation at a time or in a manner that would be in violation of our rules to transport that game within the state. However, the rules for documenting that the game was taken legally are different for Indians transporting game from their reservation than the rules for transporting game from another state.

To comply with this rule, a tribe may either participate in the DNR's tagging system or operate a tagging system of its own. Note, though, that all game must be tagged, regardless of whether the DNR requires tagging for it under the general conservation laws that apply in the rest of the state.

The Menominee Tribe brought this issue to the committee. Their conservation director, who you will hear from later, expressed concerns that the requirements that apply to tribes are onerous and asked why tribes should be subject to different rules. The committee discussed the conservation programs of various tribes and compared them – including the tags they use – to the DNR program, and found them to be quite similar. With input from the DNR and the conservation departments of several tribes, the committee developed a proposal that establishes rules for both bringing game from out-of-state and for a tribal member transporting game off a reservation. The proposal is similar to the current law for bringing game from another state.

2013 Assembly Bill 30 applies the current rules on bringing game from another state to a tribal member bringing game from an Indian reservation. However, because some tribes do not issue hunting or fishing licenses, the proposal does not require a tribal member to show a license.

Also, the bill creates one new requirement, which was requested by the DNR. It applies to both game taken in another state and game taken by an Indian on a reservation. The bill requires that, if the game is a species for which Wisconsin hunting regulations require tagging, the game must bear a tag to aid DNR wardens in confirming that the game was taken legally in another state or on an Indian reservation. The only information the tag must have is the name of the agency or Indian tribe that issued the tag. In addition, a tag is not valid unless the agency that issued the tag retained a record of the name and address of the person to whom the tag was issued.

I think AB 30 is a reasonable proposal, and I hope you will give it serious consideration. David Lovell and David Moore, from the Legislative Council, are here to help me respond to your questions.

DUEY STROEBEL

STATE REPRESENTATIVE • 60TH DISTRICT

Chairman Ott, ladies and gentlemen of the Committee, my name is John Soper. I am Representative Duey Stroebel's Research Assistant and am testifying on his behalf as family obligations prevented him from being here today.

Representative Stroebel was a member of the Joint Legislative Council's Special Committee on State-Tribal Relations last year and worked with Representative Mursau and other members of the committee on what is now AB30.

Representative Stroebel is supportive of the goal of AB 30 of creating a more comprehensive and uniform system of regulating the transport of game. However, there is one issue that should be addressed in this bill before final passage; specifically the difficulty of enforcement given there is no requirement that tribal members possess identification to show their membership in a tribe.

AB 30 expands current law to require that game being transported must have been legally taken under the laws of the tribe and meet any tagging requirements. These requirements are similar to, but not exactly the same as, transportation of out of state game by non-tribal members. The creation of two standards for game transport, out of state and tribal, means that DNR wardens and local law enforcement need to know whether a person transporting game is a member of a tribe.

Imagine a scenario where a law enforcement official has a contact with an individual transporting game. The game in question is either an animal for which the DNR has no tagging requirement or the individual possesses an appropriate tag. The individual states that he or she does not have a license to transport or possess the game, as would be required for a non-tribal member, because he or she is the member of a tribe and asserts that the animal was legally taken on tribal land.

The law enforcement official now has two bad choices: potentially fail to enforce the law, or potentially burden or infringe upon the rights of a tribal member. If the individual were not a tribal member, he or she would be in violation of the law and the officer would be duty bound to address the situation. It is not good public policy for individuals to be able to circumvent the law by feigning status in a tribe. The law enforcement official cannot simply take the individual at his or her word, no more so than a law enforcement officer can simply take the word of a driver who claims his or her driver's license is at home.

On the other hand, if the individual is in fact a tribal member and the law enforcement official chooses to take action, for the reasons I just stated, the law enforcement official is now

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DUEY STROEBEL

STATE REPRESENTATIVE • 60TH DISTRICT

taking the risk of infringing upon a citizen's legal rights. Is the law enforcement official to seize the game only to receive complaints or law suits later for the improper seizure of property? Is the law enforcement officer to detain the individual pending a call to a tribe to verify identity? What if it is a weekend and identity cannot be ascertained until Monday?

I apologize for the rhetorical questions, but as AB 30 is written, this conundrum is being presented to whoever will be enforcing this law. An easy solution to the "I'm a tribal member" loophole that doesn't involve unnecessary burden on tribal members who wish to transport game across the State is to require a tribal ID to be shown when transporting game. Name and birthdate would likely be the only things needed to verify tribal membership. Most current IDs should already contain this data so no new ID system would be needed, making it as little of a burden as possible for the tribes. While by no means the final or only way this could be done, in my written testimony is some sample language provided by the DNR that could be a simple amendment to AB 30 to fix this problem.

Thank you. I'm happy to answer any questions.

1. Page 2, line 8: replace that line with:

"Section 4. 29.047(1)(a) 4. and 6. of the statutes are created to read:"

2. Page 2, line 10: after that line insert:

"29.047 (1) (a) 6. ""Tribal identification" means a valid photographic identification card issued to an enrolled member an Indian tribe by that member's tribe, which minimally includes the name of name of the tribe that issued the identification card and the members full name and date of birth"

3. Page 3, line 19: after that line insert:

"**2.** The member holds a tribal identification card and a license or similar approval issued by the members Tribe that authorizes the member to transport, possess or control the game or its carcass."

4. Page 3, line 20: delete "2" and substituted "3".

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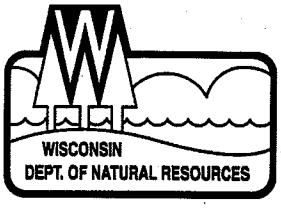

2013 ASSEMBLY BILL 30

TRANSPORTATION OF GAME FROM OTHER STATES & INDIAN LANDS

Testimony by: Conservation Warden Thomas Van Haren and Warden Supervisor David Walz.
Appearing for Information Only
March 27, 2013 10:00 AM
Room 417 North (GAR Hall)

Under current rules, the transportation of game harvested on Indian reservation lands, to a location off reservation lands, is primarily addressed in DNR's administrative rule section NR 19.12. This rule applies to wild game harvested on an Indian reservation when the state's season for that species is closed.

To comply with this rule, a tribe may either participate in DNR's tagging system or operate its own tagging system under an MOU with the DNR.

Under an MOU, the department will issue "Off Reservation Tags" to the tribal authorities to use. These tags are used to tag game for tribal members before their game is transported off the reservation. A record is to be kept by the tribe, which identifies the tag number, type of animal tagged, members name, date, etc. The purpose of this tagging system is to allow state wardens or other law enforcement officers to easily verify, if needed, that game possessed and being transported off a reservation during the off-reservation closed season, or contrary to state bag and size limits, was harvested on the reservation.

Under state statutes, it is not legal for any person to possess or transport game harvested in another state during this states closed season, or contrary to this states bag or size restrictions, unless:
1. The game was harvested legally in the other state, and
2. The person transporting the game holds a license issued by the other state which authorizes the person to transport or possess that game. In addition,
3. If the game is a deer or elk and is coming from a state which has CWD, the person must transport it in compliance with DNR's cervid carcass transportation rules.

This bill will expand the current statutory interstate transportation of game restrictions in 2 ways.

First it will require that if this state has a tagging requirement for a species of game, any such game entering this state from another state must also have a tag issue by that state attached to that game.

Secondly, this bill will establish a similar requirement for game harvested on, and transported off, "Indian lands". This language is meant to replace the current DNR rules on tagging reservation game.

Specifically, this bill does the following:
1. Requires that the game must have been taken legally under the laws of the tribe, and
2. Creates a tagging requirement for game if that game will be transported off Indian lands. This tagging requirement would only apply to species of game for which the state also has a tagging requirement, such as for deer, bear, elk, bobcat, otter, fisher, wolves and wild turkeys.

For species with a tagging requirement:

a. The game must bear a tag issued by the tribe to its members. To be valid, the tribe that issued the tag must have recorded the name and address of the person to whom the tag was issued.
b. The tag may not be removed until the time of butchering or when prepared for preservation, mounting, or tanning. The state has a similar requirement for state hunters and their game.
c. All or part of the game can be given to another person. When the whole carcass it not given away, the person issued the tag is to retain the tag.

What will this bill solve as far as problems with current rules?

Current DNR rules only apply to animals transported off of Indian lands when the state season for that species is closed. This requirements of this bill will apply regardless if the state season is open or closed.

Current DNR rules apply to "Indian reservations", but do not define which lands are considered "reservation lands". This can create confusion and uncertainty for members and DNR staff not knowing if all parcels of Indian owned lands are considered reservation lands. Under this bill, "Indian land" means all land within the exterior boundaries of an Indian reservation in this state **and** all other land in this state that is held in trust for an Indian tribe or for a member of an Indian tribe.

Current DNR rules require time and travel on the part of state or tribal wardens to meet up with tribal members wanting to transport game off of Indian lands. These lands may be a small parcels owned by the tribe but not where the tribal member lives. The member may have no way to legally transport their game home or to other lands until the game can first be inspected and tagged by a DNR warden, or by a Tribal warden under an MOU with the DNR. Under this bill, as long as the tribe has their own tagging system in place for certain species, there would be no need for State or tribal wardens to inspect tribal game before it is transported off any Indian lands.

What is missing from this bill, is a requirement similar to the current interstate transportation of game statute for game brought into this state from another state, which requires that when the game is not in compliance with state's seasons, bag, possession or size restriction, that the person possessing or transporting the game is required to hold a valid license from the jurisdiction that authorized the harvest of that game.

It is important that law enforcement officers are able to easily determine in the field if a person who is possessing or transporting game off Indian lands which is not in compliance with the state's transportation, season, bag and size restrictions for game, that the person is: 1) a tribal member, and 2) that they have the appropriate tribal authorization to possess and transport that game.

Lastly, if passed, it would be helpful for this bill to include language which clarifies that the current rules requiring the DNR to inspect and tag game taken off reservation lands would not apply when a tribal member is in compliance with the requirements of this bill.

Thank you for your time.

Background Information

Wisconsin Administrative Code

NR 19.12 Tagging the carcasses of wild animals, birds and fish taken on Indian reservations.
(1)
(a) Each authorized person who has taken a protected wild animal, bird or fish on an Indian reservation, under provisions of the reservation's treaty rights during the off-reservation closed season for such game set by the department of natural resources, shall before removing the carcass or part thereof of such animal, bird or fish from the reservation, contact and exhibit it during ordinary working hours to a conservation warden of the department of natural resources or to any tribal member authorized by the particular tribe and designated by the department of natural resources.

(b) The conservation warden or designated tribal member shall inspect all such carcasses, attach and lock a special lettered and numbered tag to each carcass or part thereof, and maintain a record book containing the following information: the date, the reservation, the name and address of the person being issued the tag, the species and description of the wild animal, bird or fish being tagged, the destination, and the name and address of the person issuing the tag. Such record book shall be exhibited to the department of natural resources at reasonable hours for inspection and duplication. Failure to maintain and exhibit such a record book containing the above information shall be sufficient cause for the department of natural resources to revoke the authority of the official to issue any more tags. The secretary of the department of natural resources may take such revocation action without requiring that a hearing be held on the matter.

(c) The special lettered and numbered tag shall be distributed to the conservation warden or designated tribal member by the department of natural resources at such times and in such numbers as it deems appropriate. During the off-reservation closed season for such wild animal, bird or fish, no person shall remove any such carcass or part thereof from an Indian reservation without such a tag being attached and locked. No person shall remove the tag prior to consumption of the animal, bird or fish carcass tagged. No endangered species shall be tagged. No person other than a conservation warden or designated tribal member shall have unused tags in his or her possession.

(d) If a Wisconsin tribe has a tagging and registration system similar to the department's and an approved memorandum of understanding with the department pertaining to the system, tagging requirements under this section may be waived by the department. Tribal tags shall be validated and affixed to the carcass.

History: Created April, 1976, Taking effect 5-1-76;
Paragraph (1) (d) [allowing state & tribes to enter into an MOU's] Took effect 12-1-08.

Background Information

Current Wisconsin State Statute

29.047 Interstate transportation of game.

(1) (a) In this subsection:

1. "Transport" includes to cause to be transported, to deliver or offer to deliver for transportation and to receive or offer to receive for transportation.
2. "Game" means any wild animal, wild bird or game fish.

(b) No person in this state may transport into or through this state any game, or its carcass, from any other state in violation of any law of the other state.

(c) No person in this state may transport, possess or control in this state any game, or its carcass, that was taken in another state in violation of any restriction on open and closed seasons established under this chapter or of any bag, possession or size limit established under this chapter unless all of the following apply:

1. The game was lawfully taken in and lawfully transported from the other state.

2. **The person holds a license issued by the other state that authorized the person to transport, possess or control the game or its carcass.**

3. If the game is a cervid the person transports, possesses, delivers, receives, or controls the carcass of the cervid in compliance with rules promulgated by the department.

(1m) Unless prohibited by the laws of an adjoining state or a rule promulgated by the department under s. 29.063 (3) or (4), any person who has lawfully killed a cervid in this state may take the cervid or its carcass into the adjoining state and ship the cervid or carcass from any point in the adjoining state to any point in this state.

(2) Subsection (1) does not apply to any of the following:
(a) A person who has a valid taxidermist permit and who, in compliance with rules promulgated by the department under s. 29.063 (3) or (4), possesses, transports, causes to be transported, delivers or receives, or offers to deliver or receive, a wild animal carcass in connection with his or her business.

(b) The possession, transportation, delivery or receipt of farm-raised deer, farm-raised game birds, farm-raised fish, or wild animals that are subject to regulation under ch. 169.

History: 1985 a. 29; 1991 a. 269, 316; 1995 a. 79; 1997 a. 27; 1997 a. 248 ss. 95, 96, 518 to 521; Stats. 1997 s. 29.047; 2001 a. 56, 109; 2005 a. 286.

Wisconsin Assembly Committee on Natural Resources and Sporting Heritage

Public Hearing on
2013 Assembly Bill No. 30 –
The transportation in this state of game taken in another state or on Indian land.

Testimony of
Walter Cox
Chief Conservation Warden and Conservation Director

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Wednesday, March 27, 2013
Wisconsin State Capitol
Madison, WI

Good Afternoon Members of the Assembly Committee on Natural Resources and Sporting Heritage. My name is Walter Cox and I am the Chief Warden and Director of the Menominee Indian Tribe of Wisconsin's Conservation Department. I would like to introduce Legislator Orman Waukau of the Menominee Tribal Legislature. I am here today to provide testimony on behalf of the Menominee Indian Tribe in support of the 2013 Assembly Bill 30.

Background:

The Menominee Indian Tribe is a federally recognized Tribe with sovereign authority as defined by P.L. 93-197; Menominee Restoration Act. This authority, along with the Tribe's Constitution, provides the foundation that guides self-governance of the Tribe in all matters. As a self-governing entity within the exterior boundaries of the State of Wisconsin, the Menominee Indian Tribe exercises rights in accordance with the Tribe's Constitution and By-laws in addition to the fully enacted Ordinances, treaty rights, and other applicable guiding documents.

The Menominee Indian Tribe has a large population of enrolled and descendent members, each of which reside on and off-reservation. The Tribal membership is composed of 8,830 enrolled members and 1,950 descendants, of which 55% enrolled members and 87% descendent populations are forced to reside off reservation.

In accordance with Menominee Conservation Code, Chapter 287, enrolled tribal members are permitted to harvest Whitetail Deer within the exterior boundaries of the Menominee Indian Reservation from August 1-December 30 of each year. Whereas, applicable tribal law permits descendants to harvest deer from November 1-November 30 and spouses during the 9-day gun season, similar to Wisconsin's current law. The Tribe has enacted laws to regulate the harvest, tagging, bag limits, registration and youth hunting requirements to provide protection for the health, welfare, safety, and natural resources available on reservation. These laws apply to all enrolled, descendent, and spouse populations harvesting or attempting to harvest deer or other game within the exterior boundaries of the Menominee Reservation.

Tribal members, descendants, and spouses permitted to hunt within the exterior boundaries of the reservation must complete a licensing process. This process is completed by our Conservation Department where seasonal limit game tags are issued to each individual hunter at the time of licensing. The Tribe has also implemented a process of issuing hunting license identification cards complete with the individuals photograph, address, and other identifying information. Once the individual harvests game, they are required to tag the animal immediately and report the kill to the Tribal Conservation Department within 72 hours. In addition when animals are being transported off-reservation, the hunter is required to make the animal available for visual inspection, tagging verification, and providing identifying

information relative to date of kill, location of the kill, tag number, harvester, method of kill and other information as required by Tribal law.

Problem:

The problem exists with the current interpretation of Wisconsin State Statute §29.047(1) and (2); transport in Wisconsin of game taken in another state and s. NR 19.12, Wis. Adm Code, which applies to the removal of game from an Indian reservation. The current interpretation requires that tribal members, descendants, and spouses who lawfully obtain game taken during on-reservation open season times, but otherwise considered a closed season in the State of Wisconsin shall comply with Wisconsin transport tag requirements. This means that each tribal member wishing to leave the exterior boundaries of the reservation must obtain a State transport tag from the Menominee Conservation Department before leaving.

Challenges:

This requirement presents challenges for the Tribe through the following:

- Wisconsin's failure to recognize Menominee Indian Tribe's sovereignty by its failure to recognize Menominee Indian Tribes game tags.
- Financial burden incurred by the Menominee Indian Tribe of Wisconsin
- Inconvenience to Tribal members

The first issue identifies Wisconsin's differential treatment of the Tribe as opposed to other States in the recognition of transport tags. Furthermore, the problem presents itself through Wisconsin's recognition of out-of-state tags for game transported through the State, but it fails to recognize the Tribe's tag for the same purpose. The second challenge is related to the financial

burden placed on the Tribe through the unnecessary requirement of additional hours of manpower and work necessary for Conservation Warden's to visually inspect any deer leaving the reservation, issuing state transport tag, and record of contact with State officials.

Therefore, the Tribe views this failure to recognize the Tribe's sovereignty and additional financial burden as unnecessary when the Tribe has the previously demonstrated its ability to successfully operate its own tribal tagging system similar to the operation currently carried out by the State Department of Natural Resources. The third issue relating to inconvenience to Tribal members relates to both on and off-reservation populations. Members who reside off-reservation who wish to transport their game back to off-reservation homes in Green Bay, Milwaukee, Madison, Wisconsin and surrounding States must complete this additional verification process. The on-reservation population incurs this procedural inconvenience when they wish to transport game off-reservation for meat processing in surrounding local communities.

Proposed Solution:

The Tribe has worked diligently with the State-Tribal Relations Committee to inform them of this issue and challenges that it presents to the Tribe. The components included in Assembly Bill 30 address this problem directly by,

1. Correctly addressing the treatment of the Tribe as a sovereign nation; and
2. Eliminating the financial burden placed on the Tribe through the elimination of the need to issue the secondary State transport tag to all tribal members leaving the exterior boundaries of the Reservation with game lawfully taken during an open tribal season.

On behalf of the Menominee Indian Tribe of Wisconsin, I ask for your support to move this important piece of legislation through to the full Assembly for passage.

Maec Waewanon,

Walter Cox, Conservation Director

Menominee Indian Tribe of Wisconsin