REMARKS OF SENATOR SPENCER COGGS, CHAIR, SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS, TO THE ASSEMBLY COMMITTEE ON JUDICIARY AND ETHICS

2009 Assembly Bill 212
Tribal Law Enforcement Officers

April 21, 2009

Chair Hebl and committee members, thank you for taking up 2009 Assembly Bill 212, relating to the powers of tribal law enforcement officers. The bills were introduced by the Joint Legislative Council, at the recommendation of the Special Committee on State-Tribal Relations, which I chair.

Tribal governments have become an increasingly important part of the landscape of the state, especially in the north. They provide a wide range of services to their members and, in many instances, to the community in general. One very important area in which tribal governments have excelled is law enforcement. Nearly all of the tribes in Wisconsin now have police departments staffed by officers who are trained to the same standards as municipal and county officers. These police departments often work closely with their county sheriffs' departments and municipal police departments. In some cases, this goes so far as to include cross-deputization and joint dispatch functions.

To take advantage of the capabilities of tribal police departments and to improve law enforcement on Indian reservations, current law authorizes tribal police officers to enforce state laws against tribal and non-tribal violators on the tribe's reservation and off-reservation trust land. As a safeguard, the law requires that, to use this authority, the officer must meet state training standards and accept the duties and responsibilities of a state law enforcement officer. In addition, the tribe that employs the officer must accept all liability for the officer's actions.

Just how a tribe accepts liability for its officers' actions is the primary subject of this bill. Under current law, a tribe must adopt and have in effect a resolution waiving the tribe's sovereign immunity to the extent necessary to allow the enforcement of its liability for its officers' actions in state court. An alternative resolution, one that does not include an express waiver of sovereign immunity, will nonetheless satisfy this requirement if the Department of Justice determines that the resolution will reasonably allow the enforcement of the tribe's liability in state court.

The bills allow a third option. As an alternative to a resolution, the bills allow a tribe to meet its liability obligation by maintaining insurance that meets certain standards. Specifically, the insurance policy must:

- Cover the tribe for general liability for negligent acts and tribal officials' liability for the acts of the tribe's officers when acting under the authority of this statute.

- Have a limit of not less than $2 million for any occurrence.
- Provide that the insurer, in defending a claim against the policy, may not raise the defense of the tribe's sovereign immunity, up to the limit of the policy.

A tribe that elects to use this option must present evidence of the required insurance to the Department of Justice, which then notifies local law enforcement.

This is a very reasonable policy. It protects the interests of individual citizens while increasing law enforcement capabilities in Indian country. In some cases, having an insurance company as a defendant to a claim, as opposed to the tribe, may even make collection of damages by the injured party easier.

The bill addresses one additional, related matter. Current law authorizes an off-duty peace officer, including an off-duty tribal police officer authorized to enforce state law, to respond to a felony in progress or to render aid to an on-duty officer. In this instance, the law provides that the state accepts liability for the officer's actions. The legislation that created this provision did not reconcile this with the liability provisions addressed by this bill. To reconcile these provisions, the bill specifies that, for a tribal officer acing under the off-duty peace officer statute, the liability provision of that statute governs – that is, the state accepts liability in that instance, as it does for other off-duty officers.

The involvement of tribal law enforcement officers has been a good experience, in general. The bill will further facilitate that involvement. I hope you will recommend Assembly Bill 212 for passage by the Assembly.

I would be happy to answer any question you may have. Also, David Lovell and Heidi Frechette, the Legislative Council staff assigned to the Special Committee, are here to help me answer questions.