STATE OF WISCONSIN

DEPARTMENT OF WORKFORCE DEVELOPMENT

POLICY REGARDING

CONSULTATION WITH WISCONSIN'S INDIAN TRIBES

Governor Jim Doyle

Secretary Roberta Gassman

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CHAIRPERSONS OFFICE

I. Introduction

The various states have a unique legal relationship with each sovereign American Indian government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws and court decisions. Wisconsin Executive Order #39, issued in February 2004, affirms the government-to-government relationship between the State of Wisconsin and each American Indian government located within the State of Wisconsin.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action taken. The goal is to implement programs in a collaborative manner. The Wisconsin Department of Workforce Development (DWD) is committed to such government-to-government relations with the federally recognized tribal governments of Wisconsin (Tribes). The Department will employ its best efforts to achieve positive outcomes from its consultation and collaboration. The intent of this policy is to improve the planning and delivery of workforce employment development services and access to American Indian governments, communities, and people. We will achieve this by developing principles and a process for consultation on workforce policies in Wisconsin. It is for this purpose that this policy has been developed.

The Department of Workforce Development is a comprehensive state agency, headed by a cabinet-level secretary. The Department has responsibility for establishing policies and providing services in a wide variety of program areas, including:

- child care,
- vocational rehabilitation,
- child support,
- worker's compensation,
- unemployment insurance,
- equal rights and,
- workforce development and employment and training
- TANF related programming

Many of these services are provided directly through the State's legal and contractual relationships with state Temporary Assistance to Needy Families ("TANF" or "W-2") agencies, county departments of human services or social services, child support agencies, Job Centers, local workforce development boards, and public and private employers. DWD services are also provided by tribal agencies through a contractual relationship between the DWD and tribal governments. DWD also has service agreements with some tribal agencies under which the Department charges tribal agencies fees for service.

Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status, self-government, and self-determination. The Department of Workforce Development respects the fundamental principles that establish and maintain the relationship between American Indian governments and the DWD. The Department affords American Indian governments the same respect afforded to other governments.

The Governor and Legislature transferred the former Division of Economic Support from the Department of Health and Family Services to the Department of Industry, Labor, and Human Resources (DILHR) and created the Department of Workforce Development in 1996. That Division had a long history of contracting with tribal governments in the State of Wisconsin. With the creation of the Department of Workforce Development, the nature of the relationship with Wisconsin's American Indians changed.

Collaboration was improved when in early 1997, former Secretary of the DILHR Carol Skornica sat down with the tribal leaders to discuss creating a Native American Services Coordinator position within the Department. The proposed position would coordinate services in the Department that were geared toward the Indian nations and bands. The position was established using as a guide the Tribal Liaison position in the Department of Health and Family Services. In addition to the Native American Services Coordinator, there are a variety of staff that actively work with the Tribes on the Department's various programs. Secretary Roberta Gassman is establishing a direct reporting relationship of the Native American Services Coordinator to the Secretary's Office.

The DWD, its partner agencies and the Tribes have a responsibility for a variety of workforce development and economic support services. As residents of the State of Wisconsin, tribal members are equally entitled to services afforded to all residents of the State. As members of a sovereign tribal nation, tribal members are also entitled to those services afforded to all members of that tribal nation. Whether the services are provided through tribal agencies or through the DWD partner agencies, or regional entities, it is critical that Department of Workforce Development administrators, the leadership of the state's American Indian governments and their representatives consult with one another to assure successful delivery of needed services.

DWD will participate in regular, sometimes monthly, meetings with the Tribes to consult and collaborate on issues pertaining to TANF and WIA related programs. Tribes and DWD may, therefore, enter into Memoranda of Agreement (MOA) & Memoranda of Understanding (MOU) to further establish formal relationships outlining policy development and systems operations.

II. Objectives

The objectives of this policy are:

A. To create a collaborative relationship to improve the child care, vocational rehabilitation, child support, worker's compensation, unemployment insurance, equal rights, workforce development, employment and training opportunities including TANF related programming for tribal communities and their members statewide.

B. To formalize the process and expectations for the DWD to implement a government-to-government relationship and to foster, consultation with and encourage the participation of representatives of American Indian governments in policy development and program activities.

C. To promote and develop methods of obtaining consultation on issues from American Indian governments, to include urban population needs and to involve their representatives in the DWD decision-making process.

III. Guiding Principles

The DWD is committed to improving and maintaining effective government-to-government relations with Wisconsin's American Indian governments. The development of mutual understanding, with cultural awareness and sensitivity, is necessary to effective consultation on policy and collaboration on program operations. Toward achieving this goal, the DWD shall utilize the following principles in consulting on policy and on program issues with tribal governments. Integration of these principles into DWD planning and management activities will help produce positive and desired outcomes in workforce development, economic support and employment and training services for Tribal community members.

A. It is important to recognize the uniqueness of each American Indian community's culture, governmental structure and processes, demographics and geography (i.e., where tribal members are located), and other factors.

B. Consultation involves respectful and timely communication with tribal governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.

C. Working directly with American Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.

D. Consultation with tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to affect American Indian Tribes or their members is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation.

E. Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.

IV. Purpose and Methods

The State of Wisconsin, represented for purposes of this policy by its Department of Workforce Development, with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to tribal community members, and other high-level matters of mutual concern.

The Wisconsin Department of Workforce Development, together with the Wisconsin federally recognized tribal governments, establishes this policy requiring consultation by and between these governments on DWD policies and activities. This policy formalizes the collaborative relationship the DWD and American Indian governments have established in contracting for and access to child care, vocational rehabilitation, child support, worker's compensation, unemployment insurance, equal rights, workforce development, employment, training opportunities and services including TANF related programming for tribal communities and their members statewide.

A. *Annual Meetings*

The Secretary of the Department of Workforce Development shall assume the responsibility for scheduling, in consultation with tribal leadership, an annual consultation session at which the Secretary will be present. The consultation must include invitations to, at a minimum, the following individuals or their designee:

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chairperson, Oneida Tribe of Indians of Wisconsin
- Chairperson, Forest County Potawatomi Community
- Chairperson, Red Cliff Band of Lake Superior Chippewa Indians
- Chairperson, Mole Lake Sokaogon Chippewa Community
- Chairperson, St. Croix Chippewa Indians of Wisconsin

- President, Stockbridge-Munsee Band of Mohican Indians
- Tribal Administrators and program staff as determined by the Tribal Leadership
- The Secretary of the Wisconsin Department of Workforce Development
- DWD administrators and other staff as determined by the Secretary

The agenda, date, and location of the consultation session shall be determined jointly by the Secretary and the American Indian leaders named above. The schedule will take into account the desirability of allowing adequate time during even numbered years for development of DWD's tribal biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting to review and evaluate the accomplishments and effectiveness of the previous year's DWD action plan (see section IV-B) and to establish mutual goals for the current year's action plan. The agenda shall also include a current DWD organizational chart.

B. *Other Meetings*

The Secretary of the Department of Workforce Development shall assume the responsibility for scheduling, in consultation with tribal leadership, additional consultation sessions at his or her discretion. In addition, any tribal Chairperson or President may request meetings or other consultation with the Secretary or other DWD representatives.

C. *Annual Action Plan*

The DWD shall establish, in conjunction with appropriate program staff administering tribal programs and the DWD Native American Services Coordinator, an annual action plan by which this government-to-government consultation policy shall be implemented. The action plan shall include:

- Programs: A list of programs and services available to Tribes, including an overview of and training on DWD programs and a DWD organizational chart.
- Policy and Program Development: Description of new or potential initiatives, programs, and policies affecting Tribes.
- Priorities: Priority issues for resolution in conjunction with the Tribes.
- Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and programs.
- Evaluation Process: The process to determine the effectiveness of the action plan with respect to the consultation process and to the programmatic, fiscal, and other aspects of applicable health and human services programs identified in the action plan shall be reported to the Tribes.

D. *Training*

It shall be part of consultation agendas to establish regular, ongoing training sessions for appropriate DWD employees and other individuals, such as workforce development boards, W-2 agencies, counties, and other subcontractors. The purpose of this training is to educate DWD employees regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty and Tribal government and services. The Department of Administration's Division of Intergovernmental Relations will facilitate training and curriculum for appropriate department staff.

E. *Federal law supersedes*

No action taken in accordance with this policy shall conflict with or circumvent Federal laws, mandates, rules or regulations governing the programs, procedures or practices of either the Department of Workforce Development or Wisconsin's federally-recognized American Indian governments.

V. Resolution of Issues

Throughout any given year, specific issues affecting one or more Tribes and the Department of Workforce Development may arise. These issues may be raised by either a Tribe or the DWD and may occur at various levels within either party. The following process is to be used when such issues arise.

A. *Initial Discussion*

When an issue arises and an authorized and designated employee of either a Tribe or the DWD contacts an employee of the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the process described in Subsection V-B will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Subsection V-C.

B. *Issues Requiring Higher Level Involvement*

If higher level involvement is needed, the issue will be raised to the appropriate level in the DWD for resolution. Within the DWD, the Native American Services Coordinator, with the support and assistance of the Secretary's Office, will facilitate contact between the appropriate DWD staff or management and the Tribe. Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue. As it is recognized that some issues may not be able to be resolved to the satisfaction of all parties, such matters shall be referred to the annual consultation session with the goal of a mutually satisfactory resolution, if possible.

C. *Issues Affecting More Than One Tribe*

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the DWD representative who is involved with the issue will make contact with the Tribe and notify the DWD Native American Services Coordinator, with the support and assistance of the Secretary's Office. The DWD representative and the Native American Services Coordinator shall notify all Tribes and initiate the resolution process. Communication involving all of the potentially affected parties will occur in a timely manner and will be facilitated by the DWD Native American Services Coordinator and the DWD representative.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to a higher level as described in Subsection V-B.

D. Resolution Process for the Division of Unemployment Insurance

The resolution of issues in the Division of Unemployment Insurance is governed by Wisconsin state statute under guidelines issued by the Federal government. Wisconsin legislative law is clear on how a dispute involving an employer, including a Tribal government employer will be resolved. The processes in Wisconsin Statute 108.09 and 108.10 provide for a hearing process as a solution to these problems.

The Division of Unemployment Insurance will treat tribal employers like other employers who become subject to state unemployment insurance law.

VI. Outreach to Tribal Governments by Committees and Workgroups

The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it is often necessary for the DWD to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the DWD. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting tribal governments, shall inform tribal Chairpersons/Presidents, in writing, of the proposed policy or program in order to solicit tribal input.

Appendix A
GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

"American Indian Tribal government": a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws and treaties of the United States of America, which also may be known as a "federally recognized Indian Tribe".

Chief Local Elected Official (CLEO)": the local government official, usually a county administrator, who is currently in charge of appointing members to the local workforce development board.

"Child support:": obligations owed by parents to their children and maintenance obligations owed to spouses or former spouses with whom the children reside in this state.

"Child support agency": an agency that is charged with establishing paternity when possible, modifying and enforcing support obligations with the powers and duties described in Wis.Stats 49.22.

"Consultation" references a tool used to facilitate communication and interaction between the state government entity and all of the federally recognized Tribes in Wisconsin.

"Council on Workforce Investment": a group of representatives from the public and private sector including education and local government, appointed by the Governor to address issues of workforce development strategy, policy and research.

"County department of human services": an agency that is part of a county governmental structure with the powers and duties described in sec. 46.23, Wis. Stats.

"County department of social services": an agency that is part of a county governmental structure with the powers and duties described in sec. 46.215 or 46.22, Wis. Stats.

"Cultural awareness and sensitivity": having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

"DWD" or *"Department":* the Wisconsin Department of Workforce Development.

"DWD Native American Services Coordinator": the person within the Department of Workforce Development who has department-wide responsibility for providing liaison duties, advice and technical assistance to Department employees and Native Americans in the State of Wisconsin.

"Division": means a subunit of the DWD responsible for the management, administration, and provision of programs and services in specific program areas. For purposes of this agreement, "division" relates to one or more of the following divisions Workforce Solutions, Equal Rights, Worker's Compensation, Unemployment Insurance, Vocational Rehabilitation, and Administrative Services.

"Government-to-government": communication and dealings between sovereign governments, their agencies and other official entities.

"Job Centers": facilities throughout the state where residents go to engage in job readiness, preparedness, resource, development activities.

"MOA": Memoranda of Agreement

"MOU": Memoranda of Understanding

"Partners" means an employer, county office of social services, child support agency, child care provider, Tribe, or workforce development board that has a contractual or other programmatic relationship with the Department of Workforce Development.

"Sovereign": means a state in which supreme authority is vested.

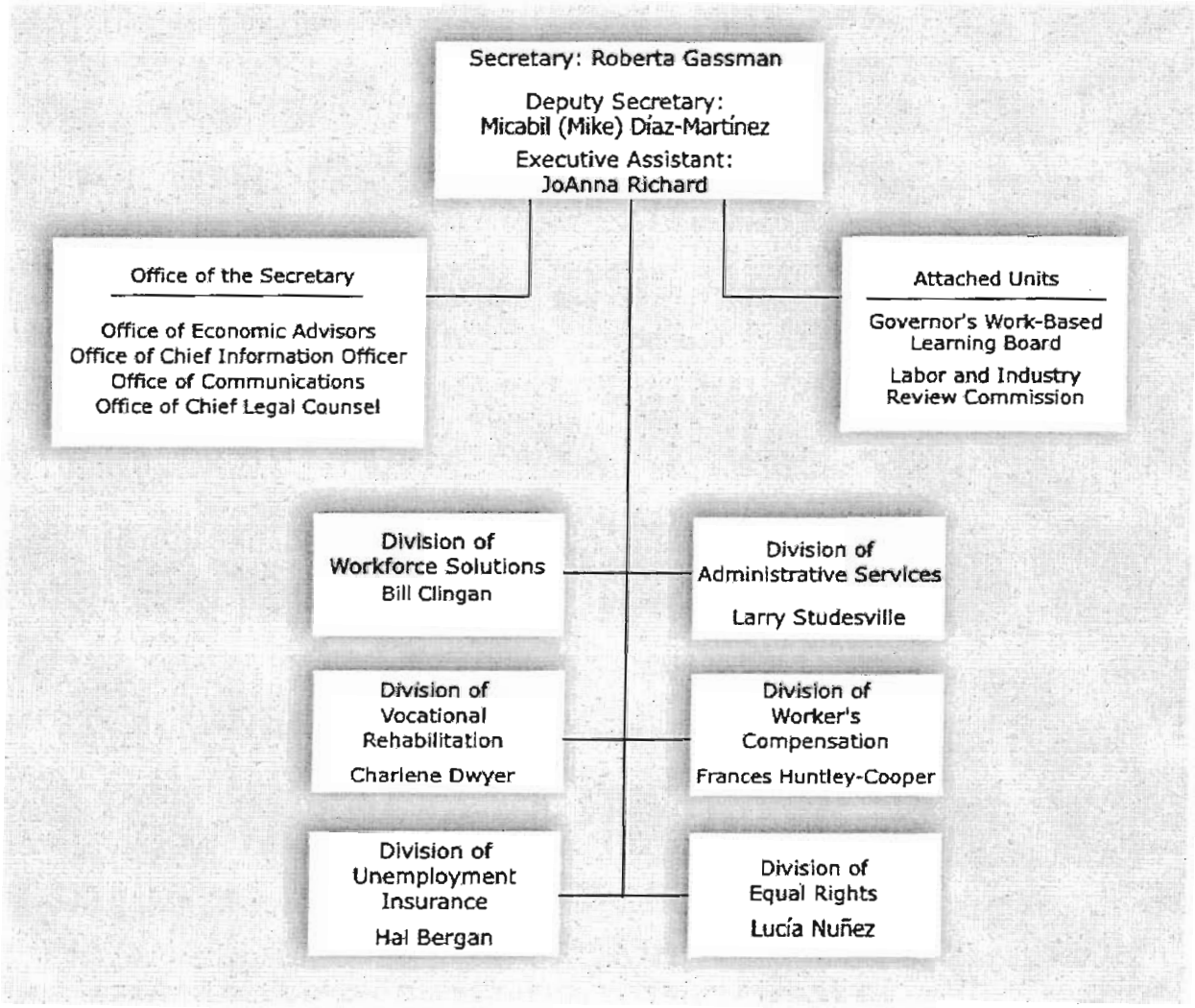
"Tribal TANF": a tribally-administered Temporary Assistant for Needy Families (TANF) program which replaced Aid to Families with Dependent Children.

"Unemployment Insurance Advisory Council": a council established with the DWD Division of Unemployment Insurance. The Council advises the Department on the administration of UI law, reports views on pending legislation to the Legislature, and submits recommendations for changes to UI law to the Legislature every biennial legislative session.

"Workforce Development Board": a regional board established to carry out the provisions of the Workforce Investment Act.

"Wisconsin Works (W-2)": the state-administered Temporary Assistance for Needy Families (TANF) program which replaced Aid to Families with Dependent Children.

Division: DWD Overview and Secretary's Office



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