

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Thursday, October 22, 2009

Auditorium, Turtle Mountain Community College, 10145 BIA Road #7
Belcourt, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Kari L. Conrad, Jim Kasper, Don Vigasaa; Senators Tim Mathern, Dave Oehlke

Member absent: Senator Stanley W. Lyson

Native American Tribal Citizens' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Richard Marcellais, Chairman, Turtle Mountain Band of Chippewa Indians

Native American Tribal Citizens' Task Force members absent: Marcus Levings, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Charles Murphy, Chairman, Standing Rock Sioux Tribe; Myra Pearson, Chairman, Spirit Lake Tribe; Michael Selvage Sr., Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Others present: Senator David O'Connell, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

Chairman Boucher noted that Native American Tribal Citizens' Task Force member Richard Marcellais is also a State Senator from District 9. Chairman Boucher welcomed everyone in attendance and thanked them for attending the meeting. He also thanked the Turtle Mountain Community College for hosting the committee and the Native American Tribal Citizens' Task Force for attending.

Chairman Boucher recognized Dr. Jim Davis, President, Turtle Mountain Community College, Belcourt. He welcomed the committee to the college and Belcourt. He said the college was founded in 1972 and approximately 15,000 students have come through the college's doors. He said the college has approximately 3,000 graduates. He noted most of the students and graduates stay in the state and the community and are a great asset to the state.

At the request of Chairman Boucher, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#). He also reviewed a memorandum entitled [Tribal and State Relations Committee - Background Memorandum](#). The memorandum discusses the committee's responsibilities, federal Indian law and policy, state-tribal relations, state-tribal cooperative agreements, and 2009 legislation relating to Indian issues.

Chairman Boucher recognized Mr. Scott J. Davis, Executive Director, Indian Affairs Commission, Bismarck. He discussed emerging issues relating to tribal and state relations. He said one issue facing the state and tribes is suicide prevention. Another issue, he said, is the upcoming federal decennial census and the challenge to get an accurate count in Indian country. He said another issue is to ensure that tribal historic artifacts, cultures, languages, and ceremonies are protected. To further this goal, he said, the State Historical Society and tribal historic preservation offices are cooperating to protect these valuable resources. He said another tribal and state issue is the commemoration of the Whitestone Hill Battlefield and preservation of the site. He said he views the Whitestone Hill battle as the Wounded Knee of North Dakota and the battlefield should be preserved. Another issue, he said, is the promotion of rural development initiatives, such as those put forward by the Bush Foundation, the Northwest Area Foundation, and the Pathways to Prosperity program to eliminate poverty on the state's Indian reservations. He said another issue that should be explored is establishing a state-tribal liaison within various state departments to provide a link between the state and tribes. He said the state-tribal liaison would work to enable tribes and tribal members to access state programs. He said a state-tribal liaison would be especially beneficial on housing, commerce, veterans', natural resource, and human service issues. He said the Indian Affairs Commission is also working with Indian parolees and their transition into society. He said a halfway house in Devils Lake has been proposed.

Chairman Boucher recognized Mr. Conrad Parisien, Counselor, Fifth Generation program, Belcourt. He reviewed the Fifth Generation program and said tribal addiction counselors should be recognized and have license reciprocity with the state.

HATE CRIMES ISSUES

Chairman Boucher recognized Dr. David M. Gipp, President, United Tribes Technical College, Bismarck. He discussed the issue of hate crimes in North Dakota ([Appendix B](#)) and distributed a copy of the November 2009 issue of *United Tribes News*, a copy of which is on file in the Legislative Council office. He recommended that the committee promote research studies to indicate how American Indians are treated in the state, educational curriculums that treat

American Indians and cultures of the state's tribes with respect, state-mandated policies that require better treatment of American Indians by state agencies and that encourage participation of American Indians in state government, leadership that is inclusive of American Indians in the state, and improvement in hate crime legislation.

Chairman Boucher recognized Mr. Mike Seminary, Commissioner, city of Bismarck. He addressed the issue of hate crimes in Bismarck. He said the investigation relating to the vandalism of sculptures placed by United Tribes Technical College students in Bismarck parks is ongoing. However, he said, what is clear is that the acts of vandalism are unacceptable and must be addressed.

INDIAN HIGHER EDUCATION ISSUES

Chairman Boucher recognized Dr. T. M. Bull Bennett, North Dakota Association of Tribal Colleges, Mandan. He reviewed [House Bill No. 1394](#) (2009) and [House Bill No. 1566](#) (2009). He said House Bill No. 1394 related to financial assistance to tribally controlled community colleges and House Bill No. 1566 required the commissioner of higher education to study the interplay between the North Dakota University System and tribally controlled community colleges.

Vice Chairman Mathern recognized Dr. Cynthia Lindquist Mala, President, Cankdeska Cikana Community College, Fort Totten. She reviewed Indian higher education in North Dakota. Concerning hate crimes, she said, one step the committee should take is to promote legislation to establish a North Dakota human rights commission. She said a human rights commission would be a step in the right direction to address the hate crimes issue. She said the state's tribal colleges have between 2,500 and 3,000 students, of which 10 percent to 15 percent are non-Indians. She said there are 252 students at Cankdeska Cikana Community College. She said House Bill No. 1394 assisted the tribal colleges in educating non-Indian students. She said another important piece of legislation enacted by the Legislative Assembly is House Bill No. 1399 (2009). She said this bill established the American Indian Language Preservation Committee. She said the preservation of American Indian languages is an important mission of each of the tribal colleges in North Dakota.

Chairman Boucher recognized Dr. Davis. Concerning the hate crimes issue, Dr. Davis urged the committee to take action now. He said this issue was ripe for legislative action. He said North Dakota's tribal colleges provide a valuable resource to nonnative students. He said many nonnative students attending tribal colleges probably would not attend a state institution, and thus tribal colleges are providing a valuable service to the state.

In response to a question from Senator O'Connell, Dr. Davis said the enrollment at the state's tribal colleges was approximately 2,700 in 2007 and

98 were non-Indians. He said the enrollment of non-Indians fell to 70 students in 2009 due to a change in the federal definition of nonbeneficiary student for reimbursement purposes.

Chairman Boucher recognized Dr. Gipp. He said the United Tribes Technical College supports the legislation providing assistance to tribally controlled colleges.

HUMAN SERVICES ISSUES IN INDIAN COUNTRY

Chairman Boucher recognized Ms. Tess Frohlich, Administrator, Home and Community-Based Services, Department of Human Services, Bismarck. She discussed the status of Medicaid-funded targeted case management services for American Indian elders ([Appendix C](#)).

Chairman Boucher recognized Ms. Bev Mathiason, Director, Rolette County Social Services, Rolla. She said the issues facing the state's Indian counties are similar. She said these include a lack of jobs, lack of transportation, lack of housing, inadequate health care, and drug and alcohol abuse. She said one-third of Rolette County residents receive food stamps and 550 families in Rolette County receive temporary assistance for needy families (TANF) benefits.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Andrew Laverdure, Judge, Turtle Mountain Tribal Court. He discussed child support enforcement and parental rights in Indian country. He said the Turtle Mountain Tribal Court has two judges and seven clerks. He said the court handles 5,000 cases a year which is equal to the caseload of the Northeast Judicial District. He said the state has a vested interest in solving problems on the state's reservations.

Concerning child support enforcement, Mr. Laverdure distributed a letter ([Appendix D](#)) from Mr. Steven J. Simonson, Special Assistant Attorney General, Child Support Enforcement, Devils Lake, indicating that the Devils Lake Regional Child Support Unit has not been granted authority to appear in tribal court. Mr. Laverdure said this position has changed under the current administration and child support enforcement attorneys who are licensed are welcome to appear in tribal court. He said if the tribal court has subject matter and personal jurisdiction it is the appropriate venue for child support determinations. He said the state's laws depriving a noncustodial parent of a license are not appropriate for tribal members. He said tribal members must have a hunting license in order to feed their family and must have a driver's license in order to get to their place of employment. He said tribal court is flexible in this regard. He said the Turtle Mountain Child Support Enforcement Act, signed into law by the tribe in June 1999, remains in full force and effect and is part of the tribal code. Thus, he said, there is no reason why

representatives of Child Support Enforcement cannot appear in tribal court.

Mr. Laverdure said the Turtle Mountain Tribal Court is having problems resolving a termination of parental rights case in Turtle Mountain Tribal Court because the three parents of two children are in state correctional facilities. He said the state has conducted psychological evaluations of the parents but state law only provides for disclosure of the psychological evaluations to other state entities and not to tribal entities.

Chairman Boucher recognized Mr. Mike R. Schwindt, Director, Child Support Enforcement, Department of Human Services, Bismarck. He distributed a DVD relating to the Office of Child Support Enforcement IV-D tribal child support training program, a copy of which is on file in the Legislative Council office. A copy of Mr. Schwindt's written comments is attached as [Appendix E](#). He said he was unaware that the Turtle Mountain Tribal Court is again allowing Child Support Enforcement to appear in tribal court. However, he said, he welcomed this development.

In response to a question from Representative Boucher, Mr. Schwindt said interest on unpaid child support arrearages may be negotiated especially to encourage the noncustodial parent to return to a paying mode.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Nathan Berseth, Impact Foundation, Fargo. He discussed economic development initiatives in Indian country. He presented a progress report ([Appendix F](#)) relating to the Impact Procurement Assistance Center. He said the current contract with the Department of Commerce expired June 30, 2009, and the Impact Foundation chose not to reapply for the contract. During the 2006-09 period, he said, 225 companies registered for services. He said 153 of these were American Indians and 43 were veteran-owned. He said this represents 90 percent of the current 8(a)/SDB certified companies in North Dakota and 70 percent of the companies registered in www.ccr.gov as owned by American Indians.

In response to a question from Senator Mathern, Mr. Berseth said the Impact Foundation did not reapply for the contract because it felt it would be a disservice to its other grantors because the amount paid under the contract was not commensurate with the services required to fulfill the contract. However, he said, the Impact Foundation had a very good working relationship with the Department of Commerce.

In response to a question from Representative Kasper, Mr. Berseth said the majority of jobs created under the program were federal jobs created off the reservation. In response to a further question from Representative Kasper, Mr. Berseth said

approximately 65 percent of the jobs created were construction jobs with the remainder of the jobs being consulting and service jobs.

In response to a question from Representative Conrad, Mr. Berseth said his organization has met with the Prairie Consulting Group, Bismarck, to provide for a smooth transition.

Chairman Boucher recognized Mr. Bob Harms, Prairie Consulting Group, Bismarck. He said he is managing partner of Prairie Consulting Group, a limited liability partnership. He said the group examined the request for proposal issued by the Department of Commerce and determined to apply for the contract. He said the group was awarded the contract and believes that it can deliver the services required under the contract. The first step, he said, is to identify the demographics of the American Indian business community in North Dakota. He said the partnership intends to complete this step by November 1. Next, he said, the partnership intends to reach out to the American Indian business community. The third part of the contract, he said, is to coordinate with the Impact Foundation. He said the focus of the contract is to assist the private sector to develop businesses that are not dependent upon federal contracts. He said the partnership intends to provide business outreach, workshops relating to business consulting, seminars, and consultation as requested. He said the partnership intends to consult with the Indian Affairs Commission, United Tribes Technical College, and business development entities on each reservation in the state.

In response to a question from Senator Mathern, Mr. Harms said the contract is a one year, \$90,000 contract. He said the partnership intends to subcontract the demographic portion of the contract.

Representative Kasper encouraged Mr. Harms and the Prairie Consulting Group to focus on creating jobs on the state's Indian reservations where the need is greatest.

Representative Boucher said that one item that needs to be done in Indian country is a resource inventory. Another item that must be accomplished, he said, is the creation of sustainable jobs.

Chairman Boucher recognized Mr. Tom Disselhorst, Attorney, United Tribes Technical College, Bismarck. He said the United Tribes Technical College has a minority business development office and can assist the state in promoting economic development on the state's reservations. One issue that must be addressed, he said, is making it easier for American Indians and American Indian-owned businesses to access state programs. He said Montana and South Dakota have developed several innovative programs that should be reviewed.

TAXATION IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel read the written comments prepared by Mr. Cory Fong, Commissioner, Tax Department,

concerning the status of relationships between the Tax Department and Indian tribes in North Dakota. Committee counsel said Commissioner Fong reported there have been no changes in the status of relationships with the tribes in North Dakota in the past year. However, he said, he believes it is important to point out two items. First, he said, the Tax Department continues to enjoy positive, effective working relationships with the governing bodies for the Standing Rock Sioux Tribe, Three Affiliated Tribes of the Fort Berthold Reservation, and Spirit Lake Tribe with regard to collection and administration of both state and tribal taxes. He said those ongoing relationships were aided tremendously by the written tax collection and administration agreements entered with each tribal governing body. Second, he said, Tax Department staff is working with representatives of the Turtle Mountain Band of Chippewa Indians with regard to a motor vehicle fuels tax and special fuels tax agreement between the state and the tribe. He said he anticipates preliminary work will be completed this fall and an agreement will be in place shortly thereafter.

INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel distributed information prepared by Mr. Robert Marthaller, Assistant Superintendent, Department of Public Instruction, concerning Indian education that had been presented to the interim Education Committee. A copy of this information is on file in the Legislative Council office.

Chairman Boucher recognized Ms. Ella Davis, Advocate, Protection and Advocacy Project. She said many disabled individuals are not getting their needs met and urged the committee to keep these individuals in mind when studying Indian education issues.

STAFF DIRECTIVES

Representative Conrad requested the Legislative Council staff arrange for a presentation by the Governor's office on the operation of the oil and gas tax agreement between the Three Affiliated Tribes of the Fort Berthold Reservation and the state of North Dakota at a future meeting.

Representative Boucher requested the Legislative Council staff arrange for a presentation by representatives of the State Department of Health concerning the licensing and recognition of tribal licenses of tribal addiction counselors.

Senator Mathern requested the Legislative Council staff contact the Board of Addiction Counseling Examiners to ascertain its position concerning the recognition of tribal addiction counselors who may be licensed by tribal or federal governments.

Senator Mathern requested the Legislative Council staff prepare a bill draft based upon the Minnesota hate crimes law.

Representative Boucher requested the Legislative Council staff invite representatives of the Fargo Human Relations Commission to discuss the *Fargo/Moorhead Hate Crime Prevention and Response Plan* with the committee at a future meeting.

Representative Boucher requested the Legislative Council staff request Human Resource Management Services to provide information on the number of American Indians employed in state government at a future meeting.

Representative Boucher requested the Legislative Council staff arrange for the chairman of the American Indian Language Preservation Committee to update the committee on the preservation committee's activities at a future meeting.

Representative Boucher requested representatives of the Department of Human Services report on the status of providing a single point of entry to access human service programs at a future meeting.

Representative Boucher requested the Legislative Council staff provide the legislative history for recent TANF changes.

Representative Boucher requested that the Legislative Council staff contact the Department of Human Services relative to disclosure of state psychological evaluations to tribal entities.

Representative Kasper requested that Mr. Berseth provide a summary of his experience working with the Department of Commerce and the Impact Procurement Assistance Center.

Representative Conrad requested that Mr. Harms provide periodic updates to the committee on American Indian business and economic development.

Representative Conrad requested representatives of the Department of Transportation be requested to appear at the next committee meeting.

Mr. Davis requested that representatives of the Superintendent of Public Instruction be requested to update the committee on Indian education issues at the next committee meeting.

Representative Boucher requested the Child Support Enforcement office provide information on the calculation of interest on child support arrearages at a future meeting.

In response to a question from Representative Conrad, Mr. Davis said the Indian Affairs Commission will provide information on the number of schools with Indian students that are not meeting adequate yearly progress requirements.

No further business appearing, Chairman Boucher adjourned the meeting at 4:17 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:6