

NORTH DAKOTA LEGISLATIVE MANAGEMENT
Minutes of the
TRIBAL AND STATE RELATIONS COMMITTEE

Monday, September 28, 2015
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Marvin E. Nelson, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Marvin E. Nelson, Bill Amerman, Wayne Trottier; Senators Joan Heckaman, Oley Larsen, Dave Oehlke

Member absent: Representative Dennis Johnson

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Allen Nygard, representing Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Patrick Marcellais, representing Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians

North Dakota Tribal Governments' Task Force members absent: Myra Pearson, Chairperson, Spirit Lake Sioux Tribe; Bruce Renville, Chairman, Sisseton Wahpeton Oyate of the Lake Traverse Reservation; Dave Archambault II, Chairman, Standing Rock Sioux Tribe

Others present: See [Appendix A](#)

At the request of Chairman Nelson, Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

At the request of Chairman Nelson, Legislative Council staff presented a background memorandum entitled [Tribal and State Relations Committee - Background Memorandum](#).

Chairman Nelson thanked Mr. Davis for his assistance in helping this committee work with the Tribal Governments' Task Force. He said the committee will be studying tribal youth services. He said the committee will also consider other issues such as agreements between the tribes and the state, natural resources, criminal justice issues, transportation needs, permits and licenses, and housing. He said although progress when dealing with government-to-government relations can be slow, it is important to continue to engage.

MEDICAID EXPANSION

Chairman Nelson called on Ms. Stephanie Waloch, Medicaid Expansion Administrator, Department of Human Services, for testimony ([Appendix B](#)) regarding the status of the enrollment of tribal members in Medicaid Expansion. Ms. Waloch said as of July 2015, the Medicaid Expansion enrollment in the state included approximately 18,833 individuals. She said 77 percent of the expansion enrollees are childless adults. She said of those childless adult enrollees, more than half are ages 19 to 44. She said the Department of Human Services is unable to report the ethnic and racial makeup of the expansion population. She said the question on the eligibility application pertaining to race is optional and therefore does not accurately reflect the ethnic and racial breakdown. She said as the department moves forward with implementing a new eligibility system that will have additional online and interactive eligibility application methods, the department expects more individuals will respond to the optional racial and ethnic question on the application. She said the department has and will continue to collaborate with the Indian Affairs Commission to ensure American Indians are aware of the expanded coverage and are encouraged to apply.

In response to a question from Senator Heckaman, Mr. Brad Hawk, Indian Affairs Commission, said navigators provide outreach on the reservations in North Dakota and South Dakota. He said a three-year grant recently was awarded to provide more outreach. He said the Indian Affairs Commission is also providing Medicaid provider reimbursement training.

In response to a question from Chairman Nelson, Mr. Hawk said there is a misconception among the tribes that tribal members do not need health insurance because they have the federal Indian Health Service. He said the

Indian Affairs Commission is working to educate tribal members on the need for health insurance. He said every tribal member with insurance creates more money for the Indian Health Service to purchase new equipment.

In response to a question from Senator Larsen, Mr. Hawk said the Indian Affairs Commission also works with insurance companies to educate tribal members on the availability of health insurance options.

Mr. Davis said changing the mindset of tribal members who believe the Indian Health Service is insurance and no other health coverage is needed is a slow process. He said, however, much work is being done to educate tribal members. He said the same discussion applies to veterans who rely on the Veterans' Administration for health care. He said veterans need to know that private insurance and Medicaid Expansion are options as well.

In response to a question from Chairman Nelson, Mr. Davis said he has been working with the North Dakota Hospital Association to implement a screening process to provide information regarding copayments and other costs. He said Sanford Health is hiring a tribal outreach worker to encourage tribal members to sign up for insurance.

In response to a question from Chairman Nelson, Ms. Waloch said she would provide information on ethnic background once the new system is operational. She said the state will be using the same application process but will have access to additional information.

Mr. Nygard said his tribal government is working with Medicaid to resolve issues in the process. He said much of the problem is the lack of information sharing and how to make it work on both sides. He said the lack of outreach is the problem, not the product.

TAX DEPARTMENT

Chairman Nelson called on Mr. Joe Morrisette, Deputy Tax Commissioner, Tax Department, for information ([Appendix C](#)) regarding the status of current and pending tobacco, fuels, oil and gas, and sales tax tribal-state tax agreements. Mr. Morrisette said the information includes the amount of revenue generated for the tribes under tax collection agreements on cigarette and other tobacco products, motor fuel and special fuels, and oil and gas production and oil extraction. He said other potential agreements include a sales tax agreement with the Standing Rock Sioux Tribe. He said all agreements require the tribe to enact tribal codes that mirror state laws. He said the Standing Rock Sioux Tribe has provided the Tax Department a draft of those codes. He said an April 1, 2016, effective date for the sales tax agreement is anticipated.

With respect to the oil and gas gross production and oil extraction agreement with the Three Affiliated Tribes of the Fort Berthold Reservation, Mr. Morrisette said 2015 House Bill No. 1476 allows for the agreement to be adjusted. He said if the revised agreement is agreed upon before December 31, 2016, the revised agreement will not require legislative approval. He said 2015 Senate Bill No. 2226 allows for oil and gas tax agreements with other tribes. He said to date, there has not been activity pursuant to the authority under that bill.

In response to a question from Chairman Nelson, Mr. Morrisette said based on 2015 Senate Bill No. 2226, legislative confirmation of agreements approved by the Governor and the governing bodies of the tribes is required if the agreement is a tax collection agreement. He said an agreement can be reached between the parties but the agreement may not be implemented until it is approved by the Legislative Assembly.

In response to a question from Representative Amerman, Mr. Morrisette said the revenue allocation percentages are negotiated between the state and tribes.

Mr. Nygard said taxation and the ability to negotiate with the state are of great interest to his tribe. He said 2015 Senate Bill No. 2226 has put tribal-state tax collection agreements on a two-year cycle. He said the tribes now have to wait until the next legislative session for agreements to become effective. He said the tribes need the ability to work with the executive branch and to be able to negotiate in the interim. He said the requirement of legislative ratification does not work well for tribal governments. He said another concern is that the motor fuels agreement applies only to retail sales. He said the tribes may have no choice but to enact their own tax policies. He said the tribes do not want to have dual taxes but waiting two years for approval is problematic.

Chairman Nelson said it is a separation of powers issue. Mr. Nygard said mechanisms already are in place for separation of powers. He said it is important to allow government-to-government relations. He said creating a mechanism to enter agreements without waiting two years is in the best interests of both the state and the tribes.

Senator Oehlke said without sessions of the Legislative Assembly becoming annual, he does not envision that happening.

Senator Heckaman said the legislation requires the agreement to be confirmed by a majority of members elected to the Legislative Assembly.

Mr. Marcellais said the state and tribes need to cooperate. He said the Turtle Mountain Band of Chippewa Indians is trying to find ways to generate revenue. He said the tribe recently adopted a corporation code. He said because issues such as health care, roads, and education need to be addressed, time is of the essence.

Chairman Nelson said one mechanism would be to call a special session following the signing of a tax collection agreement.

Mr. Nygard said tribal members are state citizens and pay taxes but rarely reap any of the benefits of the taxes collected by the state.

TRIBAL COLLEGE GRANT PROGRAM UPDATE

Chairman Nelson called on Dr. Leander "Russ" McDonald, President, United Tribes Technical College, for testimony ([Appendix D](#)) regarding the status of the workforce development grants to tribally controlled community colleges in the state. Dr. McDonald said the tribal college grant program supports the state's tribal colleges to assist tribal and nontribal students to obtain training that will make the students employable in high-need jobs such as commercial drivers and heavy equipment operators. He said the tribal college grants are an investment in several of the state's subpopulations that have been identified as high poverty areas, the state's Indian reservations. He said in the last biennium, the tribal college grant program helped to train 454 students for high-demand jobs. He said the average graduation rate across the tribal colleges for the past two years was 53 percent and the average placement rate was 46 percent.

In response to a question from Representative Trottier, Dr. McDonald said the graduation rate is somewhat disappointing. He said, however, now that the groundwork for the programs has been laid, the graduation rate is expected to improve. He also said some students get jobs before completing their training.

Chairman Nelson called on Dr. Cynthia Lindquist, President, Cankdeska Cikana Community College, for testimony ([Appendix E](#)) regarding the tribal college grant program. Dr. Lindquist said because of the state's investment in the state's tribal college, her community college has been able to establish new courses and programs of study, establish a business development center, and help students succeed by learning a vocation. She said the recruitment of staff, especially credentialed teaching staff, has been a challenge. She said efforts are being made to regionalize the training programs based on needs of the state and of the communities in which the program are located. She said she is working to ensure the programs become long-term established programs. She said the 2015 legislation that reduced the funding to \$3 million and included a sunset clause on the program is a concern. She said she is unsure how tribal colleges will sustain their programs if the grant program is eliminated. She said what tribal colleges have accomplished in the last two years is phenomenal.

Dr. Lindquist also provided a copy of a report entitled *Native American Tax Contributions in North Dakota* ([Appendix F](#)). She said this information is helpful when she is asked why the state should help the tribes. She said tribal people pay taxes and in return deserve help with unmet needs in their communities. She said it is important to bring services to the people rather than make the people travel to the services. She said a number of issues, including fear of leaving the reservation and lack of transportation, keep tribal people from traveling to Devils Lake for services. She said it is important to have native staff on the reservation to provide services such as the general educational development program.

In response to a question from Senator Heckaman, Dr. Lindquist said she is working to keep the general educational development program at Fort Totten. She said tribal people do not want to travel 13 miles to Devils Lake. She said another issue is the computerization of general educational development testing. She said the difficulty of the test has contributed to the decrease in the number of tribal people who enroll in the general educational development program.

DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Nelson called on Ms. Lucy K. Fredericks, Director, Indian Education, Department of Public Instruction, for testimony ([Appendix G](#)) regarding status of Indian education issues. Ms. Fredericks said the North Dakota Indian Education Summit held in July 2015 at the State Capitol provided quality professional development and best practices and strategies in Indian education. She said the North Dakota Native American Essential Understandings Project is complete and awaiting approval from the Department of Public Instruction. She said upon approval, services for launching and supporting the implementation of the document into the schools will begin. She said the May 2015 reorganization of the department resulted in the creation of the new division of student support and innovation.

In response to a question from Chairman Nelson, Ms. Fredericks said once approved by the Department of Public Instruction, she will provide the committee with copies of the state equity plan and action plan. She said the department is working to close achievement gap between native and nonnative children. She said the department is interested in what it can do to assist with issues such as parental involvement, teacher retention, interventions, dropout rate, graduation rate, and funding for school improvement. She said 40 schools have hit the tribal funding cap. She said unused funds go into a pool from which schools can apply for reallocated funds. She said she would report to the committee on the status of reallocated funds.

In response to a question from Mr. Marcellais, Ms. Fredericks said a need exists for the alignment of curriculum throughout the educational process. She said as long as state standards are met, curriculum alignment is a local school decision. She said the Department of Public Instruction does not endorse a particular curriculum. She said she would provide Mr. Marcellais with information on prekindergarten and early childhood standards. She said a need exists for better collaboration between the state and the federal Bureau of Indian Education in Washington, D.C.

Senator Oehlke said students need to know what is expected of them in higher education. He said it is critical for prekindergarten through grade 12 students to be prepared for what will be expected of them in college.

Senator Heckaman said at the federal level, Indian education is under the control of the United States Department of Interior rather than the United States Department of Education. She said this is part of the reason for the disconnect. She said some of the issues being raised should be brought to the attention of the Legislative Management's interim Education Committee.

Senator Larson the tribal colleges need to work with the K-12 tribal education system to help students succeed in postsecondary education. He said it may be best to have all North Dakota students be North Dakota students and eliminate the federal involvement.

Mr. Marcellais said it is a broken system with no oversight over employees. He said Indian education should not be within the United States Department of Interior.

In response to a question from Senator Heckaman, Ms. Fredericks said she could check on the status of the college and career-ready coalition.

SUPREME COURT COMMITTEE UPDATE

Chairman Nelson called on Mr. Jim Ganje, State Court Administrator's office, Supreme Court, for testimony ([Appendix H](#)) regarding the Committee on Tribal and State Court Affairs. Mr. Ganje said the Committee on Tribal and State Court Affairs was established by the North Dakota Supreme Court in 1994 with the adoption of Administrative Rule 37. He said the committee is chaired by District Judge Donovan Foughty from Devils Lake and is comprised of tribal and state court judges, tribal and state court support representatives, a federal court representative, public members, and the executive director of the Tribal Judicial Training Institute at the University of North Dakota School of Law. He said the committee is intended to serve as a mechanism for the discussion and exchange of ideas on issues of common interest to tribal and state courts. He said over the years, the committee has considered and recommended proposals related to the recognition of domestic violence protection orders, recognition of tribal arrest warrants, child support enforcement measures, extradition, cross-deputization, and other issues that affect tribal and state courts. He said most recently, the committee discussed access to state juvenile services by tribal jurisdictions, access to state jury lists for tribal court proceedings, and the compilation of tribal codes, ordinances, and rules.

In response to a question from Chairman Nelson, Mr. Ganje said one of the issues likely to be raised in the provision of state services to youth adjudicated in state court is the availability of beds. He said Ms. Lisa Bjergaard, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, discussed the potential issues with the Committee on Tribal and State Court Affairs, including the availability of beds, an agreement between the state and the tribe, and federal Bureau of Indian Affairs oversight. He said the committee's discussion of the issue ended with a commitment to further discuss with then-United State Attorney Tim Purdon and the Attorney General to work on common language. He said it is an issue of cost and bed availability.

Mr. Davis said child welfare is a very complex issue. He said with the federal Bureau of Indian Affairs having oversight, it is very difficult to navigate. He said the jurisdiction over a child is a major hurdle to overcome. He said a waiver of tribal jurisdiction may be necessary for a child to receive state services.

Mr. Nygard said availability of beds is a problem. He said most tribal juveniles who are ordered to confinement are sent to Montana or Wyoming. He said the process is very expensive and ineffective. He said when dealing with a methamphetamine case, the tribal juvenile may need a year or more of treatment. He said the Three

Affiliated Tribes of the Fort Berthold Reservation is developing a treatment facility in the Bismarck-Mandan area. He said the facility will have 40 to 50 beds and be able to treat both adults and juveniles. He said about 90 percent of the cases handled in tribal court are drug and alcohol related. He said the tribes need county, state, and federal assistance in dealing with the drug and alcohol problems among tribal members.

In response to a question from Senator Larsen, Mr. Davis said to get the federal Bureau of Indian Affairs to share data with the Highway Patrol is very difficult and likely would require making such a request under the federal Freedom of Information Act.

TRIBAL YOUTH SERVICES

The committee discussed how to proceed with the study assigned to the committee regarding tribal youth services.

Mr. Davis said the committee should review the tribal services that are available to a tribal youth who is adjudicated in tribal court. He said although the state has available resources and the state juvenile court may have the time to take on additional caseload, the biggest obstacle is jurisdiction over the child and whether the tribal court system will allow that jurisdiction to be transferred.

In response to a question from Chairman Nelson, Mr. Nygard said Public Law No. 638 allows tribes to take over functions either in full or in part. He said his tribe has contracted health services, its court system, and all law enforcement with the exception of criminal investigations. He said his tribe had to restructure its government to be able to take on those functions. He said a similar approach can be taken with regard to tribal youth. He said the resources of the court and health, law enforcement, and social services must collaborate to meet the needs of youth. He said there are many nuances in jurisdiction at the state and federal level and among the five different tribes in the state.

In response to a question from Senator Oehlke, Mr. Nygard said in order to regain respect for the family unit, it is important to look at the root cause of the problems. He said that goes beyond just treating babies with methamphetamine addiction or fetal alcohol syndrome. He said going to a Public Law No. 638 contract may not work for every reservation. He said the Public Law No. 638 approach is not perfect and it means the tribe must take responsibility for a function. He said, however, the approach allows for local control.

In response to a question from Senator Heckaman, Mr. Nygard said the process of providing services for tribal youth must begin with a memorandum of understanding and making appropriate adjustments in tribal law and other laws.

Mr. Davis said the committee must identify the extradition process, the cross-deputization process, jurisdiction issues, and treatment options of each tribe.

PALEONTOLOGY PROJECT

Chairman Nelson called on Ms. Kerry M. Libby, Institute Director, Standing Rock Institute of Natural History, for testimony ([Appendix I](#)) regarding the Standing Rock Paleontology Program. Ms. Libby said the paleontology program, which began in 2007, is the first program of its kind among federally recognized and nonfederally recognized tribes in the country. She said the program has the potential to have a positive economic impact for the tribe as well as the potential to provide outreach to area schools. She said one of the main concerns facing the program is the lack of security. She said funding is needed to provide security for the dig sites.

In response to a question from Senator Oehlke, Ms. Libby said the dinosaur discovered in June 2015 at one of the dig sites is anticipated to be about 27 feet long and is lying in a fetal position. She said the type of dinosaur has yet to be determined.

In response to a question from Chairman Nelson, Ms. Libby said any fossils or remains found on tribal land belong to the tribe.

In response to a question from Senator Larsen, Senator Oehlke said during the 2015 legislative session, funding was appropriated for a dinosaur find near Killdeer.

In response to a question from Representative Trottier, Ms. Libby said she does not want a lot of media attention regarding the June 2015 find until more security for the site is in place.

In response to a question from Senator Heckaman, Ms. Libby said some of the grant money the program has received has been used for the renovation of the old college library into a museum.

In response to a question from Chairman Nelson, Ms. Libby said the paleontology program is not willing to sell any of the fossils. She said a program has been developed to loan collections to other programs and museums.

In response to a question from Representative Trottier, Ms. Libby said the insurable value of the two Tyrannosaurus rex teeth that were shown to the committee is about \$8,000 to \$10,000.

TRIBAL RECRUITING AND RETENTION

Chairman Nelson called on Brigadier General Alan S. Dohrmann, Deputy Adjutant General, North Dakota National Guard, for testimony ([Appendix J](#)) regarding efforts to improve communication and collaboration with the tribal population in the state. He said the North Dakota National Guard is not meeting its goals with respect to the percentage of the Native American population who are in the National Guard. He said Native Americans make up about 5.4 percent of the state's population but only 2.8 percent of the National Guard membership. He said the National Guard is evaluating its recruiting process and looking internally to make sure it is providing an inclusive culture that allows the Native American members to reach their potential.

In response to a question from Chairman Nelson, Brigadier General Dohrmann said although a number of National Guard units exist near reservations, there are not any units on reservations. He said when an informal tribal leader joins the National Guard others tend to join too. He said the National Guard is reviewing its marketing materials to ensure the materials promote the National Guard to all populations in the state. He said the National Guard is working to break down barriers.

In response to a question from Chairman Nelson, Brigadier General Dohrmann said to make rank a National Guard member may have to be willing to move to another unit.

Mr. Marcellais said it may be helpful to involve local members of the National Guard in their presentations on reservations. He said the National Guard may want to consider starting its recruiting efforts to younger students, such as age 14 or 15, rather than waiting until the students are juniors or seniors in high school.

In response to a question from Mr. Nygard, Brigadier General Dohrmann said the one tribal National Guard member who is involved in recruitment and retention efforts has been quite successful. He said about 200 of the National Guard's 4,000 members are Native American.

Brigadier General Dohrmann said protocol and culture should not stifle the conversations between the National Guard and the tribes. He said he will work with Mr. Davis to plan meetings with the tribal chairmen.

Mr. Marcellais said he would assist in organizing recruitment efforts on his reservation.

GOVERNMENT-TO-GOVERNMENT RELATIONS

Senator Oehlke said he would like to receive information from representatives of higher education, including community college, four-year colleges, and the Chancellor's office, regarding efforts to prepare students for higher education.

Mr. Davis said he will discuss this idea with the Chancellor.

Senator Heckaman said Ms. Valerie Fischer from the Department of Public Instruction would like to visit with the committee to discuss general education issues.

Mr. Nygard said he would like comparable departments of the state and the tribes to work together on issues and bring proposals or solutions to this committee. He said there are housing and transportation issues to be discussed and resolved.

In response to a question from Representative Trottier, Mr. Nygard said the refinery on his reservation is moving forward. He said the tribe is working on the financing package and plans to be operational within two years.

No further business appearing, Chairman Nelson adjourned the meeting at 3:10 p.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:10