

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Tuesday, July 27, 2010

Cankdeska Cikana Community College, 214 First Avenue
Fort Totten, 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 Vigesaa; Senators Stanley W. Lyson, Tim Mathern, Dave Oehlke

Native American Tribal Citizens' Task Force members absent: Scott J. Davis, Marcus Levings, Richard J. Marcellais, Charles Murphy, Myra Pearson, Michael Selvage Sr.

Others present: Joan Heckaman, State Senator, New Rockford

Benjamin A. Vig, State Representative, Sharon

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

It was moved by Senator Mathern, seconded by Senator Lyson, and carried on a voice vote that the minutes of the April 16, 2010, meeting be approved.

Chairman Boucher recognized Dr. Cynthia Lindquist Mala, President, Cankdeska Cikana Community College, Fort Totten. Dr. Lindquist Mala welcomed the members of the committee to the Spirit Lake Nation and Cankdeska Cikana Community College. She distributed a copy of the 2009 annual report for the college and an economic impact and return on investment report prepared for the college in 2009. Copies of these reports are on file in the Legislative Council office. She said the community college is undertaking a major construction phase at a cost of \$10 million. She said the college is also increasing enrollment and expects enrollment to double from 250 students to 450 to 500 students.

Dr. Lindquist Mala then conducted a tour of the community college.

HATE CRIMES ISSUES

At the request of Chairman Boucher, committee counsel reviewed a bill draft [\[10021.0300\]](#) relating to enhanced penalties for discrimination in public places, aggravated assault, harassment, and criminal mischief involving a hate crime. He said the revision from the second draft of the bill draft is that the definition of disability contained in Section 1 of the bill draft that amends North Dakota Century Code Section 12.1-14-04 is placed in a separate subsection to make the section parallel.

Chairman Boucher recognized Representative Kasper. Representative Kasper said he has a number of concerns with the bill draft. He said he is

concerned with the standard "intentionally" contained on page one, line 11. He said determination of intent to discriminate would be difficult to determine. He said he is concerned with discrimination based on actual as well as "perceived" race, color, religion, sex, sexual orientation, disability, age, or national origin. He said it may be difficult to determine whether the discrimination is based on the actor's perception of the status of the person being discriminated against. He said this same concern also extends to sexual orientation. Concerning the definition of disability, he said, he is concerned with use of the term sensory impairment as well as physical and mental impairment. He suggested the committee review the definition of disability for purposes of the federal Social Security Act which may be more appropriate than a definition taken from Minnesota law.

Chairman Boucher recognized Senator Lyson. Senator Lyson said determination of whether the discrimination is based on the sexual orientation of the victim is a question of fact for the investigator and prosecutor. However, he said, he has concern with disability meaning a condition or "characteristic" that renders an individual a disabled individual. He said he could not support the bill draft in its current form.

Senator Lyson said he also has concern with the use of the term "perceived" for purposes of determining discrimination.

In response to a question from Senator Mathern, committee counsel said the bill draft originated with the amendment to the criminal mischief section to address property damage to artwork in public parks in Bismarck. He said the discrimination in public places, aggravated assault, and harassment sections of the criminal code were amended at the request of the committee to make them uniform with the changes made to the criminal mischief statute.

Senator Mathern requested that the Legislative Council staff separate Section 4--criminal mischief--into a separate bill draft.

TAXATION IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel reviewed written comments ([Appendix B](#)) prepared by Mr. Daniel L. Rouse, Special Assistant Attorney General and Legal Counsel, Tax Department and State Board of Equalization, concerning tribal-state tax agreements.

In response to a question from Representative Conrad, committee counsel said he was unsure whether the state-tribal tax agreement for the Turtle Mountain Band of Chippewa Indians applied to off-reservation trust land, such as the Trenton Indian Service Area in Williams County. However, he said, he would ask the tax commissioner to address this issue in his next report to the committee.

Chairman Boucher recognized Representative Conrad. Representative Conrad requested that the tax commissioner address all tax agreements involving all tribes and the status of these agreements as well as provide copies of the agreements at the committee's next meeting. She said the report should address authority for agreements, and whether any new taxes are proposed under the agreements.

INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel distributed a letter ([Appendix C](#)) from Dr. David Looyen, Superintendent, Minot Public Schools. The letter discusses students that move back and forth between Minot and nearby Indian reservations.

At the request of Chairman Boucher, committee counsel reviewed a concurrent resolution [[13015.0100](#)] directing the Legislative Management to study Indian education issues.

Senator Mathern said the word "good" on line 6 should be removed.

Representative Boucher said after the word "to" on line 6, the phrase "develop personal and family self-sufficiency and to" should be added.

Chairman Boucher recognized Mr. Robert Marthaller, Assistant Superintendent, Department of Public Instruction, for comments ([Appendix D](#)) discussing development of a pilot proposal for education based on parent involvement, length of school term, afterschool programming, and governance. Mr. Marthaller also distributed a packet of material prepared by the North Dakota Indian Education Advisory Council, which is on file in the Legislative Council office. To date, Mr. Marthaller said, the Department of Public Instruction has identified four recommendations concerning Indian education. First, he said, the Department of Public Instruction is recommending that leaders and decisionmakers from the Bureau of Indian Education, the Department of Public Instruction, and the state's tribes be convened to discuss and resolve governance issues. Secondly, he said, the Department of Public Instruction is recommending that the director of Indian education position be reestablished within the Department of Public Instruction. Third, he said, an information clearinghouse hosted by the Indian Affairs Commission should be established. Fourth, he said, planning should commence to finalize a grant proposal for support of Indian education in North Dakota.

Chairman Boucher recognized Mr. Bob Parisien, Education Line Officer, Bureau of Indian Education, Fort Yates. Mr. Parisien said an Indian education director is needed within the Department of Public Instruction. He supported the recommendations of Mr. Marthaller. He said governance is another issue that must be addressed.

Representative Conrad requested that committee counsel work with Mr. Marthaller concerning the Indian education study resolution to develop several additional specific whereas clauses to justify the study.

TRANSPORTATION IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel distributed a white paper ([Appendix E](#)) entitled *Out-of-State Temporary Vehicle Registrations* prepared by the Department of Transportation Driver and Vehicle Services.

Chairman Boucher recognized Mr. Ron Henke, Project Development Office Director, Department of Transportation, for comments ([Appendix F](#)) regarding transportation on the Fort Berthold Reservation, including Highway 23; Spirit Lake Reservation; Turtle Mountain Reservation; Standing Rock Reservation; and recent safety projects completed by the Department of Transportation in Indian country.

In response to a question from Representative Conrad, Mr. Henke said improvements to Highway 23 will take three years to five years and the earliest that improvements will probably commence will be 2012.

Chairman Boucher recognized Senator Lyson. Senator Lyson agreed that improvements must be made to Highway 23. However, he reminded the committee that Highway 1804 between New Town and Williston also does not contain adequate shoulders, and improvements in the interest of public safety must be made to that road as well.

INDIAN HUMAN SERVICE ISSUES AND CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel distributed testimony ([Appendix G](#)) prepared by the Department of Human Services, Children and Family Services, relating to child welfare-related memorandums of understanding with tribal entities.

Chairman Boucher recognized Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services, for comments ([Appendix H](#)) concerning interactions between the tribes and the state on child support services and discussed interest charged on outstanding obligations.

BUSH FOUNDATION PRESENTATION

Chairman Boucher recognized Mr. Jaime Pinkham, Vice President and Native Nations Team Leader, Bush Foundation, St. Paul, Minnesota. Mr. Pinkham discussed Bush Foundation initiatives in Indian

country. He distributed a copy of the Bush Foundation's 2009 annual report which is on file in the Legislative Council office. He said the foundation was founded in 1953 and focuses its efforts on the 23 tribes within the states of Minnesota, North Dakota, and South Dakota, as well as entities within those states. He said the Bush Foundation has invested a tremendous amount of resources in Indian country and is supporting self-determination of Indian nations by actively rebuilding the infrastructure of nationhood. He said the Bush Foundation emphasizes collaboration and self-determination for the region's Indian nations. He said the foundation is active in three areas--developing a core strategy and partnerships, building the public will, and developing and supporting courageous public leadership. He said leadership development emphasizes best practices for Indian country. He said the Bush Foundation sponsors a native nations rebuilders program designed to train native tribal leaders. He said this training emphasizes governance systems as well as constitution drafting. He said many constitutions that were drafted and adopted soon after passage of the Indian Reorganization Act are outdated and do not address the contemporary needs of tribes.

COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS

Chairman Boucher recognized the Honorable Donovan J. Foughty, District Judge, Cochairman, Commission to Study Racial and Ethnic Bias in the Courts, Devils Lake. Judge Foughty discussed the commission's activities and distributed a list ([Appendix I](#)) of commission members. He said the commission is on track to deliver a preliminary report during the upcoming legislative session and the final report should be submitted to the Supreme Court within 18 months. He said the commission is planning to hold meetings on the Fort Berthold, Standing Rock, Turtle Mountain, and Spirit Lake Reservations.

Chairman Boucher recognized Mr. Andrew Frank, counsel, Commission to Study Racial and Ethnic Bias in the Courts. Mr. Frank discussed the methodology of the commission's study and noted that the goal of the commission is to generate a report on the status of racial and ethnic bias in the courts. He said the goal of the report is to correct any disparities that may exist, such as in jury pools and use of legal services.

Chairman Boucher recognized Dr. Erich Longie, member, Commission to Study Racial and Ethnic Bias in the Courts, Devils Lake. Dr. Longie discussed the problem of perceived bias in the courts and the efforts of the commission to address this problem.

In response to a question from Senator Mathern, Judge Foughty said the final report will contain a discussion addressing the disproportionate number of Native Americans in the prison and juvenile systems and recommendations or ideas on how this problem may be alleviated.

HERITAGE CENTER EXPANSION

At the request of Chairman Boucher, committee counsel reviewed a resolution of support [[13014.0100](#)] for expansion of the Heritage Center. He said the resolution states that the committee supports expansion of the Heritage Center, the fundraising efforts of the State Historical Society of North Dakota and the State Historical Society of North Dakota Foundation, and encourages interested persons to financially support expansion of the Heritage Center.

Chairman Boucher recognized Ms. Claudia Berg, Expansion and New Initiatives Coordinator, State Historical Society of North Dakota. Ms. Berg said the phrase "and the inspiration gallery will continue the story to present day" should be added to the clause stating that "the early people's gallery will highlight early occupation and exploration up to the establishment of Dakota territory in 1861."

It was moved by Senator Mathern, seconded by Representative Conrad, and carried on a roll call vote that the resolution of support for expansion of the Heritage Center, as amended, be approved. Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern, Lyson, and Oehlke voted "aye." No negative votes were cast.

Chairman Boucher recognized committee counsel. Committee counsel reminded the committee that subdivision d of subsection 3 of the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management* require all communications expressing policy of an interim committee must first be referred to the Legislative Management chairman for approval before introduction during a legislative session, publication, or distribution. Committee counsel said he would forward the resolution to the Legislative Management chairman for approval.

COMMITTEE ON TRIBAL AND STATE RELATIONS

At the request of Chairman Boucher, committee counsel reviewed a bill draft [[10121.0100](#)] relating to extension of the Committee on Tribal and State Relations. Committee counsel said the bill draft amends Section 54-35-23 and would make the Committee on Tribal and State Relations a permanent interim Legislative Management committee.

In response to a question from Senator Lyson, Chairman Boucher said the bill draft does not expand the membership of the committee.

Chairman Boucher recognized Senator Lyson. Senator Lyson said unless there is greater participation by tribal leadership, the committee should be abolished.

In response to Senator Lyson's comment, Chairman Boucher noted there has been good turnout at many committee meetings and that several extenuating circumstances led to the limited participation by tribal members at today's meeting. He said the committee performs a valuable service in

enhancing communication between the Legislative Assembly and the tribes of North Dakota.

Representative Conrad suggested the committee chairman write a letter to each tribal chairman in the state asking what that chairman would like to see on the committee's agenda or issues addressed by the committee.

Senator Mathern suggested that the chairman contact the Indian Affairs Commission and determine what works and what does not work in scheduling and holding Indian Affairs Commission meetings.

Representative Kasper suggested that each tribal chairman be asked to give a state of the tribes report at an upcoming committee meeting.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel addressed the committee. He said Mr. Robert W. Harms, Prairie Consulting Group, could not be at the meeting but did provide the committee with a report regarding the Native American Business Development Program contract with the Department of Commerce and a memorandum concerning the May 17, 2010, employment meeting with the Standing Rock Sioux Tribe. These documents are attached as [Appendices J](#) and [K](#), respectively.

At the request of Chairman Boucher, committee counsel distributed a status report on American Recovery and Reinvestment Act of 2009 funds presented to the Budget Section on June 22, 2010. A copy of the report is on file in the Legislative Council office.

"INDIAN PRIDE" PROGRAM

At the request of Chairman Boucher, committee counsel reviewed a resolution of support [[13013.0100](#)] for Prairie Public Broadcasting's and Circle of Nations Publishing's "Indian Pride" program. He said the resolution states that the committee supports the program and urges interested persons to financially support the program.

It was moved by Representative Kasper, seconded by Representative Vigesaa, and carried on a roll call vote that the committee approve the resolution. Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

Chairman Boucher recognized committee counsel. Committee counsel said he would forward the resolution to the Legislative Management chairman for approval.

STAFF DIRECTIVES

Representative Conrad requested that representatives of the Governor's office and the Oil and Gas Division of the Department of Mineral Resources be requested to brief the committee on the status of the oil and gas tax agreement with the Three Affiliated Tribes and whether the agreement has been approved by the Bureau of Indian Affairs.

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

Jeffrey N. Nelson
Committee Counsel

ATTACH:11