

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Wednesday, January 18, 2012
Harvest Room, State Capitol
Bismarck, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David O'Connell, Robert Erbele, Richard Marcellais, Donald Schaible; Representatives Jim Kasper, Wayne Trottier

Member absent: Representative Kenton Onstad

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Mark Fox, representing Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Larry DeCoteau, representing Merle St. Claire, Chairman, Turtle Mountain Band of Chippewa Indians; Duane Jackson, Joel Redfox, and Clarise Brownshield, representing Roger Yankton Sr., Chairman, Spirit Lake Tribe; Adele White, representing Charles Murphy, Chairman, Standing Rock Sioux Tribe

North Dakota Tribal Governments' Task Force member absent: Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Others present: Representative Jerry Kelsh, member of the Legislative Management, was also in attendance.

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

It was moved by Representative Kasper, seconded by Senator Schaible, and carried on a voice vote that the minutes of the September 26, 2011, meeting be approved as distributed.

CORRECTIONS ISSUES

Chairman O'Connell recognized Mr. Tom Erhardt, Deputy Director and Reentry Manager, Transitional Planning Services, Department of Corrections and Rehabilitation, who discussed Indian corrections and transition services issues. Mr. Erhardt distributed an information sheet ([Appendix B](#)) on probation and parole and prison inmates by racial distribution. He said the department provided information to the Commission to Study Racial and Ethnic Bias in the Courts to assist the commission in its studies. He said the department has also been proactive in establishing local reentry teams for offenders in the Bismarck-Mandan area, Fargo, Grand Forks, and Devils Lake and is hoping to establish one at Standing Rock.

In response to a question from Senator O'Connell, Mr. Erhardt said up to 75 percent of offenders are recommended for substance abuse treatment. He

said substance abuse is a large predictor of offender risk.

In response to a question from Senator O'Connell, Mr. Erhardt said one aspect of criminal law that should be reviewed is the sentencing laws. He said the Legislative Assembly should review sentencing and whether acts that are classified as felonies still need to be classified as felonies or can be dealt with in another manner.

In response to a question from Mr. Fox, Mr. Erhardt said the state's recidivism rate declined 4.8 percent during the 2007-08 period--the time for which the most recent figures are available. He said the decline in recidivism is due to increased efforts emphasizing reentry programs.

In response to a question from Mr. Fox, Mr. Erhardt said the department does not have current numbers on Native American recidivism rates, but he agreed to work with Mr. Davis and the Indian Affairs Commission to try to gather this data.

Chairman O'Connell recognized Mr. DeCoteau. Mr. DeCoteau said the state should put more resources into reentry programs as they have proven very effective in reducing both offender and recidivism rates.

TRANSPORTATION ISSUES

Chairman O'Connell recognized Mr. Mark Nelson, Director, Safety Division, Department of Transportation, who discussed transportation and traffic safety issues in Indian country. A copy of Mr. Nelson's PowerPoint presentation is attached as [Appendix C](#). He discussed the traffic and criminal software or TraCS system, regional driving under the influence task forces, and tribal community traffic safety programs.

In response to a question from Senator O'Connell, Mr. Nelson said the Department of Transportation plans to have rumble strips installed on all state two-lane highways by 2014.

In response to a question from Mr. Fox, Mr. Nelson agreed that identifier information on the TraCS system may be of concern, but the department is not interested in individuals or individual identification, only information on the cause of the accident. Under memorandums of understanding with the tribes, he said, no personal information is required or needed.

Chairman O'Connell recognized Mr. Fox. Mr. Fox said the Three Affiliated Tribes believes more of state

revenues from oil and gas exploration and development should be allocated to traffic safety in the oil-producing regions of the state, especially the state's Indian reservations.

Chairman O'Connell recognized Ms. Sharon White Bear, Three Affiliated Tribes. Ms. White Bear said many tribal members are concerned with travel on the Fort Berthold Reservation. She said many elderly members who reside in smaller communities on the reservation are reluctant to drive into New Town for tribal services because of the amount of traffic on the roads within the reservation.

Chairman O'Connell recognized Ms. Delores White, Three Affiliated Tribes, White Shield. Ms. White said the Three Affiliated Tribes is facing many transportation issues on the reservation as a result of oil and gas development.

Chairman O'Connell recognized Mr. Pete Red Tomahawk, Director of Transportation Planning and Development, Standing Rock Sioux Tribe, Fort Yates. Mr. Red Tomahawk said the four Es--education, engineering, enforcement, and emergency medical services--need to be addressed.

INDIAN EDUCATION ISSUES

Chairman O'Connell recognized Mr. Robert V. Marthaller, Assistant Superintendent, Department of Public Instruction, who reported on the progress on a study on Indian education issues related to governance, success models, and barriers that prevent schools and students from performing at high rates of student achievement and to develop criteria for grants to low-performing schools. A copy of Mr. Marthaller's written presentation is attached as [Appendix D](#).

In response to a question from Representative Kasper, Mr. Marthaller said the information contained in his presentation was compiled as a result of a literature review, and although some of the statistics and information may be older, it is still relevant to the issues discussed.

At the Monday, March 26, 2012, committee meeting, the minutes were revised to add Representative Kasper said the minutes should reflect that the information presented by Mr. Marthaller is old, not pertinent to North Dakota, nothing is being accomplished as a result of the efforts to date, and his frustration with the lack of progress in this area. He said the data is not applicable to the reservations he has visited in North Dakota, and other individuals are as frustrated as he is with the lack of progress.

Chairman O'Connell recognized Ms. Adele White, Tribal Secretary, Standing Rock Sioux Tribe, Fort Yates. Ms. White said the tribe is working very hard with limited resources to enhance education for members of the Standing Rock Sioux Tribe.

Chairman O'Connell recognized Mr. Fox. Mr. Fox said although Mr. Hall was not able to attend the meeting, he had asked Mr. Fox to read a statement concerning educational needs of the state's tribes. Mr. Fox said Mr. Hall would like to state that he was

requesting that state policy and initiatives continue to address prevalent concerns with Native American student deficiencies. Mr. Fox said Mr. Hall looks forward to coordinating with state and federal agencies to improve the educational system that is leaving many of the state's Native American children behind and without proper education.

Vice Chairman Schaible recognized Mr. Randal White, Tribal Council, Standing Rock Sioux Tribe. Mr. White said the tribe had presented a binder of Indian education issues to the Governor. He said the state must still address inequities in funding Indian schools.

Vice Chairman Schaible recognized Mr. Phil Baird, United Tribes Technical College, Bismarck. Mr. Baird said the state needs to involve the state's tribal colleges in research initiatives.

Vice Chairman Schaible recognized Ms. Lillian Jones, Native American Center Project and Native American Coalition, Fargo. Ms. Jones said she is an enrolled member of the Three Affiliated Tribes. She said Indian education issues are not strictly tribal issues but are education issues as many Indian and minority students attend off-reservation schools.

Chairman O'Connell recognized Mr. Davis. Mr. Davis said one education issue that the Indian Affairs Commission is working on is graduation attire for Indian students. He said the commission is working to change public school policy regarding eagle feathers and plumes on graduation caps. He said many schools have policies prohibiting these items, but this issue is very important to Indian students and the commission would like to see this policy changed.

HERITAGE CENTER EXPANSION

Chairman O'Connell recognized Mr. Merl Paaverud, Superintendent, State Historical Society. Mr. Paaverud reviewed the expansion progress of the state's Heritage Center to date and distributed a copy of the Winter 2011 *Plains Talk* newsletter (on file in the Legislative Council office). He said the project is ahead of schedule, on budget, and is scheduled for completion in December 2012.

Chairman O'Connell recognized Ms. Fern Swenson, Deputy State Historic Preservation Officer, State Historical Society. Ms. Swenson said she and Heritage Center staff are working with Mr. Davis and the Indian Affairs Commission to identify tribal advisors to assist the State Historical Society staff in developing appropriate exhibits for the expanded Heritage Center.

INDIAN VETERANS

Chairman O'Connell recognized Ms. Brenda Bergsrud, Women and Minority Veterans Coordinator, Department of Veterans' Affairs. Ms. Bergsrud discussed Indian veterans' services available from the Department of Veterans' Affairs and the various outreach initiatives that the department is promoting.

Chairman O'Connell recognized Senator Marcellais. Senator Marcellais said one initiative the department should consider is placing Indian veterans' service representatives on the state's reservations. He said some Indian veterans may feel more comfortable interacting with Indian service representatives to access veterans' services.

TOURISM ISSUES

Chairman O'Connell recognized Ms. Sara Otte Coleman, Director, Division of Tourism, Department of Commerce. Ms. Otte Coleman discussed tourism initiatives in Indian country and distributed a packet of tourism information (on file in the Legislative Council office). A copy of her written presentation is attached as [Appendix E](#).

COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS

Chairman O'Connell recognized Mr. Andrew Frank, staff, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Court. Mr. Frank distributed an updated study summary ([Appendix F](#)) containing an outline of recent commission activities and information in anticipation of the 2012 final report. He said the Supreme Court had established the commission to study whether racial and ethnic bias exists in the courts, and if so, potential solutions. Since his last report, he said, the commission has worked with several focus groups to gather additional data on racial and ethnic bias in the courts as well as drafting and editing the report. He said completion of the report is scheduled for March. He said most of the anticipated recommendations will be internal for the courts to implement and will not require legislative action.

NATIVE AMERICAN COMMISSION

Chairman O'Connell recognized Ms. White Bear, Fargo Native American Commission, Fargo. Ms. White Bear said she is an enrolled member of the Three Affiliated Tribes but resides in Fargo. She distributed a brochure ([Appendix G](#)) concerning the Native American Commission and a schedule ([Appendix H](#)) of the F-M First Nation's Journey "Walking with Our Youth" held on September 18, 2010. She said Native Americans are the largest minority in Fargo and have the highest level of poverty and health care needs in Fargo as well. She said the commission is designed to improve local residents' perception and awareness of Native Americans and Native American issues. She said the mission of the commission is to work together to strengthen the Native American community in order to promote understanding, recognition, and respect for Native American cultures and enrich the whole community. She said the commission has four goals which are to define the role and responsibilities of the commission, define the funding priorities for Native American programs and services, determine the services that

might be provided by a facility to serve the Native American community, and to recommend an effective antiracism education model and to facilitate city and community participation in training.

In response to a question from Senator O'Connell, Mr. Willard Yellow Bird Jr., Fargo Native American Commission, Fargo, said the budget of the commission is \$10,000. He said the funding comes from city funds.

HOMELAND SECURITY

Chairman O'Connell recognized Mr. Donald Ronsberg, Protective Security Advisor, North Dakota District Infrastructure Protection, United States Department of Homeland Security, Bismarck. Mr. Ronsberg discussed infrastructure protection, and a copy of his PowerPoint presentation is attached as [Appendix I](#).

In response to a question from Mr. Fox, Mr. Ronsberg said he is aware of the security issues occurring in the oil and gas-producing areas of the state. In fact, he said, he has done several infrastructure protection assessments in this region.

GOVERNMENT-TO-GOVERNMENT RELATIONS

Chairman O'Connell recognized Mr. Fox. Mr. Fox presented the written testimony ([Appendix J](#)) of Mr. Hall and distributed a resolution "[p]roviding for a Fair Oil and Gas Tax Proceeds Agreement with State of North Dakota" adopted by the Three Affiliated Tribes of the Fort Berthold Indian Reservation ([Appendix K](#)). Mr. Fox said the Three Affiliated Tribes is concerned with the inequity of tax revenue provided under the oil and gas tax agreement.

In response to a question from Representative Trottier, Mr. Fox said the proposed Three Affiliated Tribes refinery is moving forward.

Chairman O'Connell recognized Ms. Prairie Rose Seminole, Coordinator, Native American Center Project, Fargo. Ms. Seminole said she is also an enrolled member of the Three Affiliated Tribes. Issues that the committee should address, she said, include discrimination, hate crimes, housing availability, and suicide prevention funding.

Chairman O'Connell recognized Mr. Jesse Taken Alive, Fort Yates. Mr. Taken Alive said one issue that must be addressed is unemployment on the state's reservations. He said overall North Dakota has a low unemployment rate, but unemployment is still endemic on the state's reservations.

Chairman O'Connell recognized Mr. Ken Graywater, Spirit Lake Tribe. Mr. Graywater said one item the committee should be cognizant of is housing needs assessments that are not being done as needed on the state's reservations. He also reminded the committee that Indians in North Dakota belong to different and distinct tribes, and Indians and Indian issues are not homogenous. He said the state's tribes

have different issues that are of primary concern to that tribe.

STAFF DIRECTIVES

Senator O'Connell requested that the Legislative Council staff invite Mr. Lynn Helms, Director, Mineral Resources Department, Industrial Commission; Mr. Ron Ness, North Dakota Petroleum Council, and representatives of the Tax Department to discuss oil and gas production and tax revenues on the Fort Berthold Reservation.

No further business appearing, Chairman O'Connell adjourned the meeting at 4:00 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:11