

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, March 26, 2012

Auditorium, Turtle Mountain Community College
Belcourt, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 9:10 a.m.

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

Member absent: Senator Robert Erbele

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; Cindy Malaterre, representing Merle St. Claire, Chairman, Turtle Mountain Band of Chippewa Indians; Michael T. Alex, representing Roger Yankton Sr., Chairman, Spirit Lake Tribe

North Dakota Tribal Governments' Task Force members absent: Charles Murphy, Chairman, Standing Rock Sioux Tribe; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Others present: Marvin E. Nelson, State Representative, Rolla

Senator Ryan M. Taylor, member of the Legislative Management, was also in attendance.

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

Representative Kasper said he did not believe the minutes of the January 18, 2012, committee meeting accurately reflected his concerns with the report presented by Mr. Robert V. Marthaller, Assistant Superintendent, Department of Public Instruction, on Indian education issues. He said the information presented by Mr. Marthaller was old, not relevant to North Dakota, and similar to previous information with no results being reported.

In response to Representative Kasper's comments, committee counsel said the policy of the Legislative Management is to prepare an accurate summary of the committee meeting, not a transcript. He said the meetings are recorded, and the recordings are available to the public if anyone wants further information on a discussion that takes place at a committee meeting. He said the minutes stated that "[i]n 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."

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.

It was moved by Representative Kasper, seconded by Senator Schaible, and carried on a voice vote that the minutes of the Wednesday, January 18, 2012, meeting be approved as revised.

INDIAN ECONOMIC DEVELOPMENT ISSUES

Chairman O'Connell recognized Mr. Al Nygard, President and Chief Executive Officer, Al Nygard Consulting, and representing the American Indian Business Development Office, Department of Commerce. Mr. Nygard briefed the committee on Indian business developments in North Dakota. He said the office is facilitating relations between Indian and non-Indian businesses, facilitating economic development on each of the state's reservations, working to enhance tourism, facilitating community and economic development both on and off the reservation, and providing a link to public and private economic development resources.

Mr. Nygard said one new initiative is to support native-owned businesses by creating independence in the spirit of entrepreneurship. He said this initiative is the Indian Business Alliance of North Dakota which is designed to help create new native-owned businesses and support existing native-owned business both on and off reservations. He distributed a brochure ([Appendix B](#)) concerning the Indian Business Alliance of North Dakota.

Mr. Nygard said one of the prime initiatives of the Indian Business Alliance is to identify existing Indian businesses, which is a formidable task. He said there is currently no mechanism to identify Indian-owned businesses which is needed before native-owned businesses can be contacted. He said the alliance has just completed the profile for the Turtle Mountain Chippewa and is commencing work on the Standing Rock Reservation. He said economic activity has increased dramatically on the state's reservations in the past 10 years to 15 years, and the alliance is attempting to get a feeling for the components of the economy on each of the state's reservations. He said this will lead to a proactive approach to business

development on the reservations. He said many off-reservation businesses would like to partner with Native American-owned businesses on the reservations which will ultimately benefit both the state's reservations and the state as a whole.

Mr. Nygard said the Indian Business Alliance is also examining the resources and skills that exist on each of the state's reservations and will attempt to assist these resources to reach their full potential. Next, he said, the alliance will identify the impact of Native American businesses to the state of North Dakota. He said it is believed that economic development has increased dramatically from approximately \$2.2 billion seven years to eight years ago to an estimated \$4 billion dollars today.

In response to a question from Representative Kasper, Mr. Nygard said the next step following identification of the resources is to provide a map for tribes to focus economic development on the state's reservations. He said this map will help Native American-owned businesses both on the reservation and to partner with businesses off the reservations.

In response to Mr. Nygard's comments, Representative Kasper said the Indian Business Alliance should engage tribal colleges and use tribal colleges to train future employees for jobs that economic development initiatives are attempting to create on the state's reservations.

In response to a question from Senator Marcellais, Mr. Nygard said the Indian Business Alliance does not support Indian-owned businesses with development of business plans. He said there are other resources available that provide this service, and thus rather than duplicating this service, the alliance will attempt to make connections to providers that already provide this service.

In response to a question from Senator Marcellais, Mr. Nygard said the Indian Business Alliance plans to participate in the United Tribes Technical College Economic Summit in September. Then, he said, the alliance will have a followup event to organize and solidify the effort to sustain it.

In response to a question from Senator Marcellais, Mr. Nygard said the Indian Business Alliance is working closely with the tribal employment rights office on each of the state's reservations.

Representative Kasper said the tribes must assist the Legislative Assembly in identifying tribal needs and where cases in which the Legislative Assembly may assist tribes in economic development.

COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS

Chairman O'Connell recognized Judge Donovan Foughty, Presiding Judge, Northeast Judicial District, and Cochairman, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Court. Judge Foughty discussed the activities of the commission. He said it is anticipated that the commission will submit its final report to the Supreme Court in June.

Areas of recommendation, he said, will include access to justice which includes juries and their racial makeup and interpreters and interpreter services. Another area, he said, will be criminal and juvenile justice as well as civil justice. He said civil justice will include the availability of legal services and unbundling services which will allow legal services for low-income individuals. Another area, he said, will address court personnel and the legal profession and focus on lack of minority practitioners in this area. Finally, he said, the report will conclude with findings and recommendations. He said recommendations include that objective pretrial factors be used in setting bonds; long-term studies be conducted in areas of arrest, recidivism, and sentencing; adult drug courts be expanded; risk assessment inventories be used in sentencing offenders; monitoring the racial identity of people in the court system to determine whether they are being treated on a race-neutral basis; training judges in research-based tools to implement sentencing practices; forming collaborative relationships with the Department of Human Services and the Department of Corrections and Rehabilitation for services by courts; training judges in intermotivational interviewing techniques; using evidence-based programs for parolees in community-based treatment programs; expanding community corrections programs to cover probationers; establishing collaborative relationships with the Department of Human Services and the Department of Corrections and Rehabilitation to deal with mental health issues in the corrections system; and establishing recidivism reduction as an explicit goal.

In response to Judge Foughty's comments, Mr. Davis said another aspect that should be explored is the use of tribal identifications to establish eligibility for jury pools. He said this would allow many more Native Americans to participate in the judicial system.

HUMAN RIGHTS

Chairman O'Connell recognized Mr. Emil LaRocque, Turtle Mountain Band of Chippewa Indians. Mr. LaRocque said he is a member of the North Dakota Human Rights Commission, and the Legislative Assembly should establish an independent department of human rights. He noted that very few bills relating to Indians were enacted in the most recent Legislative Assembly, which indicates a lack of concern for Indian issues. He said the North Dakota Human Rights Coalition supports an independent department of human rights. In addition, he said, there should be a Native American member on the State Board of Higher Education. He urged each tribe to adopt a resolution of support for a Native American member on the board.

ENVIRONMENTAL ISSUES

Chairman O'Connell recognized Ms. Carol Davis, Turtle Mountain Band of Chippewa Indians; Ms. Cedar Gillette, Three Affiliated Tribes of the Fort Berthold

Reservation; and Ms. Debbie Gourneau, Turtle Mountain Band of Chippewa Indians; who discussed hydraulic fracturing. A copy of Ms. Davis's written comments ([Appendix C](#)) and a resolution ([Appendix D](#)) of the Tribal Council of the Turtle Mountain Band of Chippewa Indians prohibiting hydraulic fracturing on lands that adjoin the Shell Valley aquifer or its tributaries is attached.

HUMAN SERVICES

Chairman O'Connell recognized Ms. Malaterre. Ms. Malaterre said the Legislative Assembly should reexamine poverty and income guidelines for accessing human service programs, such as commodity assistance and fuel allowances. Oftentimes, she said, pension and veterans' benefits received by tribal elders may be just enough to make them ineligible for assistance but yet the pension and veterans' benefits are small enough so that the recipients are still impoverished. She said this situation should be addressed.

OIL AND GAS

Chairman O'Connell recognized Mr. Fox who read a statement ([Appendix E](#)) prepared by Mr. Hall. Mr. Fox said the statement concerns oil and gas impact on the reservation and concerns with the oil and gas tribal tax agreement. He distributed a resolution ([Appendix F](#)) adopted by the Tribal Council of the Three Affiliated Tribes of the Fort Berthold Reservation urging a fair oil and gas tax proceeds agreement with the state of North Dakota. He also distributed an article from the March 14, 2012, edition of *Indian Country Today* entitled "Every Silver Lining Has a Cloud" (on file in the Legislative Council office).

Chairman O'Connell recognized Mr. Davis. Mr. Davis said tribes should be eligible for oil and gas impact grants and suggested that the committee explore this topic.

TRANSPORTATION AND LAW ENFORCEMENT

In response to a question from Mr. Davis, Mr. Fox said the Three Affiliated Tribes has established a tribal Highway Patrol. He said the tribe was forced to take this measure because of problems enforcing environmental regulations on the reservation and traffic safety on the reservation's highways. He said the tribal Highway Patrol is designed for environmental protection as well as safety.

In response to a question from Senator O'Connell, Mr. Fox said the tribe sets environmental and traffic fines on the reservation.

BULLYING PREVENTION

Chairman O'Connell recognized Senator Marcellais. Senator Marcellais said he had been very active in bullying prevention programs in schools on the Turtle Mountain Reservation. He also distributed

facts on bullying and cellular phone lingo (on file in the Legislative Council office).

Senator Marcellais introduced Ms. Marilyn Laducer, Student Services Director, Turtle Mountain Community High School. Ms. Laducer discussed bullying prevention measures implemented at the high school and the creation of the school's bullying prevention team. She also gave a PowerPoint presentation on bullying prevention measures implemented in the school.

INDIAN ISSUES

Chairman O'Connell recognized Representative Nelson. Representative Nelson said the Legislative Assembly should address several issues. One issue, he said, is that current tax deductions made available to finance the Housing Finance Agency are not conducive to develop housing on the state's reservations. He said the state should add additional funds to this program for housing on the state's reservations. He said 5 percent of the state's population is Native American, and it should be able to participate in this program, especially, because housing is a major concern on the reservations. Another issue the Legislative Assembly should investigate, he said, is funding for grants for intensive in-home visitations.

Chairman O'Connell recognized Mr. Davis. Mr. Davis said the Indian Affairs Commission is working to acquire Federal Emergency Management Agency trailers that will be made available once the Minot flood victims move out of the trailers. He said the trailers should be made available to the tribes to help address the severe housing needs on the state's reservations. He encouraged the committee to support this effort.

RELIGIOUS LIBERTY RESTORATION AMENDMENT

Chairman O'Connell recognized Mr. Davis. Mr. Davis distributed written comments ([Appendix G](#)) by Ms. Lillian Jones, North Dakota Human Rights Coalition, concerning measure No. 3--the religious liberty restoration amendment.

Chairman O'Connell recognized Mr. Fox. Mr. Fox announced the MHA Nation's Annual Bakken Oil and Gas Expo will be held Tuesday and Wednesday, May 8-9, 2012, at the Four Bears Event Center, New Town. He encouraged the members of the committee to attend the expo to see the impact of Bakken oil and gas development on the Fort Berthold Reservation.

STAFF DIRECTIVES

Senator O'Connell requested the Legislative Council staff invite representatives of the Industrial Commission and the State Water Commission to address local control of hydraulic fracturing and allocation of water for hydraulic fracturing.

Mr. Davis requested the Legislative Council staff request or arrange for the presentation of information on eligibility for oil and gas impact grants.

No further business appearing, Chairman O'Connell adjourned the meeting at 3:30 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:7