

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, October 13, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Dennis Johnson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Dennis Johnson, Marvin E. Nelson, Wayne Trottier; Senator Dave Oehlke

Members absent: Senators Oley Larsen, John M. Warner

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Steve Sitting Bear, representing Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Myra Pearson, Chairperson, Spirit Lake Sioux Tribe; Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians

North Dakota Tribal Governments' Task Force members absent: Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Robert Shepherd, Chairman, Sisseton Wahpeton Oyate of the Lake Traverse Reservation

Others present: See [Appendix A](#)

It was moved by Representative Trottier, seconded by Representative Nelson, and carried on a voice vote that the minutes of the September 2, 2014, meeting be approved as distributed.

TRIBAL YOUTH

Chairman Johnson called on Committee Counsel to present a draft concurrent resolution [[15.3031.01000](#)] regarding a study of the need for collaboration between the tribes and the state in providing services for tribal youth who are adjudicated in the tribal courts.

Chairman Johnson said Honorable Donovan J. Foughty, District Judge, Northeast Judicial District, suggested the concurrent resolution calling for a study of collaboration between the tribes and the state on services for tribal youth include the federal government in the parties involved in the study.

It was moved by Representative Trottier, seconded by Representative Nelson, and carried on a voice vote that the concurrent resolution relating to a study of collaboration between the tribes and the state in providing services for tribal youth who are adjudicated in tribal courts be amended to include federal government in the parties involved in the study.

Mr. Davis said a study would be helpful in determining whether there is a way for tribal youth to qualify for state services. He said Judge Foughty has expressed concerns about the huge gap in services available to youth in tribal court versus youth in state court. He said the Indian Affairs Commission will be involved in the study.

It was moved by Representative Trottier, seconded by Senator Oehlke, and carried on a roll call vote that the concurrent resolution, as amended, relating to a study of the need for tribal, federal, and state collaboration in providing services for tribal youth who are adjudicated in tribal court be approved and recommended to the Legislative Management. Representatives Johnson, Nelson, and Trottier and Senator Oehlke voted "aye." No negative votes were cast.

TRIBAL-STATE TAX AGREEMENTS

In response to a question from Chairman Johnson, Mr. Sitting Bear said in 2013 the Standing Rock Sioux Tribe requested the state enter an agreement for the collection and sharing of sales and use taxes on the Standing Rock Sioux Reservation. He said it is the opinion of Mr. John Walstad, Director, Legal Division, Legislative Council, that legislative approval is needed for the tribe and state to enter an agreement for the collection and sharing of sales and use taxes on the reservation. He said the tribe also is interested in entering a tax sharing agreement with the

state for the natural gas reserves on the reservation which would be similar to the oil and gas agreement between the state and Three Affiliated Tribes of the Fort Berthold Reservation. He said the Turtle Mountain Band of Chippewa Indians is seeking a similar agreement.

Representative Nelson asked if it would be helpful if the Legislative Assembly gave general authority to negotiate with the tribes. He said the requirement of legislative authority for each agreement is slowing down the process.

Mr. Davis said each agreement between the tribes and the state is unique. He said a "one size fits all" approach rarely works because each tribe has its own laws and constitution. He said because general authority does not exist in the North Dakota Century Code, legislative authority is sought for each agreement.

Chairman Johnson called on Mr. Dan Rouse, Legal Counsel, Tax Department, for testimony regarding tribal-state tax agreements. Mr. Rouse said the Standing Rock Sioux Tribe has two tax agreements with the state. He said the first agreement, which deals with taxes on cigarettes and tobacco products, was negotiated in 1993. He said the second agreement with that tribe, a motor and special fuels tax, was negotiated in 1999. He said at the time of the first negotiations, the Governor requested that the agreements must comply with the following three requirements:

- To ensure uniformity between state law and tribal code, the tribal code or ordinance must be substantially similar to the state law;
- The Tax Department must administer the tax for the tribes; and
- The state must retain a small administration fee.

Mr. Rouse said the administration fee is typically 1 percent. He said the state and the Standing Rock Sioux Tribe are in the final stages of updating both tax agreements. He said in addition to the agreements with the Standing Rock Sioux Tribe, the state has had a motor and special fuels tax agreement with the Spirit Lake Sioux Tribe since 2006, with the Three Affiliated Tribes of the Fort Berthold Reservation since 2007, and with the Turtle Mountain Band of Chippewa Indians since 2010.

Mr. Rouse said the North Dakota Century Code contains a general law that allows for specific tax agreements like fuels and tobacco. He said even with this general authority, each agreement with each tribe for each tax type is unique. He said each reservation has the right to impose taxes on its members and on nonenrolled members. He said by having a separate agreement for each tax type, a challenge to one agreement does not affect an agreement for another tax type. He said because sales and use tax is a broader tax, it was agreed that legislative direction and guidance was necessary. He said if the Legislative Assembly approves the negotiation of a sales and use tax agreement, the Tax Department will proceed as directed.

In response to a question from Senator Oehlke, Mr. Rouse said the 1 percent administration fee is based upon the amount that would have gone to the tribe.

In response to a question from Representative Nelson, Mr. Rouse said the effect of changes in state tax laws during the term of the agreement is addressed in the agreements. He said under the agreements, the parties can come back to the table to renegotiate if either or both parties so request. He said the agreements contain provisions calling for respect for each party's enforcement efforts. He said the state defers to the tribal government for enforcement and collection.

Chairman McCloud said to avoid vendor enforcement issues, his tribal council requires vendors to charge the tobacco tax to the business rather than having the business collect the tax from the customers.

TRIBAL ROADS

Chairman Johnson called on Mr. Ron Trottier, Director, Tribal Transportation, Turtle Mountain Band of Chippewa Indians, for testimony regarding tribal road issues. Mr. Trottier said financial help is needed for the reconstruction of Jack Rabbit Road on his reservation. He said 2005-12 police reports indicate that seven fatalities and 56 car crashes occurred on that 14.6 mile stretch of road. He said according to the United States Department of Transportation formulas, \$44 million to \$65 million could be saved over the next 25 years if minimum reconstruction improvements are made to Jack Rabbit Road. He said although state funds are not typically spent on tribal roads, he would like the committee's support of an agreement with the state to work on Jack Rabbit Road.

In response to a question from Representative Nelson, Mr. Trottier said the deteriorating condition of Jack Rabbit Road is comparable to some of the roads in the oil patch, however, Jack Rabbit Road experiences less truck

traffic. He said the reservation is densely populated with substandard roads. He said because Jack Rabbit Road is made of concrete, a total reconstruction is needed. He said the tribe is working on projects to generate revenue, including an asphalt plant and a road striping operation, both of which are planned for marketing off the reservation. He said, however, the need to reconstruct Jack Rabbit Road is immediate. He said Jack Rabbit Road, which is the second most traveled road on the reservation, is the most dangerous.

In response to a question from Representative Trottier, Mr. Trottier said an estimated \$22 million is needed for a total reconstruction of Jack Rabbit Road. He said another estimate of \$14 million would only widen the road. He said the second proposal would involve considerably less soil moving. He said most of the accidents on the road are due to the deteriorating road conditions. He said the road, which has lanes that are only 11 feet wide, has narrow shoulders, and has steep drops on each side, leaves little room for error. He said because asphalt is less expensive to maintain and is a better product in North Dakota weather conditions, the tribe would like to replace the existing concrete road with asphalt.

Chairman Johnson called on Mr. Ron Henke, Deputy Director for Engineering, Department of Transportation, for testimony ([Appendix B](#)) regarding grant programs available for tribal transportation projects. Mr. Henke said the Department of Transportation has always had good relationships with the tribes in the state and continues to work in partnership with the tribes to provide a safe transportation system across the state. He said there may be federal grant programs available to the tribes for roads like Jack Rabbit Road. He said one example is the Transportation Investment Generating Economic Recovery (TIGER) discretionary grant program, which is part of the federal American Recovery and Reinvestment Act. He said in 2014 the federal government announced that \$600 million in TIGER grant funds would be available to fund transportation projects across the country. He said state law provides that state highway funds may be spent only on projects associated with state highways. He said the Department of Transportation will continue to work with tribal governments through federal programs.

In response to a question from Senator Oehlke, Mr. Henke said the state has taken over county roads and has swapped county roads for state roads. He said because of the complexities in dealing with another sovereign government, the state has never done a swap or a take over of a tribal road. He said he and the director of the Department of Transportation recently drove on Jack Rabbit Road. He said it is very narrow with many access points. He said to bring the road up to regulation, tree removal and improvement of access points are necessary.

In response to a question from Chairman Johnson, Mr. Henke said there is not a limit on the amount of TIGER grant funds that can be requested. He said the typical grant request is for 40 percent of the cost of the project with the requester providing 60 percent in matching funds. He said he is not aware of any TIGER grant awards that have provided 100 percent of the funding for a project.

In response to a question from Mr. Davis, Mr. Henke said the Department of Transportation has sent letters of support for tribal grant requests.

Mr. Davis said the tribes may need to look to tribal-state tax agreements as a means of funding road projects. He said an example is the oil and gas tax agreement between the state and the Three Affiliated Tribes of the Fort Berthold Reservation. He said that agreement requires the tribe to set aside 10 percent of the proceeds for infrastructure projects.

In response to a question from Chairperson Pearson, Mr. Henke said the Department of Transportation has district engineers who work with the tribes. He said to discuss a safety concern, the tribe may wish to contact the department for district engineer contact information.

Chairman McCloud said a number of schools use Jack Rabbit Road as a school bus route. He said with oil activity projected to be moving into the Turtle Mountain area within three years, the tribe will likely experience many of the same road problems facing other parts of the state.

In response to a question from Representative Trottier, Chairman McCloud said two types of drain tile systems are used when building roads.

Mr. Trottier said the Turtle Mountain Band of Chippewa Indians was a recipient of a \$4 million TIGER "4" grant. He said the current grant program is TIGER "6". He said considering the condition of the tribe's roads, that amount would be insufficient. He said it is difficult for a recipient to be awarded a subsequent grant from the same program.

In response to a question from Representative Nelson, Mr. Trottier said it can be very challenging to prove a road is unsafe. He said most programs are reactive in that there must be a record of accidents in order to get action.

Chairman Johnson called on Mr. Jerry Miller, President, AgriTec, Inc., for testimony regarding road paving products. Mr. Miller and Mr. Bob Johnson, I.E.C. Distributing, LLC, demonstrated a road paving product called "Perma-zyme" ([Appendix C](#)). Mr. Johnson said the product has been used on about 70 miles of road in western North Dakota with a zero fail rate. He said the product creates an asphalt designed for North Dakota weather. He said the process includes a moisture barrier and does not crack. He said the cost is about \$350,000 per mile versus over \$1 million per mile with asphalt. He said the company came to North Dakota after being asked to give a presentation to the Center for Innovation at the University of North Dakota. He said because of that relationship, the company donates a percentage of its sales to the Center for Innovation--about \$76,000 to date.

In response to a question from Senator Oehlke, Mr. Johnson said the company has only worked on county projects in the state. He said a competitor company did a small project for the Department of Transportation, however, the product did not work well because the soil contained too much silt. He said the company has provided samples of its product to the Department for engineering testing.

In response to a question from Mr. Davis, Mr. Johnson said the product, which is a concentrate, requires about 40 gallons per mile and is applied with a water truck. He said the company worked with the Bureau of Indian Affairs to get approval on projects in California and could do the same in North Dakota. He said the company would entertain the possibility of working on a pilot project with a tribe.

In response to a question from Representative Trottier, Mr. Johnson said training on the use of the product can be done in state. He said once the product is solidified, frost boils are not a problem. He said water is not an issue once the product is treated and cured.

TRIBAL HOUSING

Chairman Johnson called on Chairman McCloud for discussion of tribal housing issues. Chairman McCloud said some dwellings on his reservation house up to nine families. He said the tribe is working on developing a manufacturing plant that would build housing units as well as provide jobs for tribal members. He said down payment assistance is a critical element of the process. He said because of Indian Health Service collection efforts, many tribal members have credit history issues. He said housing in Indian country has done away with home ownership and most dwellings are modular or manufactured housing. He said perhaps the tribe could work with the state on providing down payment assistance. He said with the average price of \$63,000 for a 1,200 square foot home, even with two working adults in the household, it can be difficult to come up with a 10 to 15 percent down payment. He said new college residence halls under construction will help alleviate some of the housing shortages.

In response to a question from Representative Trottier, Chairman McCloud said the Housing and Community Facilities Programs of the United States Department of Agriculture, which help rural communities and individuals by providing loans and grants for housing and community facilities, is available only for structures built on fee properties, not on trust properties.

Mr. Sitting Bear said his tribe is trying to establish a private housing market on the reservation. He said the tribe is working with the Turtle Mountain State Bank to build permanent structures on trust land. He said the establishment of a legal structure to create security for business is critical. He said his tribe also would be interested in working with the state on a down payment assistance program.

Chairperson Pearson said the Spirit Lake Sioux Tribe also is experiencing a housing shortage. She said due to the high water table problems in the Devils Lake area, many homes have mold issues. She said she will provide more information on housing issues at a future meeting.

In response to a question from Representative Trottier, Mr. Sitting Bear said if a structure is built on trust land, the lending institution can never take possession of that structure. He said building on trust land involves a complicated 39-step process. He said building on fee land, however, is a much simpler process. He said a Family Dollar store built on fee land was up and running in a few months.

GOVERNMENT-TO-GOVERNMENT DISCUSSION

Chairman Johnson called on Mr. Les Thomas, Vice President, Turtle Mountain Tourism Association, for testimony regarding an effort to expand tourism in the state. Mr. Thomas said the tribes would like to partner with the state to develop tourism in Indian country. He said he plans to work with United Tribes of North Dakota and the Indian Affairs Commission to make the expansion of tourism a part of the Governor's budget. He said the United Tribes of North Dakota adopted a resolution ([Appendix D](#)) in support of making a request to the Legislative Assembly for funding for a tribal tourism grant program. He said the grant program could be similar to the tribal college grant program. He said the state is working with all tribes in the state on the grand opening program for the North Dakota Heritage Center on November 2. He said his proposal includes using the Heritage Center serving

as the hub for a two-week tour of Indian country in the state. Mr. Thomas also provided a brochure ([Appendix E](#)) of the Turtle Mountain Tourism Association.

In response to a question from Mr. Davis, Mr. Thomas said progress is being made on the snowmobile trails in the Turtle Mountain area. He said the plan includes connecting the trails from Bottineau to Belcourt.

In response to a question from Representative Trottier, Mr. Thomas said the North Dakota Division of Tourism does not share any of its budget with the tribes. He said, however, small grants are available for marketing.

Representative Trottier said the loss of use of the University of North Dakota Sioux logo had a negative effect on tourism in the state.

Mr. Sitting Bear said his tribe would also support this idea of expanding tourism in Indian country. He said the tribal tourism industry currently is very limited but there is a market for expansion. He said the Hostfest in Minot is an example of an event that draws people from around the world. He said many of those international visitors have an interest in Indian country.

In response to a question from Representative Trottier, Mr. Sitting Bear said visitors from at least a dozen different countries visited the Standing Rock Sioux Reservation in recent years.

Chairman McCloud said his tribe supports the idea of expanding tourism. He said tribal tourism is an untapped market. He said it is important to show tribal heritage to the world.

Mr. Davis said the resolution is a great start, but a more detailed plan is needed.

It was moved by Representative Trottier, seconded by Representative Nelson, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.

It was moved by Representative Trottier, seconded by Representative Nelson, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Johnson adjourned the meeting sine die at 2:00 p.m.

Vonette J. Richter
Assistant Code Revisor

ATTACH:5