

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Tuesday, August 2, 2016
 Roughrider Room, State Capitol
 Bismarck, North Dakota

Representative Marvin E. Nelson, Chairman, called the meeting to order at 1:00 p.m.

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

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Mark Fox, Chairman, and Al Nygard, Chief Executive Officer, Three Affiliated Tribes of the Fort Berthold Reservation; Patrick Marcellais, representing Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Myra Pearson, Chairperson, Spirit Lake Sioux Tribe; Steve Sitting Bear, representing Dave Archambault II, Chairman, Standing Rock Sioux Tribe

North Dakota Tribal Governments' Task Force members absent: Bruce Renville, Chairman, Sisseton Wahpeton Oyate of the Lake Traverse Reservation

Others present: Claire Ness, Legislative Council, Bismarck
 See [Appendix A](#) for additional persons present.

It was moved by Senator Oehlke, seconded by Representative Johnson, and carried on a voice vote that the minutes of the March 2, 2016, meeting be approved as distributed.

TRIBAL COLLEGE UPDATE

Chairman Nelson called on Dr. Jim Davis, President, Turtle Mountain Community College, for testimony ([Appendix B](#)) regarding the tribal college grant program. He said there are 36 tribal colleges in the country, including five tribal colleges in North Dakota. He said the state distributed \$5 million in tribal college grants in the 2013-15 biennium and \$3 million in the 2015-17 biennium. He said in addition to the state tribal grant program, about 100 full-time students have been served by \$500,000 in nonbeneficiary funding. He said the overall goal for the tribal college grant program is to provide educational and training opportunities to North Dakota residents and to improve the opportunities for those residents to become employed in skilled, high-wage positions in the state. He said self-sufficient living is also a goal for the graduates. He said the grants have allowed Turtle Mountain Community College to hire six employees—a commercial drivers license (CDL) instructor, a welding instructor, a machinist instructor, an oil field operations instructor, a career navigator, and a tribal college grant director. As of June 30, 2016, he said, 352 students had enrolled in seven different training programs; 122 had graduated; and 64 had been placed. He said the average income of the placed students is \$20.12 per hour.

Chairman Nelson called on Dr. Laurel Vermillion, President, Sitting Bull College, for testimony ([Appendix C](#)) regarding the tribal college grant program. She said Sitting Bull College received \$959,462 in tribal grant funds during the grant period beginning September 1, 2015, and ending April 30, 2017. She said the purpose of the grant is to develop and seek accreditation for two new certificate programs in heavy equipment operation.

Chairman Nelson called on Dr. Cynthia Lindquist, President, Candeska Cikana Community College, for testimony ([Appendix D](#)) regarding the tribal grant program. She said when evaluating the tribal grant program, it is important to look at long-term goals. She said the tribal colleges are looking at ways to sustain the programs being developed as a result of the grant program. She said the CDL program costs \$2,000 for an 8-week program. Because of the investment from the state, she said, her college has been able to keep student costs down. She said the training programs are helping students get out of poverty one student at a time. She said training for recertification, which is needed to retain employment, is another issue that needs to be addressed. She said if the tribal grant program is able to continue for at least 3 more years, it will give tribal colleges the time and funding needed to build programs. She said the nonbeneficiary funding is based on formula-based federal funding. She said the nonbeneficiary funding helps provide child care, transportation, and tutors for about 12 full-time equivalent students.

In response to a question from Senator Larsen, Dr. Lindquist said it would be beneficial if the CDL program could collaborate with companies such as Butler Machinery or RDO Equipment. She said she would provide information to the committee on the number of students enrolled in tribal colleges who are enrolled in the marketplace for health care.

EDUCATION

Chairman Nelson called on Ms. Lucy K. Fredericks, Director, Indian Education, Department of Public Instruction, for testimony ([Appendix E](#)) regarding the state plan for the federal Every Student Succeeds Act (ESSA). She said ESSA does not go into effect until July 1, 2017. She said the United States Department of Education is creating federal guidelines for the implementation of ESSA. She said each state is required to create a comprehensive state plan. She said North Dakota will submit its state plan in March 2017. She said ESSA requires each state to engage in meaningful consultation with tribes in the development of the state's plan to meet the needs of tribal students. She said ESSA promotes tribal self-determination in the education of tribal students by authorizing coordination and collaboration of tribal stakeholders with state education agencies to meet the unique culturally related academic needs of the tribal students. She said the first tribal consultation meeting will be held on October 21, 2016.

Mr. S. Davis said education on tribal lands always has been a challenge. He said the consultation meetings represent a great opportunity for tribes to be part of the process and to get more local and tribal control. He said it is important for the appropriate representatives from each tribe to attend these meetings and offer ideas for the state plan.

In response to a question from Chairman Nelson, Ms. Fredericks said tribal students' language and cultural needs are different than those of the state's general population. She said issues that could be addressed at the meetings include--the unique needs of the tribal students, how to best support tribal students, English language learner assessments, school board training, language classes, improvement plan, local authority, empowering parents, and how tribal school systems fit students.

In response to a question from Chairman Nelson, Ms. Fredericks said the unique features of Finland's school system have been mentioned at advisory committee meetings.

In response to a question from Representative Trottier, Mr. Sitting Bear said there are about 20 children in the Standing Rock Sioux Tribe's language immersion program.

In response to a question from Chairman Nelson, Mr. Marcellais said tribal schools struggle to decide which language should be taught. He said many tribal youth were forced to speak English, and as a result, native languages have been lost. He said funding is needed to offer native languages to tribal youth.

TASK FORCE ON SUBSTANCE EXPOSED NEWBORNS

Chairman Nelson called on Ms. Claire Ness, Counsel, Legislative Council, for testimony regarding the findings of the North Dakota Task Force on Substance Exposed Newborns. She provided a copy of the report ([Appendix F](#)) and a summary ([Appendix G](#)) of the recommendations of the task force. She said there was a consensus among task force members that the issue of substance exposed newborns is a health care issue not a criminal justice issue.

In response to a question from Chairman Fox, Ms. Ness said there was little data available from the reservations in the state. She said the Three Affiliated Tribes of the Fort Berthold Reservation, the Turtle Mountain Band of Chippewa Indians, and the Spirit Lake Sioux Tribe estimated 183 babies in 1 year had been born with neonatal abstinence syndrome (NAS). She said it is likely that number is higher.

Chairman Fox said the Three Affiliated Tribes of the Fort Berthold Reservation had at least 80 babies born last year with NAS. He said of all issues impacting reservations, the one causing the most damage is drug abuse. He said the drug epidemic is overwhelming. He said his reservation recently hosted the Federal Bureau of Investigation to discuss the drug problems facing the tribes. He said even with state and federal help, it would be difficult to fight the drug cartels. He said the key to addressing the problem is drug treatment. He said he is hopeful a drug treatment facility will be built in Bismarck. He said some of the obstacles to that facility becoming a reality are construction financing and a Medicaid waiver. He said if treatment is available, fewer babies will be born addicted. He said he will attempt to provide the committee with accurate NAS numbers from his reservation.

Mr. Marcellais said his tribe is facing the same drug crisis. He said federal Section 1115 waivers must be granted by the state for the tribe to receive Medicaid funding for drug treatment.

Chairman Fox said the state of Arizona has done a good job of coordinating drug treatment with that state's tribes. He said Arizona may serve as a good model for a state and tribal effort to coordinate drug treatment.

Mr. S. Davis said the waiver is for 16 patients. He said if two business models are created, the waiver will be recognized. He said the other important element is the workforce necessary to keep the treatment facilities open.

DENTAL SERVICES

Chairman Nelson called on Dr. Mary Williard, Director, Dental Health Aide Therapy Training Program, for testimony ([Appendix H](#)) regarding tribal dental services. She provided information on the Alaska Dental Health Aide Therapy Program. She said the program, which provides competent, safe, and appropriate dental care, has high patient satisfaction and is well accepted in Alaska tribal villages. She said each dental health aide therapy team, on average, provides care to 830 patients during 1,200 patient visits each year.

In response to a question from Senator Oehkle, Dr. Williard said Alaska's dental health aide therapy program operates under a federal program. She said the Alaska dental licensing board opposed the dental health aide therapy program in Alaska. She said a tribe can institute a dental health aide therapy program without approval from the state or the North Dakota Board of Dental Examiners; however, the tribe cannot access Indian Health Service funds unless the state and the licensing authority approve the program.

In response to a question from Representative Amerman, Dr. Williard said the University of Minnesota and Metro Community College in Minneapolis have dental therapy programs. She said standards have been approved for dental therapy programs.

In response to a question from Senator Larsen, Dr. Williard said the dentists and dental therapists are employees of the Alaska program.

STATE FIRE MARSHAL

Chairman Nelson called on Mr. Jeffrey Huber, State Fire Marshal, for testimony ([Appendix I](#)) regarding state fire services. He said some of the services provided by the State Fire Marshal's office include conducting fire inspections of public buildings, approving plans for new or remodeled schools, conducting inspections of ground fuel storage tanks, conducting fire investigations, and collecting fire department fire reports and civilian and fire service fatality reports. He said of the 107 fires his office investigated between August 2015 and August 2016, 14 (13 percent) occurred on tribal property. He said 67 percent of all fires investigated were residential.

In response to a question from Representative Amerman, Mr. Huber said his office works with insurance investigators to determine if foul play is suspected. He said when vacant homes are burned in remote areas, it can be difficult to determine if a fire is intentional or accidental because of the time that elapses between the fire and when the inspection occurs.

In response to a question from Chairperson Pearson, Mr. Huber said the police usually notify the State Fire Marshal's office about fires that occur in the state. He said there are jurisdictional issues when investigating fires involving the tribal members and tribal lands. He said without proof, arrests cannot be made.

In response to a question from Chairman Nelson, Mr. Huber said he is not aware of any barriers to getting memorandums of understanding between the state and tribal governments for fire investigations.

In response to a question from Senator Larsen, Mr. Huber said he is working to create a single fire report that can be distributed to multiple agencies. He said fire reporting software is offered to all fire departments in the state. He said his office is working to get 100 percent participation among fire departments.

In response to a question from Chairman Nelson, Mr. Huber said the issuance of a letter of delegation allows for individuals outside the State Fire Marshal's office to be able to conduct inspections. He said the State Fire Marshal's office employs six fire inspectors. He said there is a certification process to qualify as a fire inspector.

TRIBAL HOUSING

Chairman Nelson called on Mr. Darrell Pullen, Chief Executive Officer, Midwest Environmental Resources, for testimony regarding the availability of mobile modular housing units for tribal purchase. He provided information ([Appendix J](#)) on the types of housing units. He said he can offer modular units for tribes to address housing shortages. He said the units, which are fully furnished studio apartments, are built for the state's weather conditions. He said funding is available for the tribes.

TRIBAL-STATE TAX AGREEMENTS

Chairman Nelson called on Mr. Sitting Bear regarding the status of the tribal-state sales and use tax agreement. He said the sales and use tax agreement, which went into effect in July 2016, provides for an 80/20 tribal/state split. He said the Standing Rock Sioux Tribe does not believe Prairie Knights Casino should have to pay the use portion of the tax. He said casino profits are used to fund elderly and nutrition programs and to pay tribal debt. He said the casino use tax, which would amount to approximately \$375,000, would reduce the amount available for the tribe's programming. He said 20 percent of the use tax collected would go to the state. He said the state gives exemptions for institutions such as the Bank of North Dakota. He said the Standing Rock Sioux Tribe is requesting Prairie Knights Casino be exempted as well.

Chairman Nelson called on Ms. Karol L. Kelly, Standing Rock Sioux Tribe Tax Department, for testimony. She said reservation vendors have upgraded equipment to accommodate collection of sales tax. She said the implementation of the use tax on the casino's purchases, such as beds, linens, and kitchen supplies, was never intended when the agreement was made.

In response to a question from Senator Oehlke, Ms. Kelly said the use tax is 5.25 percent. She said the casino is a tribally owned business, but is a corporation.

Chairman Nelson called on Mr. Myles Vosberg, Director, Tax Administration Division, Tax Department, for testimony regarding the tribal sales and use tax agreement. He said the agreement, which provides the state is to administer the collection of the sales and use taxes, requires both entities to have the same sales and use tax laws. He said the laws provide for an exemption for tribal entities, but not tribally owned businesses. He said the Tax Department has the authority to issue exemption certificates to entities exempt under the law. He said both the state and the tribe would have to change their laws to allow for an exemption for a tribally owned business.

In response to a question from Senator Larsen, Mr. Vosberg said the Tax Department would like the sales and use tax agreement to go forward; however, the use tax issue for the casino needs to be resolved.

In response to a question from Senator Oehlke, Mr. Vosberg said the Legislative Assembly likely was not contemplating tribal tax collection at the time the provision was put into law.

TRIBAL YOUTH SERVICES

Chairman Nelson asked the committee how it would like to proceed with the study assigned to the committee regarding tribal youth services. He said the services could be provided with a memorandum of understanding; however, no efforts have been made to work on an agreement. He said budget concerns also may play a role in whether an agreement should be attempted. He said the committee may want to consider recommending legislation for a pilot project.

Chairperson Pearson said the issue needs more study. She said she is concerned about whether youth will be returned to the tribe.

Chairman Nelson said the tribal court would retain jurisdiction.

Senator Larsen said all children in the state, both tribal and nontribal, are North Dakota citizens. He said he would like to see a proposal for a pilot project.

Mr. Nygard said his tribe will further discuss the issue. He said creating a tribal and state partnership for helping tribal youth would be a step in right direction.

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

Vonette J. Richter
Assistant Code Revisor

ATTACH:10