

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**TRIBAL AND STATE RELATIONS COMMITTEE**

Monday, September 26, 2016  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Marvin E. Nelson, Chairman, called the meeting to order at 9:00 a.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; Al Nygard, Chief Executive Officer, representing Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation

**North Dakota Tribal Governments' Task Force members absent:** Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Myra Pearson, Chairperson, Spirit Lake Sioux Tribe; Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Bruce Renville, Chairman, Sisseton Wahpeton Oyate of the Lake Traverse Reservation

**Others present:** See [Appendix A](#)

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

**TRIBAL YOUTH STUDY**

At the request of Chairman Nelson, the Legislative Council staff presented a bill draft [[17.0294.01000](#)] relating to the establishment of a pilot program for providing state services to juveniles adjudicated in tribal court. She said the bill draft would direct the Department of Corrections and Rehabilitation (DOCR) to offer to negotiate a memorandum of understanding with the government of one federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles who have been adjudicated in tribal court in accordance with tribal or federal laws.

In response to a question from Senator Oehlke, the Legislative Council staff said DOCR would be limited to a memorandum with one tribe. She said changing "one" to "a" on line 12 of the bill draft would allow the department to have flexibility in the number of tribes with which it entered an agreement.

Mr. Davis said the Spirit Lake Sioux Tribe and the Standing Rock Sioux Tribe have indicated interest in pursuing an agreement to allow tribal juveniles to be able to access state services.

In response to a question from Representative Amerman, Chairman Nelson said North Dakota Century Code Chapter 54-40.2, which outlines the process for creating agreements between public agencies and Indian tribes, gives DOCR the authority to enter a memorandum of understanding to provide services to juvenile youth. He said if the bill draft is recommended by the committee, but fails to pass during the 2017 legislative session, it may send the message there is not legislative support for providing state services to tribal juveniles.

In response to a question from Representative Trottier, Chairman Nelson said the memorandum of understanding could be done without a bill; however, recommending the bill draft sends the message the committee supports the idea of collaborating with the tribes to work on tribal juvenile problems.

Senator Larsen said tribal juveniles, who are being sent out of state for detention, are citizens of the state. He said when sent out of state, it is more difficult for the juveniles to get treatment and for their families to see them or get them back to the state.

Senator Heckaman said although the option for the state and the tribes to collaborate is available, it is not happening. She said the bill draft would get the process started. She said, given the current state financial situation, without a bill draft, it is unlikely either party would initiate a memorandum of understanding.

**It was moved by Senator Larsen, seconded by Senator Heckaman, and carried on a roll call vote that the bill draft be amended on line 12 to change "one" to "a."** Representatives Nelson, Amerman, Johnson, Trottier and Senators Heckaman and Larsen voted "aye." Senator Oehlke voted "nay."

**It was moved by Senator Heckaman and seconded by Senator Larsen that the bill draft, as amended, relating to establishment of a pilot program for providing state services to juveniles adjudicated in tribal court, be approved and recommended to the Legislative Management.**

Senator Larsen said a native youth who lives off the reservation can get state services, but once the native youth returns to the reservation, no state services are available.

Chairman Nelson called on Mr. Nygard for testimony regarding the bill draft. Mr. Nygard said the state of the budget should not determine the bill draft is a good idea. He said tribal youth are state youth. He said the bill draft would formalize a process that would be in the best interest of tribal youth. He said this bill draft would be a great step forward in repairing the relationship between the state and the tribes. He said the bill draft might be what is needed to change that dynamic. He said the bill draft would aid in a closer government-to-government understanding.

Representative Johnson said Northeast Judicial District Judge Donovan Foughty has long been a proponent of the idea of providing state services for tribal youth. He said Chairperson Pearson's concerns about whether youth would be returned to the tribe can be addressed in the memorandum of understanding.

Mr. Davis said moving forward with the bill draft will help strengthen tribal and state relations. He said Judge Foughty also chairs the Supreme Court's Committee on Tribal and State Court Affairs. He said the issue has been discussed in that committee as well.

In response to a question from Representative Amerman, the Legislative Council staff said it appears there is legislative authority for the executive branch to enter a memorandum of understanding with a tribe to provide state services without additional legislation.

**The motion carried on a roll call vote.** Representatives Nelson, Amerman, Johnson, and Trottier and Senators Heckaman and Larsen voted "aye." Senator Oehlke voted "nay."

## EDUCATION

Chairman Nelson called on Ms. Lucy K. Fredericks, Director, Indian Education, Department of Public Instruction, for testimony ([Appendix B](#)) regarding the state plan for the federal Every Student Succeeds Act (ESSA). She said ESSA is scheduled to go into effect on July 1, 2017. Over the next year, she said, the United States Department of Education will be creating federal guidance on the implementation of ESSA. She said each state must create a comprehensive state plan that outlines how that state will implement the law. She said North Dakota will submit its state plan in March 2017.

Ms. Fredericks said the North Dakota ESSA planning committee has met three times since May with the next meeting scheduled for Friday, September 30, 2016. She said the North Dakota plan focuses on continuous improvement. She said the three subcommittees are teacher and leader effectiveness, standards assessment accountability and reporting, and continuous improvement. She said all ESSA-related information can be accessed on the department's website at [www.nd.gov/dpi](http://www.nd.gov/dpi).

Ms. Fredericks said ESSA requires each state to engage in meaningful consultation with tribes in the development of the state plan to meet the needs of Native American students. She said ESSA promotes tribal self-determination in the education of native students by authorizing coordination and collaboration of tribal stakeholders with state education agencies to meet the unique culturally related academic needs of the state's Native American students. She said the first ESSA tribal consultation meeting is scheduled for Friday, October 21, 2016, from 1:00 to 4:00 p.m. in the Brynhild Haugland Room at the State Capitol.

Mr. Davis said it is important that tribal leaders, school board members, tribal college representatives, and other educators attend the October 21, 2016, meeting. He said it is essential for tribal representatives to provide input for the state plan.

In response to a question from Chairman Nelson, Ms. Fredericks said to qualify as meaningful consultation with the tribes, more than one meeting will be held with continuous feedback from each meeting.

In response to a question from Representative Amerman, Ms. Fredericks said upon submission of the state plan, the United States Department of Education may request additional information from the state. She said the state plan can be revised, but all revisions must be completed before the implementation date.

In response to a question from Mr. Nygard, Ms. Fredericks said the essential understandings project is in phase 2, which is lesson plans and elder interviews. She said phase 3, which is the implementation of 40-50 lesson plans, will include professional development and the use of trainers in the schools to implement the lesson plans. She said the Department of Public Instruction would like to implement the essential understandings curriculum throughout the state.

### **MEDICAID FUNDING**

Chairman Nelson called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, for testimony ([Appendix C](#)) relating to the level of Medicaid funding for tribal members. She said on February 26, 2016, the Centers for Medicare and Medicaid Services issued policy guidance ([Appendix D](#)) on federal funding for services received through an Indian Health Service (IHS) tribal facility and furnished to Medicaid-eligible American Indians and Alaska Natives. She said IHS tribal facilities may enter care coordination agreements with non-IHS tribal providers to furnish certain services for patients who are American Indian or Alaskan Native Medicaid beneficiaries and the amounts paid by the state for services requested by facility practitioners in accordance with those agreements would be eligible for the enhanced federal matching at a rate of 100 percent. She said South Dakota's agreement has been approved. She said North Dakota can use South Dakota's approved agreement as a model for drafting our state's agreement. She said because of the overlap of the Standing Rock Sioux Reservation with South Dakota, the Department of Human Services will begin the process with the Standing Rock Sioux Tribe before moving to the other tribes in the state. She said this funding only applies to IHS tribal facilities. She said a different agreement is needed for tribes with Section 638 health service programs.

In response to a question from Chairman Nelson, Ms. Anderson said South Dakota's motivation in reaching the agreement was to enable that state to get Medicaid Expansion. She said because North Dakota has Medicaid Expansion, an agreement would help fund the state's 5 percent share. She said some states are having conversations with tribal Section 638 health service programs, which would allow for sharing the savings with the tribe. She said the Department of Human Services is having ongoing conversations with its counterparts in Montana, South Dakota, and Wyoming regarding Section 638 health service program incentives.

Ms. Anderson said South Dakota estimates a Medicaid savings of about \$50 million over 5 years. She said that amount may be higher than what North Dakota could expect because South Dakota has a larger Native American population.

In response to a question from Senator Heckaman, Ms. Anderson said she is not aware of any state that has implemented this federal funding agreement to date. She said she is not able to provide a timeline for implementation, but she would like to begin talks with Sanford Health.

In response to a question from Senator Larsen, Ms. Anderson said there are about 20,000 individuals in the state on Medicaid and Medicaid Expansion. She said approximately 20 to 22 percent of Medicaid enrollment is Native Americans. She said eligibility is based upon 138 percent of the federal poverty rate regardless of whether the individual is Native American.

### **OTHER BUSINESS**

**It was moved by Senator Heckaman, seconded by Senator Larsen, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Management.**

**It was moved by Senator Heckaman, seconded by Senator Larsen, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Nelson adjourned the meeting at 11:10 a.m.

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Vonette J. Richter  
Code Revisor

ATTACH:4