

1999 SENATE GOVERNMENT AND VETERANS AFFAIRS
SB 2294

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2294

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date January 28, 1999

Tape Number	Side A	Side B	Meter #
1		X	3380-END
2	X		0-1754
Committee Clerk Signature <i>James D. Raile</i>			

Minutes: CHAIRMAN KREBSBACH called the committee back to order and opened the hearing on SB 2294. Appearing before the committee to introduce the legislation was SENATOR JUDY DEMERS, District 18, Grand Forks, primary sponsor of the bill. This bill relates to agreements between Indian tribes and the state. A copy of Senator DeMers written testimony is attached. Following her testimony there were no questions offered from the committee. Next to appear before the committee was TOM DISSELHORST, counsel for United Tribes Technical College and a staff attorney for Three Affiliated Tribes. A copy of his written testimony is also attached. SENATOR STENEHJEM- Could you give me an example of what specifically you have in mind to do that can't be done now, or that is more difficult to do because of the cumbersome nature. MR. DISSELHORST- I tried to do that already. Take the tribal contracting company. Tribal contracting company bids on building a portion of the highway within the reservation. It's otherwise eligible to bid on that project. It meets all the eligibility

criteria. The agreement is between the contracting company, owned fully by the tribe, and the state and why should they have to go through this red tape if they are otherwise eligible to enter into the agreement? Another is a grant program, for example aging services. A grant program that is administered by a state agency, and the grant criteria are such that a tribe is eligible. If the tribe applies for that grant it shouldn't have to go through the red tape required in 54-40.2. The authority is already there within the program or grant for the tribe and the granting agency to enter into that agreement. That's what I mean by otherwise eligible. SENATOR

STENEHJEM-Sections 54-40.2-08 is the section that sets limitations on agreements that may or may not have ever been necessary but was put in there just as a safeguard. Is there any reason not to prohibit any kind of agreement, because you are exempting all of the chapter including that section from the requirement? MR. DISSELHORST-I thought about that when it was drafted and I don't think any agreement that is talked about here could do that anyway. I realize that it is a safeguard. If we want to put in an amendment that they be exempted from those two process sections of the chapter, but then it seemed a little bit more confusing so I thought I would exempt it from the chapter all together, especially those entities as tribal governments. They are independently capable of handling their own affairs. They are not going to be able to extend the jurisdiction of the state anyway. SENATOR STENEHJEM-Anyway that might be true, but I assume and I don't remember I guess I was here in that session but anyway I don't remember, maybe I wasn't on the committee that worked on this. But I assume those limitations were put in for to alleviate somebody's concerns. MR. DISSELHORST-They were there in part of the original chapter. Before that in 1991 I think they were very similar. I don't think anything was added to what was in century code before that. SENATOR STENEHJEM-Can you tell me on

page 2, what 24-02-02.3 is and what 54-38 is? MR. DISSELHORST-54-38 is the gaming contract and 24-02-02.3 deals with bids for services with the DOT. CHAIRMAN KREBSBACH wanted to know what or who constitutes the government of the tribe. MR. DISSELHORST-The tribal government is the tribal council, sometimes it is referred to as the tribal business council but it is the duly elected body that is authorized by the tribal constitution to manage the affairs of the tribe. That's probably a better definition of what it really is. There were no further questions for MR. DISSELHORST at this time. LINDA WRIGHT, Aging Services Division of the Department of Human Services testified in support of SB 2294. A copy of her written testimony is attached. She urged the committee to give this bill a do pass. SENATOR THANE-You use aging services division as an example, but could you tell us what other divisions of the department of human services might be benefited by if this bill is passed. LINDA WRIGHT-I believe it would pertain to most contracts that would be entered into but Tara might be better able to answer that since she works for the contract office. TARA SHAY HOFFMAN-Department of Human Services-The ones I can think of off of the top of my head are the Human Service Center, our substance abuse division, and children and family services. There were no further questions for Ms. Hoffman. BARB JACOBSEN-Assistant Professor at U.N.D. in the department of social work-appeared before the committee to testify in support of SB 2294 a copy of her written testimony is attached. She also presented the committee with a letter from Mary Harris, Dean of the College of Education and Human Development at UND which lends her support to SB 2294. There were no questions from the committee. No further testimony was offered in support of, in neutral position on, or in opposition to SB 2294. A discussion ensued with questions for Mr. Disselhorst from Senator Stenehjem, Senator DeMers,

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Senate Government and Veterans Affairs Committee
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and Senator Thane (Meter #'s 630-1270, Tape 2, Side A). A discussion ensued between Senator DeMers, Theresa Snyder-Department of Human Services, and Cynthia Molland-ND Indian Affairs Division, Senator Stenehjem and Senator Thane. Comments were added by Mr. Disselhorst and Barb Jacobsen (Tape 2, Side A, Meter #'s 1270-1675). The hearing was closed at this time.

Committee Action: February 12, 1999, Tape 1, Side A, Meter #'s 3232-3590

Motion to amend was made by Senator Stenehjem, seconded by Senator DeMers, Roll Call Vote indicated 7 Yeas, 0 Nays, 0 ABSENT or NOT VOTING. A motion for DO PASS AS AMENDED was made by SENATOR STENEHJEM, seconded by SENATOR DEMERS. ROLL CALL VOTE indicated 7 YEAS, 0 NAYS, and 0 ABSENT OR NOT VOTING.

Date:
Roll Call Vote #: SB 2294

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number Adopt w/amendments.

Action Taken _____

Motion Made By W. Stuenkel Seconded By Judy De Meer

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date:
Roll Call Vote #: 2294

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number Do Pass - SB 2294 w/amendment

Action Taken _____

Motion Made By W. Steudgen Seconded By Jody De Mue

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. De Mue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2294: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2294 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new section to chapter 54-40.2 of the North Dakota"

Page 1, line 2, remove "Century Code, relating to agreements between Indian tribes and the state; and"

Page 1, line 8, after the third boldfaced period insert "In this chapter:"

Page 1, line 16, remove "corporate" and remove "registered with the"

Page 1, line 17, remove "secretary of state and which is otherwise", after "authorized" insert "by a tribe", and replace "under" with "of any kind without further approval by the government of the tribe"

Page 1, line 18, remove "this chapter"

Page 1, line 22, remove "or the governor on behalf of the state"

Page 1, line 24, remove "the state or"

Page 2, line 2, remove "the state or"

Page 2, line 10, replace "the state" with "a public agency"

Page 2, line 15, remove the overstrike over "a" and remove "the state or other"

Page 2, remove lines 17 through 25

Renumber accordingly

1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2294

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2294

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3-4-1999

Tape Number	Side A	Side B	Meter #
2	X		2.7 - 12.1
2		X	21.0 - 28.9
Committee Clerk Signature <i>James J. McWilliams</i>			

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on March 4, 1999.

Summary of the Bill: Relating to agreements between Indian Tribes and the state.

Testimony in Favor:

Senator DeMers, Appeared before the committee to introduce the bill. She submitted written testimony which she read in it's entirety (**please refer to her testimony**).

Tom Disselhorst, Attorney representing United Tribes and the three affiliated tribes submitted written testimony which he read (**please refer to his testimony**). The amendment consist of one comma that should be placed on page 2, line 7 after the word agency.

Linda Wright, Human Services Department of Aging Services submitted written testimony which she read in it's entirety (**please refer to his testimony**).

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House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2294

Hearing Date 3-4-1999

Representative Klemm, If this bill passes, what kind of agreements would still be subject to the public policy requirements.

Wright, I would like to defer that to someone else.

Representative Klein, Basically what your saying is that this would only apply to some of the flow through type of things that come from the federal government on to the tribes?

Wright, Yes, if these amendments are approved, then we will not have to go through all the additional steps.

Representative Klein, Closed the hearing on SB 2294.

Committee Action:

Representative Hawken, Made a motion for a Do Pass on the amendment.

Representative Kliniske, Seconded the motion.

Motion Passes: Yes (vocal).

Representative Hawken, Made a motion for a Do Pass on the amended bill.

Representative Brekke, Seconded the motion.

Representative Klein, If you would rather hold this till tomorrow, well do that so Representative Klemm can find out what it is he wants.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2294

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 3-5-1999

Tape Number	Side A	Side B	Meter #
1	X		45.2 - 47.5
Committee Clerk Signature <i>Ann McWilliam</i>			

Minutes: Representative Klein instructed the committee to take a look at SB 2294.

Summary of the Bill: Relating to agreements between Indian Tribes and the state.

Representative Klemin, I read everything over and I don't have any problems.

Representative Winrich, Made a motion for a Do Pass as amended.

Representative Brekke, Seconded the motion.

Motion Passes: Do Pass Amended **13-0-2**.

Representative Winrich, Is the carrier for the bill.

Roll Call Vote #: 1 Date: 3-5-99

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2294

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By WINRICH Seconded By BREKKE

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP. WINRICH	✓	
VICE-CHAIR KLINISKE	✓				
REP. BREKKE	✓				
REP. CLEARY	✓				
REP. DEVLIN	✓				
REP. FAIRFIELD					
REP. GORDER	✓				
REP. GRANDE					
REP. HAAS	✓				
REP. HAWKEN	✓				
REP. KLEMIN	✓				
REP. KROEBER	✓				
REP. METCALF	✓				
REP. THORESON	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment WINRICH

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 8, 1999 7:14 a.m.

Module No: HR-41-4180
Carrier: Winrich
Insert LC: 90641.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2294, as engrossed: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2294 was placed on the Sixth order on the calendar.

Page 2, line 7, after "agency" insert an underscored comma

Renumber accordingly

1999 TESTIMONY

SB 2294

TESTIMONY FOR SB 2294

Prepared by Senator Judy L. DeMers, District 18

Thursday, January 28, 1999

Chairman Krebsbach and members of the Senate Government and Veteran's Affairs Committee. For the record, I am Judy L. DeMers. I represent District 18, consisting of part of Grand Forks and part of the Grand Forks Air Force Base, in the North Dakota State Senate. I appear this morning as the prime sponsor of SB 2294.

SB 2294 was introduced at the request of the North Dakota Indian Affairs Commission. This bill is meant to simplify the process of executing agreements between Indian tribes and the state in certain circumstances.

SB 2294 exempts entities which are owned, organized, or chartered by a tribe and which exist as a separate corporate entity registered with the Secretary of State from the provisions of chapter 54-40-02. These provisions are quite cumbersome, time-consuming, and expensive. They include publication of a summary of the agreement in the official newspaper of each county of the state which may be affected; publication in any newspaper circulated to tribes which may be affected; posting in tribal offices and in the county courthouses; and, if requested, a public hearing. Once these procedures are carried out, the agreement then must be approved by the governor and the tribal governing body.

I have attached a copy of NDCC 54-40-02 so that you may review these provisions in the law and consider SB 2294 within this context.

The impetus for SB 2294 was the receipt of a grant by a tribal college and the college's efforts to contract with the University of North Dakota to carry out the provisions of the grant. In this instance, it took more than five months to work through the process to gain approval of the agreement. (Please see September 23, 1998 letter from Leigh Jeanotte to Rhonda Schauer). Others will testify in detail about this difficulty.

Tom Disselhorst drafted this legislation for the Indian Affairs Commission and he will testify. Mr. Disselhorst also will present proposed amendments which have the support of the sponsors.

Madam Chairman and Committee Members. With the passage of SB 2294, the tribal colleges will be able to enter into agreement with other public agencies without going through the process defined in 54-40-02. I urge your favorable consideration.

Thank you.

54-40-02

NATIVE AMERICAN PROGRAMS
P.O. BOX 8274
GRAND FORKS, NORTH DAKOTA 58202-8274
(701) 777-4291
FAX: (701) 777-3292

RECEIVED
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OCT 05 1998
ND Indian Affairs Commission

September 23, 1998

Rhonda Schauer
North Dakota University System
State Capitol
Bismarck, North Dakota 58501

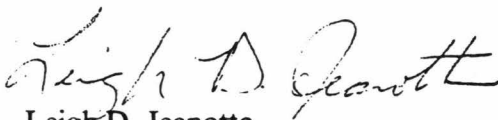
Dear Ms. Schauer:

To give you an example of all the work required regarding Chapter 54-40.2 Agreements Between Public Agencies and Indian Tribes, please find a copy of the Notice Agreement along with copies of correspondence showing where the notice was posted, etc. We were quite fortunate that no one questioned the project during the 30 day posting period. However, if someone would have raised concerns and if we did not satisfy their inquiry; we would have then had to organize a public hearing(s) delaying the agreement an additional length of time.

After the 30 day posting period our Grants and Contracts Office then had to submit the agreement to request the Governor's approval. This took another six weeks. Overall, this agreement took from October 13, 1997 to March 20, 1998 or over five months to work through this process to gain approval of the agreement.

Once again, this shows the need to repeal this cumbersome policy (Agreements Between Public Agencies and Indian Tribes). Please share with interested individuals.

Sincerely,



Leigh D. Jeanotte
Assistant to the Vice President for Student and Outreach Services/
Director of Native American Programs

enclosure: Copies of Domestic and Family Violence Project Correspondence

cc: Barbara Jacobsen, Soical Work
Eric Longie, Candeska Cikana Community College

**Government and Veteran's Affairs Committee
North Dakota Senate
56th Legislative Assembly**

**Testimony of Thomas M. Disselhorst
Attorney at Law
on SB 2294
Tribal-political subdivision agreements
January 28, 1999**

Thank you, Madame Chairman, for the opportunity to testify concerning SB 2294, which amends Chapter 54-40.2 of the North Dakota Century Code (NDCC) regarding agreements between Tribes and state political subdivisions. By way of introduction, I am counsel for United Tribes Technical College and a staff attorney for Three Affiliated Tribes. I am also the drafter of previous amendments to Chapter 54-40.2 in 1991.

This bill, as amended, does one simple thing, although the language may seem confusing. This bill reduces the red tape for most types of agreements between state agencies, including state political subdivisions and Indian tribes and various entities that are created or owned by Indian tribes.

But first, let me explain the purpose of Chapter 54-40.2. A copy of this Chapter, in its entirety, is attached to my testimony for your reference.

Chapter 54-40.2 is intended to provide authority for political subdivisions to enter into agreements with the Indian tribes in North Dakota on various matters that are not otherwise provided for under state law. The chapter has in it a public notice and public hearing provision, so that citizens of North Dakota and the affected tribe will be aware of what is being agreed to. The chapter also has a monitoring function.

One example of an agreement that should fall under this Chapter (as it is now written) are cross-deputization agreements, which I have been drafting for the Three Affiliated Tribes. In such an agreement, a local Sheriff's department may agree to assist, when necessary, in enforcing tribal law on those parts of the reservation that are within the county over which the Sheriff has jurisdiction, and the tribal police agree to assist the Sheriff and his deputies when necessary to enforce state law against non-Indians within the county over which the Sheriff has jurisdiction. Such an agreement extends the services of the Sheriff's department of a county beyond that which was originally intended. The public notice and public hearing provisions are intended to provide both Tribal members and other state citizens notice that the services of the Sheriff and the tribal police are being extended.

Testimony on SB 2294
Thomas M. Disselhorst, Esq.
Senate Government and Veterans Affairs Committee
January 28, 1999
Page 2 of 4

Another example which has arisen in the past couple of months was a proposed bill by the State Water Commission which would have established a procedure for quantification of tribal water rights. This proposed bill was opposed by tribes for many reasons, one of which was that a procedure already existed under Chapter 54-40.2 for entering into such an agreement with the state, if tribes wished to do so.

Contrast the above examples to a grant provided by the University of North Dakota to a tribal college which will be operated under an agreement between the University and the tribal college. Chapter 54-40.2 was not intended to cover tribal colleges, only tribal governments, but an attorney for the University system believed that Chapter 54-40.2 could be construed to apply to tribal colleges because they are created and owned by a tribe. Thus, in order for the agreement governing the grant to be entered into, the University believed that it must comply with the provisions of Chapter 54-40.2, causing considerable delay and additional expense to the University and the tribal college which wished to administer the grant.

The tribal college in this example was eligible for the grant, and has authority independent of the tribal government to enter into such agreements. In other words, it doesn't need the tribal council of the tribe to authorize entering into the agreement with the University which governs the grant. Further, the program under which the grant was offered (which was essentially a Federally funded program administered by the University) is one for which the tribal college was eligible; in other words, this was not a situation where the a state political subdivision was entering into an agreement which was providing new services not otherwise provided in state or federal law. In fact, the University system's attorneys believed that a case could be made that they had authority independent of Chapter 54-40.2 to enter into the agreement with the tribal college, but still felt that it was possible that Chapter 54-40.2 applied so that they had to comply with the public notice and hearing requirements.

Hopefully, this example gives some illustration of what the proposed amendments to Chapter 54-40.2 of SB2294 are trying to accomplish.

Let me then go through with you briefly the elements of the bill, and the proposed amendments to the bill. First, the amendments to the bill: These amendments take out any reference to the governor's authority to enter into agreements with tribes. As one senator has pointed out, extending the governor's authority is not necessary to accomplish the purpose of the bill, so those references should be eliminated, and that what the proposed amendments to the bill do. The amendments also correct one misstatement in Section 1 of the bill relating to the exemption to tribal governments.

Next, the main features of the bill itself:

1. Section 1, as amended, exempts out of the definition of "Tribal government" those entities created and owned by the tribe which are able to conduct business without the approval of the tribal government. Many such entities exist, including tribal colleges, various tribal corporate entities, whether organized under tribal law or some state law, and other entities created by the tribe which have authority to enter into agreements.

Of course, so that there is no uncertainty about this, nothing in state law, including anything in this chapter, could authorize such entities to enter into an agreement that would waive tribal sovereign immunity, only the duly constituted tribal governing body can do that, if permitted by the tribal constitution.

2. Section 2, as amended, creates two additional exemptions from the application of this chapter: First, if the public agency already has authority to enter into such agreements with a tribe, it doesn't need to use the procedures of this chapter. (Lines 1 and 2 of page 2).

Second, if the subject matter of a contemplated program, contract or agreement proposes an activity for which the tribe is already eligible under applicable law, the chapter doesn't apply. (Lines 7-11, page 2).

This exemption is meant to take care of all of the various programs that are offered by the state to tribes and tribal entities under authorization from federal programs that provide pass-through dollars, other state programs that by definition are available to Indian tribes, or for which tribes or tribal entities are otherwise eligible. Presumably, if the tribes or tribal entities are eligible for the programs, the political subdivision does not need additional authority to enter into the agreement under those grants or programs.

For example, the state Aging Services program provides grants and enters into agreements with tribes under provisions of state and federal law which supply the funds for these programs. The federal program may establish the eligibility criteria, or leave that to the state within broad parameters. This is not the kind of agreement to which Chapter 54-40.2 was intended to apply. Another example would be a tribal corporate entity that following a successful bid enters into a contract with the state for the provision of goods and services, say on a highway project.

Section 3 updates the validity of previous agreements clause to conform to the effective date of this bill, should it become law.

Testimony on SB 2294
Thomas M. Disselhorst, Esq.
Senate Government and Veterans Affairs Committee
January 28, 1999
Page 4 of 4

As noted in the proposed amendments, **Section 4 is being deleted.**

In summary, please note that this bill is simply a technical amendment to diminish red tape, in most instances, for the tribes and state political subdivisions entering into agreements with tribes and tribal entities as provided for in Chapter 54-40.2. Tribal leaders have been briefed on the need for the bill, and have in general agreed to the need to change Chapter 54-40.2, through the Indian Affairs Commission in its meetings during the past year.

For the reasons stated above, I urge a DO PASS recommendation on SB2294, as amended.

PROPOSED AMENDMENTS: SB 2294

In SECTION 1:

1. On line 8, add, after the word "**Definitions.**" the following words: "In this chapter:"
2. On Page 1, lines 16-18, replace "which exists as a separate corporate entity registered with the secretary of state and which is otherwise authorized to enter into agreements under this chapter" with the following: "which exists as a separate entity authorized by a tribe to enter into agreements of any kind without further approval by the government of the tribe."

In SECTION 2:

1. On Page 1, line 22, delete the words "or the governor on behalf of the state";
2. On Page 1, line 24, delete the words "the state";
3. On Page 2, line 2, delete the words "the state or";
4. On Page 2, line 10, delete the words "the state" and replace them with the words "a public agency".

Delete all of SECTION 4.

The amendment proposed to Section 1 of SB2294 clarifies the intent of the exemption being created in the proposed amendment to Section 54-40.2-01.

The reason for the proposed amendments is that these amendments are not necessary to accomplish the objectives of the other amendments to Chapter 54-40.2. The amendments that are left in place in SB 2294 are intended to eliminate unnecessary procedures that might otherwise be required before tribes and tribal entities could enter into grants and contracts with state agencies, such as the North Dakota University system, or any other state agency, in situations where the tribe or tribal entity is qualified under the eligibility criteria established for the grant or contract.

54-40.1-06. Dissolution of regional council. A regional council may be dissolved as prescribed in the agreements, rules, or procedures of the regional council. Upon dissolution, all properties of the regional council will be converted to cash and divided among participating units of general local government in proportion to the amount of their financial participation.

Source: S.L. 1977, ch. 495, § 6.

CHAPTER 54-40.2

AGREEMENTS BETWEEN PUBLIC AGENCIES AND INDIAN TRIBES

Section	Section
54-40.2-01. Definitions.	54-40.2-05.1. Review of agreement — Report.
54-40.2-02. Authorization to enter agreements — General contents.	54-40.2-06. Revocation of agreement.
54-40.2-03. Specifications of agreement.	54-40.2-07. Authorization to appropriate funds for purpose of agreement.
54-40.2-03.1. Agreement — Notice.	54-40.2-08. Specific limitations on agreements.
54-40.2-03.2. Public hearing — Notice.	54-40.2-09. Validity of existing agreements.
54-40.2-04. Submission of agreement to governor.	
5. Filing of agreement.	

54-40.2-01. Definitions.

1. "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of North Dakota.
2. "Secretary" means the secretary of interior of the United States.
3. "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States.

Source: S.L. 1983, ch. 568, § 1.

~~54-40.2-02. Authorization to enter agreements — General contents. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.~~

Source: S.L. 1983, ch. 568, § 2.

Source: S.L. 1977, ch. 495, § 6; 1993, ch. 525, § 6.

CHAPTER 54-40.2

AGREEMENTS BETWEEN PUBLIC AGENCIES AND INDIAN TRIBES

Section	Section
54-40.2-02. Authorization to enter agreements — General contents.	54-40.2-05. Filing of agreement.
54-40.2-03. Specifications of agreement — Repealed.	54-40.2-05.1. Review of agreement — Report.
54-40.2-03.1. Agreement — Notice.	54-40.2-06. Revocation of agreement.
54-40.2-03.2. Public hearing — Notice.	54-40.2-08. Specific limitations on agreements.
54-40.2-04. Approval of agreement by governor and tribes.	54-40.2-09. Validity of existing agreements.

54-40.2-02. Authorization to enter agreements — General contents. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements. This chapter does not apply to agreements entered into under section 24-02-02.3.

Source: S.L. 1983, ch. 563, § 2; 1991, ch. 606, § 1; 1995, ch. 259, § 2.

The 1991 amendment of this section by section 1 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1995 amendment of this section by section 2 of chapter 259, S.L. 1995 became effective August 1, 1995.

54-40.2-03. Specifications of agreement. Repealed by S.L. 1991, ch. 606, § 10, effective July 3, 1991.

54-40.2-03.1. Agreement — Notice. After the parties to an agreement have agreed to its contents, the state agency involved shall publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the state agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within thirty days of the publication of the notice.

Source: S.L. 1987, ch. 645, § 1; 1991, ch. 606, § 2.

Effective Date.

The 1991 amendment of this section by

section 2 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

54-40.2-03.2. Public hearing — Notice. If the state agency receives a request pursuant to section 54-40.2-03.1, the state agency shall hold a public hearing prior to the submission of the agreement to the governor at which any persons interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published prior to the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in any newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement, and must state the times and places at which the agreement will be available to the public for inspection and copying.

Source: S.L. 1987, ch. 645, § 2; 1991, ch. 606, § 3. section 3 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of this section by

54-40.2-04. Approval of agreement by governor and tribes. As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the governor of North Dakota and the governing bodies of the tribes involved. If the agreement so provides, it may be submitted to the secretary for approval.

Source: S.L. 1983, ch. 568, § 4; 1991, ch. 606, § 4. section 4 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of this section by

54-40.2-05. Filing of agreement. Within ten days after a declaration of approval by the governor and following approval of the agreement by the tribe or tribes affected by the agreement and prior to commencement of its performance, an agreement made pursuant to this chapter must be filed with:

1. The secretary.
2. The clerk of court of each county where the principal office of one of the parties to the agreement is located.
3. The secretary of state.
4. The affected tribal government.

Source: S.L. 1983, ch. 568, § 5; 1991, ch. 606, § 5. section 5 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of this section by

54-40.2-05.1. Review of agreement — Report. Upon the request of any political subdivision or any tribe affected by an approved agreement, the Indian affairs commission shall make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties, and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its findings, the Indian affairs commission shall provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The Indian affairs commission shall prepare a written report of its findings made pursuant to this section and shall submit copies of the report to the affected political subdivision or public agency, the governor, and the affected tribes. The findings of the Indian affairs commission made under this section are for informational purposes only. In any administrative hearing or legal proceeding in which the performance of any party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.

Source: S.L. 1987, ch. 645, § 3; 1991, ch. 600, § 11; 1991, ch. 606, § 6.

Effective Date.

The 1991 amendment of this section by section 6 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Note.

Section 54-40.2-05.1 was amended twice by the 1991 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 11 of chapter 600, S.L. 1991, and section 6 of chapter 606, S.L. 1991.

54-40.2-06. Revocation of agreement. Any agreement made pursuant to this chapter must include provisions for revocation.

Source: S.L. 1983, ch. 568, § 6; 1991, ch. 606, § 7.

Effective Date.

The 1991 amendment of this section by

section 7 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

54-40.2-08. Specific limitations on agreements. Nothing in this chapter may be construed to:

1. Authorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota.
2. Authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country.
3. Authorize a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.
4. Authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

~~54-40.2-06. Revocation of agreement. An agreement made pursuant to this chapter is subject to revocation by any party upon six months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of two years.~~

Source: S.L. 1983, ch. 568, § 6.

54-40.2-07. Authorization to appropriate funds for purpose of agreement. Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefore as is within its legal power to furnish.

Source: S.L. 1983, ch. 568, § 7.

Source: S.L. 1983, ch. 568, § 8; 1991, ch. 606, § 8. section 8 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of this section by

54-40.2-09. Validity of existing agreements. This chapter does not affect the validity of any agreement entered into between a tribe and a public agency prior to July 3, 1991.

Source: S.L. 1983, ch. 568, § 9; 1991, ch. 606, § 9. section 9 of chapter 606, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

Effective Date.

The 1991 amendment of this section by

CHAPTER 54-40.3**JOINT POWERS AGREEMENT**

Section	Section
54-40.3-01. Joint powers agreements — General authority.	54-40.3-03. Political subdivisions encouraged to file agreements with advisory commission on intergovernmental relations.
54-40.3-02. Clarification of constitutional authority and effect of other statutes — Construction.	

54-40.3-01. Joint powers agreements — General authority.

1. Any county, city, township, city park district, school district, or other political subdivision of this state, upon approval of its respective governing body, may enter into an agreement with any other political subdivision of this state for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or more of them. Any political subdivision of this state may enter into a joint powers agreement with a political subdivision of another state or political subdivision of a Canadian province if the power or function to be jointly administered is a power or function authorized by the laws of this state for a political subdivision of this state and is authorized by the laws of the other state or province. A joint powers agreement may provide for:
 - a. The purpose of the agreement or the power or function to be exercised or carried out.
 - b. The duration of the agreement and the permissible method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of any property upon the partial or complete termination.
 - c. The precise organization, composition, and nature of any separate administrative or legal entity, including an administrator or a joint board, committee, or joint service council or network, responsible for administering the cooperative or joint undertaking. Two or more political subdivisions which enter into a number of joint powers agreements may provide a master administrative structure for the joint administration of any number of those agreements, rather than creating separate administrative structures for each agreement. However, no essential legislative powers, taxing authority, or eminent domain power may be delegated by an agreement to a separate administrative or legal entity.

**Senate Committee on Government and
Veterans Affairs**

Testimony on Senate Bill No. 2294

January 28, 1999

Madam Chairman and members of the Senate Government and Veterans Affairs Committee, my name is Linda Wright, Director, Aging Services Division, Department of Human Services. I am testifying in support of Senate Bill 2294 on behalf of the Department of Human Services.

The amendments recommended in this bill would significantly reduce the cost and administrative time required when the Department contracts with the tribal governments in our state. The Aging Services Division, as an example, contracts with the 4 tribal governments and 1 Indian Service Area each year for the purpose of providing Older Americans Act funded services to tribal elders. The Older Americans Act funds are specifically allocated to each tribal government as part of our funding plan. We are still required, under current state statute, to incur the costs of placing ads in local papers, posting notices at the county courthouse and tribal headquarters, and proceeding through numerous administrative procedures for contracts that are a routine matter for our Division.

Attached to my testimony is a checklist we use each time we contract with a tribal government. The procedures outlined on this checklist are required by current state law. These procedures are time consuming, costly, and unnecessary. This also requires the tribal governments to submit a contract proposal to the Department of Human Services, Aging Services Division, 90 days in advance of the beginning of the contract period, whereas the timeline for other agencies and organizations is 60 days.

I urge your favorable consideration of Senate Bill No. 2294, and would be happy to answer any questions you may have.

Procedure for Contracts with Tribal Entities (NDCC Chapter 54-40.2)

- Process is completed by the Department of Human Services Contracts Officer and the Aging Services Division.
- Tribal proposals must be submitted 90 days prior to the beginning date of the contract. (This allows for additional time to meet the 30-day notice and, if requested, hold a hearing.)
- Notices are sent 'return receipt mail' to the County Auditor and the Tribal Chairperson for "posting". (Mailing cost for 'return receipt' is approximately \$4.00 - \$5.00 per notice.)
- Notices for publication in local newspapers cost approximately \$10.00 - \$15.00 per ad. (Number of notices is dependent on number of county/local newspapers.)
- To date, Aging Services Division has received no requests for public hearings on contracts for services for older individuals. (If a hearing would be requested, additional expenses would be incurred.)

PROCEDURE FOR AN AGREEMENT WITH
TURTLE MOUNTAIN BAND OF CHIPPEWA TRIBE
(PER CHAPTER 54-40.2 NDCC)

CONTRACT NO. _____

1. Agreement reached. Draft document.
2. Post Notice: Post notice in the county courthouse of any county affected by the agreement.

Date Mailed

Rolette County Auditor's Office
P.O. Box 460
Rolla, North Dakota 58367-0406

3. Post Notice: Post notice at the tribal office of any tribe affected by the agreement.

Date Mailed

Tribal Office
P. O. Box 900
Belcourt, North Dakota 58316-0900

4. Public Notice: Publish a notice containing a summary of the agreement and stating a public hearing will be held upon request of any resident of the county in which the notice is published if the request is made within 30 days of the publication of the notice, in the official newspaper of each county reasonably expected to be affected by the agreement and of general circulation for the benefit of the members of any tribe affected by the agreement.

Turtle Mountain Times
P.O. Box 1270
Belcourt, North Dakota 58316-1270

Publication Date

Turtle Mountain Star
P. O. Box 849
Rolla, North Dakota 58367-0849

Publication Date

Date Request Received

No Request Received

5. Public Hearing: If a request for public hearing is received, complete #5. If no request is received, proceed to #6.

a) Post Notice. Post notice at the courthouse of any county expected to be affected.

Rolette County Auditor's Office
P.O. Box 460
Rolla, North Dakota 58367-0460

Date Mailed

b) Post Notice. Post notice at the tribal office of any tribe affected by the agreement.

Tribal Office
P. O. Box 900
Belcourt, North Dakota 58316-0900

Date Mailed

c) Public Notice: Publish a notice containing a summary of the agreement and stating a public hearing will be held upon request of any resident of the county in which the notice is published if the request is made within 30 days of the publication of the notice, in the official newspaper of each county reasonably expected to be affected by the agreement and of general circulation for the benefit of the members of any tribe affected by the agreement.

Turtle Mountain Times
P.O. Box 1270
Belcourt, North Dakota 58316-1270

Publication Date

Turtle Mountain Star
P. O. Box 849
Rolla, North Dakota 58367-0849

Publication Date

d) Hold hearing.

6. To Attorney General's Office for approval.

Date Approved

7. Governor's Approval. Following hearing (if required) or following 30-day waiting period, submit agreement to the Governor. Also need approval of governing bodies of tribes involved if not already received.

Date Submitted

Date Signed

8. Filing Agreement. Within 10 days after Governor's and, if applicable, the governing bodies of tribes involved, file copies with the following:

Office of the Assistant Secretary
Secretary of the Interior
U.S. Department of the Interior
MS 4140
Washington, D.C. 20240

Date Mailed

Clerk of Court
P.O. Box 460
Rolla, North Dakota 58367-0460

Date Mailed

Secretary of State
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0500

Date Mailed

Tribal Office
P.O. Box 900
Belcourt, North Dakota 58316-0900

Date Mailed

COLLEGE OF EDUCATION AND HUMAN DEVELOPMENT
P.O. BOX 7189
GRAND FORKS, NORTH DAKOTA 58202-7189
(701) 777-2674
FAX: (701) 777-4393

TO: Whom It May Concern

FROM: Mary Harris, ^{M.H.} Dean, College of Education and Human Development

RE: Support for Senate Bill #2294

DATE: January 26, 1999

I am writing in support of SB2294 which would amend Chapter 54-40.2 Agreement between Public Agencies and Indian Tribes. Current interpretation of Chapter 54-40.2 requires compliance even in instances where public higher education institutions and tribal agencies have sought and been awarded external funding to carry out a project in which they are the only qualified collaborators. We recently experienced long delay in implementation of an American Indian Domestic Violence grant in which the UND Department of Social Work was a collaborator, because of the necessity to publicly ratify a formal relationship which had already been established by the process of formulating the grant proposal. As a result of this experience, the UND College of Education and Human Development and Ft. Berthold Community College were deterred from entering into a partnership which was in the interest of both parties in support of our joint Elementary Education program. My experience has been that Chapter 54-40.2, as currently written, is a barrier to collaboration between public institutions of higher education and tribal colleges, and I support the proposed amendments.

COUNSELING 777-2729
EDUCATIONAL FOUNDATIONS
AND RESEARCH 777-2171

EDUCATIONAL LEADERSHIP 777-4255
HEALTH, PHYSICAL EDUCATION
AND RECREATION 777-4324

SOCIAL WORK 777-2669
TEACHING AND LEARNING 777-3239

Legislative Testimony
Government and Veterans Affairs Committee
January 28, 1999
Missouri River Room
Senate Bill 2294

To: Chairman Karen Krebsbach, and members Rich Wardner, Judy DeMers, Ralph Kilzer, Marv Mutzenberger, Wayne Stenehjem and Russell Thane.

From: Barb Jacobsen, Assistant Professor, UND Department of Social Work

Good Morning Chairman Krebsbach and members of the committee. I would like to speak in support of Senate Bill 2294 and the proposed amendments to section 2, chapter 40 of title 54 of the North Dakota Century Code entitled Agreements Between Public Agencies and Indian Tribes. I would also like to talk about the impact of the present code on a minority training grant awarded to Cankdeska Cikana Community College (Little Hoop) in Fort Totten N.D. This grant was collaboratively written by Cankdeska Cikana Community College, UND Native American Programs, and the UND Department of Social Work. UND is the subcontractor in this project. I am the UND project coordinator for this grant.

The RFP for this grant required an applicant that was a tribal college with a social work program accredited by the Council on Social Work Education (CSWE). To the best of our knowledge, no such program exists. Thus the collaboration between Cankdeska Cikana Community College and the UND Department of Social Work was necessary in order to apply. This grant will primarily support minority students interested in working with American Indian populations.

This project is entitled The Family Violence Prevention and Services Project and is funded by the US Department of Health and Human Services, Administration of Children and Family, Community Services Division. A planning grant was awarded for one year on 9-30-97 for \$75,000. We have subsequently received additional funding for another three years in the amount of \$300,000. These grants will support a total of nineteen (19) bachelors and masters level social work students, and social work practitioners interested in returning to school. These students must be interested in further training in the field of family violence. These students take a 2 credit Family Violence Class offered by UND over the Interactive Video Network and they also complete a 480 field or fellowship placement in a reservation community or in an urban community where a higher population of American Indians reside. The students are involved in project activities for one year and receive \$11,250 in financial support. To date, four American Indian students have completed the project. We have worked with the Spirit Lake Reservation, the Turtle Mountain Reservation, and the community of Grand Forks. It is anticipated that the project will be state-wide by this summer.

The Century Code as it is currently written and interpreted by UND has created major obstacles for this project. In the first grant, we asked legal council to determine the applicability of this statute to our project. This process coupled with the publication of notices, the required signature of the governor, delayed setting up funds for the UND subcontract for six months. This represented half of the project period in which the UND Department of Social Work was incurring cost without reimbursement, some of these costs, both departmental and personal, will not be recovered. Even as we have become more efficient in the process of complying with this statute, when we were awarded funds for an additional three years, we still experienced a delay of over four months before the funds for the subcontract were available. A substantial part of the delay was caused by this statute (54-40.2), and admittedly some of the delay was due to our own scheduling or coordination difficulties. In addition, the process of complying with this statute is time consuming and costly, and these costs cannot be recovered from the the federal granting agency. For example, in order to have a state-wide project, we published notices in fourteen newspapers, thirteen courthouses, and in four tribal offices. The UND Department of Social Work was bill \$285 for those public notices. It is important to note that these notices are not published until the grant is awarded, thus the groundwork and the terms of the agreement should already be established with the parties involved.

It is more important however to consider the impact of these delays on the project. Funding delays created deployment and overload issues for this UND project coordinator. This in turn, created delays or inhibited processes related to student recruitment, travel for site development activities, recruitment of field instructors, and the ordering of instructional materials. Reactions to even the potential of the delay, and the confusion surrounding this statute created a rocky beginning for this project.

A major concern for Cankdeska Cikana Community College was how would it appear to the funder to have all of the money dispersed to the subcontractor in the last six months of the project? CCCC once indicated to us that it would be easier to work with programs from out of state that do not have to comply with this statute. In retrospect, the project itself seemed much simpler than some of the repercussions caused by this statute. Fortunately, despite these barriers, we think we have had a successful first year in our project. The collaborators in this grant have formed a good working relationship and we look forward to our continued efforts on the Family Violence project and with other collaborative activities. Amending this statute to exempt parties who have articulated a formal agreement in a grant proposal would make future collaborations more productive and timely. I ask that you support SB 2294 and its amendments. Thank you.

Testimony on Senate Bill No. 2294

A Bill for an Act to create and enact a new section to chapter 54-40.2 of the North Dakota Century Code, relating to agreements between Indian tribes and the state; and to amend and reenact sections 54-40.2.01, 54-40.2.02, and 54-40.2.09 of the North Dakota Century Code, relating to agreements between Indian tribes and the state.

By Leigh Jeanotte, Director, Native American Programs & Assistant to the Vice President for Student and Outreach Services, University of North Dakota

January 27, 1999 - Government and Veterans Affairs Committee

Chairperson Krebsbach and members of the Government and Veterans Affairs Committee, I am writing on behalf of the programs serving American Indian students at the University of North Dakota and others concerned with Senate Bill No. 2294. Please accept my written testimony.

The Need for Senate Bill No. 2294

The state of North Dakota currently requires compliance with procedural requirements set out in chapter 54.40.2 of the North Dakota Century Code. These procedural requirements mandate that before a public entity enters into an agreement with an Indian tribe or tribal entity, that a public notice be given, a public hearing be held (if requested by any individual), and that the governor's approval be obtained.

The requirements are burdensome to both parties when entering into an agreement. Since time is of the essence in many research and education projects, a lengthy delay causes undue hardship on the parties by causing them to delay their work, sometimes as much as six months. An example is:

Cankdeska Cikana Community College received a family and domestic violence project funded by the Administration on Children and Families. The grant is designed to provide education and experience to assist with decreasing the incidence of family and domestic violence. Students receive a stipend to attend a college or university to obtain an advanced degree in social work and must provide 480 hours of service on an Indian reservation. The University of North Dakota is the only source in North Dakota available to provide the educational component. Cankdeska Cikana Community College desires to subcontract the educational portion with the University of North Dakota, but must use the aforementioned process which has delayed the project up to six months. This is especially troubling that they can execute the same subcontract with an out of state university with no delay.

At best the procedural requirements are paternalistic, they may even be racist in that state entities enter into other agreements with other governments and private entities on an ongoing basis, for example public school districts.

Continuing to require that the aforementioned procedural requirements be followed is tantamount to "eating the seed corn", in that it will serve to delay services to those most in need, deprive those most in need of education to decrease their dependence on social programs and increase their ability to become tax payers, and promote agreements with universities and colleges that are outside the state of North Dakota.

What Senate Bill 2294 will accomplish

The bill will streamline the process of working with Indian tribes and tribal organizations, allowing them to execute agreements that are beneficial to state agencies and tribes and tribal organizations on a timely basis.

Streamlining the process will encourage an increasing number of collaborative relationships that benefit all citizens of the state by encouraging the partnering of education, research, and experiential learning.

Closing Comments

In closing I hope that my brief comments in support of Senate Bill 2294 will help to impress upon you and committee members, the fact that universities and tribes and tribal organizations need to have the capacity to execute agreements that are mutually beneficial and timely to take advantage of funding opportunities to bring additional revenue and students to the state, tribal colleges, and the North Dakota University System. Senate Bill 2294 proposes to do just that.

Thank you in advance for your consideration.

LEGAL AID ASSOCIATION
P.O. BOX 9003
GRAND FORKS, ND 58202-9003
(701) 777-2932
FAX (701) 777-2217

January 27, 1999

Senator Karen K. Krebsbach
Chair, Government and Veterans Affairs
Committee
North Dakota Senate
State Capitol
Bismarck, ND 58505

RE: SB 2294

Dear Senator Krebsbach:

I am writing with reference to SB 2294 relating to agreements between Indian tribes and the state. Although SB 2294 represents an improvement to existing law in narrowing the types of agreements between Indian tribes and a state agency which are subject to public notice, comment and approval by the governor, it is my opinion that it does not go far enough.

My experience with Chapter 54-40.2 NDCC is that it can be an inefficient and cumbersome procedure for facilitating the cooperative efforts between Indian tribes and the state to provide services on a contractual basis to a tribe at their request. Such contract for service agreements may very well have not been the types of agreements originally contemplated for this level of formality when Chapter 54-40.2 NDCC was originally enacted.

As a part of our clinical program at the University of North Dakota School of Law, we have had a Native American Law Project for more than 10 years which enables law students under faculty supervision to provide civil legal assistance to indigent residents of the Spirit Lake Sioux Reservation. In more recent years, the Tribe has requested our assistance in providing services to them in developing their tribal court system. Even though the Tribe has initiated this request for assistance and is willing to provide fair compensation that helps support our clinical program, we are required to follow the procedures required under Chapter 54-40.2 NDCC each time we enter into a contract for services with the tribe.

These procedural requirements often result in delays in the implementation of projects and is frustrating to the tribe who cannot understand the need for these requirements in freely contracting for services which they need. These requirements have also caused us to forego opportunities to work with the tribe on special or temporary projects which come up without sufficient advance notice because of the delays incident to the notice and approval requirements for agreements between Indian tribes and the state.

I would, therefore, encourage further expansion of the agreements between Indian tribes and a state agency for which Chapter 54-40.2 NDCC would not apply. Existing law excepts agreements under \$25,000 with the Department of Transportation. Under the proposed amendment, agreements under "chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with the state for which the tribal government is otherwise eligible under federal, state or local law" would also be excepted from those procedural requirements. Although this amendment may clarify that that it would not be necessary to follow Chapter 54-40.2 NDCC when we are, for example, a subcontractor of a tribe under a state or federally funded program or other activity originating with the state, with which we have had

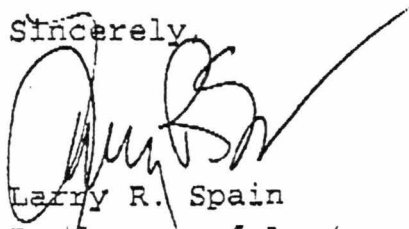
experience in the past, it would not cover the situation where we would be a subcontractor under a direct federal grant to the tribe or where the tribe was using tribal funds to contract for services.

I hope that you will consider additional means to clarify Chapter 54-40.2 NDCC to encourage further cooperation and collaboration between state agencies and Indian tribes by facilitating the ability to freely contract for essential services when not adverse to state interests. My suggestion would be to further amend section 2 of the bill beginning at line 6 of page no. 2 to read as follows:

This chapter does not apply to agreements entered into under section 24-02-02.3 and chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with the state or **federal government** for which the tribal government is otherwise eligible under federal, state, or local law, **or any contract for services initiated by the tribal government for fair compensation which is not adverse to the interests of the state.** [My suggestions in bold]

If I can provide further information or assistance to you or the Committee on this bill, please do not hesitate to contact me.

Sincerely,



Larry R. Spain
Professor of Law/
Director of Clinical Programs

TESTIMONY: SB 2294

March 4, 1999

Presented by: Senator Judy L. DeMers

Presented to: House Government and Veterans Affairs Committee

Representative Matt Klein, Chairman

Chairman Klein and Members of the House Government and Veterans Affairs Committee. For the record, I am Senator Judy L. DeMers. I represent District 18, consisting of part of Grand Forks and part of the Grand Forks Air Force Base. I am appearing this morning as the prime sponsor of SB 2294.

SB 2294 was introduced at the request of the North Dakota Indian Affairs Commission. This bill is meant to simplify the process of executing agreements between Indian tribes or tribal entities and public agencies. It accomplishes this goal by exempting entities “. . . which are owned, organized, or chartered by a tribe which exists as a separate entity authorized by a tribe to enter into agreements of any kind without further approval by the government of the tribe” from the provisions of Chapter 54-40-02.

The provisions of 54-40-02 are quite time consuming, cumbersome, and expensive. They include publication of a summary of the agreement in the official newspaper of each county of the state which may be affected; publication in any newspaper circulated to tribes which may be affected; posting in tribal offices and in the county courthouses; --- and, if requested, a public hearing. Once these procedures are carried out, the agreement then must be approved by the governor and the tribal governing body.

I have attached a copy of NDCC 54-40-02 so that you may review these provisions and consider SB 2294 within this context.

The impetus for SB 2294 was the receipt of a grant by a tribal college and the college's efforts to contract with the University of North Dakota to carry out the provisions of the grant. In this instance, it took more than five months to work through the process to gain approval of the agreement. (Please see September 23, 1998, letter from Leigh Jeanotte to Rhonda Schauer.) Others will testify in detail about this difficulty.

Tom Disselhorst drafted this legislation and the subsequent amendments on behalf of the Indian Affairs Commission. He will testify next.

Mr. Chairman and Committee Members, I hope you favorably consider of SB 2294.

Thank you.

54-40-02

NATIVE AMERICAN PROGRAMS
P.O. BOX 8274
GRAND FORKS, NORTH DAKOTA 58202-8274
(701) 777-4291
FAX: (701) 777-3292

September 23, 1998

Rhonda Schauer
North Dakota University System
State Capitol
Bismarck, North Dakota 58501

RECEIVED
RECEIVED
OCT 05 1998
ND Indian Affairs Commission

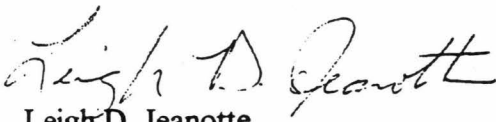
Dear Ms. Schauer:

To give you an example of all the work required regarding Chapter 54-40.2 Agreements Between Public Agencies and Indian Tribes, please find a copy of the Notice Agreement along with copies of correspondence showing where the notice was posted, etc. We were quite fortunate that no one questioned the project during the 30 day posting period. However, if someone would have raised concerns and if we did not satisfy their inquiry; we would have then had to organize a public hearing(s) delaying the agreement an additional length of time.

After the 30 day posting period our Grants and Contracts Office then had to submit the agreement to request the Governor's approval. This took another six weeks. Overall, this agreement took from October 13, 1997 to March 20, 1998 or over five months to work through this process to gain approval of the agreement.

Once again, this shows the need to repeal this cumbersome policy (Agreements Between Public Agencies and Indian Tribes). Please share with interested individuals.

Sincerely,



Leigh D. Jeanotte
Assistant to the Vice President for Student and Outreach Services/
Director of Native American Programs

enclosure: Copies of Domestic and Family Violence Project Correspondence

cc: Barbara Jacobsen, Soical Work
Eric Longie, Candeska Cikana Community College

**House Committee on Government and
Veterans Affairs
Testimony on Senate Bill No. 2294
March 4, 1999**

Chairman Klein and members of the House Government and Veterans Affairs Committee, my name is Linda Wright, Director, Aging Services Division, Department of Human Services. I am testifying in support of Senate Bill 2294 on behalf of the Department of Human Services.

The amendments recommended in this bill would significantly reduce the cost and administrative time required when the Department contracts with the tribal governments in our state. The Aging Services Division, as an example, contracts with the 4 tribal governments and 1 Indian Service Area each year for the purpose of providing Older Americans Act funded services to tribal elders. The Older Americans Act funds are specifically allocated to each tribal government as part of our funding plan. We are still required, under current state statute, to incur the costs of placing ads in local papers, posting notices at the county courthouse and tribal headquarters, and proceeding through numerous administrative procedures for contracts that are a routine matter for our Division. In addition, Economic Assistance, Children and Family Services, Alcohol and Substance Abuse and West Central Human Service Center are other DHS divisions who currently contract with tribal governments.

Attached to my testimony is a checklist we use each time we contract with a tribal government. The procedures outlined on this checklist are required by current state law. These procedures are time consuming, costly, and unnecessary. This also requires the tribal governments to submit a contract proposal to the Department of Human Services, Aging Services Division, 90 days in advance of the beginning of the

contract period, whereas the timeline for other agencies and organizations is 60 days.

I urge your favorable consideration of Senate Bill No. 2294, and would be happy to answer any questions you may have.

**Government and Veteran's Affairs Committee
North Dakota House of Representatives
56th Legislative Assembly**

**Testimony of Thomas M. Disselhorst
Attorney at Law
on SB 2294
Tribal-political subdivision agreements
March 4, 1999**

Thank you, Mr. Chairman, for the opportunity to testify concerning SB 2294, which amends Chapter 54-40.2 of the North Dakota Century Code (NDCC) regarding agreements between Tribes and state political subdivisions. By way of introduction, I am counsel for United Tribes Technical College and a staff attorney for Three Affiliated Tribes. I am also the drafter of previous amendments to Chapter 54-40.2 in 1991.

This bill, as amended by the Senate, does one simple thing, although the language may seem confusing. This bill reduces the red tape for most types of agreements between state agencies, including state political subdivisions and Indian tribes and various entities that are created or owned by Indian tribes.

But first, let me explain the purpose of Chapter 54-40.2. A copy of this Chapter, in its entirety, is attached to my testimony for your reference.

Chapter 54-40.2 is intended to provide authority for political subdivisions to enter into agreements with the Indian tribes in North Dakota on various matters that are not otherwise provided for under state law. The chapter has in it a public notice and public hearing provision, so that citizens of North Dakota and the affected tribe will be aware of what is being agreed to. The chapter also has a monitoring function.

One example of an agreement that should fall under this Chapter (as it is now written) are cross-deputization agreements, which I have been drafting for the Three Affiliated Tribes. In such an agreement, a local Sheriff's department may agree to assist, when necessary, in enforcing tribal law on those parts of the reservation that are within the county over which the Sheriff has jurisdiction, and the tribal police agree to assist the Sheriff and his deputies when necessary to enforce state law against non-Indians within the county over which the Sheriff has jurisdiction. Such an agreement extends the services of the Sheriff's department of a county beyond that which was originally intended. The public notice and public hearing provisions are intended to provide both Tribal members and other state citizens notice that the services of the Sheriff and the tribal police are being extended.

Another example which has arisen in the past couple of months was a proposed bill by the State Water Commission which would have established a procedure for quantification of tribal water rights. This proposed bill was opposed by tribes for many reasons, one of which was that a procedure already existed under Chapter 54-40.2 for entering into such an agreement with the state, if tribes wished to do so.

Contrast the above examples to a grant provided by the University of North Dakota to a tribal college which will be operated under an agreement between the University and the tribal college. Chapter 54-40.2 was not intended to cover tribal colleges, only tribal governments, but an attorney for the University system believed that Chapter 54-40.2 could be construed to apply to tribal colleges because they are created and owned by a tribe. Thus, in order for the agreement governing the grant to be entered into, the University believed that it must comply with the provisions of Chapter 54-40.2, causing considerable delay and additional expense to the University and the tribal college which wished to administer the grant, and there are persons here with examples of the delays it can cause.

The tribal college in this example was eligible for the grant, and has authority independent of the tribal government to enter into such agreements. In other words, it doesn't need the tribal council of the tribe to authorize entering into the agreement with the University which governs the grant. Further, the program under which the grant was offered (which was essentially a Federally funded program administered by the University) is one for which the tribal college was eligible; in other words, this was not a situation where the a state political subdivision was entering into an agreement which was providing new services not otherwise provided in state or federal law. In fact, the University system's attorneys believed that a case could be made that they had authority independent of Chapter 54-40.2 to enter into the agreement with the tribal college, but still felt that it was possible that Chapter 54-40.2 applied so that they had to comply with the public notice and hearing requirements.

Hopefully, this example gives some illustration of what the proposed amendments to Chapter 54-40.2 of SB2294 are trying to accomplish.

Let me then go through with you briefly the elements of the bill, as amended.

1. Section 1, as amended, exempts out of the definition of "Tribal government" those entities created and owned by the tribe which are able to conduct business without the approval of the tribal government. Many such entities exist, including tribal colleges, various tribal corporate entities, whether organized under tribal law or some state law, and other entities created by the tribe which have authority to enter into agreements.

Testimony on SB 2294
Thomas M. Disselhorst, Esq.
House Government and Veterans Affairs Committee
March 4, 1999
Page 3 of 3

Of course, so that there is no uncertainty about this, nothing in state law, including anything in this chapter, could authorize such entities to enter into an agreement that would waive tribal sovereign immunity, only the duly constituted tribal governing body can do that, if permitted by the tribal constitution.

2. Section 2, as amended, creates two additional exemptions from the application of this chapter: First, if the public agency already has authority to enter into such agreements with a tribe, it doesn't need to use the procedures of this chapter.

Second, if the subject matter of a contemplated program, contract or agreement proposes an activity for which the tribe is already eligible under applicable law, the chapter doesn't apply.

This exemption is meant to take care of all of the various programs that are offered by the state to tribes and tribal entities under authorization from federal programs that provide pass-through dollars, other state programs that by definition are available to Indian tribes, or for which tribes or tribal entities are otherwise eligible. Presumably, if the tribes or tribal entities are eligible for the programs, the political subdivision does not need additional authority to enter into the agreement under those grants or programs.

For example, the state Aging Services program provides grants and enters into agreements with tribes under provisions of state and federal law which supply the funds for these programs. The federal program may establish the eligibility criteria, or leave that to the state within broad parameters. This is not the kind of agreement to which Chapter 54-40.2 was intended to apply. Another example would be a tribal corporate entity that following a successful bid enters into a contract with the state for the provision of goods and services, say on a highway project.

Section 3 updates the validity of previous agreements clause to conform to the effective date of this bill, should it become law.

In summary, please note that this bill is simply a technical amendment to diminish red tape, in most instances, for the tribes and state political subdivisions entering into agreements with tribes and tribal entities as provided for in Chapter 54-40.2. Tribal leaders have been briefed on the need for the bill, and have in general agreed to the need to change Chapter 54-40.2, through the Indian Affairs Commission in its meetings during the past year.

For the reasons stated above, I urge a DO PASS recommendation on SB2294, as amended by the Senate.

UNIVERSITY OF  NORTH DAKOTA

BUDGET AND GRANTS ADMINISTRATION
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GRAND FORKS, NORTH DAKOTA 58202-7306
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March 3, 1999

Matthew Klein, Chairman
Government and Veterans Affairs

RE: Senate Bill #2294

I have worked in the central administrative Grants and Contracts office at the University of North Dakota for fifteen years. During this time I have become involved in agreements with Tribal governments and other Tribal entities. This includes helping University departments with the budgets, guiding them through N.D.C.C. ch. 54-40.2 and dealing with the financial matters after the agreements are in place. I am in support of the language in Senate Bill No. 2294 which would exclude from the requirements of N.D.C.C. ch. 54-40.2 many of the agreements Institutions of Higher Education enter into with the Indian Tribes of North Dakota pursuant to a state or federally funded programs or other activity for which the tribal government is otherwise eligible. This change if enacted would reduce a very cumbersome and time consuming administrative process.

Prior to the requirements of N.D.C.C. ch. 54-40.2 becoming applicable the Statement of Work and the Budgets of a project are reviewed two or three times. This would begin with a request from a Tribal entity to help with a project or collaboration between individuals at the Tribal entity and the University. A proposal would be developed at the University on how to accomplish its portion of the Statement of Work along with a budget as to what it will cost. The proposal's then reviewed by the University as to reasonableness, University policy and any Sponsor requirements. The Sponsor requirements could be those initiated by the Tribal entity, the Federal government or any other Sponsoring agency. The proposal would then be signed by an Authorized Representative of the University and sent to the Tribal entity for review or funding or inclusion in the Tribal entity's proposal to a Sponsor. It should be noted that most of the funding is Federal dollars flowing through the Tribal entity to the University.

Since we became aware of the requirements of N.D.C.C. ch. 54-40.2 in July of 1993, this process has created hard feelings between the Tribal governments, other Tribal entities and the University. We have been told by the Tribal governments or Tribal entities that this is perceived to be an infringement on their authority. It was also brought to our attention by Pat Seaworth that this procedure is only required when the agreements are coming from the Tribal unit to the University but not when the University is issuing an agreement to the Tribal unit.

The requirements also create programmatic problems due to the delays in implementing the project. Once the agreement is negotiated between the Tribal entity and the University the requirements of N.D.C.C. ch. 54-40.2 require the following actions. First, the University must publish a notice containing a summary of the agreement in the official newspaper of each county

Matthew Klein, Chairman
Government and Veterans Affairs
Page 2

of the state reasonably expected to be affected by the agreement and in any newspaper of general circulation for the benefit of the members of any tribe affected by the agreement. The notice must state that the University will hold a public hearing upon request made within 30 days by any resident of the county in which notice is published. Next, if a request is received a public hearing must be held and notice of the hearing must be published. Finally, the agreement must be approved by the governor. Under the best of circumstances this results in a five to six week delay in the project. For educational projects this could mean the loss of a whole semester and for research work it could cause many months delay due to seasonal weather. This has a domino effect as the work can not be done within the Term of the agreement therefore time extensions are required to complete the Statement of Work.

For the reasons discussed above, I urge your committee to amend existing law to exclude these kinds of agreements from the provisions of N.D.C.C. ch. 54-40.2

Sincerely,



David O. Schmidt
Grants & Contract Officer

c: Peggy Lucke - Interim Vice President for Finance & Operations
Kendall Baker - President
Alice Brekke - Assistant to the President

March 3, 1999

Representative Matthew M. Klein
Chairperson, Government and Veteran Affairs
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Re: Senate Bill No. 2294

Dear Representative Klein:

My name is Charles Evans. I am Legal Counsel for the University of North Dakota and am writing in support of the Senate Bill No. 2294, particularly the following changes that would be made in chapter 54-40.2 of the North Dakota Century Code:

1. The addition of the following sentence to section 54-40.2-01(3) of the North Dakota Century Code:

The term does not include any entity owned, organized, or chartered by a tribe which exists as a separate corporate entity registered with the secretary of state and which is otherwise authorized to enter agreements under this chapter.

2. The addition of the following language to section 54-40.2-02 of the North Dakota Century Code:

or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with the state for which the tribal government is otherwise eligible under federal, state, or local law.

I also suggest that the phrase "or federal government" be added after the word "state" in line five (5) of the change to be made in section 54-40.2-02, as the change is set out above. These changes would allow the University of North Dakota to enter into contractual relationships with the tribal governments, or

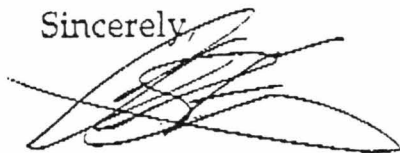
Representative Matthew M. Klein
March 3, 1999
Page 2

separate corporate entities owned, organized, or chartered by the tribal governments, without having to go through the notice and hearing requirements of chapter 54-40.2. This is important as many of the agreements entered into between the University and the tribal governments or the separate corporate entities owned, organized, or chartered by the tribal governments, involve applications for state or federal funding and have fairly strict timelines that must be met. This is especially important in the University setting as some of the grants are set up for educational programs which operate on a semester basis. If the grant is not in place by the beginning of the semester, the entire semester is lost.

Also, University departments are reluctant to enter into agreements when there are so many procedural requirements, many of which have to be paid for by the department. This is especially true for arrangements that are renewed on an annual basis. Added to this is the fact that it is easier for a the University to enter into agreements with tribal governments located in other states than with the tribes located within North Dakota, as the notice and hearing requirements of chapter 54-40.2 do not apply to agreements with tribal governments located in other states. Because of this, resources and services that could be provided to tribes within the state end up going out of state. Further, the notice and hearing requirements make it impossible to even consider projects that arise with little advance notice and need to be set up in short order.

Senate Bill No. 2294, by excepting from the application of chapter 50-40.2 the entities set out in the addition to section 54-40.2-01(3) and the agreements set out in the addition to section 54-40.2-02, will actually promote the entering into of agreements between University of North Dakota and the tribal governments of North Dakota, or any entity owned, organized, or chartered by a North Dakota tribe. Therefore, I am in support of these changes made by Senate Bill No. 2294, and also ask that the additional language I have proposed be considered.

Sincerely,



Charles D. Evans
Legal Counsel

Testimony on Senate Bill No. 2294

A Bill for an Act to create and enact a new section to chapter 54-40.2 of the North Dakota Century Code, relating to agreements between Indian tribes and the state; and to amend and reenact sections 54-40.2.01, 54-40.2.02, and 54-40.2.09 of the North Dakota Century Code, relating to agreements between Indian tribes and the state.

By Leigh Jeanotte, Director, Native American Programs & Assistant to the Vice President for Student and Outreach Services, University of North Dakota

January 27, 1999 - Government and Veterans Affairs Committee

Representative Matthew Klien and members of the Government and Veterans Affairs Committee, I am writing on behalf of the programs serving American Indian students at the University of North Dakota and others concerned with Senate Bill No. 2294. Please accept my written testimony.

The Need for Senate Bill No. 2294

The state of North Dakota currently requires compliance with procedural requirements set out in chapter 54.40.2 of the North Dakota Century Code. Those procedural requirements mandate that before a public entity enters into an agreement with an Indian tribe or tribal entity, that a public notice be given, a public hearing be held (if requested by some one), and that the governor's approval be obtained.

The requirements are burdensome to both parties to an agreement. Since time is of the essence in many research and education projects, a lengthy delay causes undue hardship on the parties by causing them delay their work, sometimes as much as six months. An example is:

Cankdeska Cikana Community College received a family and domestic violence project funded by the Administration on Children and Families. The grant is designed to provide education and experience to assist with decreasing the incidence of family and domestic violence. Students receive a stipend to attend a college or university to obtain an advanced degree in social work and must provide 480 hours of service on an Indian reservation. The University of North Dakota is the only source in North Dakota available to provide the educational component. Cankdeska Cikana Community College desires to subcontract the educational portion with the University of North Dakota, but must use the aforementioned process which has delayed the project up to six months. They can execute the same subcontract with an out of state university with no delay. The end result is that the University of North Dakota loses tuition, fees, and stipends for fifteen students over a three year period.

At best the procedural requirements are paternalistic, they may even be racist in that state entities enter into other agreements with other governments and private entities on an

ongoing basis, for example public school districts.

Continuing to require that the aforementioned procedural requirements be followed is tantamount to "eating the seed corn", in that it will serve to delay services to those most in need, deprive those most in need of education to decrease their dependence on social programs and increase their ability to become tax payers, and promote agreements with universities and colleges that are outside the state of North Dakota.

What Senate Bill 2294 will accomplish

The bill will streamline the process of working with Indian tribes and tribal organizations, allowing them to execute agreements that are beneficial to state agencies and tribes and tribal organizations on a timely basis.

Streamlining the process will encourage an increasing number of collaborative relationships that benefit all citizens of the state by encouraging the partnering of education, research, and experiential learning.

Closing Comments

In closing I hope that my brief comments in support of Senate Bill 2294 will help to impress upon you and committee members, the fact that universities and tribes and tribal organizations need to have the capacity to execute agreements that are mutually beneficial and timely to take advantage of funding opportunities to bring additional revenue and students to the state and the North Dakota University System. Senate Bill 2294 proposes to do just that.

Thank you in advance for your consideration.

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March 1, 1999

Representative Matthew M. Klein
Chair, Government and Veterans Affairs
Committee
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

RE: SB 2294

Dear Representative Klein:

I am writing with reference to SB 2294 relating to
agreements between Indian tribes and the state which is
scheduled for hearing before the Government and Veterans
Affairs Committee on March 4, 1999. Although SB 2294
represents an improvement to existing law in narrowing the
types of agreements between Indian tribes and a state
agency which are subject to public notice, comment and
approval by the governor, it is my opinion that it does not
go far enough.

My experience with Chapter 54-40.2 NDCC is that it can be
an inefficient and cumbersome procedure for facilitating
the cooperative efforts between Indian tribes and the state
to provide services on a contractual basis to a tribe at
their request. Such contract for service agreements may
very well not have been the types of agreements originally
contemplated for this level of formality when Chapter 54-
40.2 NDCC was originally enacted.

As a part of our clinical program at the University of North Dakota School of Law, we have had a Native American Law Project for more than 10 years which enables law students under faculty supervision to provide civil legal assistance to indigent residents of the Spirit Lake Sioux Reservation. In more recent years, the Tribe has requested our assistance in providing services to them in developing their tribal court system. Even though the Tribe has initiated this request for assistance and is willing to provide fair compensation that, in turn, helps support our clinical program, we are required to follow the procedures outlined in Chapter 54-40.2 NDCC each time we enter into a contract for services with the tribe, irregardless of the amount of money involved.

These procedural requirements often result in delays in the implementation of projects and is frustrating to the tribe who cannot understand the need for these cumbersome requirements in freely contracting for services which they seek. These requirements have also caused us to forego opportunities to work with the tribe on special or temporary projects which come up without sufficient advance notice because of the delays incident to the notice and approval requirements for agreements between Indian tribes and the state.

I would, therefore, encourage further expansion of the types of agreements between Indian tribes and a state agency in which Chapter 54-40.2 NDCC would not apply. Existing law excepts agreements under \$25,000 with the Department of Transportation. Under the proposed amendment, agreements under "chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with the state for which the tribal government is otherwise eligible under federal, state or local law" would also be excepted from those procedural requirements. Although this amendment may clarify that that it would not be necessary to follow Chapter 54-40.2 NDCC when we are, for example,

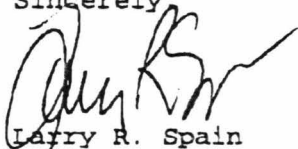
an identified subcontractor of a tribe under a state or federally funded program or other activity originating with the state, with which we have had experience in the past, it would not cover the situation where we would be a subcontractor under a direct federal grant to the tribe or where the tribe was using tribal funds to contract for services.

I hope that you will consider additional means to clarify the language of Chapter 54-40.2 NDCC to encourage further cooperation and collaboration between state agencies and Indian tribes by facilitating the ability to freely contract for essential services when not adverse to state interests. My suggestion would be to further amend section 2 of the bill beginning at line 6 of page no. 2 to read as follows:

This chapter does not apply to agreements entered into under section 24-02-02.3 and chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with the state **or federal government** for which the tribal government is otherwise eligible under federal, state, or local law, **or any contract for services initiated by the tribal government for fair compensation which is not adverse to the interests of the state.** [My suggestions in bold]

If I can provide further information or assistance to you or the Committee on this bill, please do not hesitate to contact me.

Sincerely,



Larry R. Spain
Professor of Law/
Director of Clinical Programs