

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1294

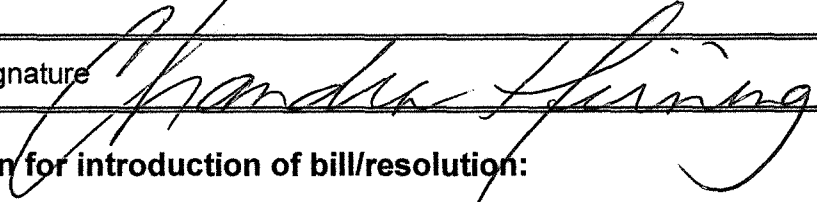
2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1294
January 23, 2013
Job 17572

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to negotiation of tribal-state gaming contracts and the Three Affiliated Tribes oil and gas agreement

Minutes:

Testimony, attachments 1 and 2

Hearing called to order.

General reminder to committee members regarding deadlines for bills for appropriations.

Hearing opened.

Representative Dosch, District 32: Written testimony, attachment 1

8:17 **Chairman Keiser:** We as a legislature gave the authority to negotiate to the governor, so it's clearly in our power to take that authority back. Why did we as a legislature initially give the authority for this to the governor?

Rep. Dosch: We can only speculate. At the time we got into this, gaming was new to the state, and we were not sure how it would develop. Overtime, we've seen it develop. One of my frustrations is that the quality of life on reservations has not improved over time. It causes me to question where the money is going and why this is not helping truly all the Native Americans. Then we get into the oil revenue not only in our state but on tribal lands, too. So it's time we as a legislative body take a look at what is the best policy for our state and for the Native American people as well.

Representative M. Nelson: You basically put legislative management or its designee in charge instead of the governor. Why would it be legislative management and not the entire legislature?

10:10 **Rep. Dosch:** By putting it to legislative management, a representative body for us, it is easier than getting all legislative members into a room to negotiate.

Representative M. Nelson: The 2nd change says the legislative management's designee. Why do we as a legislature not have to approve that designee?

Rep. Dosch: We rely on legislative management to make some of those decisions when the legislature is not in session. If you feel strongly that way, this could be amended that that remains with the legislature, but this provides some flexibility to the process.

11:31 **Representative Kasper:** When you say legislative management, do you mean the whole legislative management of the House and Senate, or do you mean the chairman of the legislative management committee?

Rep. Dosch: My intent is the legislative management committee.

Representative Kasper: I think there are seventeen members on the legislative management committee right now. Would it be your intent that all of these seventeen members are involved in the negotiation, or that they give final approval to the negotiation and that legislative management designate one or two people to do the negotiation?

Rep. Dosch: It would be my intent that the entire board be able to sit in on the negotiations and provide input. The legislative management is made up of a cross section of Republicans, Democrats, leadership, and that sort. I think it be important that all members be able to play a role in those negotiations.

13:02 **Representative Kasper:** If I recall, the state does not receive any income on the gaming side of the compact, other than maybe some dollars for addiction counseling. Did you research that? Do you have any feeling whether or not the state should be receiving some share of gaming revenue?

Rep. Dosch: I am not looking for the state to receive any of the gaming proceeds. It was put in for the purpose to help the beneficial interest of Native Americans. I think that's the way it should stay. In some states, tribes pay corporate income tax to the state. They give gas tax back to the state to help pay for the roads on their tribal reservations. I believe all the profits of the casinos should stay with the tribes to help them.

Representative Kasper: How do you feel about some of the confidentiality about some of that reporting back to the legislative management about how the dollars are spent? Do you believe that should be public record or private confidential because of maybe the nature of where the monies are going?

Rep. Dosch: Gave examples of the sharing or publication of financial information of for-profit companies and cities. Details of personal financial statements would not be part of the public record but would be made available to all members of the committee. If they were as a truly sovereign nation receiving no state funds, it would not be our business. Elaborated.

17:49 **Representative Kasper:** I would assume it would not be your intent to have the legislative management in these contracts, micromanage some of the decisions casinos make. You are only interested in how the money is being used?

Rep. Dosch: I am interested in how the money is being utilized. If we as a state are signing a compact, then we should be making sure and asking some of the questions. The way it is structured now, when we say only 10% needs to be used for economic development, 40% goes to the operation of the casino, and there's no talk of what happens to the other 50%, that is not right from a policy standpoint. I'm not interested in micromanaging, but tell us where you're spending the money so we as a state can decide that it's being spend on the social welfare of the people.

Representative N. Johnson: Since there are currently contracts in place, is your intent to redo those contracts, or is it any future contracts?

19:47 **Rep. Dosch:** It is not my intent to redo the existing contracts. If compacts and agreements have been entered into, they have to be respected. When they come up for renewal, we need to sit down and discuss things.

20:05 **Chairman Keiser:** 20:08 When the governor negotiated the most recent compact, the governor could have asked for more specific information on how those dollars were utilized. Isn't that correct?

Rep. Dosch: Yes. He could also have done it while we're in session, which would have given the legislature more input into this but chose not to.

20:35 **Representative M. Nelson:** I see the law requires the governor to send a copy out twenty-one days before it is signed. When you got your copies, did you read them and provide any input the governor on these concerns you have?

Rep. Dosch: Unfortunately, we did not receive that.

Support:

Opposition:

21:50 **Curt Luger, executive director of the Great Plains Indian Gaming Association:** Distributed written testimony from Charles Murphy, chairman of the Standing Rock Sioux Tribe, attachment 2. I listened intently to Rep. Dosch and I understand some of his concerns. This was thoroughly addressed in March of 1997 in Senate Bill 2399. The purpose of that was to clarify the negotiation end of it. The point when the last compact was not an overnight sensation; it took the building of trust over two decades. I am happy to report that the commitments that were made by the tribal nations at that time from a regulatory side and a policy stand point have been adhered to. At the point these were made, there was very little conversation about revenue. We did talk about jobs. Over 2000 full time jobs on these five small facilities. There are three breakdowns in our employment. 64% of our employees are tribal members. The second group is second income, either retired or farm income folks who are working in our facilities. The third group is college graduates, and this is a place where they can move into management. All five facilities are managed by their own tribal members.

Getting into the amounts of revenue... It has taking a long time to build our revenue, and we have not gotten to the \$100 million of revenue yet. We do not have that kind of market. We are moving at a rate of half a billion dollars in infrastructure and development since 1992. Provided examples. As you know, these are well traveled and need to be rebuilt. In last year's purchasing year, we spent \$62 million in in-state purchases, tracked to 113 different communities in our state. We incrementally built our trust and credibility, and that's how we rose today.

What do we do with our money? Elderly care, youth services, law enforcement, all levels of education, health services, roads, infrastructure, and housing. We are going back and redoing one hundred years of residual tough times. It won't happen overnight. Gaming will never paint that picture. The oil activity is not happening on all tribal areas. We have elections. We have required reports to the tribal council on revenue and budget. We also have our own media. Those things are readily available to our membership and to those outside our membership. We feel that the legislative role...it would be foolish of us to think that we could pull a fast one on the legislature. In the existing process, there was a lot of discussion and policy written in to make sure that the legislative leadership were well apprised of the drafting, the language, and the input into what they would feel be necessary requirements or intent. That is the comfort level that we have risen to with credibility and trust over the two decade relationship, resulting in an industry that has resulted in 2000 jobs. We have watched our truancy rate go the same as our FTEs in our employment. It has a residual effect. Even when you hear of the drug and alcohol things that do go on, we are more sober and more prosperous than in the past. We are moving in the right direction. I know that gaming will not be the panacea.

31:49 Representative Kasper: Your testimony certainly gives better light on what is happening. I did not hear you address the bill itself which makes the change from the governor being the negotiator to the legislative management. Would you talk briefly about why you oppose the bill?

32:31 Curt Luger: You want to dance with the one who brought you. Our fear would be the numbers involved. We are an industry subject to financial requirements as well. It is a positive thing to this point and through this history, and we feel no need for that change.

33:56 Representative Kasper: You heard Rep. Dosch talk about lack of transparency to the legislature or governor. Do the casinos report in a totally transparent way so that your tribal members have complete understanding of what funds are there and where they are going?

Curt Luger Yes. We run on budgets like everyone else. These are total tribal investments. They are reported to our tribal councils through our general fund process. The tribal councils are constitutionally required to make those available to their tribal members.

35:23 Representative Kasper: Do you think that the tribes would object to providing to the legislative management committee those reports which are available to tribal members?

Curt Luger: I am not in a position to speak on their behalf, but I think that it worth dialogue. In the past, tribes have provided information when doing so was a requirement.

36:25 Representative Kreun: Looking at the 1988 law, you touched on providing tribal economic development, self-sufficiency, and strong tribal governments. Has there been any progress made in simple things, such as staggering the terms of the governments? Do they have consistent administration?

Curt Luger: I am happy to report to you that the tribes in North Dakota generally run with four-year staggered terms. They recognize that the stability is important. The four-year term is now common practice. The staggering of terms is becoming more common. You are correct that that is a key to moving forward and to allowing ideas time to incubate and develop.

39:54 Representative Frantsvog: Asked for clarification on 64% of FTEs in the gaming operation are tribal members. Do you have goals that that should be, say, 75? Do you have trouble filling positions?

Curt Luger: We do not have goals related to the percentage of FTEs. In the early years, we had more technical and training issues, but those days are in the past. We have a stable workforce comprised of the people who live in the area, whether or not they are tribal members.

41:19 Chairman Keiser: You were part of the negotiating team for the last agreement. Could you describe who the actual members of the negotiation were? The governor and who else?

Curt Luger: Several members the legal staff of Indian Affairs Commission, the attorney general and his staff, the gaming staff, majority leader, minority leader from both distinguished halls. In the most recent negotiations, the majority and minority leaders were not there to my recollection, but they did submit written comments. From the tribal side, the chairmen come up and represent their scenarios. You have the five tribal chairman, the governor and his staff, Wayne Stenehjem and his staff, and me.

Representative Kasper: The governor himself was there? What was the rough number of people?

44:04 Curt Luger: The governor was there. The main contenders would be less than ten, maybe seven. The governor, the attorney general, leadership positions in the five tribal chairmen. Those are the decision making people, and the rest are researching information or processing paper. In the decision making, seven or eight people. In the room itself, about a dozen.

45:22 Mark Fox, representing the Mandan, Hidatsa, and Arikara Nation, also known as the Three Affiliated Tribes: I do want to raise some points and issues and concerns on behalf of our nation and answer your questions. You also have in your bill, direct aim at the Three Affiliated Tribes and what we have on oil and gas agreements and negotiations of that. I have for the last nearly two years, working with the Tribal-State Relations

Committee. We have great concerns with where it's sitting today. What I am seeing here is that some of the questions are raising a lot of concern on my part, and we understand this will be an education process for both governments on how the other government works. What I am hearing a lot of is how you are spending the money. I've heard that there is a lot of concern about how money, particularly state money, is being spent. I have been raising that concern for two years on behalf of our tribe. Our nation in particular has gone through a very difficult history. We have a number of dysfunctional things that are a result of that; they are not inherent. Then we have to compound that with the building of the Garrison Dam. Three Affiliated Tribes has had land taken away under several acts. Until the time we were flooded out by the building of the dam, the Three Affiliated Tribes were self-reliant. Your waters receded; ours never did. We are trying to rebuild that nation. Even if the legislature would give us whatever you'd decide to spend, you could not help us all of where we are at today. Every day we struggled to find a way to help our people. Poverty, disease, crime, death on our highways. Ninety percent of our people do not receive the kind of income you associate with oil booms. I had a meeting directors meeting. I told them at that as directors, they would all need to show where your shortfalls are at, what you're trying to accomplish, and what it is going to cost. Some are angry that all this time they've been trying to rebuild, looking for help from the federal government and the state, and we see very little of that. I had asked my directors about revenue they have made from the oil boom, and they have not made much if any revenue from it. It is not so much opposition to the process that you have to decide how to have intergovernmental relationships, but the concerns are the justification and reasons behind it. We are happy to tell you what were are dealing with because we see the importance of it. We understand the need to share that so we can have a better relationship with the legislature. We are doing that as we speak, and we intend to keep doing that.

55:02 Representative Kasper: What this bill is talking about is a change in how compacts are negotiated. Can you see any benefit if the legislative branch were the lead entity for the state in negotiating the compacts? You're citing the fact that legislators need to be educated as to what your needs are. Can you see any benefit in this change that would in itself educate legislators much more thoroughly about what is happening on the reservations?

Mark Fox: I think there is some are possibly some positive attributes which could result. Along the lines of what Mr. Luger said as well, what is being done now is working, but that does not mean that we cannot explore different ways other than this bill of mandating it, of educating and understanding things better. I think there are other ways to get it done.

Representative Kasper: I don't see in the bill much changing other than who does the negotiating. This bill does not mandate any change in what the policy has been in the past.

57:00 Mark Fox: If we can bifurcate it for a minute: gaming over here, and the Three Affiliated oil and gas agreement over here. If we focus on only the oil and gas agreement, you probably do not need this bill because that is exactly what we're doing today. We're not negotiating strictly with only the governor. We've had talks with him, but when it comes to changing oil and gas agreements, we're meeting with you.

Representative Kasper: It would change on the gaming side.

Chairman Keiser: If you're doing, it, then there is not a problem in putting it in statute. The legislature likes certainty.

Neutral:

Chairman Keiser: Explained the rules of neutral testimony.

59:15 **Jared Tufte, governor's legal counsel:** Gaming compacts are very stable. They go back to 1992, and changed a little in 1999. They were coming up for expiration this recent December. Over the course of several months, we concluded a series of negotiation meetings. The process we have for the gaming compacts is to notify legislative management twenty-one days before they're signed. Through our office, we contacted the legislative management staff. We got those out through mail or e-mail. I received one comment back. After that, we had the public hearing that is required. Then the compacts were signed in early January. From the governor's perspective, the current system is working well and has resulted in stable agreements that have served the state and the tribes pretty well. The jobs are really the key to these agreements from the state's perspective, and these jobs are critical. The context regarding the 10% put into economic development needs to include all those jobs. For the tax agreement, similar to the gaming compacts but a little different, the legislature did set a lot of the policy for those agreements and did put it in statute for certainty, and leaves the governor a little leeway to do the negotiations. But regarding the policy issues and parameters, the governor does not have discretion to negotiate those terms, and that is why we are having these conversations. To clarify who was at the table and whether the number of bodies plays into whether this is an improvement in the process, the governor's point was that all five tribes would be treated the same. In a sense, it was a one-to-one in parallel with five different tribal chairmen. There was an understanding that because each chairman would end up with the same deal, they collaborated and acted together. This governor and previous governors have developed that good one-on-one working relationship with the tribal chairman, and those foundations of trust and mutual respect go a long way toward the kind of rapport you need to develop some of these agreements. When the principals come into the room to hammer out the last issues, that trust matters a lot. It's a challenge that needs to be considered in whether changes are made to the bill.

Representative Becker: When did the compact go out to the members of legislative management?

Jared Tufte: The first few days of December.

1:03:47 **Representative Becker:** You said you received one comment back. How was that addressed?

Jared Tufte: What I received was more of a timing question or a conversational inquiry about how things went.

Representative Becker: If it had been a more substantial concern and had come from two members, it seems to be that if it goes out ahead of time to the individual members ahead

of time and they're not together to discuss things and may be unaware that others have concerns as well, is it reasonable to think that the compact would be changed based on the two individuals' concerns?

Jared Tufte: That is the purpose of the notification process. If something is spotted or raised that the governor or his lawyer did not notice in the negotiations, that is the opportunity to correct that before the compact is signed. The issue would be raised, and negotiations would resume.

Representative Becker: An argument could be raised that legislative management could be a more stable partner in the negotiations because you have a multi-member group that will be coming back and changing slowly. With the next election for governor, you do not know who you will get or what that person's philosophy will be. I'm not sure that the stability argument holds just because it has been stable so far.

1:06:03 **Representative Kasper:** What was the length of the contracts which were recently signed? Could we look at the contracts?

Jared Tufte: There were about thirty pages a piece, so I'd be happy to deliver a copy to you. They were for a period of ten years with optional ten year renewals at the end of that compact, provided that neither side wants to terminate or renegotiate.

Representative Kasper: Over the years, the length of the contract term has been one of my concerns. So many things change that period of time. Is there an option in that compact that if either party wishes to reopen the compact at any time during that term, it can be done, or is it a locked-in ten year compact once it is signed?

Jared Tufte: There are termination provisions by notice. It is not trivial to back out of the agreements.

Representative Kasper: Renegotiation?

Jared Tufte: By mutual agreement, they could be renegotiated at any time.

Chairman Keiser: Was there any discussion in the governor's office in December about bringing it to the legislature and letting us review and ratify it, given the timing right before the legislative session?

Jared Tufte: The discussions on the gaming contracts started more than a year before. (Chairman Keiser clarifies.) The extent of that discussion was in part that we should clear the decks before they all arrive here. The compact was all but final in July with one issue to be resolved, and that took a while to work through. We felt that the notification procedure, the opportunity for legislative management to comment on it...if there had been any concerns raised, it certainly would have been delayed into session.

1:09:34 **Chairman Keiser:** Do you think that had you brought it to the legislature, you could have gotten the legislature to sign off on a ten year commitment?

Jared Tufte: I do not want to speak for that, but I do want to say that the prior two compacts were ten year compacts. The legislature has been pretty well aware that that has been the length. The change to the term this time was to change the renewals from five years to ten years for reasons that it would be easier for the tribes to get financing with banks.

1:10:21 **Representative Vigesaa:** How long was the period of negotiation on this particular contract?

Jared Tufte: If you include discussions among staff, it took nearly two years. In terms of talking about what issues might be on the table and then going to the principals to find out how they feel about some of the issues up for discussion, the whole process probably lasted about a year.

Representative Vigesaa: Have there been substantial changes from contract to contract?

Jared Tufte: There were quite a few words changed, many asked for by the attorney general's regulatory staff to harmonize the language. Those were not very substantive in nature. In terms of substantive changes that the governor and tribal chairmen discussed in depth, it was the change of the term, and the Three Affiliated Tribes' request to avail themselves of a gaming on the waters provision. To clarify, that is within the boundaries of the reservation, but they would be allowed to have a gaming vessel under the same terms as Spirit Lake has been allowed to have one.

1:12:34 **Representative Kasper:** Some states are licensing casinos to allow and regulate internet poker. Did the issue of internet poker come up?

Jared Tufte: The issue was brought to my attention but it was not discussed very seriously for inclusion in these compacts given that the federal legislation had not passed at the time of these negotiations. We felt we could add an addendum or separate compact at some future date.

1:13:49 **Representative Kreun:** Do we have other contracts with the tribes, such as for water situations, childcare, human services, and highways? Do we have a reporting mechanism for those other contracts to show how money is spent when we put money into those projects?

Jared Tufte: There are a number of less formal agreements not quite rising to the level of compacts. Provided several examples. Many of those are less formalized and do not require the federal approval that the gaming compact requires. I cannot speak broadly to reporting requirements which may be in those other arrangements.

1:15:06 **Representative Kreun:** Do we know where our dollars are being spent in those areas?

Jared Tufte: We receive reports on the tax-related agreements about how much money the tribe gets, but once it gets to the tribe, there is not a detailed reporting requirement about where it goes and how it is spent.

Representative Kreun: Asked for additional clarification.

Jared Tufte: There is oversight, perhaps not the type you have in mind. There are ways to track these projects where we're collaborating with the tribes to make sure it ends up the way the state expects it to.

Representative Kreun: But we don't with these two specific agreements?

Jared Tufte: We receive a report on the economic development funds that are set aside in the gaming compacts, but probably not in the detail I think you are contemplating in terms of how many dollars to which program. There is some reporting of those amounts.

Hearing closed.

1:17:38 **Representative M. Nelson:** At the end of the bill under reports, there is supposed to be a report from the governor to legislative council biennially concerning all this. I think getting a copy of the last biennial report would assist us in addressing some of our questions.

Chairman Keiser: We certainly can get that. We will hold this bill.

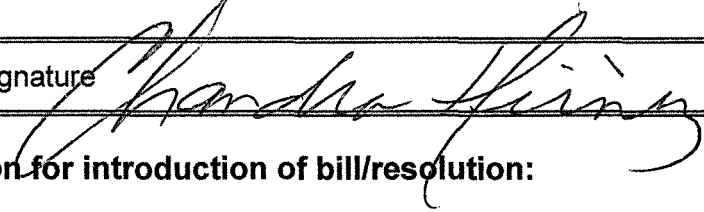
2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1294
January 23, 2013, part 2
Job 17571, starting at 53:25
Recording begins with HB 1299

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to negotiation of tribal-state gaming contracts and the Three Affiliated Tribes oil and gas agreement

Minutes:

No attachments.

Recording job 1751 begins with HB 1299; at minute 53:25, the conversation turns to HB 1294 as well as updates or reminders on other bills previously heard.

Representative Kasper: Have the people from legislative management been consulted about this change?

Chairman Keiser: I talked to the majority leader, and I believe he supports it. My question for you is that if we had heard this piece of legislation, would you have voted for a ten and ten? We in effect gave the governor authority to represent us, so when he negotiates, in effect he's representing us. We have an amendment coming down about that issue so that a non-occupied single residence.

Representative Frantsvog: If we were to pass HB 1294, would anything happen before 10 years?

Chairman Keiser: For any new contracts or any modifications to existing contracts or any renegotiation, the changes which are part of HB 1294 would be in effect.

Representative N. Johnson: The timing is always December of the year that ends in two, so it always needs a new contract before the legislature meets.

56:42 **Representative Kreun:** This pertains to these two contracts only?

Chairman Keiser: Yes. The legislature maintains control of all of the contracts.

Representative Kreun: Do we get a report? As the tribal chair gave in his report, we spend 25% of our human services. Do we get that information back as a type of audit?

Chairman Keiser: There are audits on Medicare and Medicaid which are very comprehensive, and we get full copies of everything.

Representative Kasper: On the tribal bill. Fort Berthold, the Three Affiliated Tribe, wants to renegotiate the tax arrangement. The governor I believe has said publicly that that is something the legislature needs to get involved with. He's not going to open it up. So it's almost like the buck has been passed to us even though current statute says he is the one to negotiate the contracts.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1294

January 28, 2013

Job 17791

Recording also contains HB 1316

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Negotiation of tribal-state gaming contracts and the three affiliated tribes oil and gas agreement

Minutes:

No attachments

Chairman Keiser: Summarizes the changes HB 1294 would implement.

Representative Boschee: Heard from a constituent who advises that we adopt this bill. There was some frustration with the agreements being entered into without legislative approval.

Representative Boschee made a motion on a do pass.

Representative Ruby seconded the motion.

Roll call vote on the Do Pass motion: Yes = 8, No = 3, Absent = 4

Carrier: Representative Beadle

Date: 1-28-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1294**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Boschee Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman		✓
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Marvin Nelson	wp	
Rep. Robert Frantsvog		ab			
Rep. Nancy Johnson		✓			
Rep. Jim Kasper		ab			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser		ab			
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 8 No 3

Absent 4

Floor Assignment Beadle

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

REPORT OF STANDING COMMITTEE

HB 1294: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (8 YEAS, 3 NAYS, 4 ABSENT AND NOT VOTING).
HB 1294 was placed on the Eleventh order on the calendar.

2013 SENATE JUDICIARY

HB 1294

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1294
3/18/2013
Job #20049

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to negotiation of tribal-state gaming contracts & the three affiliated tribes oil & gas agreement

Senator David Hogue - Chairman

Representative Mark Dosch - District 32 - See written testimony. **(1)**. Senator Nelson asks Rep. Dosch why a designee should more authority than the Governor. He responds that it was always the legislative authority but it was given to the Governor. He explains the policy before them. He goes on to say it is the responsibility of the Legislative Branch to set policy and they need to know where all the money is going. Senator Sitte asks him if the funds from Indian gaming and casinos are audited and if there is a report to which he replies they are required to submit reports to the Governor and Attorney General but they are confidential and the legislature is not privy to that information.

Opposition

Curt Luger - Executive Director of Great Plains Indian Gaming Association - Mr. Luger gives a history and objective between the State and Tribes. He said they send their chairman to negotiate the contracts and that person must report back to a council. He relays the job creation and benefits that has resulted from Indian gaming. He goes on to say how all existing casinos are now managed by tribal members. Senator Lyson asks him for the budget they have for roads. Senator Sitte asks for some casino history and Mr. Luger explains the Indian Gaming Regulatory Act. Senator Lyson asks about clinics and hospitals and how much of their budget goes into health care.

Chris Rausch - Attorney for the Standing Rock Sioux Tribe - Hands in written testimony for Chairman Charles Murphy. **(2)** Senator Hogue asks Mr. Rausch if there was an impasse in negotiations with the Governor what would happen. Mr. Rausch replies if there was a contract in place the gaming would stay open while it was resolved. He explains there is a system in place for not negotiating in good faith. Senator Hogue asks him about Prairie Knights debt and employees to which Mr. Rausch could not answer. Senator Grabinger mentions he has not seen a lot of change to the reservations in 20 years. He does see the change in Minnesota however so he wonders why. Mr. Rausch replies it is fair to be concerned, but they fund programs you don't see.

Senate Judiciary Committee

HB1294

3/18/2013

Page 2

Neutral

Jerry Tufte - Governor's Legal Counsel - Mr. Tufte explains the compact process and how the current system works. He says the Governor has the best interest of the State in mind and wants to keep the Legislature in the loop. Mr. Tufte says the gas tax is still in development. He and Senator Hogue talk of double taxation on oil and gas.

Close the hearing

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1294
4/2/2013
Jon #20788

Conference Committee

Committee Clerk Signature



Minutes:

Senator David Hogue - Chairman

Committee work

Senator Hogue discusses the bill and proposes an amendment 13.0613.01001. He explains the changes this amendment makes to the bill. He said it is basically a hog house. The committee discusses who can attend the meetings and that bringing in so many people from both sides would be counterproductive.

Senator Berry moves the amendment .01001
Senator Lyson seconded

Discussion

Senator Sitte says she sees value in the bill the way it was presented. She speaks about the dollars coming into the tribes from the oil. She says all that is being done here is to get some accountability for the 100's of millions of dollars. She believes there is a role for the Legislature. She believes this will return policy making with the Legislative Branch. Senator Nelson said negotiations go on from Chief of the Tribe to Chief of the State.

Verbal vote - 5 yes, 1 no
Motion passes

Committee will take up another day.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1294
4/9/2013
Job #21054

Conference Committee

Committee Clerk Signature	
---------------------------	------------------------------------------------------------------------------------

Minutes:

Vote

Senator David Hogue - Chairman

Committee work

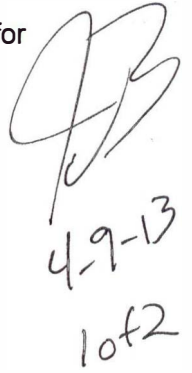
Senator Hogue explains the amendment they passed earlier. The committee discusses what is left in the bill.

Senator Nelson moves a do not pass as amended
Senator Grabinger seconded

Vote - 5 yes, 2 no
Motion passes

Senator Nelson will carry

April 1, 2013



Handwritten signature and date: 4-9-13
1 of 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1294

- Page 1, line 1, replace "sections" with "section"
- Page 1, line 1, remove ", 57-51.2-01, subsection 3 of section"
- Page 1, line 2, remove "57-51.2-02, and section 57-51.2-04"
- Page 1, line 3, remove "and the three affiliated tribes oil and gas agreement"
- Page 1, line 8, remove the overstrike over "governor"
- Page 1, line 8, remove "legislative management"
- Page 1, line 8, remove the overstrike over "governor's"
- Page 1, line 8, remove "legislative management's"
- Page 1, line 13, remove the overstrike over "4."
- Page 1, line 14, after the first "the" insert "The"
- Page 1, line 14, remove the overstrike over "~~chairman and vice chairman of the legislative management or the~~"
- Page 1, remove the overstrike over lines 15 and 16
- Page 1, line 20, replace "1." with "2."
- Page 1, line 22, replace "2." with "3."
- Page 2, line 3, replace "3." with "4."
- Page 2, line 10, replace "4." with "5."
- Page 2, line 12, replace "5." with "6."
- Page 2, line 14, replace "6." with "7."
- Page 2, line 15, remove the overstrike over "governor"
- Page 2, line 15, remove "legislative management"
- Page 2, line 16, remove the overstrike over "~~management~~"
- Page 2, line 16, remove "assembly"
- Page 2, line 18, replace "7." with "8."
- Page 2, line 19, remove the overstrike over "governor"
- Page 2, line 19, remove "legislative management"
- Page 2, line 22, replace "8." with "9."
- Page 2, line 23, remove the overstrike over "governor"
- Page 2, line 23, remove "legislative management"

2012

Page 2, remove lines 25 through 30

Page 3, remove lines 1 through 13

Renumber accordingly

Date: 4-2-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1294**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0613.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Berry Seconded By J Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal vote 6 yes, 1 no

Floor Assignment amend passes

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

Date: 4-9-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1294**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0613.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By D Nelson Seconded By S Grabinger

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong		X			

Total (Yes) 5 No 2

Absent _____

Floor Assignment D Nelson

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

REPORT OF STANDING COMMITTEE

HB 1294: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1294 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections" with "section"

Page 1, line 1, remove ", 57-51.2-01, subsection 3 of section"

Page 1, line 2, remove "57-51.2-02, and section 57-51.2-04"

Page 1, line 3, remove "and the three affiliated tribes oil and gas agreement"

Page 1, line 8, remove the overstrike over "governor"

Page 1, line 8, remove "legislative management"

Page 1, line 8, remove the overstrike over "governor's"

Page 1, line 8, remove "legislative management's"

Page 1, line 13, remove the overstrike over "4."

Page 1, line 14, after the first "the" insert "The"

Page 1, line 14, remove the overstrike over "chairman and vice chairman of the legislative management or the"

Page 1, remove the overstrike over lines 15 and 16

Page 1, line 20, replace "1." with "2."

Page 1, line 22, replace "2." with "3."

Page 2, line 3, replace "3." with "4."

Page 2, line 10, replace "4." with "5."

Page 2, line 12, replace "5." with "6."

Page 2, line 14, replace "6." with "7."

Page 2, line 15, remove the overstrike over "governor"

Page 2, line 15, remove "legislative management"

Page 2, line 16, remove the overstrike over "management"

Page 2, line 16, remove "assembly"

Page 2, line 18, replace "7." with "8."

Page 2, line 19, remove the overstrike over "governor"

Page 2, line 19, remove "legislative management"

Page 2, line 22, replace "8." with "9."

Page 2, line 23, remove the overstrike over "governor"

Page 2, line 23, remove "legislative management"

Page 2, remove lines 25 through 30

Page 3, remove lines 1 through 13

Renumber accordingly

2013 TESTIMONY

HB 1294

HB 1294

IBL - George Keiser, Chairman

January 23, 2013

① 1-23-2013am

HB 1294

Mr. Chairman, members of the IBL committee, what a pleasure it is to stand before my old committee. I must say there are many times that I miss being here, setting policies for our Great State. Ironically however it is exactly why I am here today.

The bill before you restores the authority of the ND Legislature to negotiate tribal-state gaming contracts, and the Three Affiliated Tribes' oil and gas agreements, rather than the governor. The decision is, if you feel the legislative branch of government should be the ones setting state policy, or if you think that responsibility should continue to be transferred to the executive branch.

On October 7, 1992 over 20 years ago the governor of ND entered into an agreement to allow for gaming on Indian reservations in the state. The purpose was to allow for economic development, employment, and to provide a revenue source to the tribes to assist them in improving the health and welfare of their people. This agreement has resulted in 10's of millions of dollars in revenue to the Tribes.

Then on January 13, 2010 the governor entered into an agreement with the Three Affiliated Tribes' on oil and gas agreements. This agreement has resulted in over \$100 Million dollars being paid to the Tribes, and by the 2013-15 biennium's, this amount is expected to grow to over \$190 million.

Now I bring these two contracts to light for two reasons. First, it involves the executive branch of government entering into contracts that involves policy matters such as, who can operate casinos, what casinos can offer, when and where casinos can be operated in this state... clearly establishing policy. But isn't setting policy clearly the responsibility of the legislature? Secondly, it establishes tax policy, resulting in what will be 100's of millions of tax and revenue being paid to the tribes that will no doubt affect the funding and funding needs of the tribes by virtue of these contracts. Again, a policy and appropriation function that should be the responsibility and best handled by the legislative process. These actions blur the line between the Executive Branch and legislative branch of government, and complicate the efforts of the Legislature.

Just a few weeks ago, in the State of The Tribal State Relations address by Chairman Richard McCloud, we were informed of the many needs of the tribes in the state. The need for money to fix roads, economic development, social services etc. We as a state were asked to "share the states wealth" and help our Native American friends. Now let me make it very clear. I do feel it is the state's responsibility to help all people of our state. That is why I believe the state entered into the gaming compacts years ago in the first place, so as to provide some of these opportunities to our states reservations. Unfortunately, after 20 years and our tribes reaping millions in profits every year, very little seems to

have improved on our reservations. Dependency still prevails. Why? Where has the money gone? What has it been used for? Has this been good policy?

A review of the 29 page gaming compact, finds one small paragraph, entitled "Designated usage of funds". Basically, it states that 10% of the net revenues from gaming operations must be directed to economic development and another 40% to the casino operators. No other mention of where the remainder of 50% of the gaming profits is to go, or where they should be spent. Now if the entire purpose of the state allowing the tribes to build casinos was that the profit would be used for the social welfare of the Native American people, shouldn't the compact say as much? Shouldn't we require accountability and transparency? Just as we as legislators are held accountable for the state funds we are entrusted, shouldn't we be requiring the same in our tribal compacts?

And now, with the flood of new oil money flowing into the tribes coffers, one would hope that provisions were made to help assure their new wealth will be shared and used for the beneficial interest of all Native Americans right?

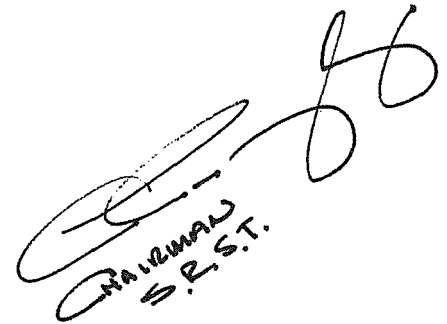
Unfortunately the Oil and gas agreement with the Three Affiliated Tribes contains no language as to what the money will be used for. No requirement that any of the money be used for the beneficial interest of the Native American people. So where is the money going? What is it being used for? If the state is entering into these agreements, shouldn't we know these answers? Is this good policy?

I realize that these are hard questions being asked, but ones that deserve answers. It is not my intent that we tell the tribes how to spend their money, however if the state of ND is expected to help fund the human service needs of the American Indians, then we should demand accountability and transparency, not only for the benefit of all native American people but in fairness to the ND taxpayers that are also providing funds to the tribes.

The bottom line is the line is that if we as a state are signing our name to any compact or agreement, then we should be making sure that the interest of both parties are being protected. The establishment of good policy in dealing with these matters is critical. I believe this must be accomplished through the legislative process where policy is developed and funds are appropriated. It's time we as legislators took back our responsibility.

② 1-23-2012 am
HB 1294

**Testimony of Charles W. Murphy
Chairman, Standing Rock Sioux Tribe
In Opposition to House Bill 1294
January 23, 2013
House Industry, Business and Labor Committee
63rd Legislative Assembly**


CHAIRMAN
S. R. S. T.

On behalf of the Standing Rock Sioux Tribe, I am honored to submit written testimony before the House Committee on Industry, Business and Labor in opposition to House Bill 1294. This bill would amend Section 54-58-03 of the North Dakota Century Code which governs the process by which State-Tribal gaming compacts are negotiated. Specifically, this bill would replace the Governor as the State's representative in those negotiations with the 17-member Legislative Management.

Tribal gaming is a vital and significant source of revenue for the Tribe to provide desperately-needed services to its members. In addition, Tribal gaming enterprises across the State provides considerable employment opportunities, not only to Tribal members on the Reservations, where such opportunities are often scarce, but to Tribal members and non-members living off the Reservation. In addition, these operations have contributed to enormous sources of revenue for North Dakota vendors, and have been an important component of the State's tourism efforts.

In 1988, the United States Congress passed the Indian Gaming Regulatory Act, recognizing the ability of Tribes to raise revenues through gaming operations "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. §2702. For certain forms of gaming, defined as Class III gaming which includes slot machines and blackjack, Congress determined that Tribes and the States within which their respective Tribal lands were located were to enter into gaming compacts to govern the operation of those activities. 25 U.S.C. §2710.

Section 54-58-03 of the Century Code was codified in 1997 after several years of discussion and debate - between not only the Tribes and the State, but between the North Dakota Legislature and the State Executive branch - as to how these compacts would be negotiated. Mindful of the Tribal, Executive and Legislative interests in the process, the Legislature carefully crafted and passed SB 2399, designating the Governor as the State representative in the negotiations and execution of those compacts, and also provided for the Legislative Assembly to be advised of all such negotiations, including provisions by which members of Legislative Management could attend the negotiations. The law further provides that the Legislative Assembly would all have the opportunity to review the compacts prior to execution. Moreover, the law provides additional transparency and the opportunity for comment in that one public hearing is to be held prior to execution, at which time not only the public but any concerned State representative would have the opportunity to comment - on the record - on the proposed compacts or amendments thereto. As the primary sponsor of the bill, on March 31, 1997, Senator Wayne Stenehjem - who now serves as the North Dakota Attorney General - testified before the Senate Judiciary Committee, that this process recognized the duties and areas of authority for each branch of the State government, as well as those of the Tribal governments.

The text of the existing Compact between the State and the Tribe provide for further transparency. Under the Compact, the parties recognize that gaming revenue be utilized for economic development and social welfare, and details criteria by which those funds can be used for economic development, including capitalization for economic development projects, improvements in Tribal infrastructure, and the purchase, lease or improvement

Testimony of Charles W. Murphy, Chairman, Standing Rock Sioux Tribe on HB 1294 before House IBL Committee, Jan. 23, 2013

of real estate to be used for economic development projects. These provisions mirror requirements under IGRA for how gaming revenues may be spent. See 25 U.S.C. §2710(b)(2)(B). Moreover, under the Compact, the Tribe is to provide the State access to accounting and audit records for gaming conducted under the Compact; information on the installation, removal, upgrade or conversion of any electronic game at a gaming site; and access to gaming premises, equipment, records and documents to ensure compliance with the Compact. In addition, the Tribe stringently regulates gaming within the Reservation's exterior boundaries, through a Gaming Department and Commission, a Gaming Code approved by the National Indian Gaming Commission, and regulations governing day-to-day gaming operations.

The authority of the State's Executive branch to negotiate State-Tribal gaming compacts - without the requirement for official Legislative approval - is not unique to North Dakota. Based on a 2007 study by the National Conference of State Legislatures (available at <http://www.ncsl.org/print/econ/tribgam07.pdf>), only six of twenty-two states included in the survey (California, Connecticut, Kansas, New Mexico, New York and Oklahoma) have codified laws granting the legislature authority over approving gaming compacts. Every single state included in the survey placed negotiating authority with the Executive Branch. Our independent verification of the laws in those states indicates the findings of the 2007 study have not changed as of the time of this testimony.¹

The carefully-allocated balance currently found in N.D.C.C. §54-58-03 serves the compacting process as well today as it did 16 years ago when it was initially passed into law. By appointing the Governor as the State's primary representative, and providing for Legislative representation in those negotiations - and thusly for Legislative advisement and consultation during the process - the State's interests are well-protected, and the content and context of the negotiations is appropriately transparent for both branches of government. Further, by narrowing the primary responsibility to negotiate and execute on behalf of the State to the Governor, the process is also an effective one for the Tribes, allowing for the vital interests of the multiple Tribes involved in the compacting process to be discussed, recognized and implemented with a level of efficiency the Tribe fears will be compromised if, in the future, it is to negotiate with a 17-member body. The method and manner by which these compacts have been negotiated and formalized over the history of Tribal gaming in North Dakota has been in keeping with not only the spirit and intent of the Indian Gaming Regulatory Act, but also of the relationship and shared goals between the Standing Rock Sioux Tribe and the State of North Dakota. Furthermore, no significant issues have arisen between the Tribe and the State during that time. The Tribe sees no reason - either in contemplation of its own interests or by recognizing those of the State - why the compacting process should be significantly altered two decades after it first negotiated a gaming compact with the State.

The Standing Rock Sioux Tribe is a sovereign nation. However, its members are also citizens of the State they reside in. Tribal gaming is a vital resource to improve the lives of those North Dakotans who are members of the Standing Rock Sioux Tribe. While the Tribe is heartened that the Legislature has expressed this interest in working more closely with the Tribe, and while the Tribe would enthusiastically embrace that relationship in dealing with a myriad of issues - including the impoverishment of some North Dakotans who live on the Reservation, the plague of domestic violence on our Reservations, and the education of our youth - the process currently in place for negotiating gaming compacts has served both the Tribe and the State well, and the Tribe urges as DO NOT PASS on HB 1294.

¹ Florida - which the survey notes was debating its compacting process at the time the survey was conducted- has since passed legislation granting the Governor negotiating authority, and requiring legislative ratification. See F.S.A. §285.712. Other states were not included in the study but have had laws on the compacting process, such as Nebraska which places all authority in the compacting process with the Executive branch and requires no Legislative ratification. See Neb.Rev.St. §9-1,106.

HB 1294

Senate Judiciary

David Hogue - Chairman

March 18, 2013

Mr. Chairman, members of the Senate Judiciary committee, for the record my name is Mark Dosch, Representing District 32.

The bill before you restores the authority of the ND Legislature to negotiate tribal-state gaming contracts, and the Three Affiliated Tribes' oil and gas agreements.

Now let me make clear up front, what this bill does not do. It does not change any agreements now in place. It does not take away the ability of the Tribes to operate a Casino, or sell their oil. What it does do is to return the authority of negotiations of these contracts back to the legislative process where it originally was.

On October 7, 1992 over 20 years ago the governor of ND entered into an agreement to allow for gaming on Indian reservations in the state. The purpose was to allow for economic development, employment, and to provide a revenue source to the tribes to assist them in improving the health and welfare of their people. This agreement has resulted in 10's of millions of dollars in revenue to the Tribes.

Then on January 13, 2010 the governor entered into an agreement with the Three Affiliated Tribe's on oil and gas agreements. This agreement has resulted in over \$100 Million dollars being paid to the Tribes, and by the 2013-15 biennium's, this amount is expected to grow to over \$190 million.

Now I bring these two contracts to light for two reasons. First, it involves the executive branch of government entering into contracts that involves policy matters such as, who can operate casinos, what casinos can offer, when and where casinos can be operated in this state... clearly establishing policy. But isn't setting policy clearly the responsibility of the legislature? Secondly, it establishes tax policy, resulting in what will be 100's of millions of tax and revenue being paid to the tribes that will no doubt affect the funding and funding needs of the tribes by virtue of these contracts. Again, a policy and appropriation function that should be the responsibility and best handled by the legislative process. These actions blur the line between the Executive Branch and legislative branch of government, and complicate the efforts of the Legislature.

Just a few months ago, in the State of The Tribal State Relations address by Chairman Richard McCloud, we were informed of the many needs of the tribes in the state. The need for money to fix roads, economic development, social services etc. We as a state were asked to "share the states wealth" and help our Native American friends. Now let me make it very clear. I do feel it is the

state's responsibility to help all people of our state. That is why I believe the state entered into the gaming compacts years ago in the first place, so as to provide some of these opportunities to our states reservations. Unfortunately, after 20 years and our tribes reaping millions in profits every year, very little seems to have improved on our reservations. Dependency still prevails. Why? Where has the money gone? What has it been used for? Has this been good policy?

A review of the 29 page gaming compact, finds one small paragraph, entitled "Designated usage of funds". Basically, it states that 10% of the net revenues from gaming operations must be directed to economic development and another 40% to the casino operators. No other mention of where the remainder of 50% of the gaming profits is to go, or where they should be spent. Now if the entire purpose of the state allowing the tribes to build casinos was that the profit would be used for the social welfare of the Native American people, shouldn't the compact say as much? Shouldn't we require accountability and transparency? Just as we as legislators are held accountable for the state funds we are entrusted, shouldn't we be requiring the same in our tribal compacts?

And now, with the flood of new oil money flowing into the tribes coffers, one would hope that provisions were made to help assure their new wealth will be shared and used for the beneficial interest of all Native Americans right?

Unfortunately the Oil and gas agreement with the Three Affiliated Tribes contains no language as to what the money will be used for. No requirement that any of the money be used for the beneficial interest of the Native American people. So where is the money going? What is it being used for? If the state is entering into these agreements, shouldn't we know these answers? Is this good policy?

I realize that these are hard questions being asked, but ones that deserve answers. It is not my intent that we tell the tribes how to spend their money, however if the state of ND is expected to help fund the human service needs of the American Indians, then we should seek accountability and transparency, not only for the benefit of all native American people but in fairness to the ND taxpayers that are also providing funds to the tribes.

The bottom line is the line is that if we as a state are signing our name to any compact or agreement, then we should be making sure that the interest of not only the State of North Dakota are protected, but all tribal members are being protected as well. The establishment of good policy in dealing with these matters is critical. I believe this must be accomplished through the legislative process where policy is developed and funds are appropriated. It's time we as legislators took back our responsibility.

**Testimony of Chairman Charles W. Murphy
Standing Rock Sioux Tribe
In Opposition to House Bill 1294
March 18, 2013
Senate Judiciary Committee
63rd Legislative Assembly**

On behalf of the Standing Rock Sioux Tribe, I am honored to provide testimony before the Senate Judiciary Committee in opposition to House Bill 1294. This bill would amend Section 54-58-03 of the North Dakota Century Code, which governs the process by which State-Tribal gaming compacts are negotiated. Specifically, the amended statute would replace the Governor as the State's representative in those negotiations with the 17-member Legislative Management.

Tribal gaming is a vital and significant source of revenue for the Standing Rock Sioux Tribe to provide desperately-needed services to its members. In addition, Tribal gaming enterprises across the State provide considerable employment opportunities not only to Tribal members and non-members on the Reservations, where employment opportunities are often scarce, but also to Tribal members and non-members living outside of the Reservations' boundaries. In addition, these operations have contributed to enormous sources of revenue for the State of North Dakota, by attracting out-of-state tourists.

In 1988, the United States Congress passed the Indian Gaming Regulatory Act, recognizing the ability of Tribes to raise revenues through gaming operations "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. §2702. For certain forms of gaming, defined as Class III gaming which includes slot machines and blackjack, Congress determined that Tribes and the States within which their respective Tribal lands were located were to enter into gaming compacts to govern the operation of those activities. See 25 U.S.C. §2710.

After several years of discussion and between the Tribes and the State regarding the process for negotiating State-Tribal gaming compacts – as well as internal discussion between the State's legislative and executive branches - the North Dakota Legislature passed SB 2399 in 1997, which is codified today at Section 54-58-03 of the Century Code.

The current law provides for the Governor to serve as the State's representative in the negotiation and execution of all State-Tribal gaming compacts. However, the current law also provides for the legislative assembly to be advised of all such negotiations and specifically includes provisions under which members of legislative management may attend the negotiations between the Governor and the Tribes. Furthermore, the current law provides the legislative assembly the opportunity to review the compacts prior to execution. Moreover, the law provides all North Dakota residents an opportunity to comment on proposed amendments to State-Tribal gaming compacts in a public hearing held prior to execution. As the primary sponsor of the bill, Senator Wayne Stenehjem – who now serves as North Dakota's Attorney General - testified before the Senate Judiciary committee on March 31, 1997. Mr. Stenehjem testified that the negotiation process - now codified at N.D.C.C. § 54-58-03 - recognized the duties and areas of authority for each branch of the State government, as well as those of the Tribal governments.

The text of the existing Compact between the State and the Tribe provide for further transparency. Under the Compact, the parties recognize that gaming revenue be utilized for economic development and social welfare, and details criteria by which those funds can be used for economic development, including capitalization for

Testimony of Chairman Charles W. Murphy, Standing Rock Sioux Tribe on HB 1294 before Senate Judiciary Committee, March 18, 2013

economic development projects, improvements in Tribal infrastructure, and the purchase, lease or improvement of real estate to be used for economic development projects. These provisions mirror requirements under IGRA for how gaming revenues may be spent. see 25 U.S.C. §2710(b)(2)(B). Moreover, under the Compact, the Tribe is to provide the State access to accounting and audit records for gaming conducted under the Compact; information on the installation, removal, upgrade or conversion of any electronic game at a gaming site; and access to gaming premises, equipment, records and documents to ensure compliance with the Compact. In addition, the Tribe stringently regulates gaming within the Reservation’s exterior boundaries, through a Gaming Department and Commission, a Gaming Code approved by the National Indian Gaming Commission, and regulations governing day-to-day gaming operations.

The authority of the State’s executive branch to negotiate State-Tribal gaming compacts - without the requirement for official Legislative approval - is not unique to North Dakota. Based on a 2007 study by the National Conference of State Legislatures (available at <http://www.ncsl.org/print/econ/tribgam07.pdf>), only six of twenty-two states included in the survey (California, Connecticut, Kansas, New Mexico, New York and Oklahoma) have codified laws granting the legislature authority over approving gaming compacts. Every single state included in the survey placed negotiating authority with the Executive Branch. Our independent verification of the laws in those states indicates the findings of the 2007 study have not changed as of the time of this Legislative Session.¹

The carefully-allocated balance currently found in N.D.C.C. § 54-58-03 serves the compacting process as well today as it did 16 years ago when it was initially passed into law. By appointing the Governor as the State's primary representative, and providing for Legislative participation in those negotiations – including the opportunity to advise and consult with the Governor during the process - the State's interests are well-protected, and the content and context of the negotiations appropriately transparent for both branches of government. Further, by narrowing the primary responsibility to negotiate and execute on behalf of the State to the Governor, the process is also an effective and efficient one for the Tribes, allowing for the vital interests of the multiple Tribes involved in the compacting process to be discussed, recognized and implemented with a level of efficiency the Tribe fears will be compromised if, in the future, it is required to negotiate with a 17-member body. The method and manner by which these compacts have been negotiated and formalized over the history of Tribal gaming in North Dakota has been in keeping with not only the spirit and intent of the Indian Gaming Regulatory Act, but also of the relationship and shared goals between the Standing Rock Sioux Tribe and the State of North Dakota. The Tribe sees no reason - either in contemplation of its own interests or by recognizing those of the State - why the compacting process should be significantly altered two decades after it first successfully negotiated a gaming compact with the State.

The Standing Rock Sioux Tribe is a sovereign nation. However, its members are also citizens of the State they reside in. Tribal gaming is a vital resource to improve the lives of those North Dakotans who are members of the Standing Rock Sioux Tribe. While the Tribe is grateful that the Legislature has expressed this interest in working more closely with the Tribe, and while the Tribe would enthusiastically embrace that relationship in dealing with a myriad of issues - including the impoverishment of those North Dakota residents who live on the Reservation, the plague of domestic violence on our Reservations, and the education of our youth - the process currently in place for negotiating gaming compacts has served both the Tribe and the State well, and the Tribe urges members of the Legislature to vote against HB 1294.

¹ Florida - which the survey notes was debating its compacting process at the time the survey was conducted- has since passed legislation granting the Governor negotiating authority, and requiring legislative ratification. See F.S.A. §285.712. Other states were not included in the study but have had laws on the compacting process, such as Nebraska which places all authority in the compacting process with the Executive and requires no legislative ratification. See Neb.Rev.St. §9-1,106.