

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Tuesday, February 21, 2006
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Bob Stenehjem, Chairman, called the meeting to order at 1:10 p.m.

Members present: Senators Bob Stenehjem, Randel Christmann, Stanley W. Lyson; Representatives Rick Berg, Duane DeKrey, Kenton Onstad

Member absent: Senator David O'Connell

Native American Tribal Citizens' Task Force members present: Ken W. Davis, Chairman, Turtle Mountain Band of Chippewa Indians; Tex G. Hall, Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation; Ron His-Horse-Is-Thunder, Chairman, Standing Rock Sioux Tribe; Cheryl Kulas, Executive Director, Indian Affairs Commission

Native American Tribal Citizens' Task Force members absent: James "J. C." Crawford, Chairman, Sisseton-Wahpeton Oyate; Myra Pearson, Chairman, Spirit Lake Nation

Others present: See Appendix A

Senator Larry J. Robinson and Representative Merle Boucher, members of the Legislative Council, were also in attendance.

Chairman Stenehjem recognized Mr. John D. Olsrud, Director, Legislative Council, who reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#) for the 2005-07 biennium.

At the request of Chairman Stenehjem, committee counsel reviewed a memorandum entitled [Tribal and State Relations Committee - Background Memorandum](#) and a memorandum entitled [Reserved Water Rights Study - Background Memorandum](#) which was prepared by the Legislative Council staff for the Agriculture and Natural Resources Committee.

Chairman Stenehjem recognized Representative Berg. Representative Berg said one of the primary objectives of the Tribal and State Relations Committee is to promote economic development in the entire state of North Dakota, including the state's Indian reservations. He said there may be barriers to economic development on Indian reservations which must be identified by this committee in order that they may be removed during the next legislative session.

Chairman Stenehjem recognized Mr. Davis. Mr. Davis noted that although most Indian reservations were allotted pursuant to the General Allotment Act or Dawes Act (1887), several Indian reservations, including the Turtle Mountain Indian Reservation, were allotted pursuant to different Acts. He said the Turtle Mountain Indian Reservation was

allotted pursuant to the McCumber Agreement of 1905. He said the McCumber Agreement included a provision for public land allotments outside the external boundaries of a reservation and thus there are a number of tracts of trust land located outside the Turtle Mountain Indian Reservation.

Chairman Stenehjem recognized Representative Boucher. Representative Boucher noted that the statutory references to the Tribal and State Relations Committee include the Native American Tribal Citizens' Task Force and that the task force and the committee are to meet jointly. He said this is a great opportunity for collaboration on issues of concern to Native Americans and the Legislative Assembly. He noted that the bill establishing the committee has an expiration date of July 31, 2007, and said he hoped one of the recommendations of the committee would be to extend this deadline or make the committee permanent.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Shane C. Goettle, Commissioner, Department of Commerce, who discussed the American Indian Business Development Office and economic development initiatives in Indian country. A copy of Mr. Goettle's written comments is attached as Appendix B.

In response to a question from Mr. Hall, Chairman Stenehjem said the committee could include a resolution of support for Section 8A of the Small Business Act programs in its recommendations to the Legislative Council.

In response to a question from Mr. Hall, Mr. Goettle said he agreed it would be a good idea to include a link to the North Dakota American Indian Business Office and Native American-owned businesses on the Department of Commerce's web site.

TAXATION IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Gary L. Anderson, Director, Income, Sales, and Special Taxes Division, Tax Department, who discussed tax collection agreements between the state and tribal governments in North Dakota. A copy of Mr. Anderson's written comments is attached as Appendix C.

In response to a question from Mr. Hall, Mr. Anderson said that for fuel purchases occurring on tribal lands, other than the Standing Rock Indian Reservation, where a tax collection agreement does not exist and where the fuel has been subjected to state fuel taxes, enrolled tribal members may apply for a fuel tax refund directly from the Tax Department. He said the fuel tax refund is subject to the same requirements as other refund programs, such as agricultural and business purposes, in that the person seeking the refund must provide a receipt for the fuel. In addition, he said, if an individual loses or misplaces a receipt, there are provisions in the statute allowing that individual to submit an affidavit from the fuel seller certifying the amount of taxes paid.

In response to Mr. Anderson's comments, Senator Christmann said the refund provisions for motor fuel taxes for agricultural use work well. In his own experience, he said, there is a learning process and once an individual becomes familiar with the process it becomes easier to obtain the fuel tax refund.

In response to a question from Mr. His-Horse-Is-Thunder, Mr. Anderson said the Tax Department will provide a report on the collection of income taxes on the state's reservations as it applies to members and nonmembers residing on a reservation as well as a review of recent court decisions in this area.

Representative Boucher requested the Legislative Council staff contact the Department of Transportation concerning whether fuel tax revenues returned to the tribes may be used by tribes to match federal transportation funds for construction and maintenance of roads on the state's reservations.

Chairman Stenehjem recognized Mr. Duane Houdek, Counsel, Governor's office, who discussed tribal gas tax agreements. A copy of Mr. Houdek's written testimony is attached as Appendix D.

Chairman Stenehjem recognized Mr. Hall. Mr. Hall said that the statutory requirement that individuals seeking a motor fuels tax refund provide actual receipts for the purchase is a problem for many tribal members and the committee should explore alternatives to ensure that tribal members obtain the refunds to which they are entitled.

DELIVERY OF SERVICES AND CASE MANAGEMENT SERVICES IN INDIAN COUNTRY

Chairman Stenehjem recognized Ms. Linda Wright, Director, Aging Services Division, Department of Human Services. Ms. Wright discussed home- and community-based management and other home- and community-based services available to tribal members and other eligible North Dakota citizens who are older persons or persons with physical disabilities. A copy of her written comments is attached as Appendix E.

Chairman Stenehjem recognized Mr. Davis. Mr. Davis requested that the Department of Human Services provide information on the amount of funds

provided for case management services in Indian country and specify how much of the funds are federal funds, state funds, or other funds. Mr. Davis requested the department provide information on whether these funds would be available to a tribe that wished to assume these services for itself. He said many tribes had explored the option of assuming responsibility for the temporary assistance for needy families (TANF) program only to discover the money for the program did not flow with the responsibility and thus tribes were not able to assume this responsibility.

Chairman Stenehjem recognized Mr. Vincent Gillette, Director, Sioux County Social Services, Fort Yates. Mr. Gillette discussed county issues relating to the provision of social services in Indian country. A copy of his written comments is attached as Appendix F.

Chairman Stenehjem recognized Mr. Hall. Mr. Hall requested the Department of Human Services prepare and present a matrix of human services programs indicating the coverage of these programs for juveniles, elders, and others for state and tribal members indicating who is eligible for which program and who is not.

Mr. Hall said the committee should explore the operation of the Uniform Commercial Code on the state's reservations. He said many tribes are developing their own commercial codes for commercial transactions on the state's reservations and the interaction between these codes and the Uniform Commercial Code and commercial transactions on and off the reservation should be explored.

Chairman Stenehjem recognized Representative Onstad. Representative Onstad said the committee should explore the issue of cross-deputization between local law enforcement agencies and the Bureau of Indian Affairs and tribal police departments.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services. Mr. Schwindt presented an overview of the interaction of child support enforcement services between the tribes and the state. A copy of his written testimony is attached as Appendix G.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Bob Humann, Senior Vice President of Lending, Bank of North Dakota. Mr. Humann discussed the tribal-state loan guaranty program and economic development initiatives in Indian country. Concerning the tribal-state loan guaranty program, he said, the Bank of North Dakota facilitated a meeting with tribal representatives, lenders, a representative of the Attorney General's office, the Indian Affairs

Commission executive director, and Bank of North Dakota personnel to implement the legislation. He said the working group identified a problem with the legislation in that tribes would have to guarantee any contract that the Bank of North Dakota was guaranteeing. He said this looks to be an impediment to the implementation of this program. He said another issue is whether the \$5 million aggregate total contained in the bill is per tribe or for the entire program. He said the group did identify other financing needs on the reservation that could be addressed by the working group. He said these include access to other guaranty programs and access to equity capital to start a business. He said the group was also confused as to what the legislation was designed to accomplish. In conclusion, he said, the program is not yet in place but discussions have commenced on this issue. He said the group is also willing to work with the committee to identify any changes in the program that should be recommended to the next Legislative Assembly.

Senator Stenehjem requested the Legislative Council staff present information on the legislative history of 2005 House Bill No. 1526, which established the loan guaranty program, at an upcoming committee meeting.

In response to a question from Mr. His-Horse-Is-Thunder, Mr. Humann said the primary concerns of the working group were the fact that a tribe has to provide a guaranty and the timing of the payout, whether the payout would be made after the dispute is settled or not, and what entity will make this determination.

Representative Boucher requested the Legislative Council staff invite representatives of the Department of Transportation to discuss transportation finance issues in Indian country and representatives of the Department of Human Services to address long-term issues at an upcoming meeting.

No further business appearing, Chairman Stenehjem adjourned the meeting at 4:15 p.m.

Jeffrey N. Nelson
Committee Counsel

John D. Olsrud
Director

[ATTACH:7](#)