

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1059

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1059

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/08/09

Recorder Job Number: 6704

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Grande opened the hearing on HB 1059. The title was read by the clerk.

Jeff Nelson: My name is Jeff Nelson. I am a staff attorney with the Legislative Council and serve as committee counsel for the interim tribal and state relations committee, the interim committee that is recommending HB 1059. My comments this morning should not be

construed as being in favor of the proposal or opposed to the proposal, but my purpose this morning is to review HB 1059 and to answer any questions the chairman or the committee members might have concerning the proposal. Section 1 of the bill draft deals with the members of the Indian affairs commission. This section merely updates several of the tribal names of the tribal representatives on the Indian affairs commission. Since the commission was created several of the tribal names have been amended or updated or changed and this section of the Century Code is being amended to reflect those changes in tribal names.

Section 2 of the bill draft, this is the section of the Century Code that outlines the powers and duties or the responsibilities of the Indian affairs commission. Currently the Indian affairs commission shall have the power to assist and mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota. A member of the Indian

affairs commission testified at one of our committee meetings that she felt this authority is

discretionary on the part of the Indian affairs commission and this should be made mandatory, a responsibility of the Indian affairs commission. The interim committee felt that that was appropriate and made the change to require the Indian affairs commission to assist and mobilize the support. Again a discretionary responsibility or duty to a mandatory responsibility of the commission. The tribal and state relations committee also received testimony from the Indian affairs commission itself that the commission should be enabled to accept grants, gifts, donations, legacies and devises from any source if those funds were to become available to the Indian affairs commission and that they should be appropriated on a continuing basis. The interim committee felt that this was a good idea and amended the section to provide that the commission may accept these types of funds and that they be appropriated on a continuing basis. The other change in section 2 of the bill draft is merely grammatical to update the code.

Chairman Grande: Any questions from the committee.

Rep. Meier: On page 2, line 1 could you explain legacies and devises and what you mean by that?

Jeff Nelson: That is a legal term that we use and perhaps Rep. Schneider will have to help me out. The legacy would be something left by an individual in a will to another individual. Devices is usually property. Someone may leave some property to the Indian affairs commission. The commission would have the authority to liquidate that property except the funds.

Rep. Froseth: The fiscal note, could you explain that.

Jeff Nelson: I have not seen the fiscal note. I assume that was prepared by the Indian affairs commission and I believe that this would be above their appropriation.

Rep. Dahl: Mr. Nelson, it says the commission may accept gifts, grants. I was just wondering if there was any discussion about avoiding any appearance of impropriety should they accept some of these gifts.

Jeff Nelson: No there really wasn't. I can't recall any specific discussion on that.

Chairman Grande: Did they discuss then who would be in charge of and the holding on those accounts. Who would be able to sign off. Are they planning to set up then a treasurer cosigning on sales and purchase and that type of thing? How does something like this as a commission get set up.?

Jeff Nelson: The committee never really discussed that issue and I don't know if the Indian affairs commission has a specific example in mind when they proposed this or how they are actually going to do the implementation of this should they receive a gift or grant.

Rep. Kasper: On the first page, line 20 where you strike out a few of the words, was there a problem that was discussed by the interim committee on the commission not doing these duties or were reluctant to do these duties or are they doing these duties as we speak.

Jeff Nelson: No, there was not type of problem at all. It was just that one member of the Indian affairs commission felt strongly that giving the commission discretionary authority that she felt that making it mandatory would strengthen the language and strengthen the authority of the Indian affairs commission and require them to do this, but there was no problem identified. Nothing that the Indian affairs commission hadn't done.

Chairman Grande: You also strike out "the voting resident of the". We don't expect the commission members to live in the state?

Jeff Nelson: Right. That is a stylistic or grammatical style of the legislative council.

Whenever we speak of the state it is North Dakota. It was something that was added many,

many years ago, and under our new style and guidelines, we eliminate that. State means North Dakota.

Chairman Grande: Any other questions from the committee. Thank you Mr. Nelson.

Cheryl Kulas: My name is Cheryl Kulas, and I am the executive director of the Indian affairs commission. In my position as executive director of the Indian affairs commission I am also a cabinet member under the governor's cabinet. My testimony should not be construed as either for or against this bill. What I would like to share with you is a little perspective on some of the changes that are proposed under this bill. The 31 legislative assembly created the Indian affairs commission back in 1949. With the start of this legislation marks the 60th year that this commission will be in existence. After 60 years, this commission has functioned as a liaison function between the tribal government and the state of North Dakota. But the primary individuals in 1949 were not members of tribes. They were members of the state agencies.

The intent at that time was to address the growing issues in the native American Indian people back in 1949, 60 years ago. If we look at the goals of the commission created and have been sustaining, we look at the issues of equity. We look at the issues of parity. We look at the issues of increasing the economic self-sufficiency of American Indians in North Dakota. We look at improving the health status of American Indians in North Dakota and to increase the public awareness of American Indians in North Dakota. This is something we really worked hard at as a part of our office and to provide for state and federal recognition of North Dakota American Indian tribes. If we are going to talk about this next step as proposed and this proposed change that you see on line 21 moving from the idea. The former word there was "may" have the power to assist. It was discretionary at that point. This term "shall" is to the mandate. "to assist and mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota, especially the five tribal councils" focusing on the tribal

councils. And "the Indian individuals and tribal councils seek to develop their own goals, project plans to achieve those goals, and implementing those plans." That is the marked change and the intent of the state agency because the tribal sovereign government is requesting a state agency to work directly with tribes in tribal government or with state and federal agencies which is something that we already do in terms of liaison. Part of the intent of the tribal state relations committee was the discussion really focused in on why is it that sovereign tribal governments are not here in that capacity because we are functioning as a state agency. This change would directly move us in a direction from where we've been in the past 60 years to working directly with tribal governments. As a state agency and cabinet position, the executive director works at the behest of the governor. If we look at the evolution of tribal government over the 60 year period, many tribal governments are working directly with the governor's office. In prior years this office served more closely of working with those tribal government in effecting change. Now if we look at the situation where tribal individual people are here in the state, I think we need to continue to think about how do we work with our state agencies. One of the goals under Governor Hoeven's office has been increase the capacity of the state to better address the needs of Indian people. We look at the statistics that are out there. In the correctional system we have 19% of adult population are American Indian. We look at the juvenile detention system. We have 15%. We look at Medicaid. Almost 90% of the caseload are American Indians. Even though our tribal governments are evolving the status and the parity of American Indians are not there. I have a couple publications that I think are worthwhile reading. See attachment #1 and #2. These issues are critical issues. There are a number of programs that are out there. These programs are devolved to state and some of those are shared and some are not. Most of those social programs go directly through the department of human services. There is still a need for greater involvement of tribal individuals

in some of the decision making related to the distribution of social services programs. These programs do need to be more effective in working with people.

Chairman Grande: Would you like to address those issues dealing with the commission "may accept gifts, grants, donations, legacies, devices" and how that would be taken care of?

Cheryl Kulas: The commission functions as a state agency so if the commission were to receive gifts and grants and legacies, I would assume those would function similar to what other state agencies function. We work with the state treasurer's office on anything we receive at this point.

Chairman Grande: Indian affairs commission is what you have up above the highway patrol. But what we're talking about, tribal and state relations committee, is a different entity. Does the Indian affairs commission have the ability to accept gifts, grants, donations. Do you guys take care of that already.

Cheryl Kulas: The commission receives grants. The commission has an administrative staff of four. I serve as the executive director. We have an administrative assistant. We have Chadwick Kramer who is our research analyst. We have Bob Parisien who was legislatively authorized last session to address education issues. We function as the administrative arm for the commission. The commission is chaired by Governor Hoeven and the tribal chairpersons for the state.

Chairman Grande: Questions from the committee?

Rep. Winrich: In the fiscal note that you prepared, the note shows general fund allocations of \$566,000 and in other funds of \$576,000. Are the other funds what you anticipate receiving in gifts and grants that are authorized? Or does that come from some other source?

Cheryl Kulas: The commission is funded 100% by the general fund. We have, at prior times, received a grant through the department of human services which we administer out of our office for a two-year period. Our proposal for 09-11 is still 100% general fund.

Rep. Winrich: So there is no anticipation of what the gifts will be.

Chairman Kulas: We had applied for a grant proposing in receipt of bringing in an Indian education administrator into our office was to be working on a pre-college grant for American Indian students, and we did not receive that grant. We will be pursuing that that again. We would still have to go to the emergency commission to receive a grant in our office. To accept any additional grants to our budget.

Chairman Grande: So could you continue to clarify where it says general funds, you're looking for dollars that would come from the general fund. Is that in the governor's budget at this time?

Cheryl Kulas: Correct. The governor's budget has approved our budget.

Chairman Grande: \$566 is the current numbers in the budget. Do you know what the other fund dollars are? Is that in the budget also?

Cheryl Kulas: I don't have the budget because I wasn't prepared to deal with the full budget this morning.

Chairman Grande: Would that be the grant you were just speaking of then? The dollar amounts left to be distributed off a grant?

Cheryl Kulas: We do have a printing fund and that might be the printing fund. We requested an appropriation of \$587. \$687,185 is the proposed operating budget for the commission for 11-13.

Rep. Kulas: I'm having trouble digesting what these changes really are. I'm having trouble understanding what the problem is now that you're trying to change so that you can do more or

less in the future. What are the problems that you're encountering now that these amendments are going to change to help you function the way you'd like to.

Cheryl Kulas: This bill came out the tribal state relations committee. We presented as part of our testimony the fact that our agency works with 37 committees in the work that we do with the staff of 4. The concern that was raised at that time was that how can we effectively function with a staff and liaison with that number of people. The intent was at that time and the discussion also related to whether or not the tribal government as a sovereign government that our office wasn't functioning as a representative of the sovereign government. Part of the changes were for clarification. Contemporary terminology that needs to be added. The way from line 7 to line 17 really was an indication from the members of the tribal state relations committee to honor the tribes in the tribal government as sovereign governments by accepting their names because the terminology that was used really speaks to a different era. The second part would be a philosophical change from line 18 through line 24. It would move us in a different direction because it hasn't been clarified. It would change the work of the commission to work more closely with tribal governments as agents of those governments.

Rep. Kasper: I think I see where you're wanting to go but I don't think this bill does that. I think this is more ceremonial than what you actually want. If that is the direction the commission is wanting to go and the governor is wanting to go, perhaps we ought to be looking at putting more teeth into your desire as opposed to maybe not getting where you wish to go and the next time you have a lot more frustration.

Cheryl Kulas: It may very well so. It was one of the tribal chairperson who, in response to this bill, coming through this tribal state relations committee is an expressed wish by a chairwoman and I cannot speak to the intent beyond that. By the governor endorsing this and

saying there was no problem, I would assume that might be the direction of the governor's office.

Chairman Grande: Any other questions from the committee.

Rep. Froseth: The general fund appropriation listed here is not the appropriation for the biennium.

Cheryl Kulas: The \$687,185 for the 2011-2013 biennium general fund appropriation is the request. \$566 is the current budget.

Chairman Grande: Any more testimony in favor of HB 1059?

Tom Disselhorst: My name is Tom Disselhorst. I am an attorney with the United Tribes Technical College. We had a concern and it will be the same concern we will raise in HB 1060 about the name changes. Now there were suggestions that this was at the request of the tribes. That may well be true, but officially their name is listed every year in the federal register which is part of the United States government. If the tribe has sought to change its name officially than what appears in the federal register, and these names have not changed from what is in the legislation. Tribes may want to call themselves other things, and they may actually do that, but the names have not officially changed.

Chairman Grande: The national registry says the Three Affiliated Tribes of the Fort Berthold Reservation.

Tom Disselhorst: That is correct. The federal register is a listing that comes out every year. Usually a name of a state or country is changed through a constitutional amendment and as I said, the tribes have called themselves other things. To be fair to anybody who testifies before the tribal state relations committee suggesting a name change, we aren't trying to urge the committee one way or the other on these names other than to suggest the committee might want to consult with elected tribal officials. The government itself determined their name has in

fact changed and that they want to be recognized by a different name. But the concern we have is when another group comes into office, then they change the name to something else. If the name has not been changed officially with the constitutional amendment of that tribe, it would seem rather pointless to change the name every two years. That's the concern we have on that name issue. I'm not trying to speak against the tribal officials who ask for the change. They may well have meant that in all good intentions. If the name of a tribe had changed it normally would be done by a constitutional amendment. United Tribes of North Dakota makes sure that the names are correct and we want to make sure they are correct in legislation.

Rep. Froseth: If in fact we change the names in this, how many other sections of the code would change? If we change this section of legislation it should be changed throughout the code.

Tom Disselhorst: I agree with you.

Rep. Froseth: I don't think we should do that until they are officially changed on the federal register.

Rep. Kasper: For clarification purposes, you said it requires a constitutional amendment by the various tribe to their constitution?

Tom Disselhorst: I believe it is true for every tribe in North Dakota that that would require a constitutional amendment.

Rep. Kasper: It's the constitutional amendment of the tribe, not the state.

Tom Disselhorst: The tribe yes. Not the state. Every tribe in the state has a constitution. One of the first sections is the name of the tribe and its jurisdiction. So that's the issue that I am raising.

Rep. Kasper: Didn't this discussion come up during tribal relations hearings and wasn't this concern mentioned or was it overlooked.

Tom Disselhorst: I tried to raise it at one point, but I was a bit dissuaded from doing so because tribal leaders had testified earlier. The tribal state relations committee was held on the various reservations when this came up, so I wasn't sure how it came up in the committee. The minutes reflect in part where that comes from.

Rep. Kasper: Is there something that should be looked at legislatively to allow the commission to do job better the way they would like to and not upset the apple cart?

Tom Disselhorst: I'm not sure this is an easy to question to answer. I think it would be worthwhile to compare the functions of the Indian affairs commission in North Dakota with the functions of Indian affairs commissions in other states. It's not something I would suggest to force upon this committee right now or even in this session. It would be a little premature without a real study. The other part of this that's important is that if you do expand the functions of the commission, you have a duty to think of that as budget and so I like that provision that allows you to receive donations, but I feel a little bit ill at ease suggesting changes to the structure without the commitment from the legislature to make those things happen.

Rep. Amerman: To change the name in a tribal constitution, can you give me the process of how they do that.

Tom Disseldorf: The process is different for every tribe but typically if you are a new organization and constitution, it requires first that the council or petitioning group of tribal citizens request that a constitutional amendment be done and that has to be run through the secretary of the interior to what is called the secretarial election. The secretarial election is an election governed by the secretary of interior for all the citizens of the tribe to vote on that constitutional amendment. There has to be a certain number of days between the time the council proposes it and the interior department actually has an election.

Rep. Nathe: Has the Affiliated Tribes talked about the name change?

Tom Disselhorst: The constitution actually lists the three affiliated tribes. It doesn't not say it, but it also says the official name is the Three Affiliated Tribes of the Fort Berthold Reservation and then that Mandan, Arikara, Hidatsa nation is the way it works. You could use the Three Affiliated Tribes of the Fort Berthold Reservation and then leave in the dash. That probably would be officially correct from the standpoint of the constitution. It is not the official name however as I said in the federal register which is the way the federal government identifies the tribe. Our position is we are not opposed to this but you should get official communication from the tribal leaders confirming the name change.

Rep. Froseth: If you change it in this section of the law, it still wouldn't be official.

Chairman Grande: I think it's something we'll have to look in a little bit and find out where we further want to take this.

Rep. Kasper: I'm wondering is Tom Disselhorst suggesting maybe there should be a study resolution for the next interim. Would that be something that we might want to have him draft that we could consider?

Chairman Grande: You can have that discussion with him when we have finished this.

Anybody else who wishes to testify on this bill. For? Against? Close the hearing on HB 1059

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work One HB 1059

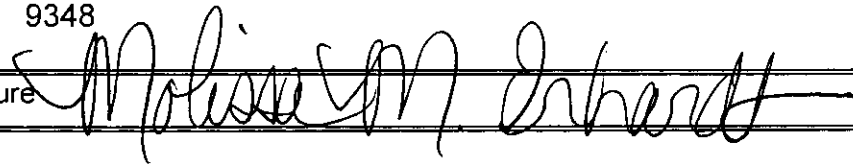
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 2/12/2009

Recorder Job Number: 9348

Committee Clerk Signature



Minutes:

COMMITTEE WORK ONE:

Chairman Grande: We will have a discussion HB 1059. If you remember in the discussion on this bill we talked about getting federal registry names put in.

These are the federal registry names and they have been voted on and approved by the chairman as you will see on the bottom of Cheryl's amendments there. If you remember in her testimony she wasn't really happy with changing "shall", so we are going to go back with the language she has listed under that Section 2. But make sure you cross off the words "continuing appropriation" on Line 20, if you remember last week I told you that the appropriation is already in their budget so we do not have to deal with that here. Do you see where she has those amendments, Line 20 and Line 21? Her amendments will work I don't want to mess it up with two sets. Along with that what I would like to do is revert back to the old language except for Page 2, Line 3 and down we want to do that correct with language.

Rep. Dahl: In Section 1, we would not change any of the existing language?

Chairman Grande: Correct. We are going to revert back it looks like.

Vice Chairman Randy Boehning: Page 1, Line 12, Overstrike "tribe" and take out the word "nation."

Rep. Dahl: On Line 10 we are going to keep of "North Dakota".

Vice Chairman Randy Boehning: Remove overstrike of the Fort Berthhold Reservation and remove Mandan-Hidasta and Arikara on Line 13. On Line 21 overstrike "shall" and after the first overstrike "to" and insert "may".

Chairman Grande: Take out "shall" and put in "may" and then add back in "have the power".

Rep. Wolf: She wants to add that back in? She left the overstrike in her testimony.

Chairman Grande: Wait, she did, my fault, my fault, I misread, may assist. She did not want that as a mandate. We are going to leave in the "Indian individuals and tribal council" we want to keep that language. We are going to take off the "commission may". We are going to remove that following new language. One of the concerns I had and I remember in committee discussion as to how we could be monitored and where does it go and how do you do it. We moved to set up a whole thing with the Treasurer's Office and all of these things and I think they need to work on how they wanted to proceed with that. So we will let them

work that out. In the back of my mind I think that since this is an agency that is already there, I think that they can establish that themselves without us telling them. I really do. That will get mentioned with the Senate too and I will mention that to Senator Dever just to make sure that he knows we took that out.

Rep. Dahl: So this just essentially becomes a bill with cleanup language with no substantiated changes?

Chairman Grande: Other than just the Indian individuals and tribal councils, I think it is just clarification. That is really what it does, it clarifies the names and puts that all on the same page.

Vice Chairman Randy Boehning: So we are removing all the underscored language from Line 24, "the commission may" except grants, all the way down to the end of the commission Line 2.

Chairman Grande: Correct. Then we are going to keep all those changes from Line 3 on down.

Vice Chairman Randy Boehning: Motion for moving the amendments.

Rep. Wolf: 2nd.

Rep. Froseth: About the only thing this bill does after all the amendments is change the word "shall" to "may."

Chairman Grande: It actually kind of reverts back to that type of language but we do correct the "mays". That is what it does.

Rep. Wolf: We have new language on Line 23.

Chairman Grande: Then we have clean up on the back.

Rep. Meier: Motion for Do Pass As Amended.

Rep. Wolf: 2nd.

Chairman Grande: We have not voted on the amendments.

Rep. Meier: I will remove my Motion for a Do Pass As Amended.

Chairman Grande: I do appreciate the fact that we are not making a lot of substitute changes in here but we do have an opportunity to clean up some redundant language and to put things in proper style and form and that is about were this bill ends up at this point. That will be up to the committee's wishes to do a cleanup bill or a Do Not Pass.

Rep. Dahl: It makes a few changes and I think we should go with it.

Rep. Froseth: Is the fiscal note going to be with this when it goes to the floor?

Chairman Grande: No it is not. I asked the appropriations committee about that because we would have had to kick this out before and they questioned why we even have it. I said to Kim as long as you have her budget she said "yes" and I said then it doesn't matter and he said "correct".

Rep. Froseth: Just as long as it doesn't show up when it gets to the floor.

Chairman Grande: I will double check to find out. But that fiscal note should not be on this bill.

Vice Chairman Randy Boehning: If you take out continuing appropriations.

Speaking of that do we have to remove Line 3.

Chairman Grande: Yes, it has already been overstruck. We have the amendments before us. All in favor? I. Consent. Opposed?. None.

We have the amended bill in front of us.

Rep. Meier: Motion for a Do Pass As Amended.

Rep. Wolf: 2nd.

Chairman Grande: Discussion? Clerk will call the roll.

Clerk Erhardt: Roll Call. Yes: 11. No: 0. Absent: 2. Carrier: Rep. Wolf.

FISCAL NOTE
Requested by Legislative Council
03/17/2009

Amendment to: Engrossed
 HB 1059

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1059 is not requesting any funds.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB 1059 as amended has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

unknown

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

unknown

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

No funds have been requested in the executive budget or as a continuing appropriation.

Name:	Chadwick Kramer	Agency:	ND Indian Affairs Commission
Phone Number:	701-328-2406	Date Prepared:	03/17/2009

FISCAL NOTE
Requested by Legislative Council
02/16/2009

REVISION

Amendment to: HB 1059

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This fiscal note is consisted with the amendment by the House Subcommittee on Government and Veterans Affairs. HB #1059 is not requesting any funds.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of HB 1059 as amended has no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

-0-

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

not applicable

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

not applicable and not related to the executive budget.

Name:	Ceryl Kulas	Agency:	ND Indian Affairs Commission
Phone Number:	701-328-2432	Date Prepared:	02/16/2009

FISCAL NOTE
Requested by Legislative Council
02/16/2009

Amendment to: HB 1059

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This fiscal note is consisted with the amendment by the House Subcommittee on Government and Veterans Affairs. HB #1059 is not requesting any funds.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of HB 1059, as submitted may have a fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

-0-

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

not applicable

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

not applicable and not related to the executive budget.

Name:	Cheryl Kulas	Agency:	ND Indian Affairs Commission
Phone Number:	701-328-2432	Date Prepared:	02/16/2009

FISCAL NOTE
Requested by Legislative Council
12/08/2008

Bill/Resolution No.: HB 1059

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$566,754	\$576,258	\$587,496	\$0	\$687,185	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1059 gives authority to the ND Indian Affairs Commission to receive funding from a variety of sources. At this time it is unknown what impact this authority will have on the State of North Dakota.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of HB 1059 may have a fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

unknown

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

unknown

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

unknown

Name:	Cheryl Kulas, Director	Agency:	ND Indian Affairs Commission
Phone Number:	(701) 328-2424	Date Prepared:	12/12/2008

February 12, 2009

VR
2/12/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1059

Page 1, line 3, remove "; and to provide a continuing appropriation"

Page 1, line 12, remove the overstrike over "~~Tribe~~", remove "Nation", remove the overstrike over "~~of the Fort Berthold Reservation~~", and remove "- Mandan, Hidatsa,"

Page 1, line 13, remove "and Arikara"

Page 1, line 20, remove "- Continuing appropriation"

Page 1, line 21, overstrike "shall" and after the first "to" insert "may"

Page 1, line 24, remove "The commission may"

Page 2, remove line 1

Page 2, line 2, remove "for the purposes of the commission."

Renumber accordingly

Date: 2/12/9
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1059

House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich	✓	
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes)

11

No

0

Absent

2

Floor Assignment

Rep. Wolf

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

REPORT OF STANDING COMMITTEE

HB 1059: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1059 was placed
on the Sixth order on the calendar.

Page 1, line 3, remove "; and to provide a continuing appropriation"

Page 1, line 12, remove the overstrike over "~~Tribe~~", remove "Nation", remove the overstrike
over "~~of the Fort Berthold Reservation~~", and remove "- Mandan, Hidatsa,"

Page 1, line 13, remove "and Arikara"

Page 1, line 20, remove "- Continuing appropriation"

Page 1, line 21, overstrike "shall" and after the first "~~to~~" insert "may"

Page 1, line 24, remove "The commission may"

Page 2, remove line 1

Page 2, line 2, remove "for the purposes of the commission."

Renumber accordingly

2009 SENATE POLITICAL SUBDIVISIONS

HB 1059

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1059

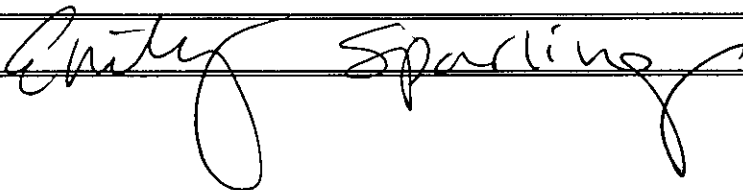
Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: 03/12/2009

Recorder Job Number: 10774, 10775, 10776

Committee Clerk Signature



Minutes:

Chairman Andrist Opened the hearing on HB 1059

Jeff Nelson Staff Attorney for Legislative Council. Provided information on HB 1059. Walked the committee through the old form of 1059 and talked about the changes made in the engrossed copy. He explained that most of the changes in the bill are stylistic and the engrossed version does nothing but clean up language. He recommended that the current version not be passed without creating new amendments as the new version makes no substantive changes. The LC adheres to the cannon of the "legislative assembly does not do idle acts."

Chairman Andrist It appears that changes have been made.

Nelson The bill makes no substantive change; the only changes are grammatical.

Senator Bakke Why did the bill take the continuing appropriation out?

Nelson I was not in on that discussion. I could get the legislative history for the committee.

Senator Dotzenrod I see that this is the fifth version of the bill, why is this the fifth version of an innocuous bill?

Nelson The first three versions were draft versions created during the interim. The fourth version was the bill that was introduced in the house.

Senator Dotzenrod Is the axiom "legislative assembly does not do idle acts" in statute?

Nelson No, it is simply a rule of interpretation.

Cheryl Kulas Executive Director of the ND Indian Affairs Commission. Spoke in support of 1059 if it is amended further. Spoke about the three changes in the bill: 1) the formalization of the names on the bill in accordance with the federal government's accepted names 2) the commission did not like section 2 which they felt impinged on the rights as a sovereign nation by requiring a group to work with them without their request, they did not like the language of "shall" but prefer "may" 3) they also dealt with the continuing appropriation, the committee felt that it was unnecessary language as there is no appropriation in this bill.

Chairman Andrist So the appropriation is dealt with in another bill?

Kulas Yes.

Discussion about the concern on the part of the commission that accepting gifts and grants may affect or endanger the appropriation amount they receive

Chairman Andrist So do you support the bill as amended?

Kulas I agree with LC that as it is amended, it serves no purpose without the continuing appropriation language. The appropriation is important; it has helped us make small progress.

Chairman Andrist When you talk about the committee are you talking about the House Political Subdivisions or Appropriations committee?

Kulas The house Appropriations committee.

Chairman Andrist The Appropriations committee thought that accepting grants might jeopardize the appropriation?

Kulas They called it a policy issue.

Senator Anderson I agree that this is basically a bill about nothing but you did mention that you do not like the wording "shall." Does the current law say shall and you want to change it to may?

Kulas The original and continuing wording uses may.

Senator Lee I would see it as a positive to bring the language back in about accepting gifts and grants. I am not threatened by thought of further discussion about this. There are many instances where we do this type of things with other programs. We would like people to seek out other sources of funding outside of tax dollars.

Kulas I wholeheartedly agree. Spoke about an example of program where the appropriation does not cover costs and they would like to be able to access outside funding.

Chairman Andrist So the continuing appropriation is the only real issue the bill is tackling?

Kulas Yes

Senator Bakke I agree with Senator Lee but do we need to add language that says that any gifts received will not affect the appropriation?

Senator Lee I don't think so

Senator Bakke We need to put that authority back in to receive gifts.

Job # 10775

Discussion about where the bill should be amended, in Political Subdivisions or Appropriations. The committee decided that the language about the continuing appropriation is necessary by statute (the Intern will check and get back to the committee on that) to cover the ability to take gifts but that the bill will not need to go to appropriations. The intern will prepare an amendment.

Job # 10776

 **Senator Dotzenrod** Spoke about the difference between shall and may and the fact that it does affect the bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1059

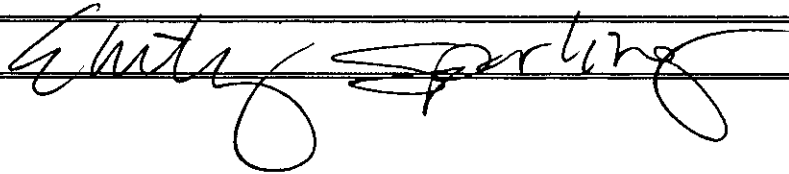
Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Hearing Date: 03/13/09

Recorder Job Number: 10880

Committee Clerk Signature



Minutes:

Chairman Andrist Opened the discussion on HB 1059

Senator Anderson I move to adopt the amendment

Senator Bakke Second

Discussion about the amendment and the concerns relating to its affect on the commission's appropriation.

The Clerk called the role on the motion to move the amendment. **Yes: 6, No: 0, Absent: 0.**

Senator Bakke I move **Do Pass as Amended**

Senator Lee Second

The Clerk called the role on the motion to **Do Pass as Amended**. **Yes: 6, No: 0, Absent: 0.**

Senator Lee will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1059

Page 1, line 3, after "commission" insert "; and to provide a continuing appropriation"

Page 1, line 19, after "duties" insert "- **Continuing appropriation**"

Page 1, line 23, after "plans." Insert "The commission may accept gifts, grants, donations, legacies, and devises from any source which are appropriated for the purposes of the commission."

Renumber accordingly

Date: 2/10/11
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1059

Senate Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☐ Do pass ☐ Do not pass ☒ Amend

Motion Made By A. Anderson Seconded By _____

[illegible]

Total (Yes) 1 No 0

Absent (

Floor Assignment

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

insert "continuing appropriation"

Date: 2/15
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1054

Senate Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☒ Do pass

☐ Do not pass☒ Amend

Motion Made By

Seconded By

[illegible]

Total (Yes)

No

Absent

Floor Assignment

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

REPORT OF STANDING COMMITTEE

HB 1059, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1059
was placed on the Sixth order on the calendar.

Page 1, line 3, after "commission" insert "; and to provide a continuing appropriation"

Page 1, line 19, after "**duties**" insert "- **Continuing appropriation**"

Page 1, line 23, after the period insert "The commission may accept gifts, grants, donations,
legacies, and devises from any source which are appropriated on a continuing basis for
the purposes of the commission."

Renumber accordingly

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

HB 1059

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Conference Committee Minutes HB 1059

House Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: 04/14/2009

Recorder Job Number: 11847

Committee Clerk Signature

Melissa M. Erhardt

Minutes:

CONFERENCE COMMITTEE MINUTES:

Chairman Grande: Open the hearing on Conference Committee HB 1059.

I will have the clerk call the roll.

Clerk Erhardt: Roll Call. Chairman Grande, Rep. Glen Froseth, Rep. Lisa Wolf, Senator John Andrist, Senator Judy Lee, Senator Arden Anderson. All present.

Chairman Grande: We would like to offer some new amendments and have the Senate recede from their amendments.

Senator Andrist: We felt that there was really no direction from the Indian Affairs Bureau.

Chairman Grande: I think it is interesting that your initial comment of the testimony was questioned. You were not quite sure what she was saying and that was exactly where our committee came from. The one person that came in, the director, was lukewarm, at best to the Legislation and she was actually the one who came in and her main focus was to truly get the "shall" to a "may" and

that was the only focus. I had asked her to draft something as to how she would like to see it written and she had not included the language and that is why we had removed it. So I had only done what she had drafted for me as to how she wanted it amended and that is why we had what we had in front of us. That is why the bill came to you in the form it did.

Sen. Andrist: It pleases me to hear you say that because we felt, I think, that she really didn't understand the bill herself.

Chairman Grande: I did go back and read some of the previous information and stuff and this came off of one person's request. They wanted to be able to do something like this and there was no clarification to her that the bill was even going to be drafted. So she was unaware of it until she was in front of us and so that is why I had asked her through the testimony for her to go back and you look at it and you give me the wording you are looking for and that is how we came up with this.

Sen. Lee: Ms. Kulas was having some health issues that resulted in surgery a week or so ago and she may have been unavailable for some of that and unaware of some of the conversations. At the request of our Chair visited with the Governor's office about it and Mr. Bernstein is here perhaps to explain and clarify some of the background on that. They are supportive of allowing the

Indian Affairs Commission to accept grants and gifts. The one that I mentioned

before we had our little tape issue here was that they have a Youth Leadership Program for example, that has just modest, if any funding, in their appropriations bill for the Indian Affairs Commission and it has been extremely useful and effective for the young native children who are involved with it and they cannot do the whole program with the funding that is in the appropriations bill. I guess our hope, perhaps, on our side was that we might be able to get together with you and see if there was a way that we could work it through so they could have the ability to accept other private funding so that they could move forward with some of these programs that they feel are worthwhile and have really good potential for the future too since there isn't any general fund money involved at all with that.

Rep. Froseth: I think that some of our committee had concern about how these gifts and grants and so forth were going to be handled. It doesn't say anything in the amendment that tells us where the money is going and how it is funneled back for different purposes and so forth. Maybe that can be worked out with an amendment.

Chairman Grande: One of the things I had done some looking at what have other agencies allowed and have done. With legacies and devisees, that is not typical language at all and other agencies ability to do gifts, grants, and donations and so that was another concern that are committee had and I am still looking to see if we can find other agencies that do do that and how it has

worked. With that type of thing you would be dealing with sales because it would be devisees and that is real property upon death. What do they do with that and how do they do that and where does that become monitored I think are very important pieces to the comfort level for us.

Sen. Andrist: This is in some response to Rep. Froseth but I guess it finally started to clarify and it took awhile for us to figure out, just as it did for you. The State Office of the Indian Affairs Commission is very modestly funded and has very few personnel but we kind of visualized it when I worked on it with appropriations as kind of a place to bring people together. My vision was that any community who was using this program they could come in to this office and say we think this is a good program would you coordinate if we put up the money for it. In which case I guess I felt that we didn't really need to track how it was spent as long as we are not putting money into in the first place.

Sen. Lee: Another part of that whole situation is that most entities if we are talking about foundations in particular, but even entities like the United Way, because I have been on the board there on two separate occasions, and programs are presented to the United Way or to the foundation and then if they are approved by that entity that is going to give the funding the accountability is to that entity for the way that is carried through. So if the Dakota Medical

Foundation or the Bush Foundation or the United Way or the Government and

● Veteran's Affairs and Political Subdivisions Foundation decided that they had a pool of money and the Indian Affairs Commission had a proposal from a particular tribe for example that would work on suicide prevention that wasn't something that was being run through Human Services Department. The foundation that is working with those programs is always very specific about what the criteria are that have to be met in order to get the funding in the first place. They always have to account back for it so I don't expect to hear on any of those entities that are involved with Human Services for example who get other kinds of funding besides State Funding the State doesn't ask for them to account for those dollars that are extended to provide for children and family services. We give so much money to those kinds of programs but The Village has other sources of funding and Lutheran Social Services has other sources of funding although they get money from us as well as a State. So they should have to account to whoever those donors are and we don't as a State have to ask them for accountability for everything they do because whoever is providing the funds will ask for accountability in that area.

Rep. Wolf: This may be something that we want to check out and I believe that universities have the ability to accept in their laundry list of things that they can accept they can accept devisees and legacies. I know on the House Bill that ● went to the Senate to create the ND Youth Council, one of the things that the

Senate did in that was put the authority for the Youth Council to accept gifts, grants and donations of money, property, and services to carry out this act. That was put in and it has been passed now again by the House and is with the Governor at the moment and that was put in so that if someone gives them a donation and they could spend it. It is pretty similar to the Indian Affairs Commission. There is language in that bill about that.

Chairman Grande: When I looked at powers and duties for the Indian Affairs Commission it doesn't talk about them doing that. That wasn't necessarily in their powers and duties of things to do they were doing cooperative things between the tribes and agencies and that was really what their purpose was.

I guess what my thing I am dealing with this too is, is this something that we are looking to stand into for them which I am not saying I am against I am just saying that the Director had not necessarily thought that was what her jobs and duties were going to be. As long as there would be an understanding as to what her duty was that might be different but I know that in her testimony not even wanting to go to the "shall" where she would be asked to "she must" do those things was an issue for her and now we are adding another task upon that where she might be doing maintaining of the trusts and looking for foundations and seeking out this kind of aid and working with these kinds of programs is this the duties she is

looking for. That is the question that keeps coming to my mind when I am looking at what her job description is.

Sen. Andrist: I am not sure how innovative she would be as far as being proactive but my thought is if we are comfortable with this maybe we should get the take from the Governor's office and let them explain from their standpoint how it came to be.

Chairman Grande: This bill comes out of the interim committee. It comes out of the Indian Affairs committee.

Sen. Lee: Can we still ask Mr. Bernstein what the Indian Affairs Commission or the Governor's position is?

Chairman Grande: Our committee can certainly do that but I have never been one to open up the podium for testimony in a conference committee.

Sen. Lee: But he is just answering a question and it will make us better informed. But you are the Chair and you decide.

Chairman Grande: As to what? The Governor's take on how this agency should run this if we give them this authority, is that what the question is?

Sen. Lee: My perception on the amendment that we are discussing is not as deep as yours I guess. I am looking at whether or not that it is appropriate for the Indian Affairs Commission to be enabled to accept gifts and grants for particular purposes if it is used for a particular function and that is maybe from the House

Committee's point of view a superficial approach to it but that is really where the thrust of our discussion was and we were quite comfortable with them being able to do that and we didn't just tie it to the individual who was the Director at the time because she seemed very nervous at the time of the hearing. We were trying to find some of our information from other places in order to determine whether or not there would be an appropriate use for this. Although she did particularly mention the Youth Leadership Program that does need this private funding. So there is some involvement with that kind of support. For example there might be a casino that would direct some funding to a particular native program. We just kind of thought that maybe there was a place for this and we didn't see it necessarily as a big expansion of their duties but rather enabling them to take advantage of an opportunity that might present itself and not be in a position to say "Well, gosh we can't do that because we don't have the Legislative authority to accept the funding."

Chairman Grande: I just go back to the list of powers and duties and it isn't within the preview of that agency to do those types of things so that is where I am kind of at with that at that point. But I have asked Council to really look at the wording for gifts, grants, donations, legacies, and devisees. Bringing the higher education into this doesn't help us because higher education is a dog of their

own and we can't compare an apple to an orange there. But as far as other agencies themselves we don't tend to use legacies and devices.

Sen. Lee: That was the language that was provided for us. We didn't sit in the committee and talk about legacies and devisees, it was just part of the phraseology so to speak that came through the Legislative Council and if there was discomfort with some of the terms that are in there then I think we maybe need to discuss that rather than throwing out the baby with the bath water.

Chairman Grande: I am not saying necessarily that the House was ready to throw the whole baby out we are just saying that there was confusion as to why all of a sudden this was back in when initially it wasn't asked for by them, that would be a little bit of a difference for the House to say "What happened in that time frame?" and this is our option to discuss what happened in that time frame. I think that with us we are just looking at what is the purpose and duties and powers and what does this lend to it? Does it make better, does it make worse, does it do nothing? That is all the House is looking at at this point.

Sen. Andrist: I just wanted to point that we don't see any boogeyman's here. It is not a directive for what the agency can do, it is permission to do something if they got money to do it and they have the program. I think there is a lot of money wasted in the Native American Community and there is a chance here that some

of what is being wasted could be better spent on something. Maybe an innovative Director could make good use of it. We couldn't see any down side.

Chairman Grande: It is good to have the discussion and I am glad we have had the opportunity to do this I think we would like to go back and look at the wording and decide if maybe we want to see what we are doing with legacy and devices and come up with some language and come back and continue the discussion.

Sen. Andrist: I might add that I am not sure what a legacy is but a devisee would be if some wealthy Native American wanted to leave them a sum of money for some purpose I suppose that would be where the devisee would be.

Chairman Grande: Devisees tend to be attached to real property so that they would be actually giving of real property upon death. Then typically they would turn around and sell it or lease it or do something to gain money off of it and then utilize it in a trust form. That is typically what you would do with a legacy or devisee's. Just trying to decide to with that the complications of, someone needs to be able to manage that type of thing. Now very simply put it could probably all go into the Treasurer's office and that is how it could be managed. That would probably be a very simple way it could be done. I think we should go back and see where we come up with a comfort level of those particular words. I would like to at this time adjourn and reschedule. Hearing Adjourned.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Conference Committee Minutes Two HB 1059

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 04/16/2009

Recorder Job Number: 11898

Committee Clerk Signature

Melissa M. Erhardt

Minutes:

CONFERENCE COMMITTEE MINUTES TWO:

Chairman Grande: We will open the Conference Committee hearing on HB 1059. Clerk will call the roll.

Clerk Erhardt: Roll Call. Chairman Grande, Rep. Glen Froseth, Rep. Lisa Wolf, Sen. John Andrist, Sen. Judy Lee, Sen. Arden Anderson.

Chairman Grande: The other day we had an opportunity to discuss where we all were coming from on the issue and some of the history on it. In discussion with the House members we would like to offer at this point an amendment. It would be a proposed amendment to the Engrossed House Bill 1059 and I am actually going to amend the amendment.

Sen. Andrist: So what you want to do is accede to the Senate amendments and then further amend?

Chairman Grande: What they told me I am supposed to do is have the Senate recede from its amendments as printed in the House Journals pages and then on

Page 1, Line 1 after commission insert "to provide a continuing appropriation" and put that back in. Then we put back in on Line 19 duties and insert "continuing appropriation." Then for Line 23 after the period insert "the commission may accept gifts, grants," and then I want to put in the word "services" there. So it would say; "gifts, grants, services and donations from any source which is appropriated on a continuing basis for the purpose of the commission." I will let Rep. Wolf talk about the services aspect.

Rep. Wolf: I had suggested adding the word services in the bill that establishes the ND Youth Council that was something that Sen. Flakoll had put into that bill.

It was gifts, grants, donations and services and that is where services kind of originated from and this would allow this commission to have services provided to them as well.

Rep. Froseth: This is very minor but I think if you said gifts, grants, services and donations it would read better.

Chairman Grande: Either way we do that is fine.

Sen. Lee: I think that is a good addition with the services and based on our discussion of a couple of days again we are probably looking less at the legacies and devisee's and if we find that those kinds of things occur as the work of the commission evolves in the next couple of years it is something the future

Legislative Session can address as well. I certainly think that is a good option.

Chairman Grande: As this amendment reads I don't know the formalities exactly but I don't know that I can ask you to recede but you have to offer the amendments.

Sen. Andrist: I think anybody can but I would be willing to do it if you are more comfortable with that.

Chairman Grande: I am more comfortable with that because I feel like I am telling you that you have to do that versus you are making that offer.

Sen. Andrist: You would like a motion that we recede from the Senate amendments and we further amend with the language that is here including the "and services." I will make that a motion.

Chairman Grande: Sen. Andrist makes a motion to accept these amendments. Do I have a 2nd?

Sen. Lee: 2nd.

Chairman Grande: Any further discussion? Clerk will call the roll on the amendments.

Clerk Erhardt: Roll Call: Yes: 6. No: 0. Absent: 0. Carrier: Chairman Grande.

Chairman Grande: Having made that motion and no further discussion we will close the hearing on HB 1059.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HB 1059 (, as (re)engrossed):

Date: 4/14/9

Your Conference Committee JVA

For the Senate:			For the House:		
	YES	NO		YES	NO
RC ✓ Chair Sen. John Ardis			Chair Rep. BETTE GRANDE		✓
✓ SEN. JUDY LEE			Rep. GLEN FROST		✓
✓ SEN. ARDEN ANDERSON			Rep. WISA WOLF		✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

CARRIER: _____

LC NO. _____	of amendment _____
LC NO. _____	of engrossment _____
Emergency clause added or deleted _____	
Statement of purpose of amendment _____	

MOTION MADE BY: _____

SECONDED BY: _____

VOTE COUNT YES NO ABSENT

VR
4/16/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1059

That the Senate recede from its amendments as printed on page 1004 of the House Journal and page 774 of the Senate Journal and that Engrossed House Bill No. 1059 be amended as follows:

Page 1, line 3, after "commission" insert "; and to provide a continuing appropriation"

Page 1, line 19, after "**duties**" insert "- Continuing appropriation"

Page 1, line 23, after the period insert "The commission may accept gifts, grants, donations, and services from any source which are appropriated on a continuing basis for the purposes of the commission."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number HB1059 (, as (re)engrossed):

Date: 4/16/9

Your Conference Committee GVA - House

For the Senate:

For the House:

	YES / NO		YES / NO
☒ Sen. John Andrist Chairman	☒	☒ Rep. Betty Grande Chairman	☒
☒ Sen. Judy Lee	☒	☒ Rep. Glen Froseth	☒
☒ Sen. Arden Andersen	☒	☒ Rep. Lisa Wolf	☒

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (S/H) page(s) 774 -

X, and place HB1059 on the Seventh order.

X, adopt further amendments as follows, and place HB1059 on the Seventh order.

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) HB1059 was placed on the Seventh order of business on the calendar.

DATE: 4/16/9
CARRIER: Chairman Grande

LC NO. <u>90139.0502</u> of amendment <u>0700</u>
LC NO. _____ of engrossment _____
Emergency clause added or deleted _____
Statement of purpose of amendment _____

MOTION MADE BY: Senator Andrist

SECONDED BY: Senator Lee

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1059, as engrossed: Your conference committee (Sens. Andrist, J. Lee, Anderson and Reps. Grande, Froseth, Wolf) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1004, adopt amendments as follows, and place HB 1059 on the Seventh order:

That the Senate recede from its amendments as printed on page 1004 of the House Journal and page 774 of the Senate Journal and that Engrossed House Bill No. 1059 be amended as follows:

Page 1, line 3, after "commission" insert "; and to provide a continuing appropriation"

Page 1, line 19, after "duties" insert "**- Continuing appropriation**"

Page 1, line 23, after the period insert "The commission may accept gifts, grants, donations, and services from any source which are appropriated on a continuing basis for the purposes of the commission."

Renumber accordingly

Engrossed HB 1059 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1059

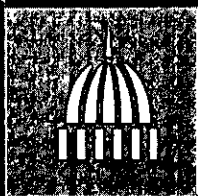
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1059

Page 1, line 12, remove the overstrike over "~~Tribe~~", remove "Nation", remove the overstrike over "~~of the Fort Berthold Reservation~~", and remove "- Mandan, Hidatsa,"

Page 1, line 13, remove "and Arikara"

Page 1, line 21, overstrike "shall" and after the first "~~to~~" insert "may"

Renumber accordingly



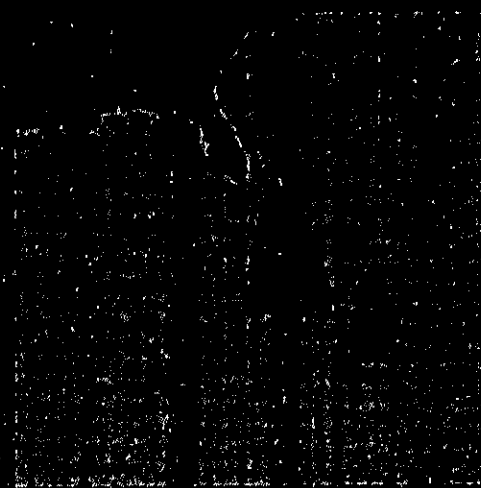
NATIONAL CONFERENCE
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The Forum for America's Ideas

States and Tribes: Building New Traditions

Improving State-Tribal Relations

An Introduction



Improving State-Tribal Relations: An Introduction

By Sia Davis and Aura Kanegis

September 2004

Introduction

To address the challenges posed by evolving relations between states and tribes, the National Conference of State Legislatures (NCSL) and the National Congress of American Indians (NCAI) have collaborated on a project to improve state-tribal relations in policymaking on critical public policy issues. The project involves educational forums, development of materials and sharing of models of cooperation to the benefit of both governments.

Thirty-seven of the 50 states are home to two independent governments—state governments and Native American tribal governments—that strive to provide for and protect their respective constituencies and to coexist with each other. State governments are granted the right to govern themselves in the U.S. Constitution. American Indian and Alaska Native tribes maintain inherent self-governance authority that predates the existence of the United States and is affirmed by the U.S. Constitution. Historically, state governments had no role with respect to tribal lands, and tribes operated in a “government-to-government” relationship with the federal government alone. Over time, however, state and tribal governments have been given powers that previously belonged only to the federal government, a practice called devolution. Under devolution, newly acquired authority and resources for specific programs have been passed from the federal level to states and tribes, making them responsible for implementation. With these shifting relationships and responsibilities, tension between state and tribal governments has risen in a range of issues, including service delivery, law enforcement jurisdiction, and taxation issues. These differences involve conflicting state and tribal jurisdictions, and they are resolved either through the court system, legislation or direct negotiations.

During the past few decades, tribal governments significantly strengthened their governmental capacity and have increasingly exercised authority over affairs in their own communities. In this increasingly complex landscape of service delivery and funding arrangements, intergovernmental coordination has become paramount to ensuring that the needs of state and tribal citizens are met. A major step to successful and effective government-to-government relations between states and tribes is the mutual recognition of each others’ sovereign governmental rights. On this foundation of respect, increased education, understanding and cooperation on both sides ultimately will help both states and tribes forge cooperative efforts that benefit all state and tribal citizens.

Insight into Tribal Governments

Just as individual states are “sovereign” governments, Indian tribes also are self-governed and have been for centuries. Tribes are increasingly exercising their self-governing powers, and it has become necessary for states to interact with them as fellow governments.

There are 562 federally recognized tribes in the United States that vary widely in their governmental structures and decision-making processes. Many of these governments are alike in that their governing constitutions address common issues such as tribal territory, eligibility for citizenship, and the creation of governing structures.

In most tribes, legislative authority belongs to a tribal council. Many tribal constitutions also provide for an executive officer in the form of a tribal chairman, president, governor or chief. In some tribes, this executive officer is elected by the tribal council; in others, he or she may be voted in by members of the tribe. Like state governments, tribal governments vary in the degree of authority accorded to the executive officer and legislative branch or council.

During several stages of U.S. history, many tribal governments were forcibly dissolved by the U.S. government. The General Allotment Act of 1887 dictated the forced conversion of communally held tribal lands into small parcels for individual Indian ownership. As part of this forced dissolution of tribal lands, more than 90 million acres—two-thirds of reservation land established up until that point—were taken from tribes and given to non-Indian settlers as “surplus,” most often with no compensation to the tribes. The federal government recognized the failure of the allotment policy and the Indian Reorganization Act was ratified in 1934 to restore tribal governments and build up Indian economies. In many cases, template constitutions were introduced in place of the sophisticated traditional governance systems that previously existed. Approximately 60 percent of tribal governments still are based on Indian Reorganization Act constitutions; the remaining 40 percent have chosen constitutions that reflect a more traditional form of government. For example, the Navajo Nation has no written constitution but functions under a tribal code.

In the middle of the twentieth century, the federal government again sought to eliminate tribal governance structures and ended all federal recognition and assistance to more than 100 tribes. Once again, the destruction of tribal governance structures was extremely damaging both to tribal citizens and surrounding communities, and these policies were again reversed with the implementation of several “self-determination” policies that began during the Nixon administration and continue to this day. With control over their lands and resources, tribes have made great strides toward reversing economic and cultural hardships that resulted from previous federal policies.

A greater understanding of the unique status and concerns of tribal communities and the acknowledgment of shared interests are key to ensuring improved governmental coordination and are essential to the effective functioning of state and tribal governments in the complex jurisdictional balance they must navigate.

A Look at State Governments

Although direct government-to-government relations with the federal government remains a fundamental principle of the trust relationship derived directly from treaties and other agreements between the U.S. government and tribes, it is important that tribes recognize

the benefits of understanding state governmental processes, leadership roles and potential avenues for collaboration.

While collaborating with a state's executive branch of government, (i.e., the governor and state executive agencies) is important for neighboring tribes, it is equally important to forge institutionalized relationships with the legislative branch of government and its lawmakers. To legislatures, state sovereignty is similarly significant, and states have struggled with the federal government over where federal control ends and state control begins. Like tribes, individual states maintain differing relationships with the federal government, and these relationships can vary widely in their structures.

Working with State Legislators

Many issues of concern to tribes can and should be addressed at the legislative level. A few reasons to get to know state legislators and legislatures are shown below.

- Indian issues can be addressed through legislation that is drafted by those who are familiar with the issues. Legislation that is drafted by those who have inadequate knowledge or information about an issue may have unintended adverse effects on tribes and may fail to accomplish the intended goals.
- Legislative policy is likely to be longer lasting than executive branch policy, which can change with every administration.
- Individual legislators are accessible.
- Legislators are close to the people, have a relatively small member-to-constituent ratio, and have a working knowledge of local conditions.
- Mutual education—of tribal leaders about the legislative process and of legislators about tribal government and the realities of Indian country—is facilitated by state legislator-tribal leader relationships.

Source: *Government to Government: Understanding State and Tribal Governments* (Denver: National Conference of State Legislatures, 2000).

Understanding state governmental processes will help tribes to build relationships with states and will ensure smoother navigation of the necessary state-tribal interactions that are beneficial to citizens of both states and tribes. This interaction can include establishing law enforcement agreements and sharing federal block grant funding. Learning about certain aspects of the legislature—such as how often elections are held, how long a legislature is in session, how to participate or testify at a committee hearing, who the leaders of the legislature are, and the process through which bills become law—will give insight on how to communicate with and gain access to a state legislature.

State legislatures are responsible for appropriating funds for state programs that include citizens who are tribal members. By increasing knowledge of how a state budget is allocated and how state legislatures operate and by building open and respectful working relationships with legislators who represent districts located on tribal lands, tribes can maximize the

positive effects of state programs and services and enhance effective intergovernmental coordination for the benefit of state and tribal citizens.

State-Tribal Communication

State and tribal citizens inevitably travel between the jurisdictions of these two types of governments. Both can benefit immensely from the respectful and open communication between state and tribal governments that contributes to positive relationship building.

For state leaders who approach tribes, research into a specific tribe's mode of operation is suggested before initial communication is made. In most cases when an issue arises, this communication should be directed to the relevant tribe's chief executive officer and council. Just as state leaders are replaced from time to time, tribal leadership also may change with time; it is important to institutionalize modes of communication so that relationships transcend transitions in both state and tribal leadership. Frequent and open communication is critical to maintaining an effective intergovernmental relationship.

Communicating with a state legislature can be achieved by personally contacting a local legislator or his/her staff and by staying informed about the status of key bills of interest. Visiting the capitol to monitor or testify at committee meetings also is an effective way to become more knowledgeable about state government. Contacting the Commission on Indian Affairs or the governor's liaison or appropriate legislative committee chair also can be helpful in facilitating a relationship with state leaders.

Intergovernmental Agreements and State Directive Orders

Nationwide, an increasing number of states are recognizing the importance of working with tribes to institutionalize state-tribal relationships through intergovernmental agreements. Although tribal governments are inherently sovereign, some states recently have taken steps to officially recognize their relationships with tribal governments.

- In 2001, the Oregon legislature enacted a bill that requires state agencies to encourage a government-to-government relationship and open communication between the state and tribes.
- Washington implemented the Centennial Accord, which focuses on teaching state officials about Indian tribes, fostering respect for both state and tribal governing authorities, and outlining steps for states and tribes to maintain healthy intergovernmental relationships in the state.
- During the 2003 legislative session, the Montana legislature passed a measure that calls for a government-to-government relationship. The state is required to

consult with tribes regarding the development of any state agency policies that will directly affect them.

- In 2004, the governor of Wisconsin issued Executive Order 39, which recognizes tribal sovereignty. It also requests cabinet agencies to recognize the government-to-government relationship between the state and tribal governments and to consult with tribes when proposing and implementing programs that affect them and their members.

A growing number of tribes across the country have entered into agreements with their state on issues such as taxes, revenue sharing and law enforcement. A wide range of topics have been addressed through these agreements.

- The Mashantucket Pequot Tribal Nation and the state of Connecticut established a law enforcement agreement that specifies investigative guidelines for federal crimes on tribal land. The guidelines were established to protect victims of crime (specifically children) on the reservation.
- Several tribes, including the Tulalip Tribes of Indians, the Squaxin Island Tribe and the Jamestown S'Klallam Indian tribe, have entered into agreements with Washington regarding cigarette sales taxes. The agreement provides revenue for the tribes, while enforcing the state's cigarette tax laws.
- Most of the 39 Indian tribes in Oklahoma have agreements with the state on gasoline and cigarette taxes. The tribes give 25 percent of the tax to the state.
- Nebraska and the Winnebago Tribe entered into a cross-deputization agreement in 2001 that allows the state patrol to enforce federal, state and tribal laws with respect to Indians and gives authorized tribal officers special deputy status to enforce state laws over non-Indians.
- California recently renegotiated gaming compacts with several tribes. The tribes will provide the state with \$1 billion in gaming revenues, which will provide funding for law enforcement, fire protection and transportation projects, among others.
- During the 2004 legislative session, Kansas enacted a cross-deputization statute that was coordinated by the State-Tribal Relations Committee, in concert with the Prairie Band Potawatomi Nation, the Iowa Tribe, the Kickapoo Tribe, and the Sac and Fox Nation. Earlier coordinated efforts yielded a sweeping inter-local agreement statute that includes state-tribal-local coordination among their respective governing authorities.

Conclusion

Education and understanding are the ultimate keys to improving and maintaining positive state-tribal relations. It is important to realize that each American Indian and Alaska Native tribe is an individual tribe and each has its own system of governing. Recognizing that both states and tribes have a responsibility to provide for their citizens is essential to promoting mutual understanding. Consistency and sincerity in dealings between states and tribes are essential to keeping the lines of communication open. Optimally, successful state-tribal relationships will resolve differences through discussion and negotiation, and litigation will be used only as a last resort.

The State-Tribal Relations Project

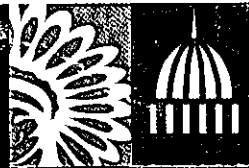
This publication is a product of the State-Tribal Relations Project, a partnership between the National Conference of State Legislatures and the National Congress of American Indians. The project is designed to promote intergovernmental cooperation between the state and tribes, assist them in identifying policy issues that are ripe for collaboration, and to develop mutually beneficial solutions for each population. The NCSL State-Tribal Relations Project policy series is designed to help legislators and tribal leaders gain a greater understanding of the issues affecting each constituency and to identify methods for cooperative policymaking in an issue-specific context.

As tribal governments exercise their self-governing powers and take more control over program administration and the provision of services within their communities, there is an increasing need for policymakers to learn to interact with tribes as sovereign governments, instead of viewing them as special interest or minority groups contained within a few states. Tribal communities exist in many states. There are more than 561 federally recognized tribes within the United States. Although a significant number are found in Alaska (227), the remaining tribes are located within the boundaries of an additional 36 states, according to a report by the W.K. Kellogg Foundation, *Native Americans: Tribal Sovereignty, Devolution and Welfare Reform*. The development of a collaborative government-to-government relationship between the states and tribes is necessary. Welfare reform, economic development and trust land issues are just a few of the many policy areas this project will focus on in which government-to-government cooperation can be beneficial.



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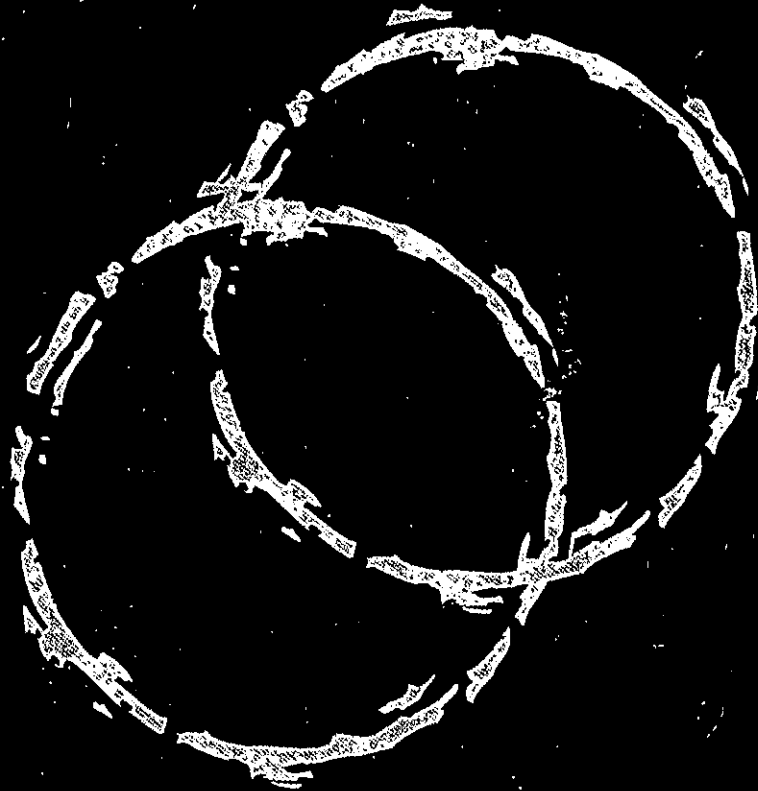
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Understanding State and Tribal Governments

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1059

North Dakota Indian Affairs Commission

600 East Boulevard • 1st Floor Judicial Wing • Bismarck ND 58505-0300

Phone (701) 328-2428 • Fax (701) 328-1537

Homepage: www.health.state.nd.us/ndiac

Email: NDIAC@state.nd.us



Governor John Hoeven
CHAIRMAN

Cheryl M. Kulas
EXECUTIVE DIRECTOR

MEMORANDUM

TO: House Subcommittee on Government and Veterans Affairs

SUBJECT: Clarify pending changes to House Bill #1059 –to amend and reenact sections of 54-36-01 and 54-36-03 of the N.D.C.C. relating to *the members and the powers and duties of the Indian Affairs Commission.*

FROM:  Cheryl Kulas, Executive Director, ND Indian Affairs Commission

At the request of the Tribal Chairpersons of the ND Indian Affairs Commission, the House Subcommittee on Government and Veterans Affairs is respectfully requested to approve of the following changes to HB 1059.

Section 1. Amend

Line 11. to read ...chairperson, or the chairperson's designee of the Standing Rock Sioux Tribe;

Line 12. to read; the Spirit Lake Tribe;

Line 13. the Three Affiliated Tribes of the Fort Berthold Reservation;

Line 14. to read...the Turtle Mountain Band of Chippewa Indians; and
And

Line 15. to read...the Sisseton-Wahpeton Oyaté of the Lake Traverse Reservation

Section 2. Amendment.

Line 20. The Indian affairs commission ~~shall~~ may have the power to assist and to mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota, especially the five tribal councils, as ~~they~~ the Indian individuals and tribal councils seek to develop their own goals, project plans for achieving those goals, and implement those plans.

These changes collectively reflect the legal status of individual tribal governments in North Dakota as acknowledged by federal recognition, codified in 72 FR 13648. They are also consistent with changes approved by individual tribal referenda and codified within individual tribal constitutions.

Approved by:

Ron His Horse is Thunder, Chairman, Standing Rock Sioux Tribe, North and South Dakota
Marcus Levings, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Richard Marcellais, Chairman, Turtle Mountain Band of Chippewa Indians, North Dakota
Myra Pearson, Chairwoman – Spirit Lake Tribe, North Dakota
Michael Selvage Jr. – Chairman, Sisseton Wahpeton Oyaté, Lake Traverse Reservation, North and South Dakota

Membership of the ND Indian Affairs Commission

Governor John Hoeven

NDIAC Chairman

Office of the Governor

600 E Boulevard Ave

Bismarck, ND 58505-0001

(701) 328-2200 (w)

(701) 328-2205 (fax)

www.governor.nd.gov

Ron His Horse Is Thunder

Chairman

Standing Rock Sioux Tribe

PO Box D

Fort Yates, ND 58538

(701) 854-7201 (w)

(701) 854-7299 (fax)

www.standingrock.org

Richard Marcellais

Chairman

Turtle Mountain Band of Chippewa

PO Box 900

Belcourt, ND 58316-0900

701-477-2600 (w)

701-477-6836 (fax)

www.tmbci.net

Cheryl Kulas

NDIAC Executive Director

Indian Affairs Commission

600 East Boulevard Avenue

1st Floor - Judicial Wing

Bismarck, ND 58505-0300

(701) 328-2428 (w)

(701) 328-1537 (fax)

www.nd.gov/indianaffairs

Myra Pearson

Chairperson

Spirit Lake Nation

PO Box 359

Fort Totten, ND 58335-0359

(701) 766-4626 (w)

(701) 766-4126 (fax)
www.spiritlakenation.com

Michael Selvage, Sr.

Chairman

Sisseton-Wahpeton Oyate
PO Box 509

Agency Village, SD 57262

(605) 698-3911 (w)

(605) 698-7907 (fax)

www.earthskyweb.com/sota.html

Marcus Wells, Jr.

Chairman

Three Affiliated Tribes

404 Frontage Road

New Town, ND 58763

(701) 627-4781 (w)

701-627-4748 (fax)

www.mhanation.com

At Large Member - Phil Baird

Dean of Institutional Development and Intertribal Programs

United Tribes Technical College

3315 University Drive

Bismarck, ND 58504

(701) 255-3285 - ext. 1238 (w)

(701) 530-0605 (fax)

www.uttcc.edu

At Large Member - Jim Laducer

President & CEO

Laducer & Associates

201 Missouri Dr

Mandan ND 58554

(701) 667-1980 (w)

(701) 667-2970 (fax)

www.laducer.com

At Large Member - Walt Moran

Chairperson

Trenton Indian Service Area

PO Box 210

Trenton, ND 58853-0210



(701) 572-8316 (w)
(701) 572-0124 (fax)



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1059

That the Senate recede from its amendments as printed on page 1004 of the House Journal and page 774 of the Senate Journal and that House Bill No. 1059 be further amended as follows:

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