

**2017 HOUSE POLITICAL SUBDIVISIONS**

**HB 1412**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee  
Prairie Room, State Capitol

HB 1412  
2/9/2017  
Job # 28130

- Subcommittee  
 Conference Committee

*Carmen Hicks*

## Explanation or reason for introduction of bill/resolution:

Relating to the membership of the tribal and state relations committee

Minutes:

1,2,3

**Vice Chairman Hatlestad:** Opened HB 1412

**Rep. Dobervich:** (Testimony #1) (Time 1:39 to 5:40)

**Rep. Ertelt:** Are there members on any of the other interim committees who are not Legislative members?

**Rep. Dobervich:** The tribal and state relations committee is a statutory committee but it's been meeting as an interim committee. There are other statutory committees that have non-Legislative members on them.

**Rep K. Koppelman:** I see the way the task force and committee are currently set up; you say it is not working why would it work better by reorganizing the makeup of the committee?

**Rep. Dobervich:** We thought it would work better, currently we are asking leaders of a Sovereign Nation to come to us, talk about issues that affect them, and then we make the decisions moving forward. Having more ownership in that brings more responsibility, brings the skin in the game to work together and move those things forward. It would only be in the committee, so if the committee disagreed on how we should move forward or put this in the interim report it wouldn't happen. It's giving everyone who is affected by the work an equal say in how we are going to move forward. It brings equity to that committee.

**Rep K. Koppelman:** I'm looking at the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, I'm not sure much of it is ND. Do you know if the chairman lives in North Dakota?

**Rep. Dobervich:** They are included because the tribal nation does come in to North Dakota. Certainly their tribal government is in Sisseton, which is in South Dakota, however like Standing Rock they are not as large of a portion, a portion does fall into North Dakota.

**Vice Chairman Hatlestad:** So basically what is happening is from a non-voting status to voting status, is what's going to transpire?

**Rep. Dobervich:** That is correct.

**Rep K. Koppelman:** I see that this panel currently on page 2 lines 12-14, we have a bill this session that would remove anyone other than Legislators to introducing legislation. We are the only state in the union that allows that. Do you have any objection to that kind of thing?

**Rep. Dobervich:** My preference is what I presented in this bill. The bill that you referenced is just that. Until then that bill if it were to pass is a moot point.

**Rep K. Koppelman:** Even when the interim committees introduce legislation it's normally a committee of Legislators.

**Rep. Dobervich:** One of the differences is this is a very unique committee in that we are asking leadership from a Sovereign Nation to come in as opposed to employees of an entity that would work with that committee. It's kind of a government to government and while tribal nations don't have a government to government responsibility with each other, in the sense that tribal nations do with the federal government.

**Rep. R. S. Becker:** It seems like South Dakota, Minnesota and Montana comparisons that you mentioned, they have interim committees, some have councils, in those states is there more efficiency? Do they have less issues? Why do things seem to work better there than what we have in North Dakota?

**Rep. Dobervich:** I wouldn't say they work better; I would say they work differently. There are a lot of similar issues that those states and tribal nations have, there are also some differences in Minnesota, they are a public law 280 state, so some of the federal powers have actually been transferred to the state government related to jurisdictions.

**Rep. R. S. Becker:** What is the timing from your point of view that is bringing this into a bill today? What is the timing or motivation to address this issue?

**Rep. Dobervich:** This creates an opportunity to sit down and solve some of the issues that both the state and tribal nations are facing that affect all of us. To move forward some of the issues that have been long standing.

**Rep. R. S. Becker:** You mentioned stress in current situations, this could be an excellent time to move forward and this could help bring the groups together. If we would have had this organizational structure in place, would it have helped or made any difference with what has taken place with the pipeline?

**Rep. Dobervich:** In my mind if any of us knew what we could have done ahead of time differently, we would have done it. I do think anytime people come together equitably and discussion issues we are more likely to come to an agreement that best suits everyone involved. With the pipeline situation it's not just state government and tribal government we have multiple federal agencies that are involved, we have private business that is involved,

we have out of state interests that are involved, so I think that would have been a larger table to bring everyone together. If we have a strong relationship between our state government and the tribal nations, we are more likely to be able to thwart potential issues.

**Rep. Nelson:** (Testimony #2, handout #3) (Time 18:43 to 26:12)

**Rep. Beadle:** Would this being a statutory committee right now, is that committee able to propose legislation? Was this idea considered during the last interim when you were chairing that committee?

**Rep. Nelson:** They are able to propose legislation. The bill that we have for a pilot program of dealing with the tribal courts, where the tribal courts will be able to place a juvenile into the state system. We did not talk about this, it didn't occur to me early enough in the process and as we got things worked out with the penitentiary this is what drove me to think about this. We saw our participation very high at the beginning then when we reached that this is what we were going to do, suddenly very low participation because they had no reason to come they didn't have a vote. At the end we didn't have much tribal participation that is part of what speared the idea.

**Rep K. Koppelman:** You talked about the lack of communication because people didn't come, and you sense they didn't was because they didn't have a vote, is that what they said? How do you know that having a vote is going to engage them and keep them active?

**Rep. Nelson:** It was from a couple of phone conversations, basically the answer was I have a lot to do and I didn't see there was anything for me to do in this meeting so I didn't come.

**Rep K. Koppelman:** Are there bodies within the tribal government where representatives of the state of North Dakota meet and have a vote and have influence?

**Rep. Nelson:** Not that I am aware of. The biggest problems with members of the Legislature have is realizing that you are dealing with five separate nations. Just because something happens one place it doesn't necessarily happen in the other. One of the biggest problems has been that tribal government tends to be more compressed. You have the executive and legislative branch and it is really one body. They had trouble understanding that when they go and negotiate an agreement with an executive branch official, like the Governor, that if it's going to spend money the Legislature has to have a say. That is an educational part, they get frustrated with biannual meetings. It varies by tribes; Turtle Mountain the Tribal Chairman's term is 2 years. Some of the other tribes have gone to 4 years and staggered terms. Standing Rock has adopted the Uniform Commercial Code. We seem to be at a time when the tribes are looking to move forward in some manner that they choose. They have decided to take certain things from our culture, they have a lot of problems and a lot of economic problems. They are trying to understand what they can do to attach business; they are making a concerted effort.

**Rep K. Koppelman:** You talked about the 2 year terms of a tribal chairman, if they negotiate an agreement through a body like this and it comes legislation and becomes law and another tribal chairman takes over is that renegotiated or is it considered binding?

**Rep. Nelson:** That would be tribe by tribe. There have been some bad incidents in the past where there were contracts where some tribal councils decided that since the previous council had signed the agreement that maybe it wasn't binding on them. I think now there is a realization what a mistake that type of behavior was.

**Rep K. Koppelman:** Rep. Dobervich talked about the makeup of Montana, and it says 6% of the body are enrolled members of federally recognized and 1% in North Dakota. We have a lot of members who represent tribal areas. I have served with members who are Native American backgrounds. It seems that is low.

**Rep. Nelson:** I believe we have 3 enrolled members in the Legislature. There might be more.

**Rep. R. S. Becker:** Earlier you made the comment that at the start of the process there is maybe lots of good ideas, but when it comes time to vote, they don't have a vote so they don't come. I see nothing in here that would cover expenses for attending meetings, is that also something that would encourage more people attending? You mentioned you have your expenses paid when you come to a meeting, they don't and that should be covered as well.

**Rep. Nelson:** I left it out of the bill with our current financial situation. They do not receive any reimbursement for participating. I would be open to an amendment on that, it wouldn't create a large fiscal note.

**Rep. Hanson:** For the other statutory committees how are expenses handled for non-Legislative member's like the PERS board?

**Rep. Nelson:** The only one I am familiar with is the Crop Protection and there I believe that the Agricultural Department covers the expenses of everyone who is not a Legislator.

**Vice Chairman Hatlestad:** You don't think the tribe would take care of the expenses?

**Rep. Nelson:** I believe they do today. And I believe they would continue to do so. I don't think that is a big issue as far as they are concerned.

**Vice Chairman Hatlestad:** No other testimony. Closed the hearing on HB 1412.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee  
Prairie Room, State Capitol

HB 1412  
2/9/2017  
Job # 28151

- Subcommittee  
 Conference Committee

*Carmen Hickle*

## Explanation or reason for introduction of bill/resolution:

Relating to the membership of the tribal and state relations committee

## Minutes:

[Empty box for minutes]

**Chairman Klemin:** Opened for committee work.

**Rep. Johnson:** Made a do pass motion on HB 1412.

**Rep. Maragos:** Second the motion.

**Rep. Ertelt:** We heard testimony today we have limited engagement not because they are not invited but because they are not showing up the members of the task force. I'm wondering if moving them on to the committee if that is going to make a difference in that regard?

**Chairman Klemin:** The feedback I have received there have been times when the members of the Governor's Taskforce none of those people appear at the meeting of the committee. The only members of the Tribal and State Relations Committee meetings maybe only the Legislative members.

**Rep. Ertelt:** That is what I gathered.

**Chairman Klemin:** Is this bill intended to encourage more participation by the tribal members?

**Rep. Zubke:** There was testimony that might actually help but there was certainly nothing conclusive. I think it's ironic that we appoint a committee to work with the tribe on relations between the two governments and they choose not to show up. There was discussion about us paying the expenses so they would show up. Why would we pay the expenses when this is Legislative Management that appoints people to work with the tribe on a variety of issues, if they choose not to show up I don't think that getting them a vote on a committee that doesn't have a budget and can't do anything except report back to Legislative Management is going to change that. I would resist the motion.

**Rep. Guggisberg:** We are hopefully coming to the end of a contentious time. I recently met with Standing Rock Council member and he said he got on the council to be an in-between person. I think it would be a good gesture if we made this change and if there is discomfort about that if we make the change and they don't show up put a sunset clause on it. Then see if they are showing up to the meeting if not change it back to the way it was.

**Chairman Klemin:** As I understand this committee meets and discuss issues and prepare a report and if there is any legislation to implement recommendations they submit that. The Legislative members are the only ones compensated under this bill. We don't pay for non-Legislative members to attend.

**Rep. Hanson:** One point that was emphasized was that by giving the tribal members a vote there would be more incentive for them to continue to show up. If you are going to listen how to someone else decides on your behalf after those first couple of conversations, you might have less incentive to come to the table.

**Rep. Johnson:** I agree with Rep. Hanson; this is great incentive for our neighbors to come to the table because they have a say.

**Vice Chairman Hatlestad:** Rep. Nelson stressed skin in the game, I think you should demonstrate that you are an active member on this committee. (inaudible)

**Rep. Johnson:** (inaudible)

**Rep. R. S. Becker:** It was mentioned this morning that the Native Americans were probably being paid by the Tribe. If we knew that they were paid, I would be more supportive to pass this bill. As much I would like to think of us extending a hand and that's what I want. I am disappointed that after the pipeline was approved the tribe is already filing suit, which is there right. There also is some coordination between the tribe and the protesters, they have hit 3 cities in protest of this. I am concern what are we trying to do with this bill? I wish we could pass it on until next session.

**Chairman Klemin:** Did anyone appear else appear on the bill? Or were they present in the audience?

**Rep. Hanson:** (inaudible)

**Chairman Klemin:** He is the Director or the Indian Affairs Commission?

**Rep. Longmuir:** You are talking about DAPL, but in our area Three Affiliated Tribe are backing away from the oil compact that we had with them as far as taxing oil. I have worked with tribal members on committees they are more apt not to show up then to show up. The ones I worked with were paid. I agree with Rep. Johnson that someone needs to take the first step and maybe that should be us. If we could open up communication to take care of the DAPL issue, the oil tax issue, the social services issue, especially now as they want to bring juveniles into our court system or correctional systems. I would be willing.

**Rep. Zubke:** I know there has been discussion about whether they are being paid their expenses but if you look at this list, it is the Executive Director, the Indian Affairs Commission, the Chairman of Standing Rock Sioux Tribe, the Chairman of Spirit Lake Tribe, can you imagine they are not getting paid?

**Chairman Klemin:** We have heard members of Congress say there needs to be more communication and consultation with tribes in North Dakota that affect both the state and the tribes. We have heard the Governor say the same thing, I think this gives us an opportunity to say the Legislature is also agreeing that we should opportunity for more discussion and consultation. If we pass this and they don't come to the meetings than next time we can say we gave you the opportunity, we put it into law, and if they do come and things work out and have the discussion then we may have succeed. Where it doesn't appear we are succeeding very well now.

**Rep. Ertelt:** The question was raised about individuals on this list who might not be residing in North Dakota. I think it should be someone within the boundary of the state.

**Chairman Klemin:** No one said we would have someone from South Dakota be a part of a North Dakota committee.

**Rep. Ertelt:** The bill sponsor said some of these members could reside in another state.

**Chairman Klemin:** We would except the chairman to be residing, but maybe not. I think we maybe be creating an issue that is going to destroy the intent here, if we want to have the Chairman of the Standing Rock Sioux Tribe unless he doesn't live within the boundaries of North Dakota then we don't want the chairman. But he still represents the people that are in the boundaries of the state of North Dakota.

Do pass 8 yes, 4 no, 3 absent.

Rep. Johnson will carry the bill.

Date: 2-9-17  
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1412

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Johnson Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg	/	
Vice Chairman Hatlestad	/		Rep. Hanson	/	
Rep. Beadle	/				
Rep. Becker		//			
Rep. Ertelt		//			
Rep. Johnson	/				
Rep. Koppelman	—				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	—				
Rep. Simons	—				
Rep. Toman		/			
Rep. Zubke		/			

Total (Yes) 8 No 4

Absent 3

Floor Assignment Rep. Johnson

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

**REPORT OF STANDING COMMITTEE**

**HB 1412: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends DO PASS (8 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). HB 1412 was placed on the Eleventh order on the calendar.**

**2017 TESTIMONY**

**HB 1412**

## House Bill 1412

A bill for an Act to amend and reenact section 54-35-23 of the North Dakota Century Code, relating to the membership of the Tribal and State Relations Committee.

Chairman Klemin and Members of the House Political Subdivisions Committee, Good Morning. My name is Representative Gretchen Dobervich. I represent District 11 in Fargo; I stand before you this morning to provide testimony in support of HB 1412. It relates to the membership of the Tribal and State Relations Committee.

This bill removes the North Dakota Tribal Governments task force and reinstates them as full members of the statutory Tribal and State Relations Committee, thereby increasing the committee from seven to thirteen members. The current task force is made up of the executive director of the Indian Affairs Commission, the Chairperson of the Turtle Mountain Band of Chippewa Indians, the Chairperson of the Three Affiliated Tribes, also known as the MHA Nation, the Chairperson of the Standing Rock Sioux Tribe, the Chairperson of the Spirit Lake Nation and the Chairperson of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or a designee appointed by the Indian Affairs Committee or tribal nation to represent the Chairperson.

The Tribal and State Relations Committee is a statutory committee that currently meets and runs as an interim committee. The North Dakota Tribal Governments Task Force can provide testimony related to issues the Tribal and State Relations Committee is studying but has no voting privileges related to the work of the committee, which affects them and the enrolled members of their sovereign nations.

While preparing testimony for this bill, I considered how best to convey its merits to you. I thought about listing the Federal Constitutional and treaty right obligations the United States has with tribal nations and how state government intersects. Instead, it is simply the right time to do the right thing.

The committee exists for the purpose of state and tribal relations, which have long been strained by lack of understanding and respect for each other's government, institutional racism, limited cultural proficiency, and most recently by economic and environmental health issues. While seeking cosponsors for this bill I was told by more than one potential cosponsor that the committee as it exists is ineffective, one said the committee never changes anything, one wouldn't even read it.

HB 1412 grants no special privileges nor absolves tribal or state government from responsibilities to citizens.

HB 1412 recognizes that within North Dakota's state lines there are five sovereign nations and whose leadership will meet as determined, study issues affecting them both, jointly determine what state legislation may resolve the issue as it applies to state and tribal relations and move those recommendations to the legislative assembly for consideration.

A common question in committees is "What so other states do?" South Dakota has an interim committee made up of five House, and five Senate members propose legislation. Minnesota has an Indian Affairs Council, but no committee. Montana has an eight-person interim committee, of which currently two are enrolled members of tribal nations residing in Montana. When redistricting after the 2010 Census, Montana intentionally created districts that would better reflect their American Indian population. Currently, 6% of the Montana legislative body are enrolled members of a federally recognized tribe, 1% in North Dakota.

But we don't have to do what another state does, right? We can do what is right for North Dakota at the right time for North Dakota.

The brink has been defined as when what has been meets what will be. The brink of anything is often chaotic, uncomfortable and uncertain.

We have the choice to move forward as we have hearing and not listening, hands tied by unresolved jurisdictional issues and the comfort of what has been amid the brink. We have the choice to listen, mediate issues and work towards what should be, thus shaping what will be.

I urge you to vote for what should be, a Do Pass on HB 1412.

That concludes my testimony and I will stand for questions.

HB 1412

2-9-17

#2

HB1412

Representative Marvin E. Nelson

2/9/2017

House Political Subdivisions Committee

Chairman Klemin and members of the Political Subdivisions Committee.

HB1412 is to give all the members of the Tribal Relations Committee a vote in the committee. I was given the pleasure of serving as Chairman of the Committee this last interim.

We treat the Tribal Relations Committee like an interim committee but it's a statutory committee. We have quite a few statutory committees which have members of the legislature and others on the committee. On the Tribal relations committee, we have a Chairman, three members of the House and three of the Senate and then the tribal governments task force made up of the Executive Director of the Indian Affairs Commission, and the Chairmen of Standing Rock Sioux Tribe, the Spirit Lake Tribe, the Three Affiliated Tribes, the Turtle Mountain Band of Chippewa, and the Sisseton-Wahpeton Oyate.

Specifically, the statute states that the committee is to study government to government relations, human services, education, corrections, and issues related to the promotion of economic development.

The Committee was made permanent in 2013 under SB2047 after several sessions of bills creating the committee for one interim.

The non-legislative members may designate someone to participate in their stead, but just one. The idea of giving the 6 members of the tribal governments task force a vote is to encourage participation. They aren't just there to speak but not have any say in the work of the committee. I believe it would help to make the committee more cooperative and encourage the bringing forth of concerns. Helping the state and the tribes deal with problems to their mutual benefit.

I encourage your support.

HB 1412

2-9-17

#3

# North Dakota Legislative Branch

## North Dakota Statutory Committees That Contain Legislative Me

Various statutes provide for legislative membership on boards, committees, and commissions other than legislative standing or procedural committees. The following information identifies the statutory entity, its general responsibility, and the authority for legislative membership.

### North Dakota Statutory Committees

- [Advisory Committee on Sustainable Agriculture](#)
- [Capitol Grounds Planning Commission](#)
- [Child Support Guidelines Drafting Advisory Committee](#)
- [Commission on Legal Counsel for Indigents](#)
- [Commission on Uniform State Laws](#)
- [Committee on Protection and Advocacy](#)
- [Comprehensive Health Association of North Dakota Board](#)
- [Court Facilities Improvement Advisory Committee](#)
- [Crop Protection Product Harmonization and Registration Board](#)
- [Devils Lake Outlet Management Advisory Committee](#)
- [Education Commission of the States](#)
- [Emergency Commission](#)
- [Federal Environmental Law Impact Review Committee](#)
- [Governor's Residence Project Selection Committee](#)
- [Health Information Technology Advisory Committee](#)
- [Higher Education Grant Review Committee](#)
- [Legacy and Budget Stabilization Fund Advisory Board](#)
- [Midwest Interstate Passenger Rail Compact Commission](#)
- [Midwestern Higher Education Commission](#)
- [Multistate Highway Transportation Agreement Cooperating Committee](#)
- [National Conference of Insurance Legislators](#)
- [North Dakota Early Childhood Education Council](#)
- [North Dakota Lottery Advisory Commission](#)
- [Public Employees Retirement System \(PERS\) Board](#)
- [School District Reporting Review Committee](#)
- [School of Medicine and Health Sciences Advisory Council](#)
- [Special Road Committee](#)
- [State Board of Agricultural Research and Education](#)
- [State Council for Interstate Adult Offender Supervision](#)
- [State Council for Interstate Juvenile Supervision](#)
- [State Council on Educational Opportunity for Military Children](#)
- [State Employees Compensation Commission](#)
- [State Hospital Governing Body](#)
- [State Information Technology Advisory Committee](#)
- [Statewide Longitudinal Data System Committee](#)
- [Streamlined Sales Tax Governing Board](#)
- [Task Force on Substance Exposed Newborns](#)
- [Veterinary Medical Education Program Admissions Committee](#)
- [Western Interstate Commission for Higher Education](#)
- [Western Interstate Commission for Higher Education Regional Council on Veterinary Medicine](#)

### Membership Information

Membership for the 64th Assembly

#### All Members

- [House Members](#)
- [Senate Members](#)
- [Members by District](#)
- [Members by Chamber/Party](#)

#### Leadership

- [House Leadership](#)
- [Senate Leadership](#)

### Committees

- [All Committees](#)
- [House Committees](#)
- [Senate Committees](#)

### Standing

- [House Standing Committees](#)
- [Senate Standing Committees](#)

### Procedural

- [House Procedural Committees](#)
- [Senate Procedural Committees](#)

#### Interim Committees

Statutory Committees That Contain Lec