

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Monday, May 19, 2008
MHA Meeting Rooms, Four Bears Casino and Lodge
New Town, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:20 a.m.

Members present: Representatives Merle Boucher, Duane L. DeKrey, Daryl Lies; Senators Stanley W. Lyson, Tim Mathern

Member absent: Senator Dave Oehlke

Native American Tribal Citizens' Task Force members present: Cheryl Kulas, Executive Director, Indian Affairs Commission; Marcus Wells, Jr., Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation

Native American Tribal Citizens' Task Force members absent: David Brien, Chairman, Turtle Mountain Band of Chippewa; Ron His Horse Is Thunder, Chairman, Standing Rock Sioux Tribe; Myra Pearson, Chairman, Spirit Lake Nation; Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate

Others present: See [Appendix A](#)

Chairman Boucher introduced Senator David O'Connell, Lansford, and Senator Richard Marcellais, Belcourt, and invited them to sit with the Tribal and State Relations Committee. Chairman Boucher welcomed Representative Daryl Lies, Douglas, and announced that Representative Lies had been appointed to replace Representative Dawn Marie Charging on the committee.

Chairman Wells welcomed the Tribal and State Relations Committee to the Fort Berthold Indian Reservation. He asked Mr. Adam "Tony" Mandan, New Town, to open the meeting with a prayer.

It was moved by Representative DeKrey, seconded by Senator Mathern, and approved on a voice vote that the minutes of the January 31, 2008, meeting be approved as distributed.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Nathan Berseth, Director, North Dakota American Indian Business Development Office, Department of Commerce, Fargo. Mr. Berseth presented a progress report ([Appendix B](#)) concerning the office and discussed economic development initiatives in Indian country. He said 178 companies have registered for services with the North Dakota American Indian Business Development Office since May 2006. He said this represents 90 percent of the current 8(a)/SDB-certified companies in North Dakota and 70 percent of the companies registered at

[www.CCR.gov](#) as owned by Native Americans. He said 134 jobs have been created or retained and 53 contracts obtained. He said the office has attracted \$76.4 million in contract dollars. He said the goal of the North Dakota American Indian Business Development Office is to increase Native American business startups and encourage firms to utilize the program.

Chairman Boucher recognized Chairman Wells. Chairman Wells said there are several Native American-owned businesses on the Fort Berthold Indian Reservation providing services to the oil and gas industry, such as hauling water and road construction. However, he said, these businesses are undercapitalized and are ready and willing to expand to meet the demand for these services in the area.

In response to Chairman Wells' comments, Mr. Berseth said the North Dakota American Indian Business Development Office can assist these businesses in developing business plans, obtaining capital, and acting as facilitators to access available programs.

In response to a question from Representative Boucher, Mr. Berseth said the North Dakota American Indian Business Development Office is aggressively marketing and promoting its programs and working to increase employment and business development on the state's reservations.

TRIBAL-STATE NATURAL RESOURCE ISSUES

At the request of Chairman Boucher, Mr. Roger Rostvet, Deputy Director, Game and Fish Department, reviewed memorandums of understanding between the Three Affiliated Tribes Fish and Game Department and the North Dakota Game and Fish Department concerning regulation of fishing and boating on the Fort Berthold Indian Reservation and the regulation of hunting on the Fort Berthold Indian Reservation. Copies of these memorandums of understanding are on file in the Legislative Council office. He said the purpose of the memorandums of understanding is to facilitate a cooperative law enforcement effort between the Game and Fish Department and the Three Affiliated Tribes relating to fishing and boating violations falling under each party's authority and hunting violations falling under each party's authority. He said the memorandums of understanding are the

first of their kind between the department and an Indian tribe in North Dakota.

Chairman Boucher recognized Chairman Wells. Chairman Wells said with the decreasing level of Lake Sakakawea, the Game and Fish Department should identify and mark hazards that are emerging in the lake to protect against damage caused to watercraft.

In response to Chairman Wells' comments, Mr. Rostvet said identifying and marking hazards, such as trees, is difficult because of the variable level of the water. Also, he said, the state may encounter liability issues as marking is very difficult and gives the public a false sense of security when a hazard may be overlooked or a new hazard may emerge because of changing water conditions.

Chairman Boucher requested that the Game and Fish Department work with the Three Affiliated Tribes and report at a future meeting on efforts to identify and mark hazards in Lake Sakakawea.

In response to a question from Ms. Kulas, Mr. Rostvet said the department compiles a detailed incident report on each mountain lion sighting or possible sighting.

In response to a question from Senator Mathern, Mr. Rostvet said the provision in the fishing and boating memorandum of understanding providing that the Game and Fish Department will make an annual payment to the Three Affiliated Tribes in the amount of \$25,000 as an in lieu payment for any access, conservation fee, or other type of license or permit previously issued to individual boaters or fishermen is based upon previous license sales and the estimated number of individuals who may have been fishing without a license.

Chairman Boucher recognized Chairman Wells. In recognition of the two memorandums of understanding, Chairman Wells presented a blanket to Mr. Rostvet. Chairman Wells also presented a blanket to Mr. Mandan for giving the opening prayer.

TAXATION IN INDIAN COUNTRY

At the request of Chairman Boucher, committee counsel presented a memorandum ([Appendix C](#)) prepared by Tax Commissioner Cory Fong concerning the status of relations between the state and tribes regarding motor vehicle fuels taxes and special fuels taxes.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas said she is still receiving reports that individual tribal members are finding it difficult to claim motor vehicle fuels tax refunds.

In response to Ms. Kulas's concern, Chairman Boucher requested that the Tax Commissioner be invited to update the committee at a future meeting on efforts by the Tax Department to facilitate motor vehicle fuels tax refunds.

Chairman Boucher recognized Mr. Tony Moran, Trenton Indian Service Area, Trenton. Mr. Moran said the issue of the collection and rebate of motor vehicle fuels taxes on the Trenton Indian Service Area also should be addressed.

In response to Mr. Moran's comments, Chairman Boucher requested that the Tax Commissioner address the issue of motor vehicle fuels taxes on the Trenton Indian Service Area at a future meeting.

At the request of Chairman Boucher, committee counsel presented a memorandum ([Appendix D](#)) prepared by Mr. Ryan Bernstein, legal counsel, Governor's office, concerning negotiations between the Governor and the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation and motor vehicle fuels taxes.

Chairman Boucher requested that the Legislative Council staff contact the Department of Transportation concerning the feasibility of entering into an agreement between the state and Indian tribes for state maintenance of roads in Indian country. He said many roads in Indian country require maintenance as a result of heavy use by the oil and gas industry and road maintenance may provide an opportunity for tribally owned or Indian-owned businesses.

Chairman Boucher requested that the Legislative Council staff request that the Industrial Commission Department of Mineral Resources provide information concerning the production of oil and gas from the Bakken formation.

INDIAN AFFAIRS COMMISSION

At the request of Chairman Boucher, committee counsel reviewed a bill draft [\[90139.0100\]](#) relating to the members and the powers and duties of the Indian Affairs Commission.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas said the word "Dakotah" on line 11 and the word "Nation" on line 12 should be removed.

Vice Chairman Mathern requested that the Legislative Council staff send copies of the bill draft to each tribe in North Dakota requesting that the tribe review the name of the tribe as used in North Dakota Century Code (NDCC) Section 54-36-01 and inform the committee whether the tribe would like a change made.

In response to a question from Vice Chairman Mathern, Ms. Kulas said the next meeting of the Indian Affairs Commission is June 6, 2008, and the commission will review the list of duties contained in NDCC Section 54-36-03 at that time. She said she will inform the committee whether the commission desires to make any change in the list of duties contained in that section.

Vice Chairman Mathern recognized Mr. Tony Moran. Mr. Moran said the Trenton Indian Service Area should be included as a member of the Indian Affairs Commission.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas distributed a draft of a consultation and coordination agreement ([Appendix E](#)) between the state of North Dakota and the sovereign Indian tribes of North Dakota. She said the consultation and coordination agreement is a draft and is designed to

improve government-to-government relationships between the tribes and the state.

INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel distributed a letter opinion ([Appendix F](#)) from former Attorney General Heidi Heitkamp to former Senator Dan Jerome concerning the authority of North Dakota public school districts to contract with federal schools for the education of students of the district and what constitutes a federal school under North Dakota law.

At the request of Chairman Boucher, Mr. Robert A. Schafer, elementary principal, Trenton Public School, presented a financial summary ([Appendix G](#)) for Trenton Public School. Mr. Schafer said Trenton Public School is facing severe financial pressure as a result of losing \$1.9 million in federal Indian School Equalization Program funds. He said the school district usually receives \$3.2 million, has been notified it will lose \$1.9 million for 2008-09, and thus will retain \$1.3 million. He said Trenton Public School has developed a barebones budget proposal for 2008-09 which cuts several positions, programs, and services.

In response to a question from Representative Boucher, Mr. Tom Decker, Director, School Finance and Organization, Department of Public Instruction, said the department does not have any emergency funds available and Trenton Public School received foundation aid based upon the state formula. He said the reduction in Indian School Equalization Program funds is a federal issue and the state is not in a position to provide substitute state funding.

In response to a question from Representative Boucher, Mr. Schafer said the school is proposing to reduce the number of administrators from 4 to 2, the number of certified employees from 26 to 18, and the number of noncertified employees from 18 to 15.

Chairman Boucher recognized Mr. J. D. Haugrose, Eight Mile School Board, Williston. Mr. Haugrose said Trenton Public School is providing a quality education for the students of Trenton and the Trenton school personnel are doing an admirable job with limited resources. However, he said, the quality of education in Trenton will suffer if the reduction in Indian School Equalization Program funds materializes.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas said she had received several inquiries raising concerns about 21st century learning centers.

Chairman Boucher recognized Mr. Dale Patrick, Department of Public Instruction. Mr. Patrick said 21st century learning centers are funded from a federal grant to replace latchkey programs for children. He said the grants are designed to enhance academic performance in reading, mathematics, and science. He said the state was required to submit a plan containing performance measures in order to receive a grant. He said the program is designed for schools identified as located in a high-poverty area. He said in order to maximize the grant and make it available to

smaller schools, it was determined to allow regional education associations to apply for the grants.

In response to a question from Representative Boucher, Mr. Patrick said the request for proposal for the 21st century learning centers grant specified that any organization, including faith-based and community-based organizations could apply for a grant. In response to a further question from Representative Boucher, Mr. Patrick said the department received 10 applications, 9 of which were from regional education associations. He said the grants have not yet been awarded.

Chairman Boucher recognized Ms. Shannon Falcon, Boys and Girls Club of the Turtle Mountains, Rolla. She said the Boys and Girls Club of the Turtle Mountains was informed that only regional education associations are eligible for 21st century learning center grants and were told not to apply for a grant. She said the Boys and Girls Club of the Turtle Mountains provides a valuable service to the students in the Turtle Mountains area and should be eligible for 21st century learning center funding.

In response to a question from Senator Mathern, Mr. Patrick said the Department of Public Instruction sent out notices of grant to all the current grantees and all of the superintendents and principals across the state notifying them of the opportunity to apply for 21st century learning center grants. He said no one was ever told that anyone could not apply for a grant.

HEALTH ISSUES

Chairman Boucher recognized Mr. Mandan and Ms. Kim Buck, Mental Health America of North Dakota, Dickinson. Mr. Mandan and Ms. Buck discussed the availability and necessity of mental health programs in Indian country. He said the 2-1-1 mental health telecommunications system generated 9,982 calls from January 1, 2008, through the end of April 2008. He said 47 of these calls were suicide-related. He said the budget for the 2-1-1 program is \$180,000, which is composed of grants and donations.

Ms. Buck said the Legislative Assembly should review the screening and admission to a public treatment facility under NDCC Section 25-03.1-04. She said the process is cumbersome and may be time-consuming when time is of the essence and the procedure should be streamlined.

Chairman Boucher requested that Ms. Buck and Mental Health America of North Dakota provide information at a future committee meeting on the number of suicides in Indian country, mental health cases in Indian country, and substance abuse and chemical addiction cases in Indian country. He said the information may help the committee determine whether there are a disproportionate number of cases in Indian country and form the basis of dealing with the problem.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas said the Indian Affairs Commission may be

able to assist Mental Health America of North Dakota in compiling the requested information.

Chairman Boucher recognized Mr. Bryan Quigley, Director, Mountrail County Social Services, Stanley. Mr. Quigley said the committee has learned about memorandums of understanding between the Game and Fish Department and tribal governments in North Dakota and he suggested the Department of Human Services should explore memorandums of understanding with tribal governments in North Dakota. He said the memorandums of understanding might address such issues as Indian child welfare and other issues relating to social services and children.

Chairman Boucher recognized Ms. Kaye Tufton, Trenton Indian Service Area, Trenton. Ms. Tufton

invited the Tribal and State Relations Committee to hold a meeting in the Trenton Indian Service Area. She said this would provide a good opportunity for the committee to meet and receive information concerning the unique issues relating to the Trenton Indian Service Area.

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

Jeffrey N. Nelson
Committee Counsel

ATTACH:7