

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Thursday, October 2, 2008
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

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

Native American Tribal Citizens' Task Force members present: Cheryl Kulas, Executive Director, Indian Affairs Commission, and Malcolm Wolf, Vice 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 Indians; Avis Little Eagle, Vice Chairman, Standing Rock Sioux Tribe; Myra Pearson, Chairman, Spirit Lake Nation; Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate

Others present: See [Appendix A](#)

It was moved by Representative DeKrey, seconded by Senator Lyson, and carried on a voice vote that the minutes of the August 15, 2008, meeting be approved as distributed.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Nathan Berseth, Director, American Indian Business Development Office, Department of Commerce, Fargo. Mr. Berseth discussed the American Indian Business Development Office and economic development initiatives in Indian country and distributed a progress report ([Appendix B](#)) concerning the status of the business development office. Concerning 2006-08 clients, he said, 184 companies have registered for services since May 2006. Of this total, he said, 101 are Native American owned. He said this represents 90 percent 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 the business development office has facilitated the awarding of 60 contracts worth \$84.4 million, \$60.1 million of which were obtained by Native American firms. One issue that is affecting Native American-owned firms in North Dakota, he said, is the effort by the Department of Defense to consolidate procurement for the Minot and Grand Forks Air Force Bases at Scott Air Force Base near St. Louis, Missouri.

In response to a question from Senator Mathern, Mr. Berseth said Native American-owned firms have

sufficient credit, but bonding is an issue for start-up companies.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Mike R. Schwindt, Director, Child Support Enforcement, Department of Human Services. Mr. Schwindt reviewed child support developments ([Appendix C](#)) and distributed a case processing work plan ([Appendix D](#)). He also distributed an OCSE IV-D Tribal Child Support Program Training CD-ROM, a copy of which is on file in the Legislative Council office. He discussed cooperative jurisdictional efforts between the state and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, which has a federally funded tribal child support office. He said the state and the Three Affiliated Tribes have developed a true government-to-government working relationship. He said a review of statistics from the state showed a significant number of cases with lack of jurisdiction on which no further collection action was being taken existed before the cooperative agreement. He said the review estimated that 700 cases were involved. He said the cooperative effort began with recognition that each party is a sovereign government receiving federal funding for the operation of a child support program. He said the cooperative effort protects the cultural diversity of tribal members and citizens of the state and there is a desire to cooperate and share resources and expertise to ensure parents and children receive necessary child support. To the greatest extent possible, he said, the cooperative effort recognizes that only one entity should provide child support enforcement services.

In response to a question from Senator Lyson, Mr. Schwindt said there are 26 federally funded tribal child support programs and 16 in development in the United States. He said the relationship between the state and the Three Affiliated Tribes' Child Support Office is a model and a true success story.

In response to a further question from Senator Lyson, Mr. Schwindt said the state office forwards tribal child support cases to the tribal IV-D office as the tribe requests them and the tribal office is able to handle them. He said it would not be in anyone's interest for the state to simply transfer all existing cases to the tribe. He said the transfer is occurring in

an orderly fashion as the tribe is able to handle the cases.

In response to a question from Representative Boucher, Mr. Schwindt said the jurisdictional grids developed by the state Child Support Enforcement Office and the Three Affiliated Tribes' Child Support Office are being used as models by other states and tribes.

INDIAN SOCIAL SERVICE ISSUES

At the request of Chairman Boucher, committee counsel presented a concurrent resolution draft [\[93012.0100\]](#) directing the Legislative Council to study the sustainability of tribal social service programs.

Senator Mathern said the clause indicating the state's Indian reservations are some of the fastest growing areas of the state should be revised to state the rate of population growth on the state's reservations is among the highest population growth rates of the state.

Chairman Boucher recognized Ms. Tove E. Mandigo, Director of Economic Assistance Policy, Department of Human Services. Ms. Mandigo said the department does have a process in place now to obtain information on social service needs from stakeholders. She said the department encourages tribes to participate in stakeholder meetings and that information is forwarded to the department and used in preparation of the department's budget.

Chairman Boucher recognized Ms. Deb Painte, Native American Training Institute. Ms. Painte said the tribes appreciate efforts of the Department of Human Services to include the tribes in the stakeholder meetings and the needs identification process. However, she said, the stakeholder meetings occur at the same time annual reports are due to the Bureau of Indian Affairs and tribal representatives often have difficulty attending the meetings. One solution, she said, would be for the state to hold a separate meeting with the tribes rather than requiring the tribes to participate with the counties at local stakeholder meetings.

In response to a question from Ms. Kulas, Ms. Mandigo said the Department of Human Services has a tribal liaison, Ms. Theresa Snyder, who assists the department in following proper protocols in dealing with the state's tribes. However, she said, different tribes may have different protocols, which may lead to complexity in scheduling meetings. She said if tribal representatives are unable to attend a meeting, they should provide written information as the department seeks all of the information it can get in developing its needs assessments and budget.

Senator Mathern said the concurrent resolution draft reflects the concern of the Legislative Assembly with the sustainability of tribal social service programs. He said the study directed by the concurrent resolution draft will examine participation by tribal social service programs in development of the state's human services budget.

Representative Boucher said the clause stating that tribal social service offices should be involved in the Department of Human Services' budgeting process similar to the involvement of county social service boards should be revised to state that tribal social service offices should be involved in the Department of Human Services' budgeting process in consultation with the involvement of county social service boards.

It was moved by Senator Lyson, seconded by Representative Lies, and carried on a roll call vote that the amended concurrent resolution draft directing the Legislative Council to study the sustainability of tribal social service programs be approved and recommended to the Legislative Council. Representatives Boucher, DeKrey, and Lies and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

GOVERNMENT-TO-GOVERNMENT RELATIONS

Senator Lyson said he was disappointed with the attendance of the members of the Native American Tribal Citizens' Task Force.

In response to Senator Lyson's comment, Senator Mathern agreed there has been some attendance issues. However, he said, tribal leaders are faced with very busy schedules, difficult decisions, and crisis management and often issues arise at the last minute demanding their attention and they are unable to attend committee meetings.

In response to Senator Mathern's comment, Representative DeKrey agreed but noted that attendance from members of the Native American Tribal Citizens' Task Force had been better last interim when compared to this interim.

Ms. Kulas said tribal governments are familiar with the federal government but are only now becoming comfortable with dealing with state governments. She said the Tribal and State Relations Committee has been very productive and is making progress. As tribal governments become more familiar with state governments, she said, the process will improve.

Chairman Boucher said the value of the committee is immense, and tribal governments must be informed that the state operates differently from the federal government. However, he said, if state legislators, who are very busy, can find time to attend a meeting then tribal leaders should make the same commitment.

Senator Mathern said the Legislative Assembly should explore revising the committee to make the members of the task force full voting members of the committee. He said this would increase the interest and participation of tribal leaders.

INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel presented a concurrent resolution draft

[\[93010.0100\]](#) directing the Legislative Council to study Indian education issues.

Senator Mathern said the committee should make the same change in the clause indicating that the state's Indian reservations are some of the fastest growing areas of the state to refer to the rate of population growth of these areas is among the fastest population growth rates of the state.

Chairman Boucher recognized Mr. Bob Marthaller, Director, School Organization, Department of Public Instruction. Mr. Marthaller said the department supports the study concurrent resolution draft.

It was moved by Senator Mathern, seconded by Senator Oehlke, and carried on a roll call vote that the amended concurrent resolution draft directing the Legislative Council to study Indian education issues be approved and recommended to the Legislative Council. Representatives Boucher and Lies and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

At the request of Chairman Boucher, committee counsel reviewed a bill draft [\[90205.0100\]](#) relating to financial assistance to tribally controlled community colleges. Committee counsel said the bill draft deletes the ethnic status reporting requirement for the program.

Chairman Boucher recognized Dr. James Davis, President, Turtle Mountain Community College. Dr. Davis said the North Dakota Association of Tribal Colleges has not had sufficient opportunity to review the bill draft in light of recent federal law changes. In addition to the ethnic status issue, he said, the committee should revise the threshold limitation of \$4,581 for each nonbeneficiary student attending a tribally controlled community college. Another change that should be made, he said, is the definition of nonbeneficiary student. He said North Dakota Century Code Chapter 15-70 defines nonbeneficiary student as a resident of North Dakota who is enrolled in a tribally controlled community college but is not an enrolled member of a federally recognized Indian tribe. Recent federal legislation, he said, has allowed nonenrolled first generation descendents of enrolled tribal members to attend tribal colleges on the same basis as enrolled members, and, thus, this change should be recognized in state law. He said this may allow a student to be counted as a beneficiary student for federal purposes and a nonbeneficiary student for state purposes and allow a tribally controlled college to receive a double payment for attendance by that student at a tribally controlled college.

Chairman Boucher recognized Dr. Michel Hillman, Vice Chancellor for Academic and Student Affairs, North Dakota University System. Dr. Hillman said there are several issues concerning tribally controlled community college assistance in addition to ethnic status that should be addressed. He said these include expenditure reporting, audit reporting, expansion of eligibility, and increased federal funding.

THREE AFFILIATED TRIBES REFINERY

Chairman Boucher recognized Mr. Horace Pipe, New Town. Mr. Pipe described efforts by the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation to construct a petroleum refinery on the Fort Berthold Indian Reservation. He said the project first appeared in the federal register on November 7, 2003. He said an environmental impact statement was conducted--the first environmental impact statement ever required for a petroleum refinery. He said the environmental impact statement was required because the refinery will be constructed on Indian trust land. He said the draft of the environmental impact statement was released on June 6, 2006. He said the comment period has closed and the final environmental impact statement is ready to be published in the federal register. However, he said, the Bureau of Indian Affairs has stated that it has not had sufficient time to review the document even though it has had the document since June 2006. The science is done, he said, and the final environmental impact statement is ready to be published but it appears the Bureau of Indian Affairs will not move forward on the issue.

In response to a question from Senator Mathern, Mr. Pipe said the refinery is scheduled to refine Canadian crude oil. If the refinery changes its product, he said, it will require a new environmental impact statement.

In response to a question from Representative Boucher, Mr. Pipe said there are a number of investors who have expressed a willingness to invest in the project. However, he said, they want to see the environmental impact statement published in the federal register before they make a final commitment. He said publication in the federal register is important because then the 60-day time period will begin to run, and after 60 days the National Pollutant Discharge Elimination System permit may be issued and construction may commence.

Senator Mathern said the committee should take some action to prod the Bureau of Indian Affairs into acting on the Three Affiliated Tribes refinery environmental impact statement.

Representative Lies said he agreed with Senator Mathern and the committee could be the catalyst that gets action commenced on the environmental impact statement. He said North Dakota has a problem transporting its crude oil out of state and the refinery would be a great economic boost to the Fort Berthold Indian Reservation.

It was moved by Representative Lies, seconded by Senator Mathern, and carried on a roll call vote that the chairman of the Tribal and State Relations Committee seek approval from the chairman of the Legislative Council and, upon approval, forward a letter to the Bureau of Indian Affairs urging the bureau to expedite its review of the environmental impact statement relating to the Three Affiliated Tribes' refinery project. Representatives Boucher

and Lies and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

TRIBAL FLAG DISPLAY IN LEGISLATIVE WING

Senator Oehlke said he had discussed with Senator Marcellais the issue of displaying the flags of each tribe in North Dakota in the House and Senate chambers. He said the committee should explore this topic further.

In response to Senator Oehlke's comments, Senator Mathern agreed that displaying the flags of the state's tribes would reflect the respect that the Legislative Assembly and the state of North Dakota have for the state's tribes.

Chairman Boucher said the committee has several options concerning the display of tribal flags in the legislative wing or legislative chambers. He said the committee could do nothing and allow Senator Marcellais to introduce a bill. However, he said, he had spoken with Senator Marcellais during the break and the senator was amenable to having the committee take the lead on the issue. Thus, he said, the committee could consider a bill draft for final approval at the committee's next and final meeting of the interim or the committee could adopt a recommendation to the Legislative Council that the Legislative Council arrange for an appropriate display of tribal flags in the legislative wing or legislative chambers. He said due to the variables involved in the issue, such as the size of the flags and whether they should be located in the Memorial Hall, the rear of each chamber, or the front of each chamber, perhaps the best solution would be to recommend that

the Legislative Council arrange for the proper display of tribal flags in the legislative wing.

In response to Representative Boucher's comments, Senator Lyson said Memorial Hall may be an appropriate place because space constraints in the chambers would lead to damage from people brushing against the flags as they moved around the rear of the chamber.

In response to Senator Lyson's comment, Senator Mathern agreed that is the precise reason why the Legislative Council should carefully review the issue and arrange for an appropriate display.

It was moved by Senator Mathern, seconded by Representative Lies, and carried on a roll call vote that the Tribal and State Relations Committee include a recommendation in its final report that the Legislative Council arrange for the display of flags from the state's five tribes in an appropriate place in the legislative wing of the State Capitol. Representatives Boucher and Lies and Senators Lyson, Mathern, and Oehlke voted "aye." No negative votes were cast.

Chairman Boucher recognized Ms. Kulas. Ms. Kulas announced that October 10, 2008, is First Nations Day and the Tribal-State Relationship Message will be given Thursday, January 8, 2009.

No further business appearing, Chairman Boucher adjourned the meeting at 3:00 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:4