

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## TRIBAL AND STATE RELATIONS COMMITTEE

Thursday, January 21, 2010

Sitting Bull College

Fort Yates, North Dakota

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

**Members present:** Representatives Merle Boucher, Kari L. Conrad, Don Vigesaa; Senators Stanley W. Lyson, Tim Mathern, Dave Oehlke

**Member absent:** Representative Jim Kasper

**Native American Tribal Citizens' Task Force members present:** Scott J. Davis, Executive Director, Indian Affairs Commission; Charles Murphy, Chairman, Standing Rock Sioux Tribe

**Native American Tribal Citizens' Task Force members absent:** Marcus Levings, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Richard J. Marcellais, Chairman, Turtle Mountain Band of Chippewa Indians; Myra Pearson, Chairman, Spirit Lake Tribe; Michael Selvage Sr., Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

**Others present:** Rod Froelich, State Representative, Selfridge

James Kerzman, State Representative, Mott

See [Appendix A](#) for additional persons present.

Chairman Boucher recognized Mr. Murphy. Mr. Murphy welcomed the committee to Fort Yates. He said the members of the Standing Rock Sioux Tribe are facing many issues, and it is important for the Tribal and State Relations Committee to hold a meeting on the Standing Rock Reservation.

Chairman Boucher recognized Dr. Laurel Vermillion, President, Sitting Bull College, Fort Yates. Dr. Vermillion said Sitting Bull College has constructed five new buildings in the last five years. She said the college has 333 students.

**It was moved by Senator Lyson, seconded by Senator Mathern, and carried on a voice vote that the minutes of the October 22, 2009, meeting be approved.**

### HATE CRIMES ISSUES

At the request of Chairman Boucher, committee counsel reviewed a bill draft [[10021.0100](#)] relating to enhanced penalties for conviction of assault and criminal mischief involving a hate crime.

Chairman Boucher recognized Ms. Prairie Rose, Chairperson, Fargo Human Relations Commission, Fargo. Ms. Rose distributed a copy of the *Fargo/Moorhead Hate Crime Prevention and Response Plan* ([Appendix B](#)). She said the hate crime prevention response plan was developed in

2002 in response to an attack on two recent immigrants to Fargo based upon the race of the victims. She said the plan focuses on education and public awareness of hate crimes.

In response to a question from Representative Conrad regarding whether an individual who sends a hateful communication via the Internet would be subject to punishment, committee counsel said the communication may be subject to the harassment statute keeping in mind the applicability of the freedom of speech guarantee of the First Amendment.

Chairman Boucher recognized Mr. Brent A. Kary, In-House Attorney, Standing Rock Sioux Tribe, Fort Yates. Mr. Kary noted that the general penalty for criminal mischief is a Class B misdemeanor. He noted the bill draft proposes to make criminal mischief involving a hate crime a Class A misdemeanor. However, he said, it is also a Class A misdemeanor if the actor recklessly causes pecuniary loss in excess of \$2,000 while it is a Class C felony if the actor intentionally causes pecuniary loss in excess of \$2,000. He said criminal mischief involving a hate crime should have a greater penalty than a Class A misdemeanor and suggested that criminal mischief involving a hate crime be a Class C felony.

Chairman Boucher recognized Mr. Jesse Taken Alive, Standing Rock Sioux Tribal Council, Bear Soldier District. Mr. Taken Alive said the penalty for engaging in a hate crime should also affect any professional licenses that the actor possesses. He said this would help prevent the perpetration of hate crimes.

Chairman Boucher requested that the Legislative Council staff redraft the bill draft relating to enhanced penalties for assault and criminal mischief involving a hate crime in light in the committee discussion and suggestions.

### HERITAGE CENTER EXPANSION

Chairman Boucher recognized Mr. Davis. Mr. Davis said one of the initiatives of the Indian Affairs Commission is to work with the state's tribes on historic preservation. As part of this initiative, he said, the Indian Affairs Commission is supporting expansion of the state Heritage Center. He said the expansion will provide an opportunity for the state's tribes to tell their story to the visitors of the Heritage Center. He said involvement of the Indian Affairs Commission will

also assist tribes in participating in the expansion project.

Chairman Boucher recognized Ms. Claudia Berg, Expansion and New Initiatives Coordinator, State Historical Society. Ms. Berg distributed a copy of the agenda for a presentation on the North Dakota Heritage Center expansion ([Appendix C](#)) and an expansion facts sheet ([Appendix D](#)). She also distributed a copy of the spring 2009 issue of *Plains Talk*, the newsletter of the State Historical Society, which is on file in the Legislative Council office. She said the State Historical Society is looking forward to working with the tribes of North Dakota on exhibits and programs for the expanded Heritage Center.

In response to a question from Representative Conrad, Ms. Berg said the State Historical Society does have traveling exhibits that it makes available to local museums, including tribal museums in the state. She said the society also provides technical assistance to local museums.

In response to a question from Representative Conrad, Ms. Berg said the State Historical Society will provide a statement on what the society is doing to assist tribes in preserving their cultural resources.

In response to a further question from Representative Conrad, Ms. Berg said the society only needs to receive a request for assistance from a tribe in order to offer its assistance to the tribe.

Chairman Boucher recognized Ms. Fern Swenson, Director, Archaeology and Historic Preservation Division, State Historical Society. Ms. Swenson reviewed the historic preservation opportunities for the Heritage Center expansion.

Chairman Boucher recognized Ms. Virginia Nelsen, Executive Director, State Historical Society of North Dakota Foundation. Ms. Nelsen said the role of the foundation is to provide fundraising expertise in raising funds for the expansion.

In response to a question from Representative Boucher, Ms. Berg said the State Historical Society has both acquisition policies and loan policies. She said these policies are governed by law as well as State Historical Society policy. She said she would provide information on these policies at a future committee meeting.

Chairman Boucher recognized Ms. Kelly Morgan, Sitting Bull College, Fort Yates. Ms. Morgan reminded the committee and the representatives of the State Historical Society to use discretion and sensitivity when displaying items of American Indian cultural significance. Generally, she said, ceremonial items should not be displayed.

In response to Ms. Morgan's comments, Ms. Berg said the State Historical Society works with tribal advisors in organizing and displaying exhibits.

## TRANSPORTATION IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Darcy R. Rosendahl, Operations Office Director, Department of Transportation. A copy of Mr. Rosendahl's written comments is attached as [Appendix E](#). Mr. Rosendahl

discussed transportation issues in Indian country, including project planning, cultural resources, federal funding for 2010 through 2013, tribal employment, and highway safety programs.

In response to a question from Representative Conrad, Mr. Rosendahl said there are no plans to make Highway 23 four lanes.

In response to a question from Mr. Scott Eagle, Three Affiliated Tribes of the Fort Berthold Reservation, New Town, Mr. Rosendahl said the Department of Transportation does not receive a per barrel fee from oil haulers. Any fees the department receives, he said, are in the form of licensing and registration fees.

Representative Boucher requested that the Department of Transportation provide information on the licensing of oilfield vehicles at a future committee meeting.

## INDIAN EDUCATION ISSUES

Chairman Boucher recognized Mr. Robert J. Parisien, Indian Education Program Administrator, Indian Affairs Commission. Mr. Parisien reviewed the activities of the North Dakota Indian Education Advisory Council and reviewed a report to the interim Education Committee prepared by Mr. Greg Gallagher, Director, Standards and Achievement, Department of Public Instruction. A copy of Mr. Parisien's written comments is attached as [Appendix F](#) and Mr. Gallagher's report is on file in the Legislative Council office. Mr. Parisien said the Indian Education Advisory Council was formed to advise the Department of Public Instruction in educational matters affecting the education of Indian students and to promote equal educational opportunity and improve the quality of education provided to American Indian students throughout the state. Core issue areas for discussion, he said, include teacher issues, tribal college issues, public policy and legislative change issues, cultural issues, challenges particular to Indian education, partnership issues, and technology and development issues.

Representative Conrad requested that the Legislative Council staff invite Mr. Gallagher to appear at a future committee meeting to discuss Indian education issues.

Chairman Boucher recognized Senator Oehlke. Senator Oehlke noted that the interim Education Committee, of which he is a member, has been assigned a study of Indian education issues. He said the Tribal and State Relations Committee should not duplicate the efforts of the Education Committee in studying Indian education issues.

In response to Senator Oehlke's comments, Chairman Boucher said he had no desire to duplicate the efforts of the interim Education Committee. However, he said, due to the importance of the issues and the responsibility of the Tribal and State Relations Committee to review issues of concern to American Indians, he would request the Legislative Council staff to send a letter to the chairman of the interim

Education Committee requesting that the chairman apprise the Tribal and State Relations Committee of the study, progress to date, and any recommendations developed by the committee.

Chairman Boucher recognized Mr. Davis. Mr. Davis said he is chairman of the American Indian Language Preservation Committee. He said the committee was created by House Bill No. 1399 (2009) and is tasked with developing a process for the orderly preservation of American Indian languages spoken by the members of tribes located in North Dakota, including the creation or acquisition of audio recordings, picture dictionaries, and pronunciation guides; translation of existing material; and the acquisition, development, and dissemination of instructional materials for elementary and high school students, individuals enrolled in institutions of higher education, and other adults. He said the committee is also to pursue working relationships aimed at American Indian language preservation with public and private sector entities, including institutions of higher education, in this state and in other states and provinces and to seek the active participation of American Indians residing in this state on an individual and a tribal basis. One concern, he said, that he as chairman has with the committee is that the Legislative Assembly in appropriating \$18,000 for the committee required the committee to match each dollar with \$3 from nonstate sources. He said this may make it difficult for the committee to carry out its activities. However, he said, the provision that nonstate sources may provide in-kind resources to provide the match may help the committee.

Chairman Boucher recognized Ms. Sunshine Carlow, Tribal Education Manager, Standing Rock Sioux Tribe Education Department, Fort Yates. Ms. Carlow distributed a letter ([Appendix G](#)) from Mr. Jim Gross, Superintendent, Selfridge Public School District No. 8, concerning the allocation of fiscal stabilization funds under the American Recovery and Reinvestment Act of 2009. She said Mr. Gross had been led to believe that the funds would be distributed based on poverty and free/reduced lunches formulas under Title 1, but ultimately the funds were distributed on a per student basis. She said this formula resulted in several schools, such as Selfridge, receiving substantially less money than anticipated.

Chairman Boucher recognized Representative Vigesaa. Representative Vigesaa said the allocation of the stimulus funds received under the American Recovery and Reinvestment Act of 2009 was very difficult. He noted that the Title 1 formula resulted in a small number of schools receiving large disproportionate distributions while the funding method based on a per student basis equalized the funding among school districts.

In response to Representative Vigesaa's comments, Ms. Carlow said several school districts had relied upon the initial funding formula and were

placed in a difficult situation when the formula was changed to a per student basis.

Chairman Boucher recognized Senator Oehlke. Senator Oehlke said the Legislative Assembly was faced with a difficult issue of allocating one-time stimulus funds fairly. He said it is unlikely that the state will receive any additional stimulus dollars, and, thus, it is unlikely that a reallocation of additional dollars will be made in the future.

Chairman Boucher recognized Mr. Terry Yellow Fat, Superintendent of Schools, Standing Rock/Fort Yates Community School, Fort Yates. Mr. Yellow Fat said the allocation issue is essentially a small school versus large school issue and the small schools did not receive a fair portion of the stimulus dollars.

Chairman Boucher recognized Senator Mathern. Senator Mathern said this is an example that it is essential that the tribes have good representation in the legislative process. He noted that many organizations and entities have lobbyists to promote their interests and to track legislation affecting their interests. He said the state's tribes should do the same.

### **INDIAN EMPLOYMENT ISSUES**

Chairman Boucher recognized Ms. Laurie Sterioti Hammeren, Director, Human Resource Management Services, Office of Management and Budget. Ms. Sterioti Hammeren discussed the number of American Indians employed in state government and efforts by the state to recruit and retain American Indian employees. She distributed an ethnicity summary ([Appendix H](#)) for the Department of Human Services, Department of Transportation, and Department of Corrections and Rehabilitation and a state employee fact sheet ([Appendix I](#)).

Ms. Sterioti Hammeren said she would like to see more American Indian applicants for positions in state government. She said Human Resource Management Services is working with United Tribes Technical College to increase the number of applicants and to make students aware of opportunities in state government.

### **CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY**

Chairman Boucher recognized Ms. Marie McLaughlin Hanken, Assistant Public Defender, Standing Rock Sioux Tribe Tribal Court, Fort Yates. Ms. McLaughlin Hanken said the Standing Rock Sioux Tribe is in the process of applying to the state Child Support Enforcement office for startup funding to implement a comprehensive child support enforcement program on the Standing Rock Reservation.

Chairman Boucher recognized Mr. Michael T. Swallow, Tribal Judge, Standing Rock Sioux Tribe and Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, Fort Yates. Mr. Swallow said that in his

capacity as tribal judge, he is working closely with the state Child Support Enforcement program. He said the tribe has a very good working relationship with the state and child support enforcement is an example of the tribes and the state working together.

### **COMMISSION TO STUDY RACIAL AND ETHNIC BIAS IN THE COURTS**

Chairman Boucher recognized the Honorable Donovan J. Foughty, District Judge, Cochairman, Commission to Study Racial and Ethnic Bias in the Courts, Devils Lake. Judge Foughty said the North Dakota Supreme Court had recently established the commission and he and Justice Carol Ronning Kapsner are the cochairs of the commission. He said the resolution establishing the commission states that North Dakota's judicial system must ensure that the rule of law is applied fairly and equally to all who seek redress in the courts and must ensure that the system and its procedures and processes are administered to ensure equality of treatment free of any racial or ethnic bias for all persons. He said the commission, to the extent possible, will review cases to see whether race or minority status was a factor in the disposition of a case, review hiring and general employment practices in the judicial system, and gather and analyze information relating to the identified responsibilities of the commission.

Chairman Boucher recognized Mr. Swallow. Mr. Swallow said the commission will focus on state district courts from the time an individual enters the courthouse to the time the individual leaves the courthouse. He said the members of the commission determined not to study the entire criminal justice or civil justice system, but only the judicial portion of the process.

### **ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY**

Chairman Boucher recognized Mr. Bob Harms, Prairie Consulting Group. Mr. Harms said the Prairie Consulting Group has been retained by the Department of Commerce to provide services relating to the development of American Indian businesses in North Dakota. He said the group has divided the contract into two segments--the first to provide an assessment of American Indian businesses in North Dakota and the second to design an outreach and business consultation program for American Indian businesses in North Dakota. He said one of the key focuses of the initiative has been private sector business development as opposed to Section 8(a) contracts. Following the assessment phase, he said, the next step is to design a program for American Indian businesses.

In response to a question from Representative Conrad, Mr. Harms said the program developed by the Prairie Consulting Group will be comprehensive and will provide assistance from retail to

manufacturing, including basic business plans, to more sophisticated assistance.

Chairman Boucher recognized Ms. Phyllis Howard, Office for Elimination of Health Disparities, State Department of Health. Ms. Howard urged Mr. Harms to disseminate any information concerning the assessment of current tribal business resources as widely as possible. She said many individuals who may be aware of such programs may not be contacted if the Prairie Consulting Group does make a concerted effort to reach them.

Chairman Boucher recognized Mr. Al Nygard, President, ANC. Mr. Nygard said ANC specializes in culturally sensitive approaches to management, planning, and development. He said economics is only one part of the puzzle, but the community must be enabled to take on the task of economic development. He said the Prairie Consulting Group is very good at what it does, but it would be more beneficial if the Department of Commerce itself came out to Indian country to assess the needs and to provide needed economic development services.

In response to a question from Representative Conrad, Mr. Nygard said Sitting Bull College specializes in Indian business development and building businesses on the reservation. He said there are 37 tribal colleges in the country and Fort Berthold Community College and Turtle Mountain Community College also provide business expertise for American Indian businesses.

### **GOVERNMENT-TO-GOVERNMENT RELATIONS**

Chairman Boucher recognized Representative Froelich. Representative Froelich noted that the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation puts a 5 percent limit on oil taxes on privately owned land within the reservation and an 11.5 percent cap on taxes on tribal trust land. He said this provision encourages oil and gas exploration activities on privately owned land at the expense of tribal trust land. He said the committee should explore this provision.

### **STAFF DIRECTIVES**

Senator Mathern requested that the Legislative Council staff provide information on the federal requirements for distribution of federal stimulus money and the criteria for final distribution of these funds at a future meeting.

Representative Conrad requested that the Legislative Council staff arrange for a presentation by representatives of the Governor's office on the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation and information on tax agreements between tribes and states in other states.

Representative Boucher requested that representatives of the Department of Human Services be requested to provide information on memorandums

of understanding entered between the department and tribal governments in North Dakota.

Representative Vigesaa requested that representatives of the Department of Transportation and State Water Commission be invited to attend when the committee holds a meeting on the Spirit Lake Reservation.

No further business appearing, Chairman Boucher adjourned the meeting at 4:00 p.m.

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:9