

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### TRIBAL AND STATE RELATIONS COMMITTEE

Thursday, September 9, 2010  
Room 101, Exhibit Hall, Civic Center  
Bismarck, North Dakota

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

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

**Native American Tribal Citizens' Task Force members present:** Scott J. Davis, Richard Marcellais

**Native American Tribal Citizens' Task Force members absent:** Marcus Levings, Charles Murphy, Myra Pearson, Michael Selvage Sr.

**Others present:** See [Appendix A](#)

**It was moved by Senator Lyson, seconded by Senator Matherne, and carried on a voice vote that the minutes of the July 27, 2010, meeting be approved.**

### HATE CRIMES ISSUES

At the request of Chairman Boucher, committee counsel reviewed a bill draft [[10021.0400](#)] relating to enhanced penalties for conviction of discrimination in public places, aggravated assault, and harassment involving a hate crime and a bill draft [[10162.0100](#)] relating to an enhanced penalty for conviction of criminal mischief involving a hate crime.

In response to a question from Representative Kasper, committee counsel said a prosecutor could show bias by the facts of the alleged crime or the status of the alleged victim of the crime.

Senator Lyson said he had some concerns with the terms "sex" and "sexual orientation" in defining the status of an individual who may be the victim of bias.

**It was moved by Representative Vigesaa, seconded by Senator Oehlke, and carried on a roll call vote that the bill drafts relating to hate crimes be amended to define disability as "a condition or characteristic that renders an individual a disabled individual. A disabled individual is an individual who has a physical, sensory, or mental impairment that materially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment" and eliminate the alternative based on the federal Social Security definition that disability means "an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for**

a continuous period of not less than twelve months." Representatives Boucher, Conrad, and Vigesaa and Senators Lyson, Matherne, and Oehlke voted "aye." Representative Kasper voted "nay."

Representative Kasper said he has concerns with the use of the term "perceived" as it relates to sex and sexual orientation for purposes of defining an individual who may be the victim of bias.

**It was moved by Senator Matherne, seconded by Senator Lyson, and carried on a roll call vote that the bill draft, as amended, relating to an enhanced penalty for conviction of criminal mischief involving a hate crime be approved and recommended to the Legislative Management.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Lyson, Matherne, and Oehlke voted "aye." No negative votes were cast.

**It was moved by Senator Lyson, seconded by Representative Conrad, and carried on a roll call vote that the bill draft, as amended, relating to enhanced penalties for conviction of discrimination in public places, aggravated assault, and harassment involving a hate crime be approved and recommended to the Legislative Management.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Lyson, Matherne, and Oehlke voted "aye." No negative votes were cast.

### OIL AND GAS EXPLORATION AND PRODUCTION IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Ryan Bernstein, counsel, Governor's office. Mr. Bernstein discussed the oil and gas tax and regulatory agreements with the Three Affiliated Tribes of the Fort Berthold Reservation and oil and gas development in Indian country. A PowerPoint used by Mr. Bernstein in his presentation is attached as [Appendix B](#). Under the tax agreement, he said, the Tax Commissioner establishes for each reservation well the mineral acres of trust land and non-trust land. He said the wells are subject to a gross production tax of 5 percent and an oil extraction tax of 6.5 percent; however, non-trust land is exempt for 60 months from the extraction tax. He said the tax agreement calls for oil and gas tax revenue sharing from production on trust lands. He said 50 percent of the total is allocated and paid to the tribe, and 50 percent of the total is allocated and paid to the state and political subdivisions based on statutory distribution formulas. Concerning oil and

gas tax revenue sharing from production on non-trust lands, he said, 20 percent of gross production taxes are allocated and paid to the tribe, and 80 percent of gross production taxes and 100 percent of oil extraction taxes are allocated and paid to the state and political subdivisions based on statutory distribution formulas. He said the tax agreement provides for a one-time \$60,000 tribal employment rights office fee and a \$40,000 tribal application fee per well. He said these fees are payable to the tribe and are not collected or administered by the Tax Commissioner. He said the fees are applicable if the well spacing unit is composed of a majority of trust land. Concerning the results of the tax agreement, he said, before the agreement, only one well was drilled on the reservation and none was on trust land. Since the agreement was signed, he said, 2,337 leases have been approved by the Three Affiliated Tribes, 65 wells are producing on the Fort Berthold Reservation, and 23 rigs are drilling on the reservation, mostly on trust land. He said the tribe has received \$13,289,150, and the state has received \$32,442,549 under the tax agreement. In addition, he said, the tribe has received \$181,227,968 in lease payments. In August, he said, \$3.1 million in royalties was paid to the tribe and allotees on the reservation. Concerning the regulatory agreement, Mr. Bernstein said, the agreement defines the cooperative process to approve permits and spacing rules on the Fort Berthold Reservation. Under the agreement, he said, the Bureau of Land Management will adopt statewide well location rules and set-back requirements. He said these are the most important aspects of the agreement as it ensures that the state and tribe will be able to develop the reservation's mineral resources in an orderly fashion without land stranded between spacing units. Concerning orders, he said, if the order only concerns trust land, the Bureau of Land Management will issue the order and the Industrial Commission may cosign the order. If the spacing unit includes both trust and non-trust land, he said, the bureau and Industrial Commission will cosign the order. If no trust lands are involved, he said, the Industrial Commission will issue the order, and the bureau will not cosign the order. He said the bureau still needs to approve the agreement.

## CORRECTIONS ISSUES

Chairman Boucher recognized Mr. Scott J. Davis, Executive Director, Indian Affairs Commission. Mr. Davis said the commission is concerned with the high number of Native American inmates in North Dakota correctional facilities as well as recidivism once these inmates are released. He said tribes lack resources to assist tribal members when they leave the corrections system and return to their home reservations. He said he and the commission are asking for guidance to bring these numbers down. He said one issue that should be pursued is treatment versus incarceration. Oftentimes, he said, treatment may be a more successful option than incarceration.

The next step in treatment, he said, is adequate transitional facilities in the state's major cities as well as reservations.

Representative Conrad said Minot needs a transitional facility. She said Minot is a center for two of the state's reservations, and a transitional facility should be located there.

Senator Mathern said one topic for the next meeting may be the high number of Native American inmates, recidivism, and the availability of transitional facilities near reservations.

Senator Lyon said in his experience as a former parole officer there is a stigma associated with being in a transitional facility as opposed to a correctional facility. He said some offenders prefer to finish their time in a correctional facility rather than in a transitional facility near their home area.

Chairman Boucher recognized Mr. Patrick N. Bohn, Director for Transitional Planning Services, Division of Adult Services, Department of Corrections and Rehabilitation. Mr. Bohn discussed transition from prison to community initiatives that have been taken since 2003. He said through this initiative, the Department of Corrections and Rehabilitation attempts to collaborate with other stakeholders in order to increase public safety by improving outcomes for the offender population. He said transitional planning services is not about more resources, but using the resources already available more effectively and working collaboratively to solve problems on a state, regional, and local level. A copy of a schedule of Native American inmates is attached as [Appendix C](#).

In response to Mr. Bohn's presentation, Representative Conrad said there are not enough resources when offenders are in county jails rather than transitional facilities. She said more transitional facilities should be developed. She said funding for transitional facilities should be reviewed at a future meeting.

Chairman Boucher recognized the Honorable Donovan J. Foughty, District Judge and Cochairman, Commission to Study Racial and Ethnic Bias in the Courts, Devils Lake. Judge Foughty discussed transition programs in Devils Lake and northeast North Dakota.

In response to Judge Foughty's comments, Mr. Davis said he agreed there are plenty of resources available, but the resources available to each tribe must be identified and allocated accordingly.

At the request of Chairman Boucher, Judge Foughty updated the committee on the progress of the Commission to Study Racial and Ethnic Bias in the Courts. Judge Foughty said the commission is in the data collection phase and sending out and tabulating surveys. He said the commission will hold a series of meetings to obtain subjective analysis and will be targeting Native Americans because they comprise the largest minority group in North Dakota.

## TAXATION IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Myles Vosberg, Director, Tax Administration, Tax Department, for comments ([Appendix D](#)) on tax collection agreements with the state's Indian tribes. Mr. Vosberg said the state has a cigarette and other tobacco products and motor fuel and special fuel agreements with the Standing Rock Sioux Tribe, a motor fuel and special fuel agreement with the Spirit Lake Nation, a motor fuel and special fuel agreement with the Three Affiliated Tribes of the Fort Berthold Reservation, and a motor fuel and special fuel agreement with the Turtle Mountain Band of Chippewa Indians. He said revenue under the agreements is allocated based upon the population of the tribe that is a party to the agreement. He said the motor fuel and special fuel agreement with the Turtle Mountain Band of Chippewa Indians does not apply to off-reservation trust land. He said authority for the agreements is granted by North Dakota Century Code Chapter 54-40.2. Finally, he said, revenue allocations will be updated once the 2010 census results are available.

## INDIAN EDUCATION ISSUES

At the request of Chairman Boucher, committee counsel reviewed a resolution draft [[13015.0200](#)] directing the Legislative Management to study Indian education issues.

Chairman Boucher recognized Mr. Bob Marthaller, Deputy Superintendent, Department of Public Instruction. Mr. Marthaller said the Superintendent of Public Instruction supports the resolution draft calling for a study of Indian education issues.

Mr. Marthaller said the department has secured a sponsor for a bill to authorize the position of director of Indian education within the Department of Public Instruction. Another issue, he said, is an appropriation to the Superintendent of Public Instruction for planning grants. He said this proposal would include a demonstration project as well as authorization for specific grants.

**It was moved by Senator Mathern, seconded by Representative Vigesaa, and carried on a roll call vote that page 1, line 9, be amended to replace "school districts" with "schools" and page 1, line 17, be amended to insert "and prevent social problems and lessen the need for correction services" after "North Dakota".** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Senator Oehlke, seconded by Representative Vigesaa, and carried on a roll call vote that page 1, lines 20 and 21, be removed.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Representative Kasper, seconded by Senator Oehlke, and carried on a roll call vote that the resolution draft be amended to**

include "a study of fair and equitable allocation of all state and federal educational funding." Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Senator Mathern, seconded by Representative Vigesaa, and carried on a roll call vote that the resolution draft, as amended, relating to the Legislative Management study of Indian education issues, including a fair and equitable allocation of all state and federal educational funding, be approved and recommended to the Legislative Management.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

## ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Robert W. Harms, Prairie Consulting Group. Mr. Harms discussed economic development initiatives in Indian country. He distributed an excerpt ([Appendix E](#)) from a Harvard University study outlining obstacles to economic development on Indian reservations. He also discussed an excerpt from a tribal business directory compiled by Prairie Consulting Group, which is on file in the Legislative Council office. He said the key directive under the contract with the Department of Commerce was to focus on developing private business capacity on the state's reservations rather than procurement activities. In conjunction with this study, he said, Prairie Consulting Group has been active in matching Indian-owned businesses with business opportunities. He said it is apparent that a Native American chamber of commerce is needed, and Prairie Consulting Group is working on this initiative. He said the Prairie Consulting Group initiatives are long-term and sustainable. He said there are many opportunities to improve the economic climate on the state's reservations. He said this effort must include the private sector, the state, and the tribes in order to build sustainable, long-term economic development on the state's reservations.

## COMMITTEE ON TRIBAL AND STATE RELATIONS

At the request of Chairman Boucher, committee counsel reviewed a bill draft [[10121.0100](#)] relating to the extension of the Tribal and State Relations Committee. He said the bill draft makes the Committee on Tribal and State Relations a permanent interim committee.

Senator Mathern suggested the jurisdiction of the committee should be revised to replace "delivery of services, case management, child support enforcement" with "education, human services, and corrections".

Mr. Davis said the committee should explore various options to increase tribal representation in committee meetings.

Representative Kasper said he supports continuation of the committee; however, he said, making the committee a permanent interim committee may be sending the wrong message. If the committee is concerned with tribal participation, he said, the Legislative Assembly may not want to make the committee a permanent interim committee. A better option, he said, may be to extend the committee for another two years and attempt to increase participation by tribal government representatives.

Senator Mathern noted the Committee on Tribal and State Relations is to be chaired by the chairman of the Legislative Management or the chairman's designee. He suggested the chairman should be appointed by the Legislative Management in the same manner as other interim committees.

**It was moved by Representative Kasper, seconded by Senator Mathern, and carried on a roll call vote that the duties of the Tribal and State Relations Committee be revised to include education, human services, and corrections.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Representative Kasper, seconded by Senator Mathern, and carried on a roll call vote that the bill draft relating to the Committee on Tribal and State Relations be amended to provide the chairman be appointed by the Legislative Management.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Representative Conrad, seconded by Representative Kasper, and carried on a roll call vote that the name of the Native American Tribal Citizens' Task Force be changed to the North Dakota Tribal Governments' Task Force.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Senator Mathern, seconded by Representative Kasper, and carried on a roll call vote that page 2, lines 23 through 28, be deleted and that the jurisdiction of the committee be expanded to study whether members of the Native American Tribal Citizens' Task Force should be voting members of the Tribal and State Relations Committee and that education of the citizens of North Dakota on Indian issues and tribal sovereignty be included as a committee study area.** Representatives Boucher, Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

**It was moved by Senator Mathern, seconded by Representative Kasper, and carried on a roll call vote that the bill draft, as amended, relating to extension of the Tribal and State Relations Committee be approved and recommended to the Legislative Management.** Representatives Boucher,

Conrad, Kasper, and Vigesaa and Senators Mathern and Oehlke voted "aye." No negative votes were cast.

## GOVERNMENT-TO-GOVERNMENT RELATIONS

At the request of Chairman Boucher, Chairman Marcellais addressed the committee. Chairman Marcellais thanked the committee for its work, especially holding meetings on the state's reservations. He thanked Mr. Davis for his work with the Indian Affairs Commission, especially his work with the Native American leadership program.

Chairman Boucher recognized Mr. Dave Archambault, Standing Rock Sioux Tribe, Fort Yates. Mr. Archambault said the Standing Rock Sioux Tribe has experienced a number of suicides within the reservation's boundaries and is implementing aggressive suicide prevention programs. Another issue facing the Standing Rock Sioux Tribe, he said, is law enforcement. He said the Bureau of Indian Affairs has authorized 38 temporary law enforcement officers along with 26 permanent law enforcement officers for the reservation. He said the reservation was impacted tremendously by the spring ice storms, and Mor-Gran-Sou Electric Cooperative has been replacing a number of downed power lines on the reservation. He said Mor-Gran-Sou Electric Cooperative incurred \$33 million in damages. Since this was a natural disaster, he said, the state should assist Mor-Gran-Sou Electric Cooperative in replacing its transmission infrastructure damaged in the ice storms.

Chairman Boucher recognized Ms. Betty Swain, Tribal Council, Turtle Mountain Band of Chippewa Indians, Belcourt. Ms. Swain said issues facing the Turtle Mountain Band of Chippewa include law enforcement, drug enforcement, and housing.

Chairman Boucher recognized Mr. Mervin Packineau, Tribal Council, Three Affiliated Tribes of the Fort Berthold Reservation, Parshall. Mr. Packineau said issues facing the Three Affiliated Tribes include housing, roads, and cross-deputization of law enforcement officers. He said the committee should encourage the study of tribal sovereignty in the education curriculum for all students in North Dakota, native as well as nonnative.

Chairman Boucher recognized Mr. Jim Baker, Tribal Council, Turtle Mountain Band of Chippewa Indians, Belcourt. Mr. Baker said issues facing the Turtle Mountain Reservation include drug trafficking, including prescription drugs; unemployment; and issues involving the gaming compact with the state.

Chairman Boucher recognized Mr. Robert Sheppard, Planning Director, Sisseton-Wahpeton-Oyate, Sisseton, South Dakota. Mr. Sheppard said there is a new generation of tribal leadership ready to step forward and work with the state. He contrasted working with officials in South Dakota with North Dakota, and he complimented the state of North

Dakota and its officials in their relations with the Sisseton-Wahpeton-Oyate.

Chairman Boucher recognized Mr. Wayne Trottier. Mr. Trottier said one issue facing Native Americans in North Dakota is the dropout problem in schools. He said this is a serious issue on the state's reservations and should be addressed.

Chairman Boucher recognized Ms. Theodora Bird Bear, Three Affiliated Tribes of the Fort Berthold Reservation, Mandaree. Ms. Bird Bear said she is a member of the Three Affiliated Tribes Landowners Association and has concerns with oil and gas development on the Fort Berthold Reservation. She said landowners are concerned with fracturing in the Bakken and Three Forks Formations and its potential effect on ground water resources. Other issues facing the tribe, she said, are increased traffic caused by oil and gas development and cross-deputization.

Chairman Boucher recognized Ms. Phyllis Howard, Office of Elimination of Health Disparities, State

Department of Health. Ms. Howard reminded the committee that health issues on the state's reservations are also a large concern that should be addressed.

Chairman Boucher recognized Mr. Henry Harrison, Tribal Council, Standing Rock Sioux Tribe, Fort Yates. Mr. Harrison thanked the committee for its work and the opportunity to speak. He said the meeting the committee held at Sitting Bull College in Fort Yates was especially productive.

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

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:5