

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## TRIBAL AND STATE RELATIONS COMMITTEE

Monday, September 26, 2011  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator David O'Connell, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators David O'Connell, Donald Schaible, Robert Erbele, Richard Marcellais; Representatives Kenton Onstad and Wayne Trottier

**Member absent:** Representative Jim Kasper

**North Dakota Tribal Governments' Task Force members present:** Scott J. Davis, Executive Director, Indian Affairs Commission; Mark Fox, representing Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Cheryl Kary, representing Charles Murphy, Chairman, Standing Rock Sioux Tribe; Jeff Baker, representing Merle St. Claire, Chairman, Turtle Mountain Band of Chippewa Indians; and Yvonne Dubois, Joel Red Fox, and Clarice Brownshield, representing Roger Yankton, Sr., Chairman, Spirit Lake Tribe

**North Dakota Tribal Governments' Task Force member absent:** Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

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

At the request of Chairman O'Connell, committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#). He also reviewed a memorandum entitled [Tribal and State Relations Committee - Background Memorandum](#). The memorandum discusses the committee's responsibilities, federal Indian law and policy, state-tribal relations, state-tribal cooperative agreements, and 2011 legislation relating to Indian issues.

Chairman O'Connell recognized Mr. Scott J. Davis, Executive Director, Indian Affairs Commission. Mr. Davis discussed ongoing and emerging issues relating to tribal and state relations. He said North Dakota is one of the few states that has a Tribal and State Relations Committee to review and discuss issues of common concern between the state and tribes located within that state. He said this says a great deal about the positive cooperative agreement between the state and the state's tribes.

Chairman O'Connell recognized Ms. Cheryl Kary, Executive Director, Standing Rock Sioux Tribe. Ms. Kary said the Standing Rock Reservation is unique in North Dakota in that it straddles the North Dakota-South Dakota state line, and the nation is thus located in two states and must deal with two separate state governments. She said water is one of the

current topics of most concern to the Standing Rock Nation.

Chairman O'Connell recognized Mr. Jeff Baker, Turtle Mountain Band of Chippewa Indians. Mr. Baker said the tribes and tribal representatives are becoming more aware that they must have a good working relationship with the state government of the state in which they are located as well as the federal government.

Chairman O'Connell recognized Mr. Joel Red Fox, Wood Lake District, Spirit Lake Nation. Mr. Red Fox said two of the most important issues facing the Spirit Lake Nation are housing and roads.

Chairman O'Connell recognized Ms. Yvonne Dubois, Crow Hill District, Spirit Lake Nation. Ms. Dubois agreed that housing and transportation are two of the most pressing issues facing the Spirit Lake Nation.

Chairman O'Connell recognized Mr. Mark Fox, Finance Director, Three Affiliated Tribes of the Fort Berthold Reservation. Mr. Fox said the Three Affiliated Tribes of the Fort Berthold Reservation is struggling to deal with the impact of increased oil and gas development on the Fort Berthold Reservation. He said issues include housing, transportation, and oil and gas taxation. He said the tribe and the state must work together to exploit the resource for the benefit of both the tribe and the state.

### CORRECTIONS ISSUES

Chairman O'Connell recognized Mr. Patrick N. Bohn, Director, Transitional Planning Services, Division of Adult Services, Department of Corrections and Rehabilitation. Mr. Bohn discussed corrections issues in Indian country. A copy of his presentation is attached as [Appendix B](#).

Mr. Bohn said the department has initiated the Read Right program to improve reading comprehension abilities among its inmate population in order to support their learning ability as much of learning hinges on reading comprehension. He said the department focuses on chemical treatment and sexual offender treatment as well as mental health services. In addition, he said, the department has taken action to improve outcomes by having American Indian leaders speak to American Indian inmates to educate and serve as quasi-mentors. He noted there are many social and economic issues that impact the department's offender population, and the department

is striving to continue to address these issues the best way possible.

### **TAXATION IN INDIAN COUNTRY**

Chairman O'Connell recognized Mr. Cory Fong, Commissioner, Tax Department. Mr. Fong discussed taxation in Indian country and distributed a guideline for tribal motor fuel tax agreements ([Appendix C](#)) and a schedule of oil and gas gross production and oil extraction tax collections from oil production from the Fort Berthold Reservation ([Appendix D](#)). He said his office is working with the Indian Affairs Commission to develop a resource guide for the Indian Affairs Commission to use in navigating Indian tax issues with the state's tribes and individual Indians.

Concerning tribal tax agreements, Mr. Fong said the department has developed several key attributes of state and tribal tax agreements. He said these include an identical tax for each tribe based upon tribal ordinances be census-based, uniform, and efficient. He said the state tribal tax agreements demonstrate the effective collaboration between tribal governments and the state. He said tax agreements also result in much-needed revenue for the tribes and ensures tax fairness to both the consumers and the retailers involved.

In response to a question from Representative Onstad, Mr. Fong said the motor vehicle tax agreements are ongoing until either party has a concern or issue which would bring the parties back to the table for negotiation.

Chairman O'Connell recognized Mr. Fox. Mr. Fox said the state should consider factors other than census numbers in allocating revenue from the motor vehicle fuel tax agreements. He said impact on transportation within the reservation should be a factor that is included in the allocation. Concerning the tribal oil tax agreement, he said, the tax rate is not the problem, but the allocation of the tax revenues collected is. He said the taxes are split 50-50 on tribal trust land and split 80 percent to the state and 20 percent to the tribe on fee land located within the exterior boundaries of the Fort Berthold Reservation. He said the agreement needs to be revisited to make it more equitable for the tribe.

Chairman O'Connell recognized Mr. Daniel L. Rouse, Attorney, Tax Department, who introduced Mr. Kevin Schatz, Supervisor, Motor Fuel and Oil and Gas Section, Tax Department. Mr. Schatz reviewed the guidelines for tribal tax agreements and discussed taxation of bulk fuel sales on the state's reservations.

### **INDIAN EDUCATION ISSUES**

Chairman O'Connell recognized Mr. Robert V. Marthaller, Assistant Superintendent, Department of Public Instruction. Mr. Marthaller discussed Indian education issues. A copy of his written comments is attached as [Appendix E](#), and the *2009-10 North Dakota State Profile for Local Educational Improvement* is on file in the Legislative Council office.

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

Chairman O'Connell recognized Mr. Andrew Frank, staff, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Court. Mr. Frank reviewed the interim report of the commission to study racial and ethnic bias in the courts (on file in the Legislative Council office). He said the preliminary conclusion is that the timing for a commission is appropriate given current circumstances in North Dakota--where a strong economic position relative to the rest of the country is attracting many people from various racial and ethnic backgrounds and where the minority population has been quickly growing relative to the majority population over the last several years. He said the commission seeks to find and address racial and ethnic bias in the face of such changes rather than continuing business as usual without knowledge of its extent and rather than having to face the consequences of such ignorance--most damage has already been done. For Native Americans--who continue to make up the state's largest minority group, he said, a comprehensive study of racial and ethnic bias in the courts is long overdue. Despite this fact, he said, the commission has received a great deal of positive feedback regarding its efforts from Native Americans attending public hearings, from open-ended comments on surveys, and from other members of the general public. He said the commission is well underway studying a wide variety of processes simultaneously, and many studies are in progress. He said the commission intends to continue its overall study, working to a greater level of detail in every subject area in order to generate a complete and substantial final report with its findings and recommendations for change. He said the commission will issue a final report between December 2011 and February 2012.

In response to a question from Representative Onstad, Mr. Frank said most of the findings to date can be implemented internally by the judicial system without the need for legislation.

### **HERITAGE CENTER EXPANSION**

Chairman O'Connell recognized Ms. Claudia Berg, Expansion and New Initiatives Coordinator, State Historical Society of North Dakota. Ms. Berg discussed expansion of the state's Heritage Center and distributed a series of construction photographs (on file in the Legislative Council office) and an expansion fast facts sheet attached as [Appendix F](#). She said the expansion is 20 percent complete, and the first gallery should be completed during the spring of 2013 and the entire project completed by the end of 2014. She said the project is on schedule.

### **HEALTH CARE AND INSURANCE EXCHANGE**

Chairman O'Connell recognized Ms. Rebecca Ternes, Deputy Commissioner, Insurance

Department. Ms. Ternes reviewed the Patient Protection and Affordable Care Act and its items specific to Native Americans ([Appendix G](#)).

Chairman O'Connell recognized Ms. Maggie Anderson, Director, Medical Services Division, Department of Human Services, who discussed Medicaid expansion and Medicaid tribal consultation ([Appendix H](#)).

### **INDIAN HOUSING**

Chairman O'Connell recognized Mr. Max Wetz, Director of Public Affairs, Housing Finance Agency. Mr. Wetz reviewed the agency's housing needs assessment which was last done in 2004. He said the agency is currently reviewing and updating the assessment and plans to complete the assessment in the spring of 2012. He said the assessment will identify housing needs throughout the state.

### **INDIAN COMMERCE ISSUES**

Chairman O'Connell recognized Mr. Davis. Mr. Davis reviewed the history of the American Indian Business Development Office. For the upcoming biennium, he said, the Department of Commerce is attempting to establish the North Dakota American Indian Business Alliance, which is a partnership with on-reservation and off-reservation businesses. He said the alliance will create new and diverse economic activity on the state's reservations.

### **CHILD SUPPORT ENFORCEMENT**

Chairman O'Connell recognized Mr. Jim Fleming, Director, Child Support Enforcement, Department of

Human Services, who discussed child support enforcement in Indian country ([Appendix I](#)).

### **STATE TREASURER**

Chairman O'Connell recognized Ms. Carlee McLeod, Deputy State Treasurer, State Treasurer's office, who discussed the number of outstanding checks issued to tribal entities ([Appendix J](#)).

### **STAFF DIRECTIVES**

Chairman O'Connell recognized Senator Marcellais. Senator Marcellais suggested that the committee put tourism issues and veterans' issues on the agenda for the next committee meeting.

Chairman O'Connell recognized Ms. Clarice Brownshield, Spirit Lake Tribe. Ms. Brownshield requested that the Legislative Council contact the Department of Transportation concerning a traffic accident west of the Four Winds School on State Highway 57 near Fort Totten.

Chairman O'Connell recognized Mr. Davis. Mr. Davis announced October 7 is First Nations Day, and there will be a number of events at the State Capitol and all members of the committee and task force are invited to attend.

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

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:10