

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**TRIBAL AND STATE RELATIONS COMMITTEE**

Thursday, May 29, 2014  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Dennis Johnson, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Dennis Johnson, Marvin E. Nelson, Wayne Trottier; Senators Oley Larsen, Dave Oehlke

**Member absent:** Senator John M. Warner

**North Dakota Tribal Governments' Task Force members present:** Scott J. Davis, Executive Director, Indian Affairs Commission; Ken Hall, representing Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Steve Sitting Bear, representing Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Russell McDonald, Chairman, Spirit Lake Tribe

**North Dakota Tribal Governments' Task Force members absent:** Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

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

**It was moved by Senator Oehlke, seconded by Senator Larsen, and carried on a voice vote that the minutes of the February 5, 2014, meeting be approved as distributed.**

**WATER ISSUES**

Chairman Johnson called on Ms. Michelle Klose, Assistant State Engineer, State Water Commission, for testimony regarding tribal water needs and the tribal reservations' eligibility for water projects. Ms. Klose said there are tremendous needs on reservations for adequate supplies of drinking water. She said the State Water Commission is able to use the resources trust fund for work with political subdivisions. She said when working with other entities with a status other than political subdivision, the rules and regulations are different.

In response to a question from Senator Oehlke, Ms. Klose said the State Water Commission cost-shares on projects, such as drinking water, irrigation, and flood protection. She said although funding has been provided for using water for industrial use, the primary focus is funding for drinking water. She said the commission does not control how the water is used, but domestic use is a priority. She said federal funding for water projects has been declining for the past several years. She said a project that involves federal money is considered a joint project in terms of who controls the project. She said the tribes, which are sovereign nations, are limited by the federal funding available for water projects.

In response to a question from Senator Larsen, Ms. Klose said information on the location of aquifers is available for sharing with the tribes. She said the State Water Commission has been working with Three Affiliated Tribes to protect water resources for the future.

In response to a question from Mr. Davis, Ms. Klose said the water projects of the tribes are benefiting everyone. She said in the past, the State Water Commission has worked on joint projects with McKenzie County and the city of Parshall. She said the commission does not need to be involved in the agreement between the tribe and the political subdivision. She said the commission requires the agreement to be between the commission and the political subdivision. She said the cost-share for grant funding is around 60 to 75 percent. She said the projects with the highest priority are for those areas without a drinking water supply. She said whether and how much to charge for the water would be determined by the tribe and the political subdivision. She said the commission is interested in sustainable infrastructure. She said the commission wants assurance that the political subdivision will be able to collect the revenues to maintain and replace the facilities.

In response to a question from Chairman McDonald, Ms. Klose said the State Water Commission does not provide maintenance on lines. She said because of last winter's depth of frost, there was considerable line damage. She said the commission will work with water systems to address their issues. She said the commission often refers callers with questions to their respective water systems. She said many water systems do not have repair or maintenance funds, and the commission stresses the importance that new systems have maintenance funds. She said individual customer concerns should be handled by the water system or by the appropriate state agency. She said, for example, the State Department of Health does compliance checks on issues of water quality and other directly monitoring from a public health standpoint.

In response to a question from Mr. Davis, Ms. Klose said due in part to pressure from oil development, it has become more difficult to get easements for water projects. She said if the easement is for a main transmission line, the landowner is paid one time for a 99-year easement. She said with temporary construction easements, the landowner is paid for crop damages for as many years as the landowner sees a reduction in crops. She said in some cases, the plan may have to be redesigned if easements are refused. She said obtaining gratis easements for rural lines has become difficult. She said the State Water Commission wants to be consistent on how landowners are treated. She said if eminent domain is used, an appraisal must be done. She said it has become very difficult to hire land appraisers. She said if a gratis easement is not granted, an appraisal must be done.

Mr. Davis said water issues have been a concern of the tribes for decades. He said he would recommend tribal representation on the State Water Commission. He said tribal members should apply for available positions on the commission.

Chairman Johnson called on Mr. Mark Fox, Director, Tax Commission, Three Affiliated Tribes of the Fort Berthold Reservation. Mr. Fox said tribes have a right to water. He said just because water rights have not been settled does not mean that the rights do not exist. He said the tribe has been trying to fund a water system in Twin Buttes for years. He said after applying and being rejected, a request was made to the Legislative Assembly. He said the tribe was informed that the tribe was not eligible to receive direct grant funding but rather the tribe must work with a political subdivision. He said this requires the political subdivision to cooperate with the tribe in order for the tribe to get a water system. He said even though the state has financially benefited greatly from oil wells on tribal lands, the tribes cannot get money from the state for water projects. He said there is a need for constant communication about what the state is doing with water and the issuing of permits on ground water because it affects the tribal water supply. He said the Little Missouri River flows into the Missouri River, which is within the tribal water rights. He said Fox Hills, from which water is being discharged, has dropped two feet within the last two years. He said one inch of recharge takes 9,000 years. He said although he has attended State Water Commission meetings on behalf of the tribe, it is difficult to be heard at the meetings. He said because decisions are made that impact the tribes, it may be time to get a tribal representative on the State Water Commission.

In response to a question from Senator Oehlke, Mr. Fox said the tribe has had discussions with the Governor on getting tribal representation on the State Water Commission; however, it has not been in the form of a formal resolution.

Mr. Davis said he will address the issue with the Governor when the Indian Affairs Commission meets this summer.

Mr. Hall said the state must work with the tribes. He said the state water project budget for the biennium is \$700 million. He said Twin Buttes' water project request was for \$2 million.

Chairman Johnson called on Mr. Eric Volk, North Dakota Rural Water Systems Association. He said the North Dakota Rural Water Systems Association is working on self-prioritizing water projects. He said the association is trying to get water to those without a water source. He said most of the funding for rural water projects has been federal. He said for the upcoming year, only \$6 million in federal funding is available for water projects--an amount that will be split 50/50 between the state and the tribes. He said in previous years, that amount was \$18 million. He said it is only during the last biennium that the state has put in a significant amount to rural water projects.

In response to a question from Representative Nelson, Mr. Volk said all tribal systems are considered rural systems.

Ms. Klose said there is not a definition of rural water system in state law. She said North Dakota Century Code Chapter 61-02 provides the State Water Commission is to work with political subdivisions, which are entities of the state.

Mr. Fox said the tribal water system is recognized federally. He said the tribe received an irrigation grant from the State Water Commission in the past so there is precedence for a tribe to receive grants directly from the state for a water project. He said based upon that grant, the assumption was made that the tribe should be able to get a grant for the Twin Buttes pipeline project as well.

### TRIBAL PUBLIC HEALTH UNIT PILOT PROJECT REPORT

Chairman Johnson called on Ms. Chris Burd, Wowicala Community Health Training and Consulting, for testimony ([Appendix B](#)) regarding the status of the tribal public health unit pilot project on the Standing Rock Reservation under 2013 House Bill No. 1180. Ms. Burd said House Bill No. 1180, which was a companion bill to 2013 House Bill No. 1093, was intended to provide for a pilot project to improve access to home and community-based services to the Standing Rock Sioux Tribe. She said, however, without House Bill No. 1093 passing, House Bill No. 1180 offered little value to long-term strategic planning for home and community-based services in tribal communities. She said access to licensed independent clinical social workers is limited in the state, and the fees required to pay these practitioners are significantly higher than to pay licensed social workers. She said as a result, there has not been a significant interest in the implementation of House Bill No. 1180. She said the following has had an impact on the unimplemented status of House Bill No. 1180:

- The bill did not meet the specific needs of the Standing Rock Sioux Tribe to plan for improved access to home and community-based services as well as to the full range of community-based services for elders and people with disabilities in the state.
- There is not a clear understanding of whether a fiscal note was ever attached to the final amended bill. The pilot project would be very costly to a tribe in terms of contracting a licensed independent clinical social worker.
- No tribe in the state has its own qualified service provider agency in place to improve access to community-based programming.
- There are questions as to whether House Bill No. 1180 was directly discussed with the tribal leadership as it was being amended.

Mr. Davis said it was his understanding that tribal leadership was at the table on House Bill No. 1180. In response to a question from Mr. Davis, Ms. Burd said House Bill No. 1180 did not do much in terms of a strategic plan for home health services. She said a qualified service provider agency and a social worker are needed at each tribe. She said adaptations need to be made. She said there was no sustainability attached to the bill.

Senator Larsen said there is a disconnect regarding billing at the district level. He said there is a need for a licensed social worker at the district level.

Mr. Davis said he will look to Ms. Burd's lead to make the pilot project work. He said this is a pilot project for the state. If the Standing Rock Reservation can make it work, funding can be requested for a statewide project.

Ms. Madonna Azure, Otter Woman Consulting, said House Bill No. 1180 requires the Department of Human Services to establish the pilot project. She said this needs to be a joint effort with the state and the tribe.

Chairman McDonald said home and community-based care is more of a rural issue than a tribal issue. He said the purpose is to keep elders in their home with proper care and to save the state some money. He said House Bill No. 1180 provides for a pilot project for independent case management. He said it is important that the parties move forward with the project.

Chairman Johnson called on Ms. Karen Tescher, Assistant Director, Long Term Care Continuum, Medical Services Division, Department of Human Services. Ms. Tescher said she has been involved in House Bill No. 1180. She said the bill was intended to establish a pilot project in Sioux County. She said only the county case manager can provide services for service payments for elderly and disabled (SPED) and Expanded SPED. She said this pilot project would expand to allow more individuals to get home and community-based services. She said there are two different things being discussed, and it can be confusing.

At the request of Chairman Johnson, Mr. Davis said his office will work with the Department of Human Services and the Standing Rock Sioux Tribe to get the project back on track. Mr. Davis said the goal is to create a business model of billing the state for home health services.

Chairman Johnson called on Mr. Hall who presented a report ([Appendix C](#)) on the Fort Berthold public health unit pilot project. Mr. Hall said in 2012 a health workgroup composed of tribal health office leaders, the Elbowoods Memorial Health Center, the State Department of Health, the Director of the public health master's program at North

Dakota State University, and his office began working to establish a tribal public health unit on the Fort Berthold Reservation. He said the workgroup has been meeting to make plans for building the tribal infrastructure to support the public health needs and to continue collaborating with the tribal programs and nontribal public health programs that support the development of an effective model of public health service delivery. He said the following public health programs operating within the boundaries of the reservation are providing services to the local communities:

- The special supplemental nutrition program for women, infants, and children (WIC), which is a federally funded program, provides services to 320 children in six tribal communities;
- A tobacco prevention program, which is administered by the Three Affiliated Tribes Boys and Girls Club and funded by the State Department of Health and the tribe, provides tobacco prevention activities and education for youth and teens;
- The Fort Berthold Coalition Against Domestic Violence, a nonprofit program funded by a federal grant, the State Department of Health, and tribal funding, provides 24-hour services to the reservation populations;
- The Elbowoods Memorial Health Center provides immunizations, which are provided by the State Department of Health, to all tribal communities; and
- Women's Way, a program that provides mammograms and pap test screenings to eligible women between the ages of 40 and 64 who live on the reservation, is an outreach program of the State Department of Health.

Mr. Hall said in May 2014 a proposal to fund the public health unit was presented to the Tribal Business Council Health Committee. He said a budget of \$60,400 was requested to hire an administrative assistant; for travel support; and to purchase equipment, supplies, and phone service. He said the Tribal Business Council will present the proposal to the full committee at its June 2014 meeting. He said also in May 2014 the Fort Berthold Health Authority Board went on record to lend its support to the developments of the Fort Berthold Public Health Unit. He said discussions with the Elbowoods Memorial Health Center are underway to hire a director for the public health unit.

In response to a question from Mr. Davis, Mr. Hall said because the tribe's environmental code is silent on the disposal of fracking socks, it is likely the tribe will copy the state's policy until its environmental code can be amended.

Mr. Davis said he will work with tribes to avoid duplication of laws. He said the oil industry would appreciate uniformity on laws and rules and to which entity--the state or the tribe--the industry is required to report.

Mr. Hall said he was not aware of any tribal and state compacts relating to environmental issues although it is a topic that may need to be addressed.

Chairman Johnson called on Ms. Faith Hall. Ms. Hall discussed the important of serving healthier foods in school lunches. She said she prefers eating fresh food and having less fat in foods. She said foods like hotdogs and chips can be served occasionally. She said she would like schools to have a fresh garden program.

### **BOARD OF UNIVERSITY AND SCHOOL LANDS STUDY**

Chairman Johnson called on Mr. Lance Gaebe, Commissioner, Department of Trust Lands, for a report ([Appendix D](#)) on the status of the Board of University and School Lands study of options to address the concern of landowners adjacent to land surrounding Lake Sakakawea and Lake Oahe, which is under the control of the Army Corps of Engineers. Mr. Gaebe said Eide Bailly LLP was the successful bidder of this project, and a plan was put into place to gather information as well as seek out novel approaches to these issues. He said a mail survey was created after reviewing 2013 House Bill No. 1338 and 2009 House Bill No. 1459 and meeting with the Board of University and School Lands, the Governor's office, and a local engineering company. He said the survey was divided into seven special interest groups--producer, conservation or wildlife, state or federal agency, tribal, county/city, recreation, and other. He said the results were tallied according to each group to determine cohesiveness amongst the group and between the groups. He said the mail survey was sent out to approximately 520 individuals, organizations, counties, and agencies. He said the list was derived from adjacent landowners as shown in recent county plat books; a tenant list secured from the Army Corps of Engineers, which appeared to be agriculture tenants; and individuals, organizations, counties, and agencies that testified at the 2013 House Bill No. 1338 hearings and the 2009 House Bill No. 1459 hearings. He said about 210 responses were received. He said the producer and other groups had the greatest number of responses, a number that coincided with the greatest number on the mailing list. He said in March 2014, public meetings were held New Town, Garrison, Linton, Beulah, and Fort Yates. He said a final general public meeting will be held in Bismarck on June 11, 2014. He said after the June 11 meeting, the draft options will be developed and presented to the Board Secretary of the Board of

University and School Lands. He said a revised draft will be presented to the Board of University and School Lands at its August meeting, and the final report presented to the Legislative Management by Wednesday, October 1, 2014.

In response to a question from Representative Nelson, Mr. Gaebe said the Department of Trust Lands jurisdiction only relates to the mineral rights of the land. He said the shoreline is the jurisdiction of the State Water Commission. He said returning the land to landowners will be a challenge. He said after the Army Corp of Engineers began the acquisition process for the 1950s water projects, oil was discovered in the area. He said many of those landowners whose land was acquired after the discovery of oil retained mineral rights while those landowners whose land was acquired before the discovery did not retain those rights.

In response to a question from Mr. Davis, Mr. Gaebe said those tribal members who were denied comment at the Fort Yates meeting will get another opportunity for comment at the Bismarck meeting on June 11.

### TRIBAL COLLEGE GRANT PROGRAM UPDATE

Chairman Johnson called on Dr. Jim Davis, President, Turtle Mountain Community College, for an update ([Appendix E](#)) on the status of the workforce development grants to tribally controlled community colleges in the state. Dr. Davis thanked the Legislative Assembly for approving funding for the grant program. He said Turtle Mountain Community College has received all of its funding--just over \$1 million. He said Ms. Beth Zander of the Department of Commerce has been very helpful in working with tribal colleges on this program. He said as a result of the grant funding, the college's commercial driver's license (CDL) program has been able to hire an additional instructor and purchase an additional truck. He said the enrollment of the electrical program has increased from about 9 students per session to 25 students per session. He said as a result of the grant program, the college has added an oilfield operations program. He said the college has been able to place all of its students who sought placement. He said the college is ahead of schedule in reaching its goals. He said the best people to train tribal people are the tribal colleges. He said students have been placed in Devils Lake, New Town, Fargo, Minot, and the local area. He said while many graduates have left the reservation, many do not have the resources to enable them to move off the reservation to get jobs. He said the Governor has been looking to other states for workers. He said the state should be looking to graduates of tribal colleges and should provide assistance for a month or two until the graduates can get settled in their new jobs.

In response to a question from Chairman Johnson, Dr. Davis said some students opt to return to college for a second year to earn an associate's degree. He said other students cannot afford to leave the reservation due to lack of resources.

Chairman Johnson called on Dr. Cynthia Lindquist, President, Cankdeska Cikana Community College, for testimony ([Appendix F](#)) regarding the tribal college grant program. Dr. Lindquist said in August 2013 Cankdeska Cikana Community College (CCCC) received its first grant funding. She said since then, the college has been awarded about \$1 million in three rounds of grant applications. She said CCCC will be receiving an additional \$247,000 in the final round. She said because of the difficulty in hiring instructors, CCCC has formed a partnership with Lake Region Community College. She said she receives constant requests from industry for graduates. She said because the grant funding cannot be used directly for students, the college has had to find other sources of funding for on-the-job training and internship programs. She said housing and college readiness are issues of concern. She said because most students are not prepared for college, CCCC must work on remediation to prepare the students to enter the programs. She said mathematics is one area for which students are ill-prepared. She said CCCC averages 8 students to 10 students in its commercial driver's license (CDL) program and 4 students to 5 students in its heavy equipment program.

In response to a question from Representative Trottier, Dr. Lindquist said the college is in the early stages of establishing relationships with the trucking industry. She said such a relationship could provide students with much-needed resources, such as tuition and relocation assistance.

In response to a question from Chairman McDonald, Dr. Lindquist said CDL graduates are also needed to fill bus driver positions.

In response to a question from Senator Larsen, Dr. Lindquist said each tribal college tries to create its own niche. She said the tribal colleges would rather partner and do what is sustainable.

In response to a question from Representative Trottier, Dr. Lindquist said she does not recruit off her reservation. She said, however, there may programs at other tribal colleges which may attract students from other reservations, such as an advanced degree.

Mr. Davis said each tribal college is different and unique in how they operate, which is a good thing. He said it is likely that additional tribal college grant funding will be requested in the next legislative session. He said the common goal has been to get tribal people to work, and it is working. He said the tribes will experience good results in the years to come.

Chairman Johnson called on Dr. Phil Baird, Interim President, United Tribes Technical College. Dr. Baird said United Tribes Technical College (UTTC) started in 1969 as an employment training center. He said the tribal college offers a number of programs, including CDL, heavy equipment, medical coding, and electrical technology. He said UTTC has an 85 percent retention rate, and all graduates who want a job have one. He said up to 15 students can take welding during a session. He said because of the changing nature of medical coding, it can be difficult to find qualified instructors. He said because of the competition from industry in the state, the tribal college has not been able to find construction technology instructors. He said housing continues to be an issue for students, especially the affordability of off-campus housing in the Bismarck area. He said UTTC serves students from 50 to 70 different tribes. He said of the 36 tribal colleges in the country, two-thirds of the students are female, many with dependents. He said UTTC appreciates the investment from the state. He said partnerships are important. He said tribal colleges are an important part of the training picture.

In response to a question from Senator Larsen, Dr. Baird said UTTC has married housing as well as co-ed and separate men's and women's dormitories. He said campus housing is at 98 percent occupancy. He said many of the housing units are over 100 years old. He said others, which were surplus housing from the United States Air Force, are about 65 years old. He said the campus is in need of infrastructure. He said UTTC is working on establishing a hotel on campus as part of an on-the-job training program.

Chairman Johnson called on Dr. Koreen Ressler, Vice President of Acedemics, Sitting Bull College. Dr. Ressler said Sitting Bull College has also found it difficult to find qualified faculty. She said the college has been advertising for a welding instructor for nine months. She said the college has partnered with Bismarck State College for faculty. She said offering more short-term training, such as two-week programs, makes it easier to find instructors. She said one of the uses for the grant money has been to hire an employment coach. She said the college is working on bringing enrolled members who are working in the Bakken back to the college to talk about life in the Bakken and to debunk some of the myths about the work and the life in that area. She said because there is not housing on campus, all students must commute.

## DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Johnson called on Ms. Lucy Fredericks, Director, Indian Education, Department of Public Instruction, for information ([Appendix G](#)) regarding the North Dakota Indian Education Summit and other Indian education issues. Ms. Fredericks provided information on the upcoming North Dakota Indian Education Summit to be held on Tuesday, July 22, 2014, in the Brynhild Haugland Room of the State Capitol. She said Ms. Denise Juneau, Superintendent, Montana Office of Public Instruction, will be the keynote speaker.

In response to a question from Senator Larsen, Ms. Fredericks said the Common Core Standards are being implemented. She said resources and training are being provided.

## MEDICAID EXPANSION UPDATE

Chairman Johnson called on Ms. Julie Schwab, Director, Medical Services Division, Department of Human Services, for testimony ([Appendix H](#)) regarding Medicaid Expansion. Ms. Schwab said as of May 2014, approximately 7,800 individuals were enrolled for coverage in the state's Medicaid Expansion. She said the data shows that most enrollees are childless adults, 52 percent of the Medicaid Expansion enrollees are female, 56 percent are aged 19 to 44, and 69 percent live in rural areas. She said Cass and Burleigh Counties are the only urban counties in the state. She said enrollment has continued to grow steadily. She said the department is unable to report the ethnic and racial makeup of the Medicaid Expansion population as the contingency eligibility system does not capture this information. She said once the system is operational, that information can be reported. She said the department does not have any reported difficulties relating to coverage for American Indians. She said the department continues to collaborate with the Indian Affairs Commission to ensure eligible American Indians are aware of the expanded coverage and are being encouraged to apply.

In response to a question from Representative Nelson, Ms. Schwab said there is not an open enrollment period for Indian population. She said about 15 percent of the Native population eligible for expansion and open enrollment have done so. She said the department and the tribes are taking an active role in getting people signed up for Medicaid Expansion. She said Indian Health Service is a payer of last resort.

Chairman Johnson called on Ms. Elaine Keepseagle. Ms. Keepseagle said she is a certified patient navigator, covering the Standing Rock Sioux Tribe, the Three Affiliated Tribes, and the Bismarck-Mandan area. She said

many on the Standing Rock Sioux Reservation did not know about Medicaid Expansion. She said many are not waiting until they get sick before signing up. She said it was difficult explaining to tribal members that if they have insurance, they do not need to go through Indian Health Service. She said she explains to tribal members that with Medicaid Expansion, the money goes back to the hospital and is not an Indian Health Service expense. She said it only takes 20 minutes to sign up for Medicaid Expansion. She said some people are reluctant to provide their personal information.

Mr. Davis said it comes back to trust. He said people trust Ms. Keepseagle so they will trust what she is saying is accurate.

In response to a question from Chairman McDonald, Ms. Keepseagle said Indian Health Service is underfunded. She said Medicaid Expansion allows the medical facilities to provide overall service to everyone.

### **TRIBAL-STATE TAX AGREEMENTS**

Chairman Johnson called on Mr. Myles Vosberg, Tax Commissioner's office, for testimony regarding tribal-state tax agreements. Mr. Vosberg provided data ([Appendix I](#)) on tax collection agreements with tribal governments. He said the agreements are such that the tribes pass laws within reservations which mirror state laws. He said this allows for all transactions to be subject to tax equally with a split of revenue based on census number of enrolled versus nonenrolled members on the reservation. He said under the tribal-state oil and tax agreement, about \$21.3 million was remitted to the tribe in May 2014. He said the average has been approximately \$19.3 million per month. He said the Tax Commissioner's office has been working with the Standing Rock Sioux Tribe to update its agreements. He said a draft has been provided to the tribe. He said the contracts will be updated with the appropriate split so it accurately represents the number of enrolled members, which have increased. He said a tribal-state sales tax agreement, which has been discussed, may need legislative approval to go forward. He said most compacts are negotiated between the state, via the Governor, and the tribes and do not require legislative approval.

In response to a question from Senator Oehlke, Mr. Vosberg said the tobacco tax passed by the Turtle Mountain Band of Chippewa Indians is not part of a revenue sharing agreement with the state. Rather, he said, it is a tax initiated by the tribe alone.

### **TRIBAL YOUTH AND RELATED ISSUES**

Chairman Johnson called on Mr. Davis for testimony regarding the need for the establishment of a youth assessment center in Devils Lake. Mr. Davis said an effort is underway to establish a short-term assessment center for youth which would provide detention, shelter care, and residential assessment and treatment for youth in the Devils Lake area who are involved in delinquent acts and become subject to the jurisdiction of state and tribal courts. He said Judge Donovan J. Foughty, Northeast Judicial District, has taken the lead on this effort. Mr. Davis provided information ([Appendix J](#)) prepared by Judge Foughty.

Chairman McDonald said United States Senator Heidi Heitkamp is working on identifying sources of funding for the project, possibly Medicaid. He said funding will be needed for construction as well as for operations and maintenance. He said a youth assessment center would be used to provide emergency housing for the time between the incident and the juvenile's appearance in court. He said it would also be used for counseling, therapy, treatment, and education. He said the idea arose out of conversations with Chairman McCloud, Judge Foughty, Mr. Davis, and himself. He said many juveniles are being sent out of state because of the lack of facilities and services. He said as a result of the lack of facilities and services, a juvenile is more likely to commit a more serious offense in the future. He said progress is being made on making a youth assessment center a reality.

Mr. Davis said the idea arose after discussions were had about the need to provide a dormitory-type setting for children who are having trouble at home. He said those involved in the project are looking at the licensing through the Department of Human Services and the State Department of Health.

Chairman McDonald said tribal children are also citizens of North Dakota and deserve the same opportunities as nontribal children.

Chairman Johnson said the committee will hear an update on the project at the committee's next meeting.

Chairman Johnson called on Ms. D. Joyce Kitson for testimony ([Appendix K](#)) regarding the transition from the corrections system to society. Ms. Kitson said Native American offenders released from the corrections system have substantial barriers that ultimately lead to reoffending or revocations. She said some of the barriers include homelessness, lack of credit to obtain housing, transportation, mental health, and other health-related issues. She said there are employment barriers common to felons and other probationers and lack of family support and

community resources. She said in response to these issues, concerned citizens and tribal members are working to implement a team that would oversee trained advocates and sponsors to assist the offenders throughout the legal process and upon release. She said it is imperative for the state to look for ways to address the problems facing addiction-based offenders in order to achieve a successful and meaningful rehabilitation. She said graduates of tribal colleges can be trained as advocates and court watchers. She said a transitional pilot project is needed. She said it is important to keep communication available between offenders and their families.

Mr. Davis said his office has been working with the correctional systems in the state on how to prepare offenders for release and for successful transition back to the reservation and to society. He said his wife is working to create a Native American transition center that can provide released offenders with support until that individual is ready to go home. He said all larger cities in the state need a center for Native Americans.

Chairman McDonald said there is a higher percentage of Native Americans in prison in the state than any other population. He said the stereotyping of minorities is a problem. He said offenders often reoffend in order to go back to a culture the offender knows.

Chairman Johnson called on Mr. Leonard D. Hosie. Mr. Hosie said it is important that those released from incarceration have the resources to return to their families. He said he had a personal experience of assisting an offender who was released from jail late in the evening who had no resources to return to his family.

Chairman Johnson called on Ms. Lorraine Davis, Bismarck-Mandan Native American Development Center, for testimony. Ms. Davis said she has developed a business model and is working on getting funding to create the Native American Development Center that would provide a vast array of services aimed at helping Native Americans transition from the reservation to off reservation or from incarceration back into society. She said it is important to teach the Native population to be self-sufficient. She said she does not want to provide duplication of services. She said the development center would be used to help to empower Native Americans. She said the result of changing the mindset from entitlements to empowerment will result in self-sufficiency. She said she hopes to collaborate with Job Service North Dakota, UTTC, cities, counties, and other political subdivisions.

Mr. Sitting Bear commended Ms. Davis and said her project is a great idea.

In response to a question from Representative Nelson, Ms. Davis said the availability of treatment in prison is a critical element to the offender's success after release. She said when she was released, she had nowhere to go and everyone she knew had addiction problems. She said it was very humiliating and difficult. She said she hopes to receive the first grant for the project in late August. She said she has been working on funding with the North Dakota Humanities Council.

In response to a question from Senator Oehlke, Ms. Davis said there is too much politics on reservations and that she is not sure if a nonprofit organization could survive there. She said individuals often become products of their environment and need to get away--often from their own families.

Representative Trottier said her story could be very inspirational to young people.

Mr. Hall commended Ms. Davis and Ms. Kitson for their bravery and drive. He said the state needs to find a balance between industry and its identity. He said decisions have long-term effects. He said the decisions made now will affect the state for years to come. He said after the oil activity has gone, the people of the state will still be living here. He said we must make good decisions today.

## OTHER CONCERNS

Chairman Johnson called on Ms. Jessica Johnson, Judicial Systems Administrator, Indian Affairs Commission, for testimony ([Appendix L](#)) regarding issues related to the enforcement of domestic violence protection orders. Ms. Johnson said one of the recommendations of the final report of the North Dakota Commission to Study Racial and Ethnic Bias in the Court was to implement the Extending Project Passport through the state. She said the goal of Extending Project Passport is to build upon the success of the original Project Passport. She said Project Passport was designed to improve recognition and enforcement of protection orders within and between states and tribes by encouraging states and tribes to adopt a recognizable first page for orders of protection, which includes common elements and format. She said Extending Project Passport also encourages electronic data and information sharing using established national data standards to improve the comparability and accessibility of protection order data across jurisdictions. She said all four major North Dakota tribes are using a coversheet for their protection orders; however, not all identify the coversheet as Project Passport. She said the Supreme Court's Committee on Tribal and State Court Affairs is working with the tribal courts and the Attorney General's office to initiate a process for tribal courts to use Project Passport, as well as enter their orders of protection in the state's



system so any law enforcement officer, on or off the reservation, will be able to easily identify any valid domestic violence protection order. She said the cover letter is designed to look uniform throughout the country.

In response to a question from Senator Oehlke, Chairman McDonald said his tribal council has the authority to override a judicial decision. He said the tribal code is designed to have a separation of powers. He would like to see separation of powers in the tribal constitution rather than as a law and order code. He said on the Standing Rock Sioux Reservation, judges and department heads are elected officials.

Mr. Hall said Three Affiliated Tribes is working toward more judicial independence. He said judges are elected; however, if a judge leaves before the end of a term, one is appointed.

Chairman Johnson called on Ms. Linda Isakson, North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota, for testimony ([Appendix M](#)) regarding the enforcement of a domestic violence protection order. Ms. Isakson said the full faith and credit enforcement of foreign protection orders is guided by the Violence Against Women Act [18 U.S.C. 2265-2266] and North Dakota Century Code Chapter 14-07.4, the Uniform Interstate Enforcement of Protection Orders Act. She said the reluctance on the part of law enforcement in enforcing protection orders comes from identifying the validity of the foreign order. She said the uniform cover page of the Project Passport will help assure law enforcement that the order is valid on its face. She said the necessary information is on that cover page and easily accessible. She said the North Dakota Council on Abused Women's Services supports adoption of this cover page by both the state and all tribal entities to enhance the enforcement of protection orders across reservation boundaries.

Chairman McDonald said the Spirit Lake Sioux, Turtle Mountain Band of Chippewa, and Three Affiliated Tribes are all members of the coalition. He said the North Dakota Council on Abused Women's Services serves the Standing Rock Sioux Reservation. He said quick recognition of protection orders is important, especially when the number of law enforcement officers is limited.

In response to a question from Mr. Davis, Ms. Isakson said the state and the tribes must look at how their computer systems can communicate. She said the state and the tribes must look at how the tribe can be a part of the state's criminal justice information sharing (CJIS) program.

Mr. Sitting Bear said the enforcement of foreign orders is also needed for child custody orders.

Chairman Johnson called on Mr. Thomas L. Trenbeath, Chief Deputy, Attorney General's office. Mr. Trenbeath said the issue of enforcement of protection orders is between the state and the tribal court systems. He said within the last several years, discussions have been held about reporting the common cover sheet in CJIS. He said educating law enforcement should enable them to recognize the uniform cover sheet. He said it would all depend on the ability of the issuing court to get the protection order into the system so it could be accessed by law enforcement.

In response to a question from Senator Larsen, Mr. Trenbeath said it would be much more beneficial to law enforcement if the state would pick up the cost of accessing CJIS. He said the subscription cost is \$25 per month per officer.

In response to a question from Mr. Hall, Mr. Davis said tribal councils have asked the Indian Affairs Commission about the possibility of exploring the idea of tribal access to CJIS. Mr. Trenbeath said CJIS has been building for many years. He said including tribal information and access may be another piece of the puzzle in building the system.

Chairman Johnson called on Ms. Molly Brooks, Director, Criminal Justice Information Sharing Program. Ms. Brooks said CJIS is open to expanding the system to include tribal information and access. She said several Bureau of Indian Affairs officers have access to the information. She said expansion would require legislative or grant funding.

In response to a question from Representative Nelson, Mr. Trenbeath said CJIS is currently a line item in the Information Technology Department's budget. He said there may be a movement to house CJIS in the Attorney General's office.

## GOVERNMENT-TO-GOVERNMENT DISCUSSION

Chairman Johnson called on Ms. Cara Currie Hall for testimony regarding the United Nations Declaration on Rights of Indigenous Peoples and other issues. Ms. Hall said within the tribal oil and gas tax agreement is the requirement that the tribes disclose how the funds will be used and for which program. She said the same

requirement should be imposed upon the state. She said the state should use the funds generated from the money the state receives from oil revenue from the reservations for programs that help the tribes.

Ms. Hall discussed the United Nations Declaration on Rights of Indigenous Peoples. She said President Barack Obama endorsed this declaration. She said the declaration relates to human rights of indigenous peoples. She said a Native American has to be a member of a tribe and a citizen of the state.

Chairman McDonald said there are several existing models of agreements between tribes and states in the country. He said New Mexico has one of the more notable ones. He said much of that relationship in New Mexico is from gaming revenue. He said tribal nations have the right to tax. He said tribes need revenue from sources other than gaming to fund basic infrastructure.

Chairman Johnson called on Mr. Ron Trottier, Director, Tribal Transportation, Turtle Mountain Band of Chippewa. Mr. Trottier said he was representing Chairman Richard McCloud. He discussed the need for state funding of tribal roads. He said tribal members are North Dakotans, and the members pay taxes. He said his department is taking steps to implement a crash reporting system that is used to log citations, crashes, and other traffic information that will be shared with the state. He said he would like the state to help get the tribal road systems up to standard.

In response to a question from Senator Larsen, Mr. Trottier said there are 171 miles of tribal roads on the reservation. He said there are also county roads within the reservation boundaries. He said the tribe is in the process of purchasing an asphalt plant that the tribe could operate as a business to fund its own road projects.

Mr. Hall said the road construction and maintenance is a concern on the Fort Berthold Reservation as well. He said in light of the greatly increased truck traffic, the \$600,000 per year in transportation funding from the Bureau of Indian Affairs is inadequate. He said the reservation has over 1,300 miles of tribal roads. He said 13,000 vehicles per day drive on Main Street in New Town, of which 5,000 to 6,000 are trucks. He said the state has received nearly \$6 million in revenue from reservation minerals. He said his reservation has been fortunate in that it has been able to afford to repair its own roads. He said other reservations are not as fortunate.

Mr. Trottier said tribes have gone to the United States Department of Interior for assistance, which only resulted in the federal government requiring a percentage of new construction funds to be used for maintenance. He said the result was less money for new construction.

Chairman McDonald said most of the money from the federal government is to cover maintenance with no opportunity to grow the tribal road system.

No further business appearing, Chairman Johnson adjourned the meeting at 4:10 p.m.

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Vonette J. Richter  
Committee Counsel

ATTACH:13