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ROLL NUMBER

DESCRIPTION

1503

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1503

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1503

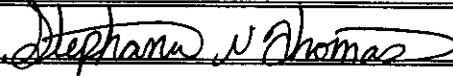
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1861

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1503.

Sen. Richard Marcellais, District 9: See written testimony #1.

Rep. Rick Berg, District 45: HB 1503 was introduced last session. The intent of the bill was simply to create a vehicle. We have two communities in the state. We have tribal communities that have high unemployment, and yet they have a lot of opportunities for contracts for 8A status, and then we have much of the rest of the state that's very high in unemployment, and we need businesses looking for additional work. So, this bill was intended to lay a framework that goes to businesses so they could join together, bid on contracts, except those contracts, and bring those jobs back in the state of ND. One of the things that a tribal business wants to do is give up their sovereign immunity for this contract. We have put a sunset on this, and what's happened recently is there's been some changes to leadership in some of the different tribes, and I think there's some renewed interest in taking a look at this to try and create jobs in some of those areas. What we're asking here is not to eliminate it, not to extend it for all time, but extend this for two years, and see if something can help create some jobs and bring some contracts back to ND.

Rep. Ruby: I noticed there's no fiscal note, no cost, and you said it wasn't utilized in the last two years, there's no fiscal effect to this at all so, is that just uncertainty whether it'll get used in the next two years?

Rep. Berg: I think in the bigger picture if it was fully utilized, what we're doing, I guess as an example is exporting trade to another country. Your business sells a product to another country that maybe doesn't get paid, then the country would pay you, and the two countries would work it out. The intent is there would not be a loss, because that would get worked out.

Rep. Dawn Charging, District 4: If you recall two sessions ago which was modeling legislation, and in the two years time there has been some additions that I feel are going to be beneficial to help drive this forward. I understand there's been some discretion with Bank of ND, and I think the goal here is to just keep it alive so we can work on some things that will work on it. We have the addition of the American Indian Business Office, which was also delegated to the authority of the Department of Commerce two years ago.

Rep. Keiser: What's developed that you think we should extend this for the two year period?

Rep. Charging: Right now the 8A industry, the ability to contract with a federal entity, and if an individual does it, there's a cap on it. If each tribe does it of the sovereign nation, there is no cap, its multimillion dollars.

Eric Hardmeyer, Bank of ND: We are neutral on the bill. This hasn't necessarily set dormant for the last two years. We've had several meetings with various tribal members, business people, economic developers, bankers, regarding this particular program. We did find a few shortstops, and we certainly are not in opposition to extending it, we just enjoy the opportunity to tell you what the issues were, and maybe there's an opportunity to tweak some of this and make it more workable.

Bob Humann, Bank of ND: See written testimony #2.

Kristine Martin-Goldsmith, American Indians Business Development Office: Support HB 1503.

See handout A.

Rep. Johnson: On your client NM partner, what is NM?

Kristine: Non minority partner.

Rep. Keiser: Are you experiencing problems with your discussion with the various groups?

Kristine: We never really covered that with anybody, because I didn't want to get their hopes up. I was surprised that there were a number of people that didn't have a good understanding of the variety in state and federal programs that were available to them. You give me something to work with, and companies are ready to look for anything innovative and new that is going to take them to the next level.

Shane Goettle, Department of Commerce: By statute, we at the Department of Commerce were expected to create an office, and we had the authority to contract two of them. We contracted the impact foundation in Fargo, and then we housed her in the Department of Commerce to run the American Indian Business Office. I think she's doing a great job for the last 5 or 6 months that she has been employed. In concept the Tribal State Guarantee Program, if it could work, and if we could get beyond some of these hurdles and issues that have been identified by the Bank of ND, I think it would be a great tool to market the businesses. The real challenge is making this work institutionally, as well as program wise for the parties involved. Extending this gives us some time and work through those, and to figure out if the way it's currently structured is the best way to approach it, or if there's different models that we need to try to create.

Rep. Keiser: So, the extension is the right thing to do now, however the alternative is for this committee to take this bill, and take freeze areas that Bob identified in trying to work up the amendments to somehow address those. Do we need to address this area?

Shane: I think it would be a real challenge to try to get all of these issues resolved in the present time involved. The second thing is to make an observation that here in the interim it was created, the Tribal State Relations Committee, and that committee will continue during the next interim. I suggest that they be given the task of studying some of the obstacles, and barriers to the implementation of this program.

Rep. Charging: We are entering into arms unknown, and I know from my own experience that it's a difficult bridge financially, but it just didn't get much radar.

Rep. Vigesaa: I move a do pass.

Rep. Thorpe: Second.

Roll call vote was taken. 13 Yeas, 0 Nays, 1 Absent, Carrier: Rep. Amerman

Hearing closed.

FISCAL NOTE
 Requested by Legislative Council
 01/16/2007

Bill/Resolution No.: HB 1503

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Since an Indian Tribe or a tribally approved entity will be providing a guaranty there will be no costs to the General Fund or Other Funds. The costs for establishing loan program guidelines and application forms will be paid by the Bank of North Dakota as part of their operations.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None of the sections of this legislation will have a fiscal impact to the State of North Dakota.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Robert A. Humann	Agency:	Bank of North Dakota
Phone Number:	328-5703	Date Prepared:	01/19/2007

Date: 1-24-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1503

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Vigesaa Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Amerman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 25, 2007 8:33 a.m.

Module No: HR-17-1184
Carrier: Amerman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1503: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1503 was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1503

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1503**

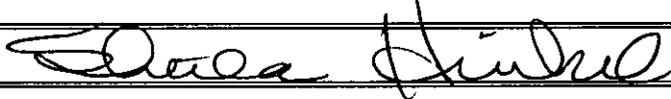
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 6, 2007**

Recorder Job Number: **4426**

Committee Clerk Signature



Minutes:

Representative Rick Berg, District 45 - In Favor

HB 1503 was passed last session with the intent of trying to bring commerce together between both businesses and individuals in the tribes and off the reservation. Fairly simple structure, called the "Tribal State Guarantee Program." This bill did was Sunset to expire this year and what we're asking to continue the Sunset for 2 more years. This is a program that hasn't been used and part if it is part of it is a lack of awareness of what it can do.

S Potter: A few days ago we heard a commerce reorganization division, we heard an American Indian loan program, or business development program, how does that tie in here?

Rick B: It ties in as a logical point person on this.

S Wanzek: Just curiously, procedurally, is that emergency clause just to built it, why do you need an emergency clause if you're extending it?

Rick B: It's a drafting error, I would agree. Whether you want to amend it out or keep it in...

Representative Dawn Charging – District # 4 – Fort Berthold Indian Reservation

In Favor

Was privileged to be a part of this bill in the last session, and somewhat disappointed that we haven't been able to engage it so far. There are a number of components coming into play,

and we hope this will hold it together. The program is through the Indian Tribes and contractual opportunities, the Dept. of Defense" type of contracts. We're talking unlimited ceiling dollars, where you are limited in local contracts. Recommend a DO PASS.

S Wanzek: In the interest of being efficient and clean, you don't have any problem if we remove the Emergency Clause as it is existing law.

Dawn C: No

S Heitkamp: Why take the effective date through? Why not just make it a law?

Dawn C: Halleluiah!

S Behm: I totally agree with it, why did you stop it. Why not make it a law?

S Klein: Did we have the question last time, "how is this going to work?"

Dawn C: The Bank of ND being a partner, the Chamber of Commerce being a partner, they wanted a little assurance that there was room for growth. Given the opportunity we don't know that, we don't know how it works, we haven't gotten to that point. That's the disappointment we have.

S Klein: Do we need to point any fingers at anyone?

Dawn C: Absolutely not. It's the process.

S Klein: It just hasn't gotten that far.

Dawn C: Absolutely

S Potter: Have some questions on existing law which is: "the 5 ND Indian Tribes," what are we defining there? Mandan, Hadatsa, Arikara, ...

Dawn C: The 5 reservations

S Potter: American Indian – owned small business, what does that mean exactly?

Dawn C: That I would be the owner, federally recognized member of the tribe and would qualify under the Federal American Loan. S Potter, you're a wordsmith in catching the minute details of it.. I felt very important, TY.

S Potter: Thanks for calling me a wordsmith, I would prefer "word smithe."

Sole owner, principal owner?

Dawn C: Could be any of the above, it's defining that they're with the Tribal government.

Senator Marcellais – District 9 – Belcourt - In Favor

TESTIMONY #1 *Went over testimony*

This program was established on 1526 in 2005 under economic development initiatives in the Indian country for the Bank of ND to guarantee contract with a business located in ND either owned by one of the ND Indian tribes, or an American Indian-owned business located in ND.

There is a 51% ownership.

S Heitkamp: You deal with the tribes all the time, when you comeback and sit down, the system option come to the table, or is it... Do you see active participation for the system?

S Marcellais: We just put a bill in to extend them to the commission. From previous meetings, they are one of the most consistent to attend these meetings and be present to these meetings, so we added them to the commission as one of the tribes.

NEUTRAL TESTIMONY

Bob Humann – Sr. VP of Lending, Bank of ND – Neutral on History

Bank has put together a sub-committee that was tribal representatives, business owners, lenders for Native American owned businesses, developers and attorneys. The sub-committee tried to see how to make the bill work, representatives of the tribe had problems with guarantees. The atmosphere has changed out there and hope it is not an obstacle. Our plan, if this legislation goes through, we will try to get a program together as soon as possible.

We have a marketing arm, the Native American business office housed at the Dept. of Congress will help us market this program. They will call on the Native American owned businesses, looking at the tribes and can see that as a great help.

S Klein: Can you see how the program will work without a Sunset clause?

Bob H: Sure, we can do a report for any committee up here.

S Hacker: Do you feel that we have a quite a few tools in the economic development arena, would it be justified to have a Sunset, maybe not in 2 years, maybe 4 or 6, just for the simplicity of the program. If the program is not going to be used, we don't have to have it in the code.

Bob H: There are other loan programs with a Sunset where we've done a report. If it actually has to be in the bill or a report at the request of some committee, it can work either way.

S Klein: Do we have any money in this?

Bob H: We do not. We are a temporary funding source. When there is a contract dispute, the Bank of ND automatically pays the ND business, not the Native American owned business,, the ND business and then we go request from the tribe. That's how this works.

S Klein: For example...

Bob H: If a Native American owned business, such as Mandaree Enterprises, they have a large contract and need to do some sub contracting work that is done by another company outside the reservation, it is owned by a ND citizen, and they are worried they won't get paid for performing the work. They enter into a contract and we would come in and provide assurance to the ND business to pay guaranteed funds. If there is a disagreement between those two parties, we pay the ND businesses, it's up to the board to collect on the deal or not. It is litigated in Burleigh County District Court if there is any litigation to be had.

S Potter: Native American owned business participates in this, is they have to get the tribe or tribal entity to authorize and approach you about the loan. Correct?

Bob H: They would have to approach the tribe about getting a guarantee. If they can get that guarantee, then we would be willing to issue a guarantee on the contract. What gets cumbersome, we are a Bank, we have no attorney's on staff, we contract review, we're not really a bond agency. That is essentially what this is leaning towards. The bank would be the funding source. We work with the industrial commission.

CLOSE

S Heitkamp: Looking at what language can be offered and other feedback can come, rather than come back every two years and deal with this, it just gets reported to the Legislative Council. I realize there is a need to see if it's working and if we don't in the process, go through this whole Legislative process every two years is....

S Klein: It was good for me to be reminded how we got this...

S Heitkamp: If the committee doesn't want to take the Sunset off, that's ok with me.

S Andrist: I was thinking we should run the Sunset out for 4 years instead of 2 years, it would give the program a better trial.

S Hacker: I agree with S Andrist. There are loads of programs available, many of them are not used and am in favor of the 4 years, either they're going to use the program or they're not, if not, there is no need to continue tracking it any longer.

S Heitkamp: Just something so that 2 years from now we're not having the same debate.

S Klein: So looking at July 31, 2011.

S Andrist: July 31, 2011, I'll move that amendment.

S Wanzek: Can we remove the emergency clause?

S Andrist: I was wondering if the emergency clause was there because they proposed June 30 as new legislation.

S Wanzek: It's law today, and if you remove the Sunset, it will continue to be law. I've been amused with Sunsets, we pretty much can come back here anytime and address an issue, I suppose Sunset forces us to take a look at it. If a program's not working, certainly we can adjust it.

Second from S Heitkamp

S Potter: It's a lot easier to let a bill die than introduce legislation to repeal a Native American loan program. Nobody's going to do that.

Roll call on AMENDMENT to change July 31, 2011. 7-0-0 passed

Motion for DO PASS AS AMENDED by S Wanzek

Second by S Andrist

Roll call on DO PASS AS AMENDED HB 1503 – 7-0-0 passed

Carrier: S Heitkamp

REPORT OF STANDING COMMITTEE

HB 1503: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1503 was placed on the Fourteenth order on the calendar.

Page 1, line 7, replace "2009" with "2011"

Renumber accordingly

2007 TESTIMONY

HB 1503

Testimony
House Bill No. 1503 – Extending the Tribal-State guaranty
program
Industry, Business and Labor Committee
Representative G. Keiser, Chairman
January 24, 2007

Chairman Keiser, members of the Industry, Business and Labor Committee, I am Senator Richard Marcellais, from District 9, of Belcourt I am here today to provide you with testimony on extending the Tribal-State guaranty program.

This program was established under House Bill # 1526 (2005) under the Economic Development Initiatives in Indian country which allows for the Bank of North Dakota to guaranty contracts with a business located in North Dakota which is either owned by one of the seven North Dakota Indian tribes (54,075 tribal members and over 3.8 million acres of land) or an American Indian-owned small business located in North Dakota.

Sure the tribes have a number of loan guaranty programs available from the Bureau of Indian Affairs, Small Business Administration, United States Department of Agriculture's rural development business and industry program and Bank's beginning entrepreneur loan program which may be accessed.

However with the extension of the Tribal-State guaranty program this would allow economic development infrastructure on the North Dakota American Indian reservations and small businesses to be involved in the state of North Dakota.

Thank you very much for the opportunity to appear in support of House Bill #1503.

TESTIMONY TO THE
HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
HOUSE BILL 1503
BOB HUMANN – SVP OF LENDING
BANK OF NORTH DAKOTA
JANUARY 24, 2007

House Bill 1503 contains the same language as the 2005 House Bill 1526 with the exception of moving the sunset date and adding an emergency clause. Bank of North Dakota formed a sub-committee made up of business owners, tribal representatives, lenders, developers, and attorneys to try and implement the Tribal-state guaranty program. The sub-committee came up with a list of issues as follows:

- 1) A North Dakota Indian Tribe or tribally approved entity is required to provide a pledge or guaranty equal to the amount of the guaranty issued by the Tribal-state guaranty program (Lines 26-30). The tribes were not willing to make this commitment. The tribe would be taking all of the risk and only the ND business can be paid by this program. In the case of a dispute, there is no chance of payment to the tribal or Indian-owned business (Lines 20-23).
- 2) If the bank pays out a claim to a ND business, it removes the incentive of the ND business in pursuing collection from the tribal-owned or Indian-owned business (Lines 20-24).
- 3) Any disputes would be litigated in Burleigh County district court to eliminate the need for a waiver of sovereign immunity. After litigation and an order is issued, the enforcement of a judgment may require the order to go to tribal court in order for enforcement.

The Tribal-state guaranty sub-committee also determined that establishing a performance-based contract program as proposed was not necessary, but the real issue is communication between the non-Indian owned business and tribal or Indian owned business. This committee also determined that in relation to financing needs there was an abundance of loan guaranty programs available from the Bureau of Indian Affairs, Small Business Administration, Rural Development's Business & Industry Program and the bank's Beginning Entrepreneur Loan Program.

The bank presented these issues to the legislative Tribal and State Relations Committee on May 8, 2006. It was the consensus of this committee to have Christine Martin-Goldsmith of the newly formed American Indian Business Development Office work with the tribes and business owners to see what kind of deal flow exists and if there would be a need for a contract guaranty program. Christine will present the results of what she has found this afternoon.

In conclusion, if the need for a contract guaranty program exists, it is recommended to move the responsibility of contract review and surety bond coverage to an entity more familiar with those duties.



SENATOR RICHARD MARCELLAIS
District 9
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Belcourt, ND 58316-9787
rmarcellais@nd.gov

SENATE
**NORTH DAKOTA
LEGISLATIVE ASSEMBLY**

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Judiciary
Government and Veterans
Affairs

Testimony
**House Bill No. 1503 – Extending the Tribal-State guaranty
program**

Industry, Business and Labor Committee
Senator J. Klein, Chairman
Roosevelt Park Room
March 6, 2007 @ 11:00 AM

Chairman Klein, members of the Industry, Business and Labor Committee, I am Senator Richard Marcellais, from District 9, of Belcourt I am here today to provide you with testimony on extending the Tribal-State guaranty program.

This program was established under House Bill # 1526 (2005) under the Economic Development Initiatives in Indian country which allows for the Bank of North Dakota to guaranty contracts with a business located in North Dakota which is either owned by one of the five North Dakota Indian tribes or an American Indian-owned business located in North Dakota.

The extension of the Tribal-State guaranty program would allow economic development infrastructure on the North Dakota American Indian reservations and small businesses to be involved in the state of North Dakota.

Thank you very much for the opportunity to appear in support of House Bill #1503.

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1503