

2011 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2353

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee  
Missouri River Room, State Capitol

SB 2353  
February 4, 2011  
13911

Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

### Minutes:

Testimony Attached

Chairman Dever opened the public hearing on SB 2353

**Senator Marcellais:** District 9, see attached testimony #1

**Senator Nelson:** What happens now?

**Senator Marcellais:** A lot of the things that happen between state/tribal governments aren't discussed and I feel that they should be.

**Vice Chairman Sorvaag:** This is more to get them in the room together?

**Senator Marcellais:** Yes, that is correct.

**Senator Berry:** How does this differ from the bill we considered earlier that related to tribal state relations?

**Senator Marcellais:** This would differ because the tribal state relations deal with the legislative body and this deals with more continuing basis.

**Chairman Dever:** Where would this end up in Code?

**Senator Marcellais:** I would have to get that info for you, there may need amendments.

**Senator Triplett:** District 18. I was interested in this bill while watching the process the last few interims in the tribal/state relations committee, which I think is well intentioned, is not accomplishing the purpose that the legislature intended Part of it is attendance issues on the part of the tribal governments. Whether or not the tribal chairs want to attend meetings with the legislative interim committee really doesn't negate the fact that we as a legislature have an obligation to help develop a better relationship with the tribal entities that are within our borders. All of the members of the various tribes across the state are also citizens of the state

of North Dakota and my understanding is that there is a fair range of interactions from department to department but that it may not be evenly accomplished.

**Vice Chairman Sorvaag:** Line 11, significantly or uniquely affecting tribal government. What does the significantly mean in this instance?

**Senator Triplett:** There is no penalty clause here; this is more a proactive goal setting piece of legislation.

**Chairman Dever:** Are we banning unfunded mandates?

**Senator Triplett:** Unfunded mandates to the tribes, yes. It has worked reasonable well in recent years with the agreement that former Gov. Hoven's office made, with prior approval of the legislature, with the 3 affiliated tribes for the regulation of oil and gas development. We authorized the Governor's office to negotiate a regulatory framework and a tax structure that would encourage oil development on the reservation, which has happened in the last few years. In that case, there was that prior consultation to decide what the rules were going to be in terms of regulation and who was going to do the regulation and who was going to pay for it. So that is an example where it worked out fairly well.

**Cheryl Ann Kray:** See attached testimony #2.

**Mark Voss:** See attached testimony #3.

**Chairman Dever:** This bill as it should applies to the state, are there similar things happening on the tribal side?

**Mark Voss:** I can't say for sure but they can be easily reciprocated.

**Scott Davis:** Commissioner of Indian Affairs. I am at a neutral position for this. If we formalize it I think that it would strengthen the process.

There was no further discussion and Chairman Dever closed the public hearing on SB 2353.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veteran's Affairs Committee  
Missouri River Room, State Capitol

SB 2353  
February 17, 2011  
14686

Conference Committee

Committee Clerk Signature

## Explanation or reason for introduction of bill/resolution:

To provide for state and political subdivisions consultation and coordination with Indian tribal governments.

## Minutes:

Testimony Attached

**Chairman Dever:** Before the formal adoption OMB provides a description of and makes available any written information given by the tribal governments. Thoughts of the committee?

**Senator Cook:** To what extent don't we do this today? We run an open government. The process that we have is not affective. We should be conducting our business in a transparent way.

**Chairman Dever:** We don't provide the funds necessary to carry that out but political subdivisions would make the same argument. Just as the Federal government doesn't cover what they mandate from us.

**Senator Cook:** It seems to me that it affects rules rather than the process.

**Chairman Dever:** Do they adopt rules that are not required from statute. There are also policies that are developed by agencies that are not tied to statute.

**Senator Cook:** Section 5, 'this act is intended only to improve the internal action of the executive branch.'

**Chairman Dever:** Does that say if the agencies don't do what is called for in other sections then they should be held accountable for that? I am all for respect and I think that I am respectful. I am all for improving communications and I think that one other way is the state/tribal relations committee. It seems to me to be not necessary to put this into law.

**Senator Marcellais:** We had an IBL bill yesterday forming a coalition to work with the state tourism agency to improve tourism all over the state. DOT comes out to the reservation and we don't know why they are there. We do have state highways that run through the reservation.

**Chairman Dever:** Aren't their struggles with jurisdictional issues?

**Senator Marcellais:** Yes. If you read the century code all the counties can be cross jurisdiction between them all. That issue came up last session regarding Fort Berthold. This kind of follows what Obama is doing with the tribes. I think that the state and its agencies should follow that lead; there is some interrelations in all of them

**Senator Cook:** What is the name? What role does he play in facilitating the communication?

**Senator Marcellais:** He has his roles and responsibilities but he is not responsible for all of them. We try to get him more staff but the appropriations won't give up the money. But Scott does a good job for the limited staff that he has.

**Senator Cook:** Is the right approach to include Scott?

**Senator Marcellais:** That could be one of his functions. When we had state of the tribal he had all the chairmen there.

**Chairman Dever:** Sometimes when an agency adopts rules they apply to everyone in the state and they don't consider that as applying to the tribe's as well.

**Senator Marcellais:** Same with the gas tax. Each nation of the 5 nations in the state are treated differently.

**Chairman Dever:** It seems to me to be complicated to impose on state agencies without having a reciprocal relationship. I wonder if we should let this bill go and next session see how things have gone with the new effort.

**Senator Marcellais:** Sarah Coleman brought out some good info because she now has tourism directors on each of the 5 tribes.

**Chairman Dever:** That sounds like a good thing as well but it sounds like they are already doing that.

**Senator Cook:** Everybody is for group communication and working together and I think that this is like taking a much bigger weapon to do a job that a fly swatter could do. I hope that there is not a negative message sent with this bill if it is killed. I would think that the best thing to do is to either get some amendments on it or give it a do not pass.

A motion for a do not pass was made by Senator Cook with a second by Vice Chairman Sorvaag. There was no further discussion, roll was taken and the bill moved out of committee with a do not pass on a 4-1-2 vote and Chairman Dever carrying the bill to the floor.

Date: 2-17-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2353

Senate \_\_\_\_\_ Committee \_\_\_\_\_

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Cook Seconded By Sorvaag

| Senators              | Yes | No | Senators           | Yes | No |
|-----------------------|-----|----|--------------------|-----|----|
| Chairman Dever        | X   |    | Senator Marcellais |     | X  |
| Vice Chairman Sorvaag | X   |    | Senator Nelson     |     |    |
| Senator Barry         |     |    |                    |     |    |
| Senator Cook          | X   |    |                    |     |    |
| Senator Schaible      | X   |    |                    |     |    |
|                       |     |    |                    |     |    |
|                       |     |    |                    |     |    |
|                       |     |    |                    |     |    |
|                       |     |    |                    |     |    |

Total (Yes) 4 No 1

Absent Dever

Floor Assignment Nelson, Barry

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

**REPORT OF STANDING COMMITTEE**

**SB 2353: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO NOT PASS** (4 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING).  
SB 2353 was placed on the Eleventh order on the calendar.



2011 TESTIMONY

SB 2353



**NORTH DAKOTA SENATE**

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



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**COMMITTEES:**  
Education  
Government and Veterans Affairs

**Testimony on Senate Bill No. 2353  
Government Veterans Affairs Committee**

**Senator Dever, Chairman**

**February 4, 2011**

**Chairman Dever, members of the Government Veterans Affairs Committee, for the record my name is Richard Marcellais, Senator from District 9, of Belcourt I am here today to provide you with testimony on Senate Bill 2353 to provide for state and political subdivision consultation and coordination with Indian Tribal Governments.**

**This bill will assist the relationship between the five Indian Tribal Governments, political subdivisions and the North Dakota state government.**

**The consultation process would allow elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies and rules affecting their communities.**

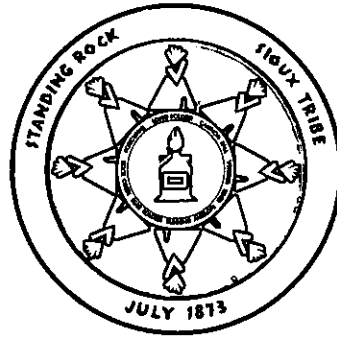
**Section 4 of this bill would allow for cooperation in developing rules on issues relating to tribal self-government, trust resources, or treaty and other rights and each agency should explore and where appropriate, use consensual mechanisms for developing rules, including negotiated rulemaking.**

**Section 5 would only improve the relationships between state and Indian Tribal Governments.**

**Thank you very much for the opportunity to appear in support of Senate Bill # 2353. If there are any questions I will try and answer them.**

**Charles W. Murphy**  
*Chairman*

**TRIBAL COUNCIL  
(DISTRICTS)**



**Mike Faith**  
*Vice Chairman*

**Adele M. White**  
*Secretary*

**TRIBAL COUNCIL  
(AT LARGE)**

**John "Jay" Taken Alive**

**Margaret M. Gates**

**Avis Little Eagle**

**Dave Archambault II**

**Joseph McNeil Jr.**

**Jesse McLaughlin**

**Sharon Two Bears**  
*Cannonball District*

**Henry Harrison**  
*Long Soldier District*

**Duane Claymore**  
*Wakpala District*

**Kerby St. John**  
*Kenel District*

**Errol D. Crow Ghost**  
*Bear Soldier District*

**Milton Brown Otter**  
*Rock Creek District*


**Frank Jamerson Jr.**  
*Running Antelope District*

**Samuel B. Harrison**  
*Porcupine District*


**Testimony in SUPPORT of S.B. 2353**  
**Senate Government & Veterans Affairs**  
**Sen. D. Dever, Chairman**  
**February 3, 2011**

Chairman Dever and members of the Committee, thank you for this opportunity to provide testimony. My name is Cheryl Ann Kary. I am the Executive Director of the Standing Rock Sioux Tribe. I am here to testify on behalf of Chairman Charles W. Murphy, who sends his regards and regrets that he cannot be here today. The Standing Rock Sioux Tribe would like to submit this testimony in support of S.B. 2353, to provide for state and political subdivision consultation and coordination with Indian Tribal governments. We believe this bill is a key component to improving Tribal-State Relations within North Dakota.


As you know, Executive Order 13175 was enacted in 2000 "in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes". Since then, the commitment to



this Executive Order has been supported by three Presidents, both Democrat and Republican. In the most recent reiteration of this policy, President Barack Obama stated that “meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship”.



As a Tribe, we believe that such consultation at the Tribal-State level is also a key ingredient to a sound and productive relationship. Although the Tribal and State governments of North Dakota enjoy an amicable relationship, we have not been without our controversies and minor conflicts. We encourage the passage of this particular piece of legislation in order to continue to ensure that our amiable relations far outweigh any controversies or conflicts. SB 2353 will formalize the commitment of the Tribal and State governments of North Dakota to work together to improve the lives of all people. SB 2353 will help bring State, Federal, and Tribal agencies to work together more effectively in what will surely be trying times ahead. SB 2353 will ensure that our Tribal and State counterparts will know each other by name, consult with each other as equals, inform each other as friends, and engage in meaningful and respectful dialogue.



The Standing Rock Sioux Tribe will gladly accept the extension of a hand to engage in such dialogue and, as such, encourage your full commitment to this bill as well. On behalf of Chairman Murphy and the Standing Rock Sioux Tribe, thank you for your time and attention.

**TESTIMONY ON SB 2353,  
A BILL FOR AN ACT TO PROVIDE FOR STATE AND POLITICAL  
SUBDIVISION CONSULTATION AND COORDINATION WITH INDIAN  
TRIBAL GOVERNMENTS.**

**SENATE GOVERNMENT & VETERANS AFFAIRS COMMITTEE**

**February 3, 2011**

**Tex G. Hall “Red Tipped Arrow”, Chairman,  
Mandan Hidatsa and Arikara Nation Tribal Business Council  
Fort Berthold Indian Reservation**

Mr. Chairman and Members of the Committee, My name is Tex Hall; my traditional name is Ihbudah Hishi, “Red Tipped Arrow”. I am honored to present this testimony as the Chairman of the Mandan Hidatsa and Arikara Nation Tribal Business Council. I support SB 2353 because it is a positive step toward better state and tribal relations. The Bill promotes meaningful dialogue between state agencies and the North Dakota Indian tribes. I believe this Bill will help affirm and strengthen the government-to-government relationship that exists between North Dakota and Indian tribes in a time that is critical to our state.

North Dakota Indian Tribes provide governmental services to tribal members and non-tribal members living or working on or near our lands, in areas such as health care, law enforcement, education, emergency response, fire fighting, snow removal, road and street repair, and waste management. Tribal members living on North Dakota’s Indian reservations are also citizens of North Dakota, entitled to state services like any other state resident. The tribal-state consultation required by this Bill could help ensure that services are provided by both governments more efficiently, through coordination and cooperation.

The intricate interplay between federal, tribal and state jurisdiction in Indian Country has been described by Commentators as a “jurisdictional maze”. A policy of consultation prior to adopting a state rule or policy that impacts tribal sovereignty will help avoid the jurisdictional conflicts that often result in contentious and expensive litigation. The communication and education that consultation will promote on both sides will be helpful to better decision making. Too often in the past decisions have been made in state government without considering the potential impacts on North Dakota’s Indian tribes, tribal sovereignty, and our land and resources. The consultation provisions of SB 2353 will help remedy this problem.

The National Congress of American Indians issued a statement on tribal-state consultation to the President in December 2010 at the White House Tribal Nations Summit. The NCAI statement pointed out that several states already have formal policies in place to consult regularly with the tribes residing within their state’s borders, and that these mechanisms for timely and ongoing communication between the appropriate parties on issues of mutual interest have had marked and demonstrable success. The implementation of tribal-state consultation provides certainty about the process and forums through which issues can be discussed and addressed, even with changes of political leadership at the tribal and state levels.

Our neighbors in Montana have, by legislation, instituted a consultation policy based on five principles: mutual understanding and respect; regular and early communication; cooperation and collaboration; accountability in addressing issues of mutual concern; and preservation of the state-tribal relationship. As a result, in 2009 the Montana Governor’s office issued a Tribal Relations Handbook

to assist state employees in the understanding and implementation of these principles. Our state needs a policy founded on principles of respect for Indian tribal self - government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the federal government, the state, and Indian tribal governments. That is what this Bill will accomplish.

Mr. Chairman, there are a number of critical issues in law enforcement that must be addressed on a cooperative basis immediately. Federal funding is available to promote consultation and cooperative tribal state agreements to address these critical issues that our law enforcement officers and courts face on a daily basis. For example, section 202 of the recently enacted Tribal Law & Order Act (P.L. 111-211) authorizes the Attorney General to provide technical assistance funds to encourage tribal, state, and local law enforcement agencies to enter into cooperative law enforcement agreements to combat crime in Indian Country and nearby communities. We must make this a priority, and I look forward to working with the state of North Dakota to address these issues. SB 2353 will help set the parameters for what I hope will be a cooperative agreement that respects our sovereignty and our mutual interest in protecting and serving the residents and visitors on the Fort Berthold Reservation.

With tribal governments taking an increasing role in the delivery of health care from the Indian Health Service, and state governments expanding their control of federal Medicaid, the Children's Health Insurance Program and other social programs, the current need for tribal-state consultation is at an historic high. The MHA Nation is in the process of constructing a health clinic. The clinic is

underfunded and my Administration has made it a priority to find sufficient funds from all available sources to build a larger and better facility that will deliver much needed quality health care. Additional funding is needed to build houses to recruit and support doctors, nurses and clinic staff. Tribal-state consultation could help open new doors and uncover new opportunities in our endeavor to improve health care on the Fort Berthold Reservation.

By now we all know the overwhelming effect that the oil and gas boom in western North Dakota is having on our tribal, county and local governments, as well as our citizens in western North Dakota. The impact on our roads, infrastructure, law enforcement, emergency services and particularly our natural environment, has far exceeded the resources our respective governments have to keep up with the burden. The need for a cooperative and comprehensive oil and gas tax and regulatory system on the Fort Berthold Reservation is critical as we move forward to deal with the continuing onslaught that comes with this economic boom. Mr. Chairman and members of the Committee, it is particularly important to recognize that we all have a responsibility to ensure that the oil and gas industry is held accountable for the responsible development of our resources. This is particularly true when it comes to the dust, the fumes, the damage to our roads, and the increased danger to our people as a result of the heavy truck traffic that comes with oil and gas activity. We must all be concerned about the transportation and use of the chemicals used in the hydraulic fracturing process in the oil fields of western North Dakota. These chemicals are injected into the earth, and we are duty bound to ensure that it is done in a safe and responsible manner. We must have a coordinated regulatory system in place to protect our land and our resources while we promote responsible development. We are the stewards of the land, and we



must work together to ensure that the companies who are here to profit from our non renewable resources do so in a safe and responsible way. This must be a common goal, and I believe that this Bill provides a mechanism which will enable us to work together to accomplish what our people expect and deserve.

I thank you again, and offer my support for the Bill.