

**MINUTES  
of the  
SIXTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**December 5-7, 2005  
State Capitol, Room 322  
Santa Fe**

The sixth meeting of the Indian Affairs Committee for the 2005 interim was called to order by Senator John Pinto, co-chair, on Monday, December 5, 2005, at 10:18 a.m. in Room 322 at the State Capitol in Santa Fe.

**Present**

Rep. James Roger Madalena, Co-chair  
Sen. John Pinto, Co-chair  
Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Dianna J. Duran  
Rep. Manuel G. Herrera  
Rep. Patricia A. Lundstrom  
Sen. Lidio G. Rainaldi (12/5 & 12/7)  
Sen. Nancy Rodriguez  
Sen. John C. Ryan  
Sen. Leonard Tsosie (12/6 & 12/7)  
Rep. W. C. "Dub" Williams  
Rep. Teresa A. Zanetti (12/5 & 12/6)

**Absent**

Rep. Irvin Harrison  
Rep. Don L. Tripp

**Advisory Members**

Sen. Ben D. Altamirano (12/6)  
Sen. Joseph J. Carraro (12/5)  
Rep. Ben Lujan, Speaker of the House  
Rep. Fred Luna (12/6)  
Sen. Richard C. Martinez  
Rep. Debbie A. Rodella (12/5 & 12/7)  
Rep. Gloria C. Vaughn (12/6 & 12/7)

Rep. Nick L. Salazar  
Sen. William E. Sharer  
Rep. Avon W. Wilson

(Attendance dates are noted for those members not present for the entire meeting.)

**Staff**

Charles H. Van Gorder  
Jennie Lusk  
Larry Matlock

**Guests**

The guest list is in the meeting file.

## **Handouts**

Copies of all handouts and written testimony are in the meeting file.

## **Monday, December 5**

### **Settlement of Water Rights — Status Update**

John D'Antonio, Jr., state engineer, gave a PowerPoint presentation regarding the Indian Water Rights Settlement Fund and the status of the three proposed Indian water rights settlements. The Indian Water Rights Settlement Fund was created by Laws 2005, Chapter 172 and requires the state engineer to report annually to the interim Indian Affairs Committee. Since the settlement fund was not actually funded in 2005, there were no disbursements to report. The Navajo Nation settlement agreement in the San Juan River Basin was signed by President Shirley and Governor Richardson on April 19, 2005. That agreement provides for irrigation water for the Navajo Indian, the Hogback-Cudei and Fruitland-Cambridge irrigation projects, the Navajo-Gallup water supply project, the Farmington-Shiprock municipal pipeline, drinking water for remote rural areas, the quantification of Navajo water rights and the avoidance of litigation. The next step in this settlement is federal approval and funding. The proposed *Aamodt* settlement would adjudicate all water rights in the Nambé-Pojoaque-Tesuque stream system north of Santa Fe, resolve the water rights claims of the Pueblos of San Ildefonso, Nambé, Pojoaque and Tesuque, and would provide for the development of a regional water system to serve the Pojoaque Basin area. A conceptual proposal to settle these water rights was announced on June 1, 2005 and negotiations are continuing among the involved parties. A revised settlement proposal should be made public soon and there is a proposed deadline of January 17, 2006 for governments other than the United States and the Pueblo of Tesuque to approve a settlement. Finally, the Taos water rights adjudication is proceeding and nearly all of the non-Indian water rights have been adjudicated. Negotiations are continuing among the state, the Pueblo of Taos, the town of Taos and non-Indian water rights holders. Mr. D'Antonio recommended that the state approve funding in the amount of \$75 million in the next session, which would be the state's share of the Navajo, *Aamodt* and Taos settlements.

Upon questioning by the committee, Mr. D'Antonio indicated that the total cost of proposed water projects in the state is \$260 to \$280 million, including the state share of settlements of Indian water rights. Federal concerns with the pending settlements appear to be mainly fiscal constraints. Members of the committee expressed their desire to advise the governor and the state's congressional delegation of their support for full funding of the proposed settlements of Indian water rights.

## **Minutes**

Upon a motion by Senator Rodriguez, seconded by Senator Rainaldi, the committee approved without objection the minutes from the November 2005 meeting of the Indian Affairs Committee.

## **Payday Lending**

John Kelly, chair of the Governor's Task Force on Payday Lending Legislation, briefed the committee on the status of the task force's work. The task force has been meeting for the past three months in an effort to develop a consensus approach to regulating the payday loan industry. The governor's charge to the task force was to provide specific recommendations for proposed

legislation that is fair and balanced to address the state's strong interest in protecting against abusive lending practices while ensuring an adequate supply of capital for payday loans in this state. The task force has been focusing on three aspects of the industry: the cycle of debt for consumers, best practices for the industry and payday lending as a niche industry. The task force has followed a mediation format and will be meeting the following week in an effort to wrap up its work. There has also been an effort to gather financial information on the payday loan industry that, with the help of a forensic account, will provide a rational basis for the pricing of payday loan products. The consumer advocates appear to be going for interest rates in the 80 to 90 percent range, while the industry is looking at rates of 150 to 170 percent.

Art Jaramillo, superintendent of regulation and licensing, has been acting as a technical advisor to the task force. Concepts that the task force has been considering include the following: 1) limiting the number of rollovers for payday loans; 2) provide for an interest-free payout after a specified number of rollovers; 3) limit multiple payday loans at the same time; 4) makes the rates charged for payday loans fair but not excessive; 5) incorporate industry best practices into statute; and 6) regulate post-default practices. There may be a proposal to require payday lenders to follow certain underwriting guidelines.

Joel Cruz-Esparza, chief of the Consumer Protection Division of the Attorney General's Office, briefed the committee on certain actions the attorney general has taken regarding payday loans. The attorney general has issued draft rules regulating payday and car title loans under the Unfair Practices Act. Areas covered by the proposed rules include interest rates, repayment period (a minimum of four months) and underwriting guidelines. The attorney general has held five hearings on the proposed rules and the comment period has now closed.

Representative Lundstrom reviewed with the committee the provisions of the payday lending bill she introduced in the 2005 session (House Bill 65) and indicated she would be introducing a similar bill in 2006. A number of municipalities in her district are prepared to adopt ordinances similar in nature to HB 65, but they are waiting to see what the legislature might do in 2006. The key to any payday lending bill is pricing the loans. Her approach is to cap the amount that can be charged to a consumer at 175 percent of the original loan. The attorney general's proposal caps interest at 54 percent, which she believes will force the industry to quit the payday loan business.

Upon questioning by committee members, Mr. Cruz-Esparza indicated the attorney general would not need additional financial resources to enforce the proposed rules as the Unfair Practices Act provides for private rights of action. The attorney general does expect, however, that there will be a legal challenge to the proposed rules if they are adopted. There are currently 97 licensed payday lenders in New Mexico with about 300 loan storefronts; payday loans are also available via the internet. While the Attorney General's Office has seen as many as 10 rollovers for a single loan, the average number of rollovers is 4.6. Mr. Jaramillo indicated that in 2005, the payday loan industry lent about \$80.7 million. Of that total, \$26.65 million was defaulted, of which about \$10 million was recovered, resulting in a loss of about \$10 million in loans.

Dr. Donald Pepion, director of the American Indian Program at New Mexico State University (NMSU), updated the committee on the status of that program at NMSU. A key indicator is the retention rate for Native American students. The target rate is 72 percent, and the actual rate has increased from 61.4 percent to 63.2 percent over the last four years. The six-year graduation rate has risen from 17.8 percent for the 1997 cohort, 18.6 percent for the 1998 cohort and 29.4 percent for the 1999 cohort; the target rate is 40 percent. The current enrollment of Native American students on the main campus in the fall of 2005 was 459, a slight decrease over the past two years. There are currently 104 lottery tuition scholarship students, about 22 percent of the Native American student body. Dr. Pepion reviewed the accomplishments of the American Indian Program during the 2004-05 academic year, which are detailed in the handout to the committee. He emphasized the mentoring program at NMSU, where junior and senior students are trained to help out newer students. About 30 percent of the new students are participating and there have been positive results in the subsequent retention rates. NMSU has agreements with 15 tribes and pueblos to work together to increase the Native American student population at NMSU. NMSU received an appropriation during the last session for planning for the proposed Native American cultural center and a contract has been awarded for planning and development. Dr. Pepion indicated the American Indian Program would be submitting appropriations requests for a full-time counselor and a full-time recruiter for the program.

Dr. Samuel Suina, project director for the Tribal Extension Task Force of the Cooperative Extension Service, addressed the committee regarding the New Mexico Tribal Extension Initiative. This initiative is intended to bring eight permanent cooperative extension service centers to pueblos and other tribal entities. This initiative was started two years ago at the request of tribal entities. Those tribal entities have committed for in-kind contributions and have partnered with the W.K. Kellogg Foundation, which has given a \$150,000 grant. He presented a request for \$1 million in funding for FY 2007 and supporting resolutions from the All-Indian Pueblo Council and the Jicarilla Apache Nation.

### **Recess**

The meeting was recessed by Senator Pinto at 4:10 p.m.

### **Tuesday, December 6**

The meeting was reconvened by Senator Pinto on Tuesday, December 6, 2005, at 9:13 a.m. in Room 322 at the State Capitol in Santa Fe.

### **Capital Outlay Issues — Status Update**

Rebecca Martinez, capital outlay manager for the Indian Affairs Department, reviewed the efforts her office has undertaken to follow up on the August meeting in Gallup where capital outlay issues were discussed with representatives of the Navajo Nation. Nine follow-up meetings have been held to resolve the actual amount of dollars that had reverted and to work out a strategy for improving the capital outlay process with the Navajo Nation. While not all issues have been resolved, progress is being made, including the drafting of a joint powers agreement (JPA) template that would require only the signature of the president of the Navajo Nation. Several sessions have already been held, and more are planned, to teach Navajo Nation chapters how to best plan and implement capital outlay appropriations. Chapters have been notified that there are 111 projects with delinquent scopes of work. The Navajo Nation has

adopted a coordination policy for proposed chapter capital outlay appropriations. Ms. Martinez then gave committee members five different ways in which they can facilitate the expenditure of capital outlay funds appropriated to the chapters of the Navajo Nation. She also indicated that the department is trying to implement a direct pay program on a limited basis. While only two tribal entities are currently eligible for direct payment on all projects, the Pueblo of Isleta and the Newcomb Chapter of the Navajo Nation, seven or eight other chapters of the Navajo Nation are close to becoming certified. The department will be making an appropriation request for an increase in personnel to assist with monitoring and compliance in order to cut down the amount of funds that revert each year.

Robert Apodaca, director of the Capital Outlay Unit of the Department of Finance and Administration, gave a PowerPoint presentation on Governor Richardson's Invest New Mexico Program. During the 2005 legislative session, more than \$470 million was approved for approximately 2,600 separate projects. The types of projects that were funded were described in a chart. For the 2006 session, it is estimated there will be \$1,378,200,000 available in nonrecurring revenues. Estimated project costs for the infrastructure capital improvement plan for fiscal years 2007 through 2011 total \$8,588,400,000. The governor's capital outlay bill for the 2006 session is being drafted and will be shared with members of the legislature. Mr. Apodaca distributed a list showing the capital outlay priorities for tribal entities.

Renee Gregorio of the Capital Outlay Unit of the Legislative Council Service reviewed requests received over the past two years: in 2004, there were requests for 550 projects at a cost of \$1.6 billion — \$353 million were funded; in 2005, there were requests for 6,638 projects at a cost of \$3.5 billion — \$473 million were funded. The unit expects the number of requests will be even greater for the next session, given the amount of funding expected to be available. Ms. Gregorio reviewed the process to be used for submitting capital outlay appropriations for the upcoming session.

Upon questioning by the committee, the composition and role of the Tribal Infrastructure Board was reviewed. There was also a discussion of what had happened to the \$3 million that had been appropriated during the last session for tribal infrastructure projects but which was not put into the Tribal Infrastructure Trust Fund. The Navajo Nation has established the following capital outlay priorities: public safety — \$21 million; elderly group home — \$6 million; and a governmental complex — \$1.5 million. There was a suggestion that publications showing approved capital outlay requests should include the names of the sponsors. It was also suggested that when capital outlay funds slated for tribal projects revert, the funds should be allocated to the Tribal Infrastructure Trust Fund.

Casey Begay, manager of the Capital Improvement Office of the Navajo Nation, distributed to the committee a memorandum from the Navajo Nation Division of Community Development to local chapter officials regarding the nation's coordination policy for New Mexico capital funding. The division has tried to impress upon chapter officials that compliance with the coordination policy would be in their best interests. He also observed that sometimes the reversion of funds is not a bad thing if projects cannot be implemented properly or are completed under budget.

## **Lottery Tuition Scholarships**

Dr. Beverlee J. McClure, secretary-designee of higher education, addressed the committee regarding higher education in general and lottery scholarships in particular. She explained that even with the current eligibility requirements, the Lottery Tuition Fund is predicted to be in a deficit position by FY 2011. If tribal colleges were included as eligible institutions, the deficit would be experienced years earlier. Dr. McClure supports the concept of students in tribal colleges receiving state-supported scholarships, but it is her department's recommendation that the best route would be to expand the College Affordability Act to include tribal colleges; the administration has already committed to funding that act with \$50 million for FY 2007. The department's studies have shown that Native American students, as a group, would be best served by a needs-based scholarship program rather than by the current lottery scholarship program, which is not needs-based. In addition to the discussion of scholarship issues, Dr. McClure distributed a report on the recruitment, enrollment, retention and graduation of Hispanic and Native American students.

Following Dr. McClure's presentation, the following representatives of New Mexico's tribal colleges introduced their institutions and spoke in support of expanding the lottery scholarship program to include tribal colleges: Ferlin Clarke, president, Diné Tribal College; James Lujan, acting president, Southwestern Indian Polytechnic Institute; and Ramus Suina, director of tribal relations, Institute of American Indian Arts.

### **Surface Owners Protection Act**

Bill Humphries of the New Mexico Cattle Growers' Association appeared before the committee to request support for a bill to protect the rights of surface owners of mineral rights. The objective is to provide for adequate notice to surface owners, agreements between surface owners and owners of mineral rights, compensation for surface owners and dispute resolution techniques. There is no law now protecting the rights of surface owners. Representative Andy Nuñez is planning to reintroduce House Bill 1015 from the 2005 legislative session.

### **Aging and Long-Term Services Department — Update**

Deborah Armstrong, secretary of aging and long-term services, advised the committee that the combined capital funding for the Navajo and Indian Area Agencies on Aging for FY 2006 was approximately \$5.5 million, 42 percent of the total requests. For FY 2007, the anticipated share of capital requests will be \$4+ million for the Navajo Area Agency on Aging and \$7.8 million for the Indian Area Agency on Aging, about 35 percent of the expected total request. The Aging and Long-Term Services Department has been working with the Indian Affairs Department to coordinate procedures for capital outlay projects. A tri-state agreement (New Mexico, Arizona and Utah) was entered into in October 1979 to handle funding through the Administration on Aging for the Navajo Nation. The three states hope to revisit this agreement in the coming year. The secretary also reviewed the budget for the current fiscal year and for FY 2007 for Planning and Services Areas 5 (Navajo Nation) and 6 (pueblos and Apache tribes). The secretary also discussed a recent two-day tribal consultation meeting that included her department as well as the Department of Health, the Human Services Department, the Indian Affairs Department and the Children, Youth and Families Department. A great deal of effort was put into the planning for that meeting. The discussions centered on sovereign relationships and children and elderly issues. These issues will continue to be the subject of focused task groups in the future. Other topics included housing, long-term health care, culturally competent services and protective services. Finally, the secretary briefed the committee on the upcoming

White House Conference on Aging and expressed her dismay at the minimal treatment of issues relating particularly to Native Americans.

Upon questioning by the committee, the secretary indicated almost \$1 million in capital outlay appropriations for projects in Indian country had reverted in the past year. Upon a motion by Representative Vaughn, seconded by Senator Tsosie, the committee voted to write a letter to those convening the White House Conference on Aging to express its concern about the minimal way in which Native American issues are being addressed.

### **Gasoline Tax Update**

Perry Martinez, chair of the Native American Petroleum Coalition, reviewed legislative efforts since 1995 to address issues relating to the taxation of gasoline sold on tribal lands. In 1999, a compromise was reached between the state, tribal entities and petroleum marketers with the following factors in mind: 1) avoiding double taxation of gasoline by the state and tribes; 2) preventing unfair competition for the non-Indian petroleum interests; 3) the need for economic development on tribal lands; 4) creation of new jobs; 5) providing a stable tax base for tribes; and 6) providing gasoline, service and related products to tribal communities. In essence, if tribes sell gasoline at retail outlets on tribal land and charge a tribal tax equal to the state gas tax (\$.17 per gallon), then the state will not impose its own gasoline tax on those sales. The Pueblos of Nambé and Santo Domingo have entered into separate agreements with the state regarding the wholesale marketing of gasoline. Tribal entities have been working with the governor's Gasoline Tax Working Group to address ways to administer and enforce the current laws more efficiently. The Gasoline Tax Act solved many issues between tribal entities and the state regarding the sale and taxation of petroleum products on tribal lands and the system is working well.

Carolyn Abeita of Roth, VanAmberg, Rogers, Ortiz & Yepa, LLC in Albuquerque represents the Native American Petroleum Coalition and explained in more detail the changes brought about by the amendments to the Gasoline Tax Act in 1999. Following the implementation of the amended Gasoline Tax Act, problems arose regarding the administration and enforcement of that act. The governor's Gasoline Tax Working Group was formed to address those problems. The recommendations of that working group were implemented through the passage in the 2005 legislative session of House Bill 424. Ruben Baca of the Petroleum Marketers Association indicated the only problem at this time is that the new administrative procedures, including electronic filings, are to begin January 1, 2006, but the Taxation and Revenue Department has given no information or workshops on the new procedures to be followed. Ms. Abeita also briefed the committee on the opinion of the U.S. Supreme Court in the case *Wagon v. Prairie Band Potawatomi Nation* that had just been handed down. That case would allow states to tax the retail sale of gasoline on tribal lands, thereby resulting in double taxation. The case should have no impact in New Mexico, however, as the 1999 amendments of the Gasoline Tax Act had resolved those issues in this state.

### **Public Education Issues**

Penny Bird, assistant secretary for public education, and Barbara Alvarez of the Indian Education Division appeared to update the committee on issues related to Indian education. On December 19, there will be an Indian education summit at the Ohkay Owingeh Dome convened by Governor Joe Garcia. The summit is being directed by the Indian Affairs Department, the Public Education Department and the Higher Education Department. The theme of the summit

is developing relationships and partnerships between tribes and the state to ensure equitable resources and quality education for Native American students. A copy of the proposed agenda was distributed to the committee. Assistant Secretary Bird also briefed the committee on the results of the government-to-government meeting sponsored by the Indian Education Advisory Council held in Mescalero on November 3, 2005. That meeting focused on student health and wellness and the secretary distributed a summary of the points raised by the work groups at that meeting. Regarding the legislative suggestion last session through House Memorial 3 that the Indian Education Division be elevated within the department, a study has been implemented by an outside contractor and should be ready by the 2006 legislative session.

### **Recess**

The meeting was recessed by Representative Madalena at 5:00 p.m.

### **Wednesday, December 7**

The meeting was reconvened by Senator Pinto on Wednesday, December 7, 2005, at 9:15 a.m. in Room 322 at the State Capitol in Santa Fe. An invocation was given by Representative Madalena.

### **Indian Affairs Department — Legislative Update**

Michelle Brown-Yazzie, deputy secretary for Indian affairs, and Melissa Candelaria, senior policy analyst, distributed to committee members the Indian Affairs Department's first newsletter and then presented the committee with the department's proposed legislative initiatives for the 2006 session. The following initiatives have been forwarded to the governor's office for approval: 1) \$500,000 for a study on Indian education in New Mexico; 2) \$10 million for the Tribal Infrastructure Trust Fund; 3) \$600,000 for a Native American domestic violence shelter; 4) \$500,000 for a statewide traffic records system tribal project; 5) \$1 million for an Indian children and youth health, education and leadership program; and 6) funding for forensic investigation and related services provided to tribal governments. On a motion by Representative Lundstrom, seconded by Senator Rodriguez, the committee voted to support the 2006 legislative initiatives proposed by the Indian Affairs Department.

There was a discussion of what had happened to the \$3 million that had been appropriated for tribal infrastructure projects but which had not been put into the Tribal Infrastructure Trust Fund. Deputy Secretary Brown-Yazzie indicated those funds had been appropriated to the Department of Finance and Administration, and that list of proposed tribal infrastructure projects has been sent to the governor for approval. Upon a motion by Senator Tsosie, seconded by Representative Vaughn, the committee voted unanimously to send a letter to the governor stating that it was the intent of the legislature that the \$3 million be put into the Tribal Infrastructure Trust Fund rather than given to the Department of Finance and Administration, and requesting a list of the projects proposed for the use of those funds. Following further discussion regarding capital projects, upon a motion by Senator Pinto, seconded by Representative Begaye, the committee voted unanimously to request from the secretary of transportation a full accounting of how GRIP funds have been spent to date and answers to the following questions: 1) what have been the actual GRIP revenues to date as compared to the GRIP revenues originally projected; 2) have any GRIP funds, whether state or federal, been transferred for expenditure on non-GRIP projects?; and 3) are all GRIP projects as

specified in the 2003 legislation still planned to be constructed in the manner and time frame originally proposed?

### **Endorsement of Legislation**

Staff attorneys Chase Van Gorder and Jennie Lusk presented to the committee the various legislative proposals offered for committee endorsement. The committee voted to endorse the following:

#### Memorials

- congratulating Governor Joe Garcia on his election as president of the National Congress of American Indians;
- recommending the establishment by the Navajo Nation of a capital improvement loan fund for the benefit of New Mexico chapters;
- recommending the promulgation of rules by the Indian Affairs Department for meaningful tribal consultation; and
- recommending full funding in the amount of \$75 million for Indian water rights settlements.

#### Appropriations

- \$1.5 million for tribal TANF funds;
- \$1 million for the Tribal Extension Initiative of the NMSU Cooperative Extension Service;
- \$62,000 for a recruiter for the NMSU American Indian Program;
- \$52,000 for a counselor for the NMSU American Indian Program;
- \$90,000 for an additional full-time employee at the Jemez and the Coronado state monuments;
- \$2.6 million for the expansion of the Jemez state monument by approximately 700 acres; and
- earmark five percent of Indian gaming revenues (approximately \$2 million) for the Lottery Tuition Fund.

#### Bills

- regulate the payday lending industry;
- extend the Lottery Tuition Fund to include students at New Mexico tribal colleges; and
- extend the College Affordability Act to include students at New Mexico tribal colleges.

### **Adjournment**

There being no further business before the committee, the sixth meeting of the Indian Affairs Committee for the 2005 interim was adjourned at 12:15 p.m.