

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

**June 5, 2013
Room 307, State Capitol
Santa Fe, NM**

The first meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on June 5, 2013 at 10:05 a.m. at the State Capitol in Santa Fe.

Present

Rep. Sandra D. Jeff, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Alonzo Baldonado
Rep. Sharon Clahchischilliage
Rep. Patricia A. Lundstrom
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr.
Sen. William P. Soules

Absent

Sen. John C. Ryan

Advisory Members

Rep. Ernest H. Chavez
Rep. Zachary J. Cook
Sen. Daniel A. Ivey-Soto
Rep. Georgene Louis
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Clemente Sanchez

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Rep. Antonio "Moe" Maestas

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS
Abby Wolberg, Law Student Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in meeting file.

Wednesday, June 5**Welcome, Introductions and Invocation**

Senator Pinto welcomed the committee and members of the audience and asked everyone to introduce themselves. Arthur P. Allison, secretary of Indian affairs, delivered an invocation.

Interim Committee Procedures

Raúl E. Burciaga, director, LCS, described several interim legislative committee procedures. Interim committee work should terminate by October 1, 2013 unless the New Mexico Legislative Council authorizes meetings after that date. Advisory members may not vote on official committee actions and voting members may take action by roll call votes, by a show of hands or by consensus. Eight voting members constitute a quorum of the committee. Without a quorum, the committee may still operate as a subcommittee and take testimony and receive presentations, but it may not take any official action. Interim meetings held in the State Capitol are webcast.

Indian Education: Programs and Priorities

Paul Aguilar, deputy secretary, Public Education Department (PED), greeted the committee on behalf of Hanna Skandera, secretary-designate, PED, who was unable to attend. Mr. Aguilar identified and discussed the following four Indian education initiatives of the PED, which are aimed at ensuring success of all students: 1) the State-Tribal Education Partnership (STEP) grant awarded to the Navajo Nation; 2) instructional training and professional development in connection with Common Core State Standards (Common Core); 3) the reassignment of personnel in the Indian Education Division (IED) of the PED; and 4) the New Mexico Real Results initiative.

Regarding the STEP grant, Mr. Aguilar stated that the federal government awarded the Navajo Nation a grant to allow the nation to work directly with school districts on overseeing federal programs, funding and language maintenance. The final agreement between the federal government and the Navajo Nation will be signed and finalized soon. Several pueblos submitted a STEP grant proposal as a consortium, but a grant was not awarded.

Mr. Aguilar noted several areas of concern related to the Navajo Nation's STEP grant agreement, including access to and sharing of student data and evaluating students' classroom performance. Certain data must be collected, and certain entities are permitted to share data with the PED. The PED wants to be able to share some data with the Navajo Nation. The PED is addressing how data are shared, including hand-carrying data, rather than electronically

transmitting data, to ensure that data are safe and that data are destroyed after use. The PED wants to provide for a native language component of the Common Core and hopes to have a final agreement on that issue by June 30, 2013.

Regarding the PED's second initiative, Mr. Aguilar indicated that trainings on instruction, language and the "race-to-lead" are being rolled out regionally. The PED is making arrangements so that professional development training will be held in locations in local communities outside Santa Fe and Albuquerque.

On the PED's third initiative, Mr. Aguilar stated that the IED is housed in Santa Fe and Gallup, and because there are tribes and pueblos all around the state, the PED wants to move some personnel onto the Navajo Nation in the northwest part of the state to better serve the area. The PED is closing its current Gallup office and moving a staff person into the Gallup schools; no IED positions are being eliminated. The PED will also place a staff person in the Central Consolidated School District in San Juan County to reduce required travel and to increase efficiency and effectiveness. He read aloud an official statement by the PED regarding this issue. Finally, Mr. Aguilar pointed committee members to pages 11 and 12 of the PED's presentation materials for an image showing how the PED will regionalize its staff. The PED will evaluate these changes throughout the year to see if additional changes need to be made.

Regarding New Mexico Real Results, the PED's fourth initiative, Mr. Aguilar said that the PED is working with the Office of Special Education Programs, U.S. Department of Education (USDE), and with Santo Domingo schools, the Bernalillo Public School District, Mesa Elementary School and the Central Consolidated School District to focus on special needs children in a yearlong pilot program. Thus far, he noted, results show that participating children are exceeding their non-special education peers in relative growth (not overall performance) because of the intense focus of the program. The PED will look at year-end reports to consider expanding the pilot group.

On the topic of the STEP grant, Mr. Aguilar stated that the PED worked with the Dine Department of Education and separately with the pueblos in writing the grant proposals. The USDE decided to award just a few grants nationwide.

- A representative made a motion, which was seconded and passed, asking that the PED make a formal request to the USDE to explain why the pueblo consortium proposal was not awarded.

Dr. Ferlin Clark, assistant secretary for Indian education, PED, addressed the committee on the topic of the STEP grant and notified the committee that about \$2 million was identified by the U.S. government for the grant program. The PED and the tribes had only three or four weeks to prepare and submit proposals. He noted that he worked with the pueblo consortium on its proposal. A status report will be provided at the upcoming State-Tribal Summit. At this point, eight dialogue sessions have been held on the topics of the Impact Aid program, Common Core,

language and special education.

On the issue of funding, Dr. Clark reported that \$1.824 million was provided for Indian education, and he noted that the IED is working on behalf of all students, including rural and urban Indians. The IED wants to develop a plan to address language retention to help students succeed. The IED wants to work with tribes and pueblos on multicultural and bilingual education.

Members of the audience who serve on the Indian Education Advisory Council (IEAC) addressed the IAC and expressed their thoughts on the changes being made within the PED.

Gilbert Sanchez, former educator and member, IEAC, noted that there have been many concerns with implementation of the Indian Education Act. It will be helpful to identify issues at a local level. The Indian Education Act is supplemental to and does not supplant education law. Funding will be an important part of the first year of language programs and will impact the programs in later years.

Keith Franklin, member, IEAC, explained that there is not enough collaboration with the PED and the changes within the PED were not made with the IEAC's input. The IEAC could be more effective if it is a commission instead. How to contact and serve the large population of urban Native Americans throughout the state is an important issue. There are approximately 3,500 Navajo students in the Albuquerque public schools, and the Indian Health Service hospital in Albuquerque serves over 440 tribes. The number of homeless Native American students is also a significant issue. The annual report (the "Moccasin Report") he publishes on New Mexico's Indian population shows that the number of homeless Native American students grew from about 4,000 to more than 12,000. The report also shows that the achievement gap for Native American students is a significant concern. Mr. Franklin offered to send a copy of the report to the committee members and mentioned that he has sent copies of the report along with his suggestions to the PED, Governor Martinez and President Obama, but he has received no replies.

Pauline Billie, member, IEAC, stated that after the Indian Education Act was passed, funds were provided to the IED and it may be necessary to look at how those funds were used and what progress was made.

A committee member raised a concern regarding state education-related waivers to be granted by the USDE. The committee received notification that the USDE had granted a waiver for 2010, but had denied a waiver for 2011. The figures cited in the letter from the USDE were not the numbers provided by the PED, and the matter may be heard in a hearing with the USDE. If the waivers are not granted, the state's special education grant would be reduced and the state's budget would be impacted in the amounts of \$12 million for fiscal year (FY) 2010 and \$20 million for FY 2011.

Several members expressed concerns about funding provided to the IED. Of the \$1.8 million the IED received, \$500,000 was used for contracts and another \$700,000 was used for required expenditures, including payments to nonprofit organizations like Save the Children and Teach for America. Too much funding is being provided to the nonprofit organizations when it should be given to school districts with concentrated Native American student populations. The IAC has never received a report from Save the Children or Teach for America, and based on the amount of funding the legislature provides to PED for those programs, the committee should receive reports from them.

Another committee member expressed serious concerns about teachers being recruited from Asian countries by Teach for America to teach at Newcomb, Shiprock and Naschitti. Community members are concerned that those teachers are replacing Navajo teachers and that they have difficulty speaking English and communicating with students and parents. A member also said that she saw an advertisement that effectively stated, "If you would like an easy teaching job with good pay and well-behaved students, come to the Navajo Nation.". The member suggested that the PED should be inquiring about those kinds of advertisements.

- A committee member requested that the report Dr. Clark referenced be provided to the IAC.
- A committee member requested that, by the end of the interim, the IED provide a report showing its budget, staffing patterns and subcontractors, along with information on how subcontractors' work relates to the core curriculum.
- A committee member requested a report from the IED on the status of USDE waivers for the PED because that information will impact the PED's budget.

In response to IAC members' comments relating to PED funding and the STEP grant, Mr. Aguilar stated that the \$400,000 used for Teach for America programs is all being used in the Gallup-McKinley County School District. The PED has used a request for proposals process (RFP), and Teach for America and Save the Children are some of the only applicants. He voiced his concerns and said the PED will investigate possible advertisements like the one highlighted by the committee member.

Mr. Aguilar noted that the Indian Education Act allows funding for the two administrators and the support staff person in Gallup, but it does not fund every position in the IED. The other four positions in the IED are funded through the PED's general appropriations. The PED is committed to adding another staff member. The administration of the STEP grant will not involve IED staff members, but because the PED is the grantee, the PED will oversee the Navajo Nation's administration of the grant.

Mr. Aguilar also responded to concerns about the teachers being recruited by Teach for America. He recalled that the PED supported unsuccessful legislation that would have provided financial incentives, including performance-based incentives, to teachers working in certain schools. He oversees the teacher licensure process for the state. Teach for America conducts

most of its recruiting in the United States. Having noted the need for special education teachers in the United States and separate from Teach for America, the Philippines has sent many teachers to the United States and many arrive to teach in New Mexico because the state offers licensure reciprocity.

On the issue of teachers' cultural awareness and training, Mr. Aguilar informed the committee that the PED is working on a proposal and looking for outside funding to start a program to internally recruit teachers who might eventually teach in their own communities. The program would identify middle school students interested in teaching and provide support to help those students eventually become teachers.

A committee member reported that Arizona has successful graduate programs in education and native languages and New Mexico should be recruiting out of programs like those in Arizona. Advisory committees and cultural awareness experts, including volunteer members, should be used to support students and parents with issues related to culture and language. The committee member expressed a desire to help, not to place blame for the concerns.

Another committee member mentioned that school districts should also be held accountable for concerns in the schools. Funds should be used to invest in and recruit teachers from within communities because they will be more likely to work in their communities. As an incentive, professional teacher education tuition could be covered to help prepare teachers to teach in their own communities. The member acknowledged that PED representatives visit tribes and pueblos during feast day celebrations, but asked that they visit at other times as well when the tribes and pueblos can discuss business.

- The committee member made a motion, which passed without opposition, requesting the PED to make a presentation on the roles and responsibilities of the IED staff, a description of how they work with school districts and whether school districts describe their collaborations with the IED to be effective.

Mr. Aguilar noted that IED staff members attend every school board meeting to ensure meetings are well-run and in compliance with the Open Meetings Act.

Returning to the discussion of the PED's reassignment of personnel, Representative Jeff mentioned to Dr. Clark that she was not involved in speculations or discussions about the reassignment. She noted that she prepared a letter to Secretary-Designate Skandera about the reassignment. (See letter dated May 9, 2013 in the meeting file.) Representative Jeff also noted that she received a response from Secretary-Designate Skandera on June 5, 2013 but that she still has concerns about the reassignment of personnel. She inquired whether the reassignment was due to a lack of funding, when the reassignment is going to take place and whether the affected school districts are aware of the reassignment. She expressed her regret that Secretary-Designate Skandera was not in attendance to answer questions about the reassignment and requested her attendance at the next meeting. She also requested that the IEAC members attend the IAC

meetings.

- Representative Jeff requested an organizational chart for the IED and asked that Dr. Clark provide answers to her questions regarding the reassignment of personnel at the IAC's next meeting.

In response, Mr. Aguilar provided his telephone number and said that the PED can schedule meetings to help resolve issues.

- A member made a motion to ask the New Mexico Legislative Council to consider creating a subcommittee of the Legislative Education Study Committee and the IAC to study Impact Aid and how funding is being expended. A member seconded the motion for the purpose of discussion. The motion passed without opposition.

Indian Affairs Department (IAD): Programs and Priorities

Secretary Allison reported that the IAD is working to ensure effective government-to-government interactions among the tribes, pueblos and the state. Duane Duffy, deputy secretary, IAD, directed the members to the IAD's presentation materials. (See PowerPoint presentation entitled "IAD Programs and Priorities Presentation to the Interim Indian Affairs Committee".) Mr. Duffy's presentation addressed the following: the history, role and mission of the IAD; IAD staff members; the IAD's strategic plan; the core duties of the IAD; the 2013 Tribal Infrastructure Fund (TIF) funding cycle and projects; and the upcoming State-Tribal Summit.

Crispin Kinney, tribal infrastructure planner, IAD, reported more details on the current and coming years' TIF funding cycles and referred the committee to slide #10 of the IAD's presentation materials. Ninety-nine TIF applications were initially received by the IAD, and after a review process, the number of applications was reduced to 40. The 40 applicants made formal proposals to the IAD, which applied the scoring criteria shown in slides #12 through 16, and ultimately the IAD awarded \$16.3 million to 19 project proposals.

Mr. Duffy noted that the IAD also assists communities with special project funding, which is not a permanent funding source but a short-term subsidy until a tribe identifies permanent funding. The deadline for special funding proposals is June 10, 2013.

Autumn Monteau, general counsel, IAD, discussed the agenda for the upcoming State-Tribal Summit. The IAD formed a Summit planning committee, which surveyed tribes and pueblos regarding topics to be addressed at the summit. The planning committee narrowed the topics down to four: Indian education; water rights and natural resources; health; and infrastructure and economic development. All survey responses were provided to the governor and relevant agencies. State agencies were also asked what issues they would like to address with tribal leaders. The planning committee met with agency secretaries and tribal liaisons to prepare for the summit.

The summit will be a full day of open dialogue between tribes and Governor Martinez's administration. The first day of the summit is a networking session for state agencies and tribal leaders. Tribes can address specific issues at the networking session. The second day of the summit will include discussion of the four topics identified by the planning committee.

Jerry Sandoval, division director, Economic Development and Tourism Division, IAD, addressed the committee on issues related to economic development and explained his presentation materials entitled "New Mexico Department of Indian Affairs, Tribal Economic Development and Infrastructure". (See materials in meeting file.) The MainStreet program in the Pueblo of Zuni is the first Native American MainStreet in the United States. The project was successful, and public meetings on it were well-attended.

Mr. Sandoval stated that the Community Development Financial Institutions Fund (CDFI) is one of the most important IAD programs. The CDFI brings the IAD together with New Mexico-certified native community development financial institutions to help provide financial products, including business development, home-ownership education, financial education and business planning services to Native Americans. The IAD is also working on a financial education program to address predatory lending.

Mr. Sandoval also addressed the following topics, each detailed in his presentation materials: the Minority Business Development Agency; a grant writing and technical assistance program, using funds from the Kellogg Foundation; the Eight Northern Tribal Youth Behavioral Health Facility in Taos; additional Kellogg Foundation funding requests; state health initiatives; tribal business development involving the Regional Development Corporation, Los Alamos National Laboratory and Los Alamos National Security, LLC; Native Brand food products; the New Mexico Tribal Roundtable; the Native American Economic Development Summit; the New Mexico Infrastructure Finance Conference; the "8(a) SBA Program"; the Southwest Native Green Loan Fund; business development; and the Zuni MainStreet program.

Mr. Duffy concluded by commending the staff of the IAD for the hard work they do with the IAD's limited resources.

A committee member asked how State-Tribal Summit action items identified throughout the year are reported back to tribes. Mr. Duffy stated that throughout the year, the IAD tries to relay progress on commitments made by the state to tribes. Each year at the summit, the IAD reports on whether and which commitments were met. The IAD's web site provides access to every state agency's final report, which is an additional tool for gauging progress.

A committee member inquired about a professional services contract made with a company in Albuquerque to perform a survey of tribal gaming. Secretary Allison responded that in the 2011 State-Tribal Summit, Indian gaming was identified as a major area of economic development. The gaming industry would like the state to acknowledge the development potential for the purposes of funding. The governor has acknowledged that the gaming industry

is not just gaming but also tourism and an enterprise. Mr. Sandoval added that the Encuentro firm is performing the survey and about half the tribes are participating. The survey will study several items, including: how much gaming money is returning to the state; tribal versus non-tribal employees in gaming; and tax issues. The tribes not participating were not willing to provide financial information. The IAD will receive percentages and statistics from the firm's survey and does not have access to any of the financial information that is provided by the tribes due to a nondisclosure agreement between Encuentro and the tribes.

- A committee member asked that a copy of the report be provided to the committee members when it is completed.

In response to a question about TIF funding and reports to the committee, Mr. Duffy stated that the IAD generally receives notice of how much TIF funding will be available in July or early August, so the next funding process will begin in September. He noted that all TIF funding is earmarked for "brick and mortar" projects and that the IAD assesses whether a tribe will have funding for operation and maintenance once a building project is completed. The IAD currently does not have funding to assist with operation and maintenance projects.

- The committee member requested that the IAD provide the committee with a report showing all TIF funding requests received by the IAD and the other items shown in reports the committee historically has received.

On the topic of the State-Tribal Summit, several members expressed concerns that tribal leaders are frustrated about the lack of opportunities to meet one-on-one with the governor and not only with members of the governor's cabinet. One committee member asked that Secretary Allison relay that concern to the governor. Mr. Duffy stated that the IAD relays requests it receives from tribes regarding meetings with the governor. He also recalled that the first day of the State-Tribal Summit will offer tribes an opportunity to express concerns to the governor. Secretary Allison also stated that the governor has provided her phone numbers and has offered to meet and has met with many tribal leaders. He suggested that it may be necessary for more than one State-Tribal Summit to be held each year.

- A committee member asked that the IAD inform the IAC about which tribes have had one-on-one meetings with the governor.
- A committee member asked that the IAD provide the committee with a list of all tribal liaisons and with information about the possible duplication of efforts between the Economic Development Department (EDD) and the IAD.

Mr. Duffy stated that a listing of tribal liaisons is available on the IAD's web site and that the IAD would provide a listing to the committee. He noted that the IAD is working on memorandums of understanding (MOUs) with the Tourism Department (TD) and EDD to develop a plan on how to work together without duplicating efforts. Secretary Allison added that he collaborates with Secretary Jon Barela of the EDD on projects such as the expansion of

Raytheon in Farmington, but there is no duplication of work between them. He stressed that there are many issues tribes face, including up to 80% unemployment rates, and that collaboration is the key if the IAD is going to be effective.

A member asked whether individual tribes are taking advantage of the TD's New Mexico True tourism campaign. Mark Trujillo, Indian tourism program director for the TD, stated that the TD, through the New Mexico True campaign, has reached out to all the tribes to include them in promotions and has asked the IAD for assistance in coordinating with tribes. The TD's web site, www.newmexico.org, is an access point for tribes, and the TD can assist with creating specific advertisements, on the web site or in print.

In response to a question about capital outlay funds, Mr. Duffy noted that the IAD's role is to act as a fiscal agent, ensure that intergovernmental agreements are executed and oversee that materials for projects are purchased and tribes are meeting deadlines so that the funds do not revert. Secretary Allison reiterated that it is with respect to capital outlay funds, as opposed to TIF funds or special project funds, that the IAD acts as the fiscal agent. He added that if the committee members need to know which parties are in an intergovernmental agreement, Ms. Monteau can provide that information. Ms. Monteau explained that after funds are appropriated, the IAD enters into an intergovernmental agreement with a chapter of the Navajo Nation or with a tribe and requests a description of the scope of work from the chapter or tribe. Once the project is started, the IAD oversees the project to ensure that it is completed.

Mr. Duffy reminded the IAC of the June 10, 2013 deadline for special funding requests and stated that the notice related to the funding deadline is on the IAD's web site. Secretary Allison added that urban tribal members can also submit proposals.

A committee member asked a question about a recent executive order from the governor related to project audits, and Mr. Duffy replied that the order applies to all capital outlay projects regardless of whether they are located on or off Indian land. The IAD is coordinating with the Department of Finance and Administration (DFA) on how to address audits of capital outlay projects. Ms. Monteau added that the executive order is aimed at ensuring that grantees of funds are fiscally responsible and accountable. The DFA has proposed uniform funding criteria and audits.

A committee member suggested that the IAD consider redesigning its web site to include more photographs and information about what is taking place in the state.

2013 Legislation — Summary

Mr. Kovnat explained that the members had a list of committee-endorsed legislation during the last interim and for introduction in 2013. He provided an update of which measures did and did not pass.

- A few committee members requested a report toward the end of the interim showing

how appropriated funds will be or were used and by whom. One member requested that a list of relevant legislation, for use in preparing the report, could be obtained from an analyst with the Legislative Finance Committee.

Discussion of Focus Areas, Work Plan and Meeting Schedule

Mr. Kovnat reviewed the proposed work plan and meeting schedule with the IAC. Several IAC members had comments on the work plan and the following topics were suggested for inclusion in the work plan: solid waste cleanup; railroad access points on tribal lands; competitive court orders; cross-deputizing tribal police officers; health care; elder care and senior centers; dental therapist licensure; transportation and road projects and the taxation of gasoline and service stations; and telecommunications and internet availability and telephone billing concerns.

Several committee members made suggestions regarding meeting locations and discussed several options for revisions to the schedule. The committee asked Mr. Kovnat to determine if the following changes could be made to the meeting locations: July — visit the Pueblo of Acoma instead of the Pueblo of Cochiti; August — visit Ohkay Owingeh if a visit to Taos could not be arranged; September — consider meeting at the Fire Rock Casino and the Pueblo of Zuni; October — consider visiting the Jicarilla Apache Nation; November — request that the New Mexico Legislative Council approve an additional meeting day; December — Santa Fe.

Adjournment

There being no further business before the committee, the first meeting of the IAC for the 2013 interim adjourned at 3:24 p.m.