

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

**May 24, 2006  
State Capitol, Room 307  
Santa Fe**

The first meeting of the Indian Affairs Committee for the 2006 interim was called to order by Senator John Pinto, co-chair, on Wednesday, May 24, 2006, at 10:15 a.m. in Room 307 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. Irvin Harrison  
Rep. Manuel G. Herrera  
Rep. Patricia A. Lundstrom  
Sen. Lidio G. Rainaldi  
Sen. Nancy Rodriguez  
Sen. Leonard Tsosie  
Rep. Teresa A. Zanetti

**Advisory Members**

Sen. Ben D. Altamirano  
Sen. Richard C. Martinez  
Rep. Nick L. Salazar  
Sen. William E. Sharer  
Rep. Gloria C. Vaughn

**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.

**Absent**

Sen. John C. Ryan  
Rep. Don L. Tripp  
Rep. W. C. "Dub" Williams

Sen. Joseph J. Carraro  
Rep. Ben Lujan  
Rep. Fred Luna  
Rep. Debbie A. Rodella  
Rep. Avon W. Wilson

**Wednesday, May 24**

**2006 Legislation — Summary**

Chase Van Gorder, staff attorney, reviewed the fate of the committee-endorsed proposals for the 2006 legislative session. The committee endorsed five substantive bills, none of which passed both chambers. The committee endorsed appropriation bills for six different purposes, but only bills related to tribal TANF funds were approved by the legislature and the governor. The committee endorsed five memorials and only one house memorial was approved. One significant bill that was not considered by the committee prior to the 2006 legislative session was Senate Bill 579, which concerned capital outlay procedures for chapters of the Navajo Nation. This bill was enacted as Chapter 105. Other capital outlay legislation extended by one year the deadline for capital outlay appropriations scheduled to revert at the end of fiscal year 2006 and provided that general fund capital outlay appropriations would revert to the Tribal Infrastructure Trust Fund. Information was also presented regarding funds appropriated for projects in Indian country, including appropriations that had been vetoed by the governor. There was discussion from committee members regarding capital outlay funds reverting to the Tribal Infrastructure Trust Fund and the manner in which the Tribal Infrastructure Act would be administered. In regard to legislation to be endorsed for the 2007 legislative session, Mr. Van Gorder reminded committee members that committee-endorsed bills may be pre-filed in the senate.

**Indian Affairs Department — Status Update**

Secretary of Indian Affairs Benny Shendo, Jr., began his presentation with the introduction of new members of the department's staff, including the new general counsel, Stephanie Kiger, and the new deputy secretary, Teresa Gomez, who will start her duties in June. With the addition of the newly authorized staff person to deal with the technical and engineering aspects of capital outlay projects overseen by the department, the Indian Affairs Department will have its full complement of 13 full-time staff members.

Regarding capital outlay issues, Secretary Shendo noted the Indian Affairs Department and the Department of Finance and Administration have drafted proposed rules to implement the provisions of Senate Bill 579, which was enacted in the 2006 legislative session. The draft rules have been sent to the Navajo Nation for review and comment. A response is expected by June 2 and a follow-up meeting is scheduled for July 13. Ms. Kiger reviewed and clarified the provisions of the Tribal Infrastructure Act, which was enacted in the 2005 legislative session.

In 2005, the legislature appropriated \$250,000 to the Indian Affairs Department to address problems related to alleged trespassing by Native American families living in state trust lands in the checkerboard area. The department entered into a memorandum of understanding with the State Land Office, and Commissioner Pat Lyons will be addressing the results of that effort later in the meeting. Five hundred thousand dollars was appropriated from the Tobacco Settlement Fund to the Indian Affairs Department for smoking cessation programs. A request for proposals (RFP) is being drafted for that purpose.

Rebecca Martinez, capital outlay manager, Indian Affairs Department, reported on the status of capital outlay training for tribal entities and on the status of capital outlay projects being administered through the Indian Affairs Department. The department is administering over 620 different projects with \$66.7 million in active projects and \$1.9 million in projects waiting for

scopes of work. The tribal communities are increasingly becoming able to handle the requirements for scopes of work for individual projects.

### **Rights of Way in the Checkerboard Area — Status Update**

Commissioner of Public Lands Patrick Lyons reported on the status of efforts to legalize Native American home sites in the checkerboard area that are located on state trust lands. In 2005, the legislature appropriated \$250,000 to be used for the purchase of the rights to have home sites on state trust lands. A survey by the State Land Office revealed 127 home sites in 17 chapters of the Navajo Nation located on state trust lands. An agreement was signed on May 23 between the State Land Office and the Navajo Nation whereby existing grazing leases were amended to include existing home sites. Now that the status of home sites on state trust lands has been confirmed through the amended leases, utility companies will then be able to provide services to these homes. The State Land Office will work to expedite the processing of any necessary right-of-way and easement applications for utilities over state trust lands to home sites on amended leases.

### **Public Education Department — Status of Indian Education Division**

Dr. Robert Behrendt, education performance auditor with the Legislative Finance Committee (LFC), presented the results of his audit of the implementation of the Indian Education Act. The audit found that government-to-government relations between the Public Education Department and the state's 22 tribal entities have been complex and slow as evidenced by the pattern of Indian education expenditures. For example, in fiscal years 2004 through 2006, approximately \$2 million out of a total of approximately \$7 million in funding for Indian education remains unspent. The audit found that the Indian Education Act is vague, overly ambitious and extremely difficult to implement given the following:

- 1) the issues of poverty and low-performing schools require focused programs and resources on a scale that is not supported by the funding formula or the capacity of the Public Education Department;
- 2) research indicates that low achievement of Native American students is largely due to culturally inappropriate content standards, school organization, instruction and testing;
- 3) the Public Education Department's current strategy for developing relevant curricula shifts responsibility to school districts and outside contractors and does not provide a blueprint or technical assistance to school districts;
- 4) the Public Education Department has not developed a strategy and working relationship to increase tribal education department capacity and to coordinate programs;
- 5) research is abundant and the critical elements of a culturally based education provide a blueprint for what schools must do and be held accountable for by the Public Education Department;
- 6) native languages have not been a part of the Public Education Department bilingual program nor have alliance efforts been facilitated between school districts and teacher preparation programs to meet the teacher supply needs for culturally based education; and
- 7) the New Mexico Indian Education Summit held in December 2005 provided a one-day forum for stakeholders but did not result in priorities, targets or action plans.

The audit also referred to House Memorial 3 from the 2005 legislative session, which directed the Public Education Department to analyze means to elevate the status of the Indian

Education Division within the department and to report back to the Indian Affairs Committee by October 2005. This deadline was not met, but the task was contracted out to a consulting firm, Richard Nichols and Associates. That report was submitted to the department in April 2006, and contained the following recommendations:

- 1) bring the funds for implementing the Indian Education Act within the department's general budgeting process rather than letting them remain as temporary appropriations;
- 2) assess the impact of having the assistant secretary for Indian education report directly to the secretary of public education;
- 3) consider increasing the funds for staffing and operations of the Indian Education Division;
- 4) provide more information to Indian education stakeholders, such as through a newsletter or tribal consultation meetings; and
- 5) develop a better awareness within the department of the enhanced responsibilities of school districts as a result of the Indian Education Act.

The LFC audit made the following seven major recommendations for improving the implementation of the Indian Education Act:

- 1) develop content standards and tests to include language and cultural competencies relevant to Native American students for purposes of determining adequate yearly progress;
- 2) review the adequacy of at-risk unit values by the Funding Formula Study Task Force to meet the purposes of the Indian Education Act;
- 3) increase the capacity of the Indian Education Division and the Public Education Department to provide technical assistance and interventions to tribal education departments, school districts and schools in implementing culturally based education;
- 4) make tribal education departments eligible for state funding to increase their capacity, involvement and control;
- 5) use the critical elements of the culturally based education model as a blueprint and as a set of accountability measures for implementation of the Indian Education Act;
- 6) develop and disseminate Indian education curricula, holding districts accountable for their use for accreditation purposes; and
- 7) establish an Indian education teacher corps program for accelerated teacher training, professional development and certification in culturally based education.

Dr. Behrendt also observed that there is an inherent conflict among the three major education laws: the federal No Child Left Behind Act, the New Mexico Indian Education Act and the Navajo Sovereignty in Education Act of 2005. The state and tribal laws mandate the teaching of native languages and culture while the federal law looks only at traditional academic performance measures. Therefore, schools with significant Native American enrollment face the additional tasks of teaching native language and culture in addition to subjects required to enable making adequate yearly progress under the federal act.

Assistant Secretary of Public Education Penny Bird responded to the LFC audit on behalf of Secretary of Public Education Veronica Garcia, who was unable to attend the meeting. Assistant Secretary Bird reviewed the accomplishments of the Indian Education Division over the past two-and-a-half years in the following areas: increased communication with tribes and

pueblos, teaching Native American languages and culture, increased number of Native American teachers and administrators, assistance provided to school districts and tribes to meet the educational needs of Native American students, Native American language bilingual efforts and culturally appropriate content and instructional strategy workshops that have been conducted. She also announced the completion of the first statewide Indian education annual status report for the 2005-06 school year that will provide baseline information and establish procedures to collect and maintain education-related data for the state's Native American student population. Assistant Secretary Bird also acknowledged that the corrective action plan responding to the LFC audit is a final document.

Zelda Yazza of Mescalero, a member of the New Mexico Indian Education Advisory Council, read a letter from Council Chair Larry W. Emerson responding to the LFC audit.

Copies of the LFC audit and summary presentation, the responses of the Public Education Department and the Indian Education Advisory Council and the Nichols and Associates report on the status of the Indian Education Division are contained in the meeting file.

During the course of questions and discussion by committee members, Senator Tsosie moved, and Representative Vaughn seconded, a motion that the committee write the secretary of public education to recommend that the person in charge of the Indian Education Division report directly to the secretary of public education rather than to a deputy secretary. The motion passed without objection.

### **Domestic Violence**

Agnes Maldonado, executive director of the New Mexico Coalition Against Domestic Violence (coalition), appeared before the committee to express concerns regarding the appointment of Sandra Gardner as the state's domestic violence czar and recent changes in the procedure for awarding TANF grants to domestic violence programs. Although the coalition has been awarded TANF funds for legal assistance over the past several years, it was decided this year that those funds would be awarded on a competitive RFP basis. The coalition will submit an RFP, but it is concerned that, if it is not awarded funds as it has in the past, many of its offices in counties throughout the state will be forced to close.

### **2006 Interim Work Plan and Meeting Schedule Development**

Mr. Van Gorder presented the committee with a draft work plan for the 2006 interim and a sheet containing ideas for meeting locations and agenda topics. The committee discussed many possibilities and eventually agreed on meeting locations and topics as listed in the attached proposed work plan, including an extra committee meeting in December to enable the committee to have one meeting in the northwest portion of the state.

Following discussion of the work plan, Senator Tsosie moved, and Representative Herrera seconded, a motion that the committee write New Mexico's congressional delegation to advise them that the committee opposes the designation of English as the national language. The motion passed without objection.

### **Adjournment**

There being no further business before the committee, the first meeting of the Indian Affairs Committee for the 2006 interim was adjourned at 5:30 p.m.

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