

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

**May 29, 2014
Room 322, State Capitol
Santa Fe, NM**

The first meeting of the Indian Affairs Committee (IAC) for the 2014 interim was called to order by Representative Sandra D. Jeff, co-chair, on May 29, 2014 at 10:15 a.m. at the State Capitol in Santa Fe.

Present

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

Absent

Sen. John Pinto, Co-Chair
Sen. Cliff R. Pirtle
Sen. Nancy Rodriguez

Advisory Members

Rep. Ernest H. Chavez
Sen. Carlos R. Cisneros
Rep. Zachary J. Cook
Sen. Cisco McSorley
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Georgene Louis
Rep. Antonio "Moe" Maestas
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Staff

Peter Kovnat, Legislative Council Service (LCS)
Michelle Jaschke, LCS
Mark Edwards, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, May 29

Welcome and Introductions

Representative Jeff welcomed the committee and members of the audience and asked everyone to introduce themselves. Arthur P. Allison, secretary of Indian affairs, delivered an invocation. The agenda was then rearranged to allow the committee to discuss its own organizational aspects first and then have the presentation by the Indian Affairs Department (IAD).

Discussion of Focus Areas, Work Plan and Meeting Schedule

Meeting Schedule

Mr. Kovnat presented a tentative meeting schedule for the IAC and noted that the proposed July 16 meeting would be a joint meeting with the Military and Veterans' Affairs Committee (MVAC). Several requests and comments regarding the schedule were raised by the committee, including:

- Veterans health care provider agency presentation. If possible, include a panel presentation from all of the governmental health care providing agencies (federal, tribal and state) during the joint IAC/MVAC meeting to clarify what services are available for veterans and where veterans can go to receive them. A particular question was raised regarding the ability of the federal Department of Veterans Affairs (VA) to provide services on reservation lands.
- A VA presenter experienced in providing health services across jurisdictional boundaries. Include a hospital administrator-level representative from the VA in the health agency presentation, particularly someone that can act or has acted as a liaison to tribal governments.
- Farmington as a meeting location. A committee member proffered a suggestion that Farmington be substituted as a July meeting location given its accessibility to northern Navajo Nation chapters. It was noted that this might conflict with the Legislative Education Study Committee (LESC) meeting already scheduled for Farmington. However, staff has been in contact with the Navajo Nation for suggested meeting places and will work on it.
- Meetings outside the State Capitol after September. A question was raised about whether the New Mexico Legislative Council would need to approve committee meetings scheduled outside of the State Capitol after September. Mr. Kovnat acknowledged that while that is the standard rule, given the IAC's intergovernmental

outreach function, approval for field hearings into late fall is generally approved by the New Mexico Legislative Council.

- Timing of Middle Rio Grande pueblos meetings. A question was raised by a committee member about possibly switching the dates for the meeting in southern New Mexico and the meetings at the Pueblos of Jemez, Cochiti and Zia. Mr. Kovnat stated that the proposed dates had been chosen to avoid conflicts with autumn ceremonies at the pueblos.

Motion

Representative Lundstrom moved that the committee approve the tentative schedule as reviewed and discussed by the committee. Senator Martinez seconded the motion, and it was adopted by a vote of nine in favor and two opposed.

Work Plan

Mr. Kovnat presented a tentative work plan to the committee and asked for comments as each category was reviewed. A copy of the committee work plan as approved by the New Mexico Legislative Council is posted on the New Mexico Legislature web site.

A. Proposed Issues to be Examined Relating to State-Tribal Relations

A question was raised by a committee member concerning whether capital outlay funding for Indian communities should be incorporated within this category. It was noted that capital outlay concerns had instead been included as a work plan issue under the topic of development in Indian country.

Committee members discussed the consolidation of the schools within McKinley County and noted that the issue would be included under the topic of education.

B. Proposed Issues to be Examined Relating to Health

Committee members discussed how DWI issues are part of this category and requested that a presentation be included during the interim.

C. Proposed Issues to be Examined Relating to Development in Indian Country

During the review of this category, committee members requested that the following three issues be included or expanded upon as part of the committee's work for the year:

- broadband for higher education;
- a report on the newly chartered Dulce/Jicarilla Apache Nation utility project, including presenters from the utility and from federal regulatory agencies; and
- a joint presentation from the Tourism Department and Economic Development Department along with tribal development agencies.

D. Proposed Issues to be Examined Relating to Education

During the review of this category, the committee entered into an extended discussion regarding funding for tribal colleges and scholarships for students attending tribal colleges. Suggestions and ideas raised during this discussion included the following.

- Lottery scholarship funds are sent to the college that a student attends, not to the individual student; so with regard to those funds, it is a question of whether a tribal college is eligible.
- Funding for tribal colleges may be precluded by the Constitution of New Mexico. A constitutional amendment might be needed to address the problem.
- Have the secretary of higher education give a report to the committee on the participation of Native American students in the lottery scholarship program.
- Develop legislation for a separate scholarship program for Native American students to be introduced as a committee bill.
- Would it move the issue forward to request an attorney general opinion on the constitutional obstacles to current funding statutes? Alternatively, should the committee take the obstacles as a given and either develop legislation that works through those obstacles or propose a constitutional amendment?
- Tribal colleges provide educational value for Native American students that state colleges have not been able to provide. Maybe providing funding for tribal colleges could become incorporated into the College Affordability Act.
- The committee should have a presentation from the tribal colleges on what they need or recommend to address the education funding needs of Native American students.
- If a share of Indian gaming proceeds were to be directed to tribal colleges, it would have to be specified within the gaming compacts, which would require reopening all of the compacts.

In regard to the potential for creating a separate scholarship fund for Native American students, it was noted that the Lottery Tuition Fund for all New Mexico students is running out of money. The committee discussed how to engage the LESC and the Legislative Finance Committee (LFC) in a general effort to develop a funding solution for scholarships that would include Native American scholarships. It was pointed out that both the LESC and the LFC had set their meeting calendars earlier in the year, so having the IAC participate in a formal joint meeting with them would not be possible. However, the LESC and the LFC have scheduled a joint committee meeting in August. A member suggested that the IAC request time on the agenda for that meeting for a co-chair and other IAC members to give a presentation.

Additional education issues discussed by the committee included:

- whether the Santa Fe Indian School is open to both native and non-native students and, therefore, is eligible for state funding; and
- the sometimes baffling results of the *Zuni* lawsuit and how that affects getting funding to school districts. Last year, the committee received a presentation from Robert

Gorrell, director of the Public School Facilities Authority, but members cited the need to follow up on questions concerning:

- (1) how the restructuring of services under the Indian Education Act is working (for example, at Church Rock); and
- (2) how to include districts like the Zuni Public School District into the general budget increases for other schools around the state.

Staff requested committee members to suggest potential presenters on these topics who might offer a different perspective from the presenters who have previously appeared before the committee.

E. Proposed Presentations from State Agencies

During the review of potential presentations to the committee, the following were requested to be added to this interim's agendas:

- a presentation regarding the state's relationship with schools run by the federal Bureau of Indian Affairs. Particularly, the presentation should clarify which entities are eligible for state funding assistance and which ones are not;
- a presentation from the Department of Health on the number of people signing up for the health insurance exchange under the federal Patient Protection and Affordable Care Act and the progress of this program within Native American communities; and
- a presentation from the secretary of state regarding voting issues, including early voting opportunities and Native American language options.

Motion

Representative Lundstrom moved that the IAC approve the work plan as amended. Senator Martinez seconded the motion. The motion was adopted unanimously.

2014 Legislation — Summary

Mr. Kovnat reviewed a list of committee-endorsed legislation for the 2014 legislative session. He then provided an update on which measures passed and which did not.

Presentation from the IAD

General Departmental Overview and Government-to-Government Efforts

Secretary Allison introduced his staff. He stated that the IAD has four current vacancies for policy analyst and the chief financial officer positions. He then gave a brief overview of some issues on which the IAD is working.

Touching upon the IAD's efforts with regard to infrastructure, Secretary Allison noted that the IAD recently hired Graham Noles to oversee the tribal infrastructure funds (TIF) and capital outlay projects. He further explained that the IAD had retained a consultant to help resolve issues related to annual TIF and capital outlay audits and that outstanding audit issues

had been reduced from eight issues to one. Responding to a request for a listing of the audit findings, Secretary Allison stated that the IAD could provide them or that they could be found on the state auditor's web site. Secretary Allison also related that the IAD had been working with a business management firm, Impresario Global Solutions, in looking for international funds for tribal communities. He said that \$615,000 had been raised as a special project fund. The IAD has turned this funding into a request-for-proposals process. Selected projects will be notified in mid-June.

Speaking about the IAD's tobacco-cessation program, Secretary Allison noted that the program had been budgeted at the same rate as last year, but 50% of the funding had to be returned this year due to prior problems with the tobacco settlement disbursement.

Deputy Secretary of Indian Affairs Duane Duffy then reviewed some of the IAD's efforts on state-tribal relations. He said that the IAD would be offering a cultural competency program for state agency tribal liaisons on Friday, May 30, and that committee members were all welcome to attend. Responding to a question about the content of the program, he said that it would cover the history of state-tribal relationships, general rules for working with tribal governments and some of the differences between the various tribal governments in New Mexico.

Deputy Secretary Duffy then thanked the committee for supporting funding for the annual state-tribal leadership summit. He said that this year's summit would be held at the Route 66 Casino on July 18 and 19. He indicated that a particular value of the summit is the chance for cabinet secretaries to interact with tribal leaders and that an executive networking session was planned for an entire day.

In preparation for the summit, Deputy Secretary Duffy said that the IAD had sent surveys to 22 tribal governments on the issues they would like to discuss with Governor Susana Martinez. So far, the IAD has received nine responses, and the following four topics were common themes:

- (1) consultation: a discussion to create a framework for the future, including the process of consultation, and how to follow up on issues;
- (2) water and water rights settlements: a discussion concerning drought conditions, senior water rights, call-on-the-river rights and water rights settlements;
- (3) economic development: a discussion on diversifying tribal economies; and
- (4) education: a discussion of issues surrounding impact aid and the Public Education Department.

Deputy Secretary Duffy said that the IAD was conducting a more focused survey with the tribal governments to facilitate the discussion on these topics and would be developing issue papers on them for the summit.

Concluding his remarks on the summit, Deputy Secretary Duffy noted two new changes to the state-tribal summit. First, the Fort Sill Apache Tribe will be a new participant in the summit this year. Second, the IAD is surveying cabinet secretaries to find out the issues they would like to discuss with tribal leaders, such as which agency programs may be underutilized.

Secretary Allison was then asked if IAC members would be invited to the summit. The secretary said that the IAD would extend invitations, but in past years, tribal leaders wanted time for private discussions with the governor.

Turning to a brief review of the IAD's role during the 2014 legislative session, Secretary Allison said that the department had commented on 185 bills that affected Native Americans. He also thanked the committee members for supporting Indian Day at the Legislature as part of the efforts to promote good state-tribal relations. Secretary Allison said that the IAD was in the process of developing its legislative priorities for the 2015 session, and two issues were already pinpointed:

- (1) support for traditional farming; and
- (2) the use of Native American mascots within the state.

Secretary Allison stated that the IAD would come back to brief the committee when the priorities were finalized. Responding to a committee request to highlight economic development issues, he said that two baseline goals are to preserve tribal infrastructure and to keep funding flowing out to projects and not sitting in various accounts.

A committee member noted that many questions came up during the course of IAC meetings, and she requested that someone from the IAD attend as many committee meetings as possible to respond to them.

Economic Development and TIF

The IAD presentation turned to economic development issues and project funding through the TIF. The presenters frequently referenced two IAD documents: *IAD Economic Development: Partners in Advancing the Economics and Well-Being of the Native American Peoples*; and *Tribal Infrastructure Fund*.

Jerry Sandoval, IAD director for economic development, noted that the IAD has 54 active initiatives within the 12 categories listed in the *IAD Economic Development* handout and 44 infrastructure planning projects under the TIF. He highlighted the following categories on which the IAD is working:

- (1) housing programs: Mr. Sandoval made special mention that the IAD hired a Mr. Padilla from the federal Department of Housing and Urban Development (HUD) to examine available housing programs. He also highlighted that the IAD and HUD were working to make more traditional housing available. He thanked Senator Shendo for getting this effort started;
- (2) funding for comprehensive development planning;
- (3) energy development, including wind and solar projects, but in particular oil production on Navajo Nation allottee lands in the San Juan Basin. He said that the IAD was partnering with oil companies to work on public safety issues arising from this production;
- (4) transportation: Mr. Sandoval highlighted the potential intermodal freight rail site at Thoreau, noting that 14 companies had expressed interest in renting property there;
- (5) water issues: using the Pueblo of Zuni as an example, Mr. Sandoval noted that the wells there are going dry and that the IAD is working with New Mexico State University (NMSU) to study wells on tribal lands;
- (6) ranching and farming studies on tribal lands with NMSU; and
- (7) working with tribal enterprises, such as the NOVA Corporation.

Secretary Allison expanded on the issue of energy development, noting that over \$108 million in oil bonuses have been paid out to allotment owners within the last four months. He said that those bonuses could grow to over \$500 million, and the influx of wealth could cause social dislocations in the area. In an ensuing discussion with a committee member, Secretary Allison reflected that there is tension between protecting culturally significant sites like Chaco Culture National Historic Park and economic advantages for allottees. He remarked that a typical allottee with 160 acres could receive over \$300,000 in oil bonuses and that if production is possible throughout the Mancos shale formation, that development would be extensive.

Secretary Allison also pointed out the connection between the IAD's efforts on agriculture and water infrastructure. He said that, given soaring beef and lamb prices, Native Americans have a great opportunity to lease lands to grow herds, but water infrastructure needs to be in place.

Remarking on the IAD's process, a committee member raised a concern that the IAD needs to focus on building expertise that would be internal to each tribe, instead of bringing in outside help to work on issues. There was a suggestion that the IAD have a goal to build capacity within the tribal governments. Deputy Secretary Duffy acknowledged the issue and noted efforts to have Native American college graduates return to their tribes to provide that pool

of expertise. He said that IAD efforts with tribal governments are based on the tribes' particular strategic plans and the services they request from the IAD to implement those plans.

Moving the discussion to the operations of the TIF, Deputy Secretary Duffy gave a quick review of the handout provided by the IAD. He noted that since 2006, when the TIF started receiving a fixed 5% of New Mexico's severance tax revenues, \$54 million had been channeled to projects on tribal lands.

Explaining the process for spending TIF funding, Deputy Secretary Duffy discussed an executive order issued by the governor last year regarding TIF accounts. The IAD spent the last year consulting with the tribes on how to meet the accounting processes required to comply with that order. He said that each tribe is eligible for a project in each TIF category. Applications are then evaluated against a set of criteria, including whether the project is included in the state's infrastructure and capital improvement plan (ICIP) and whether it meets a critical need. Deputy Secretary Duffy said that 117 TIF projects are currently within the state's ICIP.

For fiscal year (FY) 2015, Deputy Secretary Duffy said that the review of projects occurred in April and May and that the Tribal Infrastructure Board would make its recommendations on June 4. Applications for the FY 2016 cycle start this fall.

Responding to a committee member's question, Secretary Allison explained that project funding awards had been changed to spread funding out to more tribes. Currently, an individual TIF award cannot be more than 10% of the total funding available. The IAD is encouraging the phasing of projects and using TIF awards to leverage other funding. A concern was raised that capping awards in this manner slows down project completion. Secretary Allison acknowledged the concern and said that the IAD has an ongoing review of the TIF process and outcomes.

With regard to a concern about confusion over which projects meet the requirements of the executive order, Secretary Allison remarked that the IAD has a different challenge than other agencies. Because it works with sovereign nations, the IAD wants to consult with the tribes before implementing the order. He said that it has taken time, but the process should be much faster this year.

Adjournment

There being no further business before the committee, the IAC adjourned at 1:25 p.m.