

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

**December 17, 2008
Room 309, State Capitol
Santa Fe, New Mexico**

The seventh meeting of the Indian Affairs Committee for the 2008 interim was called to order by Senator John Pinto, co-chair, on December 17, 2008 at 10:14 a.m. in Room 309 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Ray Begaye
Sen. Dianna J. Duran
Sen. Lynda M. Lovejoy
Sen. Lidio G. Rainaldi
Sen. Nancy Rodriguez
Rep. Gloria C. Vaughn

Absent

Rep. Justine Fox-Young
Rep. Patricia A. Lundstrom
Rep. John Pena
Sen. John C. Ryan
Rep. W. C. "Dub" Williams

Advisory Members

Rep. Ernest H. Chavez
Rep. Ben Lujan
Sen. Richard C. Martinez
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Joseph J. Carraro
Sen. Timothy Z. Jennings
Sen. William E. Sharer
Sen. David Ulibarri

Staff

Chase Van Gorder
Damian Lara
Mark Harben

Guests

The guest list is in the meeting file.

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

Wednesday, December 17 — Room 309, State Capitol

Native Arts Authenticity Task Force — Status Update

Bruce Bernstein, executive director of the Southwestern Association for Indian Arts and a member of the Governor's Task Force on Native American Arts Authenticity, explained that Native American arts are a vital part of the state's heritage and today's culture. Native American artists are able to work and participate in the economy. Mr. Bernstein estimated that of the 13,000 residents of the Pueblo of Zuni, 8,500 make their living through arts and crafts. Native American arts and crafts in New Mexico is a \$500 million per year industry. Tourism by comparison is a \$4 million per year industry, and Native American culture is the primary reason for people visiting New Mexico. Mr. Bernstein noted that the presence of fake, fraudulent and imitation Native American arts and crafts items is insidious and legendary. The actual number of non-authentic Native American arts and crafts items offered for sale is unknown. There have been a few cases of prosecution in 2008 and 2005 for violation of current laws. The current laws, however, appear to be ineffective because of the knowledge and specialization needed and merchant willingness to pay the relatively small fines. Mr. Bernstein stated that given these facts, the intent of the laws to stop fakes, frauds and imitations is not producing the desired effect. Vernon Lujan, director of the Poeh Cultural Center and Museum and a member of the Governor's Task Force on Native American Arts Authenticity, commented that the burden is put upon Native American artisans to prove authenticity whereas the burden should be on the shop owners and galleries.

Joe Garcia, chair of the All Indian Pueblo Council, expressed his appreciation of the great working relationship the state has with the Indian peoples of the state. The impact of Native American arts and crafts on New Mexico's economy and society has never been studied. All facts are anecdotal and a clear picture is needed of any adverse impact of the import production and sale of non-authentic Native American arts and crafts items. Mr. Garcia indicated that often stores selling imitations will set up across the street from Native Americans selling their authentic handmade crafts and arts. While the aim is not to stifle competition or free enterprise, there is a need for regulating the sale of arts and crafts that are represented as being Native American. A clear picture of the present situation is needed, however, in order to come up with recommendations for changes in current rules and laws. An appropriation to the Cultural Affairs Department to study the extent of misrepresentation of Native American arts and crafts will help produce recommendations to achieve the desired effective changes.

The committee expressed its apprehension of studies, particularly on an issue such as this, in which the existence of the problem is widely known. Given that the expected results of the study will indicate that there are many fakes, frauds and imitations that are misrepresented as authentic Native American arts and crafts, there needs to be enforcement of existing federal and state laws. The committee also expressed concerns about the amount of \$50,000 to conduct the study, even with the leverage of twice that amount by non-state government sources. Upon a motion by Senator Lovejoy, seconded by Representative Madalena, the committee voted without objection to endorse the proposed appropriation to the Cultural Affairs Department. Upon a motion by Representative Madalena, seconded by Senator Lovejoy, the committee voted without objection to endorse a separate bill to be sponsored by Representative Madalena to appropriate

\$100,000 to the Office of the Attorney General for the enforcement of laws pertaining to the misrepresentation of Indian arts and crafts authenticity.

Indian Affairs Department — Capital Outlay Update

Secretary of Indian Affairs Alvin Warren gave a brief overview of the status of the capital outlay projects for which the Indian Affairs Department (IAD) is responsible. Secretary Warren indicated that the IAD has made great progress and has experienced record turnaround for completion of capital outlay projects. The department also made great advances with the projects supported by the Tribal Infrastructure Fund (TIF). Secretary Warren then turned to Rebecca Martinez, capital outlay manager at the IAD, for a detailed report on capital outlay.

Ms. Martinez indicated that the IAD handled more than 600 capital outlay projects over the past year. In December 2008, the IAD had 552 projects totaling \$81.9 million. Out of that total only 100 projects totaling \$6.5 million are in backlog status. Ms. Martinez indicated that the IAD had undertaken major initiatives to assist Indian nations, tribes and pueblos to complete their capital outlay projects, including outreach and training, technical assistance, reconciliation meetings, work groups and the Navajo Nation master intergovernmental agreement. These initiatives all helped reduce capital outlay projects in backlog status. The establishment of the TIF and subsequent amendments have allowed for the unexpended capital outlay appropriations made after January 1, 2007 from the general fund to the IAD or the Aging and Long-Term Services Department to revert to the TIF. The original intent to promote and develop the physical infrastructure of the Indian nations, tribes and pueblos is preserved. In addition to the capital outlay projects, the IAD handles 16 special projects and eight special appropriations for recurring services. The 2009 IAD Capital Outlay Unit annual report will be available January 19, 2009 and will be distributed to each legislator whose legislative district has Native American constituents.

Navajo Nation Vice President Ben Shelly provided a summary of the capital outlay projects awarded to the various chapters of the Navajo Nation. Additionally, Vice President Shelly presented a letter and several resolutions regarding Governor Richardson's direction to classify all capital outlay projects into categories that could then be used to generate a recommendation for de-authorization as part of an effort to balance the state's budget for fiscal year 2009, and the Navajo Nation's efforts to move its capital outlay projects in response.

Arbin Mitchell, director of the Division of Community Development of the Navajo Nation, presented a report on the status of capital outlay projects awarded to the Navajo Nation and its chapters. He reported 120 active, 134 stalled, 68 underfunded, 19 unable to move and 30 unproductive projects in New Mexico. Mr. Mitchell indicated that in order to move forward with these projects and avoid the possibility of de-authorization, the Navajo Nation had contacted all the affected chapters and informed them that the projects at risk of being de-authorized would be pooled together for different projects to move them forward. Mr. Mitchell explained that capital outlay projects with similar authorization language and purpose would be pooled to fulfill the purpose of the authorization. For example, all parking lot pavement or heavy equipment projects could be pooled together to move a common project forward thereby

avoiding the need for a reauthorization. Upon further explanation, the legality of the proposed initiative was called into question. The committee expressed concern about the ability of the Navajo Nation to unilaterally pool individual chapter appropriations and expend them on a common project for the Navajo Nation without the reauthorization of the state. The Navajo Nation felt that all appropriations were made to the nation for individual chapters rather than to individual chapters for the nation.

Upon inquiry from the committee, members representing individual chapters that voted against or abstained from voting for the resolutions presented by Vice President Shelly indicated that they voted against the resolution because some of the pooled projects would be used for the benefit of the Navajo Nation rather than for the chapters. The committee informed the representatives of the Navajo Nation that pooling the individual projects was just one alternative to dealing with the possibility of de-authorization of capital outlay projects for the Navajo Nation and its chapters. Another alternative was for the legislature to exempt capital outlay for the Indian nations, tribes and pueblos from de-authorization. Upon a motion by Senator Lovejoy, seconded by Representative Madalena, the committee voted without objection to request that capital outlay projects for all tribal entities be exempt from consideration for de-authorization as part of the effort to balance the state's budget for fiscal year 2009. The committee directed the staff to send a letter on behalf of the committee to Governor Richardson, Lieutenant Governor Denish, Secretary of Finance and Administration Katherine Miller and David Abbey, director of the Legislative Finance Committee, as well as to all legislators. Committee members explained that there is never a guarantee for the session and the Navajo Nation should continue to work on appropriate ways to move the projects forward. It was emphasized that it is the legislature, and not the governor, that decides what appropriations will be reauthorized or de-authorized.

Committee staff attorney Chase Van Gorder reminded the representatives of the Navajo Nation that absent a letter from the Office of the Attorney General or the Department of Finance and Administration allowing a pooling of projects without reauthorization from the legislature, there is a possibility that the Navajo Nation would not be reimbursed for capital outlay expenditures for "pooled projects".

Indian Affairs Committee — Budget and Project Update

Secretary Warren indicated that the five percent reduction represents a \$213,480 reduction for fiscal year 2010. The IAD proposed cuts to line items currently funded for contractual and grant services. The expansion requests for fiscal year 2010 total \$729,000. Secretary Warren also provided an update on the requests of the committee and provided the necessary information for the members. Upon inquiry from the committee, Secretary Warren indicated that salaries and personnel cuts are not proposed by the IAD.

Endorsement of Legislation

Secretary Warren and Governor Ivan Pino of the Pueblo of Zia provided a summary of the revised bills addressing state-tribal collaboration and tribal consultation in the case of subdivision proposals. The proposed State-Tribal Collaboration Act builds on a proven structure for effective government-to-government communication and collaboration between state and tribal agencies. The bill would provide for greater consistency across all cabinet-level agencies and would ensure that the effective structure continues in future administrations. The draft language dictates that the governor shall meet with the leaders of the Indian nations, tribes and pueblos in a state-tribal summit. The proposed subdivision-tribal consultation bill amends the New Mexico Subdivision Act to require the board of county commissioners to request opinions from Indian nations, tribes and pueblos regarding preliminary plat approval by developers for newly proposed or merging subdivisions. The bill would not create any new mechanism or provide an Indian nation, tribe or pueblo with the authority to halt a board decision. Upon a motion by Senator Rainaldi, seconded by Senator Rodriguez, the committee voted without opposition to endorse the proposed State-Tribal Consultation Act and the proposed bill amending the New Mexico Subdivision Act.

Secretary of Higher Education Reed Dasenbrock and members of his staff presented the proposed Post-Secondary Indian Education Act and a proposed bill to extend the dual credit programs to tribal colleges and federal Bureau of Education schools. Upon a motion by Representative Madalena, seconded by Senator Rodriguez, the committee voted without opposition to endorse these two bills.

Mr. Van Gorder presented additional proposed bills to the committee for its consideration and endorsement. Bill A relates to taxation and amends sections of the NMSA 1978 concerning the Native American Veterans' Income Tax Settlement Fund. Bill E is a memorial regarding proposed amendments to the federal Radiation Exposure Compensation Act. Bill F is a memorial regarding the cleanup of the ammunition dump at Fort Wingate. Bill L is a memorial requesting the New Mexico Legislative Council to appoint a uranium mining task force. Bill H is an appropriation bill requesting \$43,000 for a counselor to assist victims of domestic violence. Bill I is an appropriation bill requesting \$5 million for tribal emergency management. Bill J is an appropriation bill requesting \$230,000 for a youth development program at the Tohatchi Chapter of the Navajo Nation. Bill K is an appropriation bill requesting \$119,000 to offset fees charged to the Navajo Nation by the state for services related to child support enforcement. Upon a motion by Representative Madalena, seconded by Senator Rodriguez, the committee approved without objection to endorse the proposed bills as presented by Mr. Van Gorder.

Minutes

Upon a motion by Representative Vaughn, seconded by Representative Madalena, the committee approved without objection the minutes from the November 2008 meeting of the Indian Affairs Committee.

Adjournment

There being no further business before the committee, the seventh meeting of the Indian Affairs Committee for the 2008 interim was adjourned at 3:33 p.m.

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