

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

**June 23, 2010
Room 307, State Capitol**

The first meeting of the Indian Affairs Committee (IAC) was called to order as a subcommittee by Representative James Roger Madalena, co-chair, at 10:20 a.m. on Wednesday, June 23, 2010, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. James Roger Madalena, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Rod Adair
Rep. Eliseo Lee Alcon
Rep. Sandra D. Jeff
Sen. Lynda M. Lovejoy
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Absent

Rep. Ray Begaye
Sen. Eric G. Griego
Rep. Patricia A. Lundstrom
Sen. George K. Munoz

Advisory Members

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

Sen. Stuart Ingle
Sen. Timothy Z. Jennings
Rep. Antonio "Moe" Maestas
Sen. William E. Sharer

Staff

Damian Lara
Peter Kovnat

Guests and Handouts

The guest list and handouts are in the meeting file.

Wednesday, June 23

The committee members, staff and audience introduced themselves.

Government Restructuring Task Force — Update and Request

Raúl E. Burciaga, director, Legislative Council Service (LCS), told the committee that he would shorten his presentation because all of the members had already heard the full

presentation at other interim committee meetings. He reminded the committee that the New Mexico Legislative Council (LC) had asked all committees to meet in Santa Fe and that they should provide justification for any requests to meet elsewhere. He also said that the LC had asked to reduce the number of meetings as well. These are cost-saving measures. He asked the committee to consider suggestions and recommendations relating to cost savings. Mr. Burciaga also asked for recommendations for restructuring the agencies that the committee oversees. The Government Restructuring Task Force will provide a report to the governor by December.

Mr. Burciaga was asked if meetings in the Santa Fe vicinity would be close enough to be considered a local meeting. He stated that he cannot speak for the LC, but the LC is likely to allow locations that do not require overnight travel.

Committee members asked about a meeting in Gallup and explained that the Navajo Nation chapters need to be able to attend the meetings and the committee needs to be accessible to its constituents. Mr. Burciaga responded that the committee should make the request, along with a justification, in its proposed work plan and to present it to the LC.

The committee discussed covering issues that deal with the Indian Affairs Department (IAD) and other executive agencies when it is in Santa Fe, and that the committee deal with local issues when traveling to other places. Mr. Burciaga said that he would raise this issue with the LC and discuss it with Mr. Lara.

The committee had no more questions, thanked Mr. Burciaga and congratulated him on his new position as director of the LCS.

Summary of 2010 Legislation

Mr. Lara, staff attorney, LCS, gave a summary of the 2010 legislation related to Indian affairs.

2010 LEGISLATION SUMMARY

Bill No.	Sponsor	Summary
-----------------	----------------	----------------

Bills Chaptered

HB 90	Begaye	Allows students attending federal Bureau of Indian Education high schools in New Mexico to earn dual credit from higher education institutions, including accredited tribal colleges located within New Mexico.
HB 162	Lujan, B.	After January 15, 2012, appropriates 5% of annual severance tax bonding capacity for tribal infrastructure projects as certified by the Tribal Infrastructure Board.

HB 264	Lundstrom	Provides for Indian law institute training for New Mexico legislators to enable them to understand the foundational principles of Indian law.
SB 107	Lovejoy Madalena	Increases the penalties for willful violations of Section 30-33-9 NMSA 1978 to: a petty misdemeanor for property valued at less than \$250 instead of \$2,500; a misdemeanor for property valued from \$250 to \$500; a fourth degree felony for property valued from \$500 to \$2,500; a third degree felony for property valued from \$2,500 to \$20,000; and a second degree felony for property valued in excess of \$20,000.
SB 182 (SFC substitute)	Cisneros	Reverts over \$3 million in Native American projects and swaps over \$1 million in funding for Native American projects from the general fund to severance tax bonds.
SB 1 (2010 2nd special session)	Cisneros	<p>Appropriates over \$2.5 million in general obligation bonds for senior center projects in Isleta, Santa Clara, Hondo Valley, Zuni, Ohkay Owingeh, Sandia, San Felipe, Kewa (Santo Domingo), Zia, Nambe, Pojoaque, San Ildefonso, Picuris and Taos and Navajo Nation chapters, including Baca, Nahodishgish, Crystal, Huerfano, Lake Valley, Shiprock, Tse'Daa'Kaan, Pinedale, Tohatchi and Whitehorse Lake.</p> <p>Appropriates \$1 million in general obligation bonds for tribal libraries. Appropriates \$5 million in general obligation bonds for Navajo Technical College, Southwestern Indian Polytechnic Institute, Santa Fe Indian School and Institute of American Indian Arts.</p>

Memorials Signed

HJM 43	Begaye	Resolves that Medicaid be fully funded to meet enrollment needs and avoid cuts to eligibility and services. The request that the Human Services Department create a separate Medicaid eligibility category for Native Americans was struck.
HM 73	Madalena	Requests Congress to increase appropriations for the Southwestern Indian Polytechnic Institute.
HM 74	Garcia, M.P.	Requests the interim committees dealing with land grant issues and Indian affairs to hold a joint meeting during the 2010 interim to hear about issues facing the land grant and Native American communities.

SJM 51 Pinto Requests Congress to support and preserve the Navajo Code Talkers' legacy and substantial contribution to this country.

Action Postponed Indefinitely

HB 48 Begaye Expands eligibility for emergency medical services funds to Indian nations, tribes and pueblos.

HB 49 Begaye Expands eligibility for state fire protection funds to Indian nations, tribes and pueblos.

HB 91 Begaye Requires the Interagency Behavioral Health Purchasing Collaborative to take into consideration the need for out-of-state residential alcohol treatment if appropriate alcohol treatment is otherwise unavailable to a Medicaid recipient on tribal lands within New Mexico.

HB 102 Alcon Expands the legislative lottery scholarship program to allow students who attend New Mexico tribal colleges to receive lottery tuition scholarships.

HB 157 Madalena Requires reimbursement to counties for certain expenses at alternate early voting and mobile alternate voting locations on Indian lands.

HB 158 Madalena Appropriates \$75,000 from the general fund to the secretary of state for the purpose of funding early voting precinct staff, including native language interpreters, at early voting sites.

HB 265 Lundstrom Appropriates \$200,000 from the general fund for the purpose of creating a task force to study Native American arts and crafts.

HB 267 Jeff Provides for an automatic change of purpose for capital outlay funds appropriated for inactive capital outlay projects in tribal communities in order to fund viable capital outlay projects.

SB 196 Pinto Appropriates \$50,000 from the general fund to the IAD for the purpose of contracting to provide direct services, including advocacy, counseling and assistance in filing protection orders, to low-income victims of domestic violence in New Mexico communities of the Navajo Nation.

SB 206 Munoz Requires the Legislative Finance Committee to prepare a comparison of tribal versus nontribal cuts or reversions to capital outlay projects or funds by county.

Memorials Not Signed

HJM 20 Madalena Requests county commissions and county attorneys to comply with the letter and spirit of monitoring agreements made with the federal government to prevent discrimination and allow Native Americans access to voting.

SJM 50 Pinto Resolves that Medicaid be fully funded to meet enrollment needs and avoid cuts to eligibility and services and that a separate Medicaid eligibility category be created for Native Americans.

Mr. Lara stood for questions.

The committee asked what the enrollment is at Southwestern Indian Polytechnic Institute. Members explained that the institute needs exposure, and they expressed an interest in holding a meeting there.

The committee asked how HB 90 works and if it includes tribal colleges. Mr. Lara responded that, yes, it does include tribal colleges. He said that it expands cooperative agreements so the students will get college credits for high school classes. The committee asked if there are associated costs and who pays for the textbooks. Mr. Lara explained that many of those details are not yet ironed out and that, in some cases, the schools incur those costs.

The committee asked for a clarification about HB 264, regarding what entity pays the costs of attending the Indian law institute at the University of New Mexico (UNM). Mr. Lara responded that there are limited funds, which are for a half-day or one-day training. The funds, he said, might be focused on freshmen legislators.

The committee discussed that perhaps this money could be used to go to a conference on Indian gaming. However, the committee indicated that as a member state of the National Conference of State Legislatures, members are entitled to attend those meetings, which are paid for from other funds.

The committee discussed how many code talkers are still alive, indicating six, eight or nine, but three may have passed on just this year.

There were no more questions, and Mr. Lara thanked the committee members and reminded them to fill out a sheet with their correct address, phone number and email and denote their

preferred method of contact. Mr. Lara explained that the LCS is trying to move toward electronic communications.

IAD — Priorities and Initiatives

Alvin Warren, secretary, IAD, introduced new staff and bid farewell to previous staff members. Rebecca Martinez has left, and Laurie Chapman is now the capital outlay manager. Christina Stick has left, and Lisa Marie Gomez from the New Mexico Health Policy Commission is working with the IAD. Also, Leah Larranaga replaced Lisa Tolles.

Secretary Warren then gave a PowerPoint presentation. He explained the following six IAD core responsibilities:

- assist with developing and securing legislation and policy that benefit tribes and Native Americans;
- manage capital outlay funds appropriated to tribes by the state;
- administer the Tribal Infrastructure Project Fund and award grants to tribal entities;
- award and manage special projects and appropriation funding to tribal entities;
- provide training and technical assistance to tribes and state agencies; and
- maintain consistent high-level attention to tribal issues and concerns in state government.

Secretary Warren noted that the IAD has three open positions. The IAD employs only 15 people and needs to fill staff positions. He said the IAD can only deal with certain issues and that is where it focuses.

The IAD's 2010 priorities are Indian education, tribal infrastructure, state-tribal DWI coordination and economic development.

Francine Hatch of the IAD gave an update on the State-Tribal Collaboration Act (STCA). She said the IAD is working with tribes to implement the STCA and mentioned the following five items:

- annual summit;
- communication and collaboration policies;
- tribal liaisons;
- training for state employees; and
- annual report.

Secretary Warren spoke about the summit and said the position paper included in the file lays out the IAD positions. He said the Office of the Governor also took positions.

Ms. Hatch mentioned HB 162, Executive Order 2009-037 and HB 90.

Secretary Warren mentioned that tribal audits of school districts were taken up at the 2010 summit and that the IAD wants to explore the teaching of tribal languages through the Bilingual

Multicultural Education Act. He also said that the IAD aims to create a memorandum of understanding to allow tribal governments access to student achievement information.

Secretary Warren also said that tribal infrastructure is a major concern, not just for the IAD but also for the Office of the Governor. Also of concern is state-tribal DWI coordination.

Marvis Aragon spoke about economic development incentives for tribes. Tax incentives are one piece of it. He is interested in developing the Enterprise Zone Act to see if changes might be made to it and the Enterprise Loan Fund to improve economic development for tribes. He also said that a report is online and that the IAD initiatives include the Green Jobs Initiative, ecotourism and the New Mexico Film Commission, which are ways to develop economic opportunities for the tribes.

Ms. Chapman, in charge of capital outlay for the IAD, said she has a small staff but a large objective. She wants to develop projects and offer assistance to others as consultants. She said SB 182 took away a lot of money (about \$7.8 million) from tribes, which was difficult, but with the Tribal Infrastructure Project Fund money, the IAD will do the best it can. She said that projects are being given extra time because the funding was frozen for seven months.

Secretary Warren said he is proud of the 18-month capital outlay projects. The projects do not count toward the seven-month freeze, because that was not the choice of the project administrators. He also said Medicaid is very important and that the IAD has created a committee to understand how to implement the recently passed national health care reform. Because Native Americans are exempt from the requirement that every individual have health insurance, this needs to be worked into hospital, government, Indian Health Service (IHS) and medical insurance company computer programs having to do with health care.

Secretary Warren next said that in Thoreau, the community is facing many suicides and suicide attempts. Dr. Steve Adelstein, UNM, and Jamie Lee Hall are part of the unified command group to help with suicide prevention. The Department of Health is working with the IHS to collect data and numbers on the suicides and suicide attempts in Thoreau.

Ms. Hatch said that the IAD is working to close the education gap for Native Americans. The IAD is looking at recommendations made by the Public Education Department as well as other committees and individuals that have been formed to deal with this issue. The IAD also provides recommendations to these committees so that the tribal perspective is taken into consideration.

Secretary Warren spoke of the IAD Sustainability Initiative. Because there is an upcoming transition in the Office of the Governor, the IAD has started a process to map initiatives so that the support processes that allow the IAD to function will promote efficiency in the transition, evaluate effectiveness and sustain the ability for improvement.

Finally, Secretary Warren asked to add four items to the work plan:

1. tribal economic development;
2. national health care reform and Medicaid reform;
3. implementation of the STCA; and
4. public safety (particularly state-tribal DWI coordination).

Secretary Warren, Ms. Hatch, Mr. Aragon and Ms. Larranaga stood for questions. Ms. Gomez left for a meeting on health care.

The first question was about Medicaid, who provides it and why it does not go directly to the tribes. The answer was that the state administers it, with a \$3.00 match from the federal government for every \$1.00 spent by the state. For Native Americans, the cost is totally covered by the federal government. For one-time funding, it might make sense for money to go directly to the tribes, but now there are 22 tribal leaders working together to organize it. Tribal medical technical assistance is necessary for the unique positions of Native Americans for whom 100% of medical costs are covered by federal money.

The committee asked Secretary Warren to please call Dr. Lujan and discuss this with him, and Secretary Warren agreed.

Next, the committee discussed the suicide problem in Thoreau and why the committee is only now addressing this issue. Secretary Warren said that the reality is that Native Americans have higher rates of suicide than the general public. This is true especially with the youth. There needs to be a different approach because this problem is not going to be solved in one place at one time. There needs to be different intervention and prevention strategies, which will be a challenge. Secretary Warren is on the Child Fatality Commission and was told that the structure of prevention activities in Thoreau was the best the commission had seen. Peter Winograd and Laura Bellotti from the Office of the Governor are also working with the IAD.

The committee then discussed Indian education. In regard to the 25% set-aside of impact aid, it is federal money to benefit Indian education, but it does not come with sufficient guidelines to force the school districts to use the money on Indian education. Secretary Warren said that federal money could be used better and that the Indian Education Advisory Council and the Native American Education Task Force have already made recommendations. He said the committee should look at those combined recommendations and that there is no need to reinvent the wheel.

The committee commented on SB 182, indicating that the state is still short of money and those projects need to get going so that they actually happen.

The committee sought clarification on how the Native American Education Task Force is different from the Indian Education Advisory Council and the need to make sure that the IAD's information and the tribes' information is consistent. Secretary Warren said that he did not want the Native American Education Task Force to duplicate the work of the Indian Education

Advisory Council, so he made sure the board of one was on the other. Now, they have joint recommendations.

The committee asked about the maintenance of native traditions and languages and what is being done on that front. Secretary Warren said that the loss of native languages is a major problem for tribes in New Mexico and that the IAD is concentrating on existing funds for native language programs. The IAD recommends shifting the focus from teaching English to non-English speakers to teaching native languages, and it is looking at federal funding to do just that. Currently, there is a youth program at the Pueblo of Cochiti, and programs at UNM and the Jicarilla Apache Nation are focusing on teaching native languages. The programs are administered by the tribes, so attendance numbers are not known by the IAD, but the department could present this information at the next meeting.

Native American Veterans' Income Tax Settlement Fund — Update

John Garcia, secretary, Veterans' Services Department (VSD), introduced Alexine Chavez, administrator for the Native American Veterans' Income Tax Settlement Fund, who also served two tours in Afghanistan. Secretary Garcia said Ms. Chavez processes claims. Currently, over \$400,000 has been paid from the fund. There is an outreach effort to the tribes to tell them that they qualify for the fund. All of this has been done since February.

Marilyn Hill, deputy secretary, Taxation and Revenue Department (TRD), spoke about SB 574, introduced by Senator Pinto, and how the fund is administered and distributed. The annual status report will be brought to the committee soon. As for outreach, tribes have an account with the TRD to get the funds out. There is a summary of the fund on page 8 of the purple-colored PowerPoint presentation.

The committee asked what the time frame is for refunds and if there is a cutoff. Secretary Garcia responded that there is no time frame. If one was taxed and applied for and deserves a refund, that person can get it. The fund has \$1 million and so far has used \$436,000. There are 9,700 Native American veterans in New Mexico that are domiciled on tribal lands. Native Americans who resided on their reservation, served up to 2007 and wore a U.S. uniform while they were assessed state taxes are eligible for a refund. For outreach, the VSD is going to the chapters and will do that again. Every time the VSD does outreach, it gets a flurry of applications.

The committee asked if the fund is capped at \$1 million. Secretary Garcia said that this is the question the VSD is asking the IAC and the legislature. The VSD and TRD reported that claims paid are halfway through the allocated funds. If the \$1 million is exceeded due to more applications, the legislature would have to allocate more money.

Office of Indian Elder Affairs (OIEA) — Update

Ray Espinoza, director, OIEA, told the committee that Alzheimer's disease and diabetes are booming and are a huge threat to the Native American population. He stated that the OIEA has very little money and that elders in New Mexico are living in third world conditions. Mr.

Espinoza continued to say that there are virtually zero reversions and many senior centers have been remodeled. The centers now meet minimum standards and will not be condemned. As an example, Mr. Espinoza said the Taos senior center could have been condemned, but because it is under federal auspices, the state inspectors did not condemn it.

The OIEA had a 5.6% funding cut, and then it faced a further 2% cut because of this year's economic problems. If the federal matching assistance percentage (FMAP) for Medicaid is not approved this year, it would be a terrible hit for many New Mexicans, especially the elderly. Even if the FMAP is approved, there may be a \$400 million deficit. If it is not approved, the deficit will be even worse.

On an administratively positive note, being this broke has really forced the OIEA to trim the fat and streamline its processes. Also, the group of providers works together very well, and the providers are dedicated people.

There was a discussion of the services that the OIEA offers seniors, which is included in its presentation handout. Also, there was a question about the difference in cost between home-delivered meals versus meals provided at senior citizens centers. The exact difference is unknown, but home-delivered meals are more expensive. The manner in which the federal money is accounted for by the tribes makes it hard to figure out exactly how much it costs for different types of food provisions.

The committee asked if all the tribes provide support to their elder programs. Mr. Espinoza said that most, but not all, do. The Navajo Nation provides significant money. He said that without the federal stimulus money, the OIEA would have been in serious trouble last year. If the OIEA does not receive money again, it will be in serious trouble.

The committee recognized that New Mexico has an aging population and asked how the OIEA is going to deal with that. Mr. Espinoza said that the aging population is a big, looming problem, and he is asking the committee to consider this. So far, the OIEA has relied on the amazing providers in this state. But the elderly population is growing.

Committee members commented that the state allocates more than \$5 million to elders, which is a significant percentage of the state budget. The state is very generous already and, in the recent past, the federal government and state did not provide help to anybody for elder care. A committee member gave a firsthand example of how a member had to take care of his parents without any government assistance. Families will have to just start taking care of their own. That is the way it used to be, but hopefully it will not be that way again. Committee members expressed concern that people do not realize how many services the state provides and how much good the funding accomplishes.

Mr. Espinoza said that is why home care services are so important and that an increasing number of the elderly are going to need to rely on Medicare for their services.

Discussion of Focus Areas, Work Plan and Meeting Schedule

Mr. Lara went over the proposed work plan items.

The committee proposed to explore and discuss the following topics during the 2010 interim:

1. capital outlay, including tracking the expenditure of allocated funds, alternative funding sources and coordination with the Navajo Nation;
2. funding of projects from the Tribal Infrastructure Project Fund, including projections of allocated amounts pursuant to HB 162;
3. the coordinated multi-agency five-year plan to address the uranium legacy and cleanup of abandoned uranium mining and milling sites led by the United States Environmental Protection Agency;
4. the implications of Mt. Taylor being designated a traditional and cultural property in coordination with the Land Grant Committee pursuant to HM 74;
5. the increase in hate crimes against Native Americans in recent years;
6. efforts to ensure an accurate count of Native Americans in the 2010 census;
7. tribal emergency management services;
8. settlement of state income tax refund claims from the Native American Veterans' Income Tax Settlement Fund;
9. the implications of *Garcia v. Gutierrez*, 2009-NMSC-044, on state and tribal jurisdiction on domestic matters;
10. the feasibility of establishing Shiprock Pinnacle as a state park pursuant to HJM 69, 2009 legislative session;
11. implementation of the increased penalties pursuant to the Indian Arts and Crafts Sales Act;
12. Native American education, including improvements to performance, and implementation of the Indian Education Act;
13. the disproportionate incarceration of Native Americans in relation to the general population;
14. health care, including mental health care, for Native Americans and in Native American communities, and addressing high rates of youth suicide among Native Americans;

15. status of the *Aamodt* and Pueblo of Taos and Abeyta Indian water rights settlements;
16. tribal economic development;
17. national health care reform and Medicaid reform;
18. implementation of the STCA;
19. public safety (particularly state-tribal DWI coordination); and
20. that the IAD and Native American legislators jointly plan Indian Day, which occurs every 60-day session.

The committee expressed that the state is pulling more schools and programs into the funding stream while general fund revenues are dwindling. Assistance from the Bureau of Indian Education and clarification on its role in the Indian Education Act are necessary.

After some deliberation, the committee proposed to request the following meeting dates and locations:

<u>Date</u>	<u>Location</u>
June 23	Santa Fe
July 12	Pueblo of Tesuque
July 13	Santa Fe
July 14	Ohkay Owingeh
August 19	Pueblo of Jemez
August 20	Pueblo of Zia
September 14	Gallup
September 15	Thoreau Chapter
October 11-13	Mescalero
November 23	Pueblo of Pojoaque
November 24	Santa Fe

Upon a motion by Representative Rodella and seconded by Senator Rodriguez, the committee voted, without objection, to submit the proposed work plan and meeting schedule as amended for approval by the LC.

Adjournment

There being no further business before the committee, the first meeting of the IAC for the 2010 interim was adjourned at 3:45 p.m.