

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

**July 24, 2017
Chi Chil Tah Chapter House
Chi Chil Tah**

**July 25, 2017
Pueblo of Zuni**

**July 26, 2017
University New Mexico-Gallup
Gallup**

The second meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, Co-Chair, on July 24, 2017 at 10:21 a.m. at the Chi Chil Tah Chapter House in Chi Chil Tah.

Present

Rep. Georgene Louis, Co-Chair (7/24, 7/25)
Sen. John Pinto, Co-Chair (7/24, 7/25)
Rep. Sharon Clahchischilliage (7/24, 7/26)
Rep. D. Wonda Johnson
Rep. Derrick J. Lente (7/24, 7/25)
Sen. Richard C. Martinez (7/24, 7/25)
Rep. Debbie A. Rodella (7/24, 7/25)
Sen. Nancy Rodriguez
Sen. William E. Sharer (7/24, 7/25)
Sen. Benny Shendo, Jr. (7/24)
Rep. James E. Smith (7/24, 7/25)
Sen. William P. Soules (7/24, 7/25)

Absent

Rep. Zachary J. Cook
Sen. Mark Moores
Sen. Cliff R. Pirtle
Rep. Nick L. Salazar

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Harry Garcia (7/24)
Rep. Stephanie Garcia Richard (7/25)
Rep. Patricia A. Lundstrom (7/24)
Sen. Cisco McSorley
Sen. George K. Munoz (7/24, 7/26)
Rep. Patricia Roybal Caballero (7/24, 7/25)
Rep. Angelica Rubio
Sen. Clemente Sanchez (7/25, 7/26)

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Rep. Sarah Maestas Barnes
Rep. Patricio Ruiloba

Rep. Debra M. Sariñana (7/24, 7/26)
Rep. Elizabeth "Liz" Thomson

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Diego Jimenez, Research Assistant, LCS
Maria Alaena Romero, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts and other written testimony are in the meeting file.

Monday, July 24 — Chi Chil Tah Chapter House

Welcome and Status Update

Senator Pinto asked committee members, staff and the audience to introduce themselves. Seth Damon, council delegate, Navajo Nation Council, introduced himself and thanked the committee for visiting. Mr. Damon introduced representatives from the Chi Chil Tah Chapter, including Roselyn John, community services coordinator, and President Tommy Nelson and staff.

The Navajo Nation includes 27,425 square miles of land. The most recent census numbers increased the Navajo Nation population from 290,000 to 332,000. Chi Chil Tah and its surrounding communities currently have a population of about 32,000 people. The Navajo Nation government is structured similarly to the United States federal government, with three independent branches.

The Navajo Nation is facing tremendous turmoil in its general fund budget due to heavy dependence on natural resources, including coal, oil and gas reserves. The Navajo Nation recently extended a lease with the Navajo Generating Station. Without the deal, the Navajo Nation could have lost \$32 million to \$86 million from its general fund. The Navajo Nation's contingency plan in case of the generating station closure is to focus on economic development and utility expansion. To expand such opportunities, the Navajo Nation has taken steps to reduce bureaucratic processes, has invested in infrastructure with tribal infrastructure funds and capital outlay funds and has invested in entrepreneurship. Despite these efforts, the Navajo Nation still struggles with economic growth and the ability to acquire loans. The Navajo Nation has an option in an upcoming poll, similar to a mill levy bond, to remove \$300 million from its general fund to invest in roads, water and electricity. The Navajo Nation is working with the Jicarilla Apache Nation and the Pueblo of Zia to construct convenience stores and shopping centers.

Mr. Damon discussed the Navajo Nation's challenges in showing progress on and completion of projects, and he assured the committee that improvements are being made. To replace state capital outlay funds not appropriated during the 2017 legislative session, the Navajo Nation has been seeking grants and funding from other agencies.

In response to questions from the committee, Mr. Damon discussed the time line for the Navajo-Gallup Water Supply Project, which is seeking federal funds to reach Ramah and Mountain View by 2036; the \$30 million to \$40 million impact of the Public Regulation Commission's decision to deny a plan for the Navajo Generating Station and affiliated financial losses; and internet service in the Navajo Nation.

The committee discussed the Trump Administration block grants; the Tribal/Interior Budget Council and the Bureau of Indian Affairs meeting in Arizona to discuss pending budget cuts; the potential for state government to rescind funds granted for projects not yet completed; and the reciprocal effect of closing a generating station and the effect on public finance. Mr. Damon added that the Navajo Nation has received a memorandum from the U.S. Department of the Interior that predicts a 9% cut for fiscal year 2019, which begins October 1, 2019.

Jay Santillanes, registered lobbyist, answered questions about problems with the state's compliance with the federal REAL ID Act of 2005 for tribal members trying to get compliant identification cards.

The committee requested that IAC staff provide a list by tribe of potential impacts from the Trump Administration block grant decreases.

Transportation Boundary Agreements

Mike Hyatt, superintendent, Gallup-McKinley County School District, discussed current transportation boundary agreements, attempted agreements and agreements being considered.

In response to a question from the committee, Latifah Phillips, assistant secretary for Indian education, Public Education Department (PED), explained challenges presented by differences in school funding systems between Arizona and New Mexico; a recently changed federal law states that children may need to attend school across state boundaries, requiring agreements to be in place between districts and states. Impact aid can be used to pay cross-state tuition if agreements are in place. In similar scenarios, the student's resident district must apply for the impact aid dollars, which are transferred to the attendance district via the agreement. Ms. Phillips described one Arizona district that has been hesitant about using impact aid to pay cross-state tuition due to a discrepancy in how students are counted, resulting in the district having to return funding. She assured the committee that her counterpart at the Arizona Department of Education is working to find solutions for the states to work jointly.

The committee discussed the dangers of having student bus stops on highway shoulders; the need for improved communication with parents on safe transportation; road improvement

liability for counties; the need to have all stakeholders at the table for discussion; Gallup-McKinley County School District's 127 bridges that are impassable for school buses; the slow rate at which needed roads are being paved; PED rules regarding purchasing sport utility vehicles (SUVs) for student transportation; lack of financial allotment for bridge repairs; and van purchases to alleviate issues particular to buses.

Jeffery Bond, director of transportation, Gallup-McKinley County School District, told the committee that school funding from the state is not allotted for road or bridge construction but only for buses and drivers, adding that counties may receive money for constructing routes but many bridges remain impassable.

Update on House Bill (HB) 484 (2017 Regular Session)

Representative Lente discussed HB 484, "School Indian Student Needs Assessments", from the 2017 regular legislative session. Representative Lente described himself as someone who was a Native American student who went to public schools. He added that Native American students are born as statistics on a path to failure, citing general low achievements, high dropout rates and social/economic deficits to overcome. Representative Lente was determined to overcome those barriers and become a legislator to represent those "statistics". Native American students continue to be low-performing, according to the *KIDS COUNT Data Book*, ranking New Mexico students at the bottom of the 50 states, with Native American students ranking lower than their non-Native American New Mexico peers.

HB 484 sought to amend the Indian Education Act to require historically defined Indian-impacted school districts to perform needs-based assessments and to require a systemic framework to address the education gap between Native American students and their peers. There are 23 Indian-impacted school districts in the state, which are surrounded by Native American land. In these districts, the federal government provides funds for the school district operation.

In the 2015-2016 school year, the price per school district per student was about \$7,000 for impact aid. Of that \$7,000, 27% was retained by the school district and the remainder went to the state equalization guarantee distribution. Representative Lente assured the committee that questions, including how impact aid money is being apportioned and which school districts need to provide assistance to prepare Native American students for college and careers, would be answered if a future version of the bill becomes law.

Representative Lente attests that the bill creates a systemic framework of accountability for how school districts and the state provide funds for Native American education programs; provides for culturally relevant instruction to ensure collaboration of students, parents, teachers and superintendents; and requires student performance reporting from school districts to tribes. Representative Lente's 2017 bill passed the house unanimously, passed the senate with five dissenting votes and was then vetoed by the governor. Representative Lente will reintroduce the

bill at the next opportunity and reports that certain school districts have taken the initiative to begin programs modeled on provisions in the bill.

The committee also discussed the Bernalillo Public School District's efforts to support Native American students; the Albuquerque Public School District's forums for parents and free credit recovery program for Native American students; the appropriate role of courts in budget-related hearings; differences between Utah's and New Mexico's educational systems; legislative intent and misunderstanding of that by the governor; and statistical measuring and the importance thereof.

Update on *Zuni Public School District 89 v. State of New Mexico*

Timothy J. Williams, assistant attorney general, Litigation Division, Office of the Attorney General, provided an update for the committee on the ongoing case *Zuni Public School District 89 v. State of New Mexico*. Providing a brief background, Mr. Williams told the committee that the suit was brought by several districts that were later joined by others in an attempt to raise issue with capital improvement funding methods. A special master was appointed and found inequity spurring organizational changes. In the last 12 years, large shifts have taken place in capital appropriation processes. The Gallup-McKinley County School District now receives 10% to 15% of all Public School Capital Outlay Council funding.

The defense in the case challenged a number of witnesses brought by the plaintiff. The court ordered a partial dismissal with respect to some of the plaintiffs, finding a lack of standing in response to schools in the Gallup-McKinley County School District and Zuni Public School District. The suit is still in place for the individual students named in the suit. It is unknown when the court will continue the trial.

In response to a question from the committee, Mr. Williams confirmed that the Grants-Cibola County School District, Zuni Public School District and Gallup-McKinley County School District are no longer part of the suit. Originally, the suit began with the Zuni Public School District filing, and shortly after, the Grants-Cibola County School District and Gallup-McKinley County School District joined the suit. The only plaintiffs going forward are individual students in the Gallup-McKinley County School District.

Approval of Minutes

On a motion made by Representative Smith, seconded by Senator Shendo and facing no opposition, the minutes from the first meeting of the IAC were approved.

Public Comments

Ms. John thanked the committee for capital outlay dollars allocated to local communities. She told the committee that the building where the meeting is being hosted was built using capital outlay dollars and, while the project took nine years to complete, the facility is greatly appreciated.

Ms. Chavez highlighted that a major challenge to be aware of is the water line project in Vanderwagen, which is designed to go from the Pueblo of Zuni to Jones Ranch Road. In the area, more than 300 households are without running water and 60% of the homes have no electricity. Water for these homes is transported from Gallup, 32 miles away. The project has used \$235,000 in tribal infrastructure funds but more is needed to complete the project.

Recess

The committee recessed at 3:30 p.m.

Tuesday, July 25 — Pueblo of Zuni

Reconvene

Senator Pinto reconvened the meeting at 10:15 a.m., inviting members of the committee, staff and audience to introduce themselves.

Welcome and Status Update

Val R. Panteah, Sr., governor, Pueblo of Zuni, updated the committee on ongoing projects in the Zuni community. With assistance from the state, the Pueblo of Zuni has been able to construct the new Zuni Senior Center, Zuni Veterans Memorial Park, Zuni Commercial Development Area and the Zuni Teen and Family Wellness Center. He informed the committee of the ongoing Zuni Pueblo MainStreet project, the only MainStreet project on federal Indian land, and he listed accomplishments made by the project.

Update on the Federal STOP Act

Ann Berkley Rodgers, attorney, Chestnut Law Offices, P.A., reported to the committee on federal Senate Bill 1400, the Safeguard Tribal Objects of Patrimony Act of 2017 (STOP Act), introduced by Senator Martin Heinrich in June 2017. The bill intends to make a crime of selling stolen cultural items. Currently, federal law does exist to prevent sales inside the United States but fails to expressly prohibit exportation. The penalty that was intended to prevent the stealing and selling of cultural items frequently does not qualify as a felony-level charge, and few United States attorneys are unwilling to utilize resources to prosecute misdemeanor crimes.

Ms. Rodgers informed the committee that between 2015 and 2016, 20 items from the Pueblo of Acoma were moved through illegal markets. EVE Auction House in Paris, France, is currently active in the sale of sacred items from the Navajo, Hopi and Zuni tribes. The Hopi tribe unsuccessfully tried to use courts in France to have items returned. The Navajo Nation had to purchase an item to have it returned. Ms. Rodgers informed the committee on the status of the infamous Acoma shield, which was moved to France on consignment by an individual in Santa Fe. Following the associated backlash, the shield was removed from the market but has not been returned to the tribe.

Kenneth B. Lucero, Ph.D., field representative, Office of United States Senator Martin Heinrich, updated the committee on Senator Heinrich's efforts to stop the exportation of sacred items by introducing the STOP Act, which has four major provisions:

1. export of items that are currently being legally exported under other laws is explicitly prohibited;
2. penalties are doubled, making felony offenses of current misdemeanor acts;
3. a federal policy will be established to return items to their original communities; and
4. attorneys general will appoint liaisons to work with tribes to locate items, prosecute offenders and have items returned.

Senator Heinrich made changes from the 2016 version of the bill. The changes removed the amnesty provision for the return of items and no longer directs cultural offices to report on exports and prosecutions.

Ms. Rodgers concluded by reminding the committee of the heavy influence arts have on the New Mexico economy and warned of a New Mexico that is known as the black market of cultural patrimony. Members of the Pueblo of Acoma will contact members of the committee to sponsor a bill similar to Senator Heinrich's at the state level.

In response to a question from the committee, Ms. Rodgers explained jurisdictional issues in regard to applying United States federal law overseas. In this case, the United States government can issue a warrant; however, it is solely up to the French government to serve the warrant. She discussed an existing UNESCO-based treaty and failures to address the sale of cultural objects from within the United States. The UNESCO treaty and similar treaties deal with products from Europe being sold in the United States.

Ms. Rodgers explained that for items to be covered by the STOP Act and existing law, the items must be needed in cultural or religious practice, may not be owned by an individual and could otherwise qualify under the federal Native American Graves Protection and Repatriation Act or other archaeological protections. In this bill, to get a criminal conviction for exportation or sale of cultural objects, mens rea must be proved.

Update on Tribal Courts

Judge William Bluehouse Johnson, tribal co-chair, Tribal-State Judicial Consortium, described the creation of the Tribal-State Judicial Consortium in 2006 by order of the New Mexico Supreme Court for the purpose of building relationships and fostering communication between state and tribal courts. The consortium was established to address the everlasting and ongoing need for communication between the courts to resolve cross-jurisdictional issues. The consortium has created several committees to address issues and educate and train judges.

Renée Torres, judge, Bernalillo County Metropolitan Court, detailed the work of the committees developed by the consortium and discussed the model by which the committees operate and produce recommendations.

Judge Johnson highlighted some of the projects worked on by the consortium. A focus has been on domestic protection orders and ensuring that all orders are honored by all policing entities regardless of jurisdiction. To ensure that all orders are recognized as legitimate, the consortium requested that the New Mexico Supreme Court create and require the use of a standardized first page for all domestic protection orders. All state courts must use the standardized page, and most tribal courts have adopted its use.

Judge Torres discussed Judge Monica Zamora's work with Navajo chapters and the Pueblo of Isleta in creating alternatives to incarceration for juvenile offenders. Collaboration between tribal and state drug courts is also encouraged to meet the needs of Indian country. She also discussed work with state court judges to notify tribal courts of a tribal member in state court.

Discussion of Impact Aid

Hipolito J. Aguilar, deputy secretary, finance and operations, PED, discussed how public schools are funded, the funding formula and impact aid. In 1974, New Mexico enacted the Public School Finance Act to equalize financial opportunity and to guarantee each public school student equal access to funding regardless of location or local economic conditions. Previously, schools were locally funded and dependent on local property taxes. The formula is designed to distribute operational funds to school districts objectively and in a noncategorical manner while providing for local school district autonomy.

Mr. Aguilar discussed different approaches to "equal funding" and described to the committee the funding formula bases in "equal treatment of equals", ensuring that a student receives the same funding as a peer in a different district, and "unequal treatment of unequals", ensuring that students with greater need receive more funding than students with less need. To allocate both equally and unequally when prudent, the funding formula assigns units to each student or program, which is multiplied by a unit value to determine the cost of the educational program for that student. Mr. Aguilar discussed sources for the Public School Fund from General Fund revenue and federal mineral leases.

Mr. Aguilar discussed impact aid and changes needed to implement the funding formula. By changing school funding revenue to the state rather than to local governments, the state set the stage for adopting the funding formula and implementing impact aid funds. Many school districts in New Mexico and throughout the country struggled with local funding because they have a substantial amount of nontaxable land within their districts. In New Mexico, this is mitigated as a result of the equalization components of the funding formula.

Mr. Aguilar discussed the program cost calculation. Program cost is the total funding to which a school district or charter school is entitled to provide an educational program for its students. Every school district and charter school receives an amount annually that, at minimum, equals its program cost, though only a portion of the revenues may come from the state. For school districts, total program cost revenue is made up of the state equalization guarantee distribution, 75% of revenues received directly by the districts from a required half-mill property tax levy, payments for federal property received in lieu of taxes (impact aid) and revenue generated through forest reserve funds.

Mr. Aguilar discussed federal Impact Aid Program components, which include payments for federal property, or the basic payment, children with disabilities payments, basic support payments and construction grants. School districts receive all of their impact aid payments directly from the federal government, and none of those payments flow through the state. Current state law provides that the state use 75% of basic impact aid payments, forest reserve funds and the half-mill levy as offsets, also referred to as credits, in determining the amount of state aid to a school. No credit is taken for the Indian add-on, special education add-on and capital outlay grants. Mr. Aguilar explained that taking credit for impact aid means that the state uses 75% of a school district's impact aid basic payment as an offset in the calculation of a school district's state equalization guarantee distribution. The only impact aid dollars affected by the funding formula are the payments for federal property, or the basic payment.

Mr. Aguilar discussed federal law requirements for impact aid and state funding formulas. States must meet federal requirements before taking basic impact aid payments into consideration in calculating state aid (before taking credit). The state must meet a 25% disparity requirement and a proportionality requirement in order to qualify. The federal requirements are designed to prove that the state has an equalized funding formula.

In response to a question from the committee, Ms. Rodgers explained that since 1904, pueblo lands in New Mexico, however owned, cannot be taxed by the State of New Mexico. Pueblo lands in these instances do not have to go into an intertrust process to be removed from the tax base.

In response to questions from the committee, Mr. Aguilar explained that approximately 60% of schools in the state do not receive impact aid funds and approximately 28% receive significant impact aid. There are 25 school districts and three charter schools in the state that receive impact aid.

Recess

The committee recessed at 4:00 p.m.

Wednesday, July 26 — University of New Mexico (UNM)-Gallup

Reconvene

Representative Johnson reconvened the meeting at 9:11 a.m.

Welcome and Status Update

Fran Palochak, city councilor, District 4, Gallup, welcomed guests and legislators. The Gallup area has a population of about 23,000 people. The many veterans and other residents of Gallup take pride in their town and its diversity, earning it the title of America's Most Patriotic Small Town in Rand McNally's Best of the Road contest.

Richard Goshorn, interim chief executive officer, UNM-Gallup, explained economic development on the UNM-Gallup campus and the decline in student enrollment in recent years. He detailed the governance structure that puts the UNM main campus in authority over its branch campuses, including UNM-Gallup. He discussed benefits and challenges UNM-Gallup faces being under control of the UNM main campus, highlighting difficulties in partnering with outside entities.

Mr. Goshorn discussed advantages of attending smaller branch campuses for the first two years of a college career. Considering cost savings, the value of obtaining low-level credit hours is notable. State law prevents branch campuses from teaching classes above a 200 level, making student retention difficult for the school. Many students do not have the financial or travel means to attend classes at the main campus, ending their college careers at certificates and associate-level degrees awarded by UNM-Gallup. He briefly discussed the state's higher education financing system and the difficulties of tracking student and performance statistics after students leave UNM-Gallup.

In response to a question from the committee, Mr. Goshorn discussed student body statistics. UNM-Gallup currently has a student population of 78% Native American enrollees and a gender ratio near 1:1. A substantial percentage of students drop out following the second or third semester. Mr. Goshorn told the committee that higher-level college courses and career technical classes would benefit the branch and the community. He described the school's nursing program, which is three semesters to prepare students for the nursing program at the UNM main campus for bachelor's degree completion. UNM-Gallup awards associate's degrees for nursing, but bachelor's degrees are generally required for the nursing job market. UNM-Gallup also has a vibrant education program, but as in nursing, bachelor's degrees are required for employment. UNM-Gallup is nationally ranked for its welding program.

The committee discussed the state's higher education structure and the powers of the UNM Board of Regents and the UNM-Gallup Board.

Wage Theft: A Health Impact Assessment

Anna Rondon, executive director, New Mexico Equity and Social Justice, told the committee about the McKinley Community Health Alliance. In 2005, a nonscientific poll showed that a significant portion of individuals, when asked, lacked knowledge of their rights as employees in the workplace. Ms. Rondon explained the impact of wage theft and other employment violations facing workers in the Gallup area.

Elsa Lopez, Somos Un Pueblo Unido (Somos), spoke on behalf of the McKinley Community Health Alliance and explained to the committee that minority groups and families suffer from varying forms of wage theft. Forms of wage theft include underpayment for extra hours worked and unlawful payroll deductions. These violations are extremely harmful to what is already the poorest county in the state. An unscientific snapshot survey by the McKinley Worker Justice Coalition surveyed 50 individuals, one-half of whom were Native Americans and the other one-half Latino immigrants. The poll revealed that a majority of Native American and Latino immigrant workers claim to be victims of wage theft. Employees who have suffered wage theft must go to Albuquerque to file a complaint with the Workforce Solutions Department (WSD). These workers' financial situations often hinder the ability to follow through on reports.

Jose "Pancho" Olivas, Somos advocate, told the committee his story of experiencing wage theft. Mr. Olivas and his wife were allegedly not compensated for work they did. The allegedly unpaid wages add up to approximately \$15,000, for which Mr. Olivas has time cards and a letter from the owner of the restaurant as proof of the unpaid wages, he told the committee. Mr. Olivas' claim and associated lawsuit against the WSD are ongoing. He is being represented by Somos attorneys.

Gabriela Guzman, Somos attorney, informed the committee of previous attempts to resolve Mr. Olivas' claim with the WSD before the suit was filed. She contends that the WSD is not adhering to state law. Ms. Guzman also expressed that adequate rural enforcement has not been the norm for the WSD.

In response to a question from the committee, Ms. Lopez addressed potential inaccuracies in the handout to the committee. The committee discussed scientific and nonscientific polls, potentially inaccurate information and graphics, lingering and extended problems associated with wage theft and failures of the WSD to enforce laws.

On a motion made by Representative Clahchischillige, seconded by Senator Munoz and facing no opposition, the committee passed a motion to request the presence of the secretary of workforce solutions at a future IAC meeting to answer questions regarding compliance and investigation of wage theft.

Overview and Tour of the Rehoboth McKinley Christian Health Care Services Behavioral Health Services-Residential Treatment Center

The committee toured the Rehoboth McKinley Christian Health Care Services Behavioral Health Services-Residential Treatment Center.

Adjournment

The meeting adjourned at 2:00 p.m.