



NEW MEXICO LEGISLATURE

INDIAN AFFAIRS COMMITTEE

2015 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
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INTERIM SUMMARY

Indian Affairs Committee 2015 Interim Summary

Since its inception in 1989, the Indian Affairs Committee (IAC) has addressed issues that affect Native Americans residing in New Mexico. In fulfillment of its mission, the IAC held eight meetings during the 2015 interim, conducted in Dulce; the pueblos of Taos and San Felipe; the Navajo chapters of Red Valley/Mitten Rock and Huerfano; and several educational institutions, including Navajo Technical University, the University of New Mexico-Gallup, Diné College, Southwestern Indian Polytechnic Institute and Santa Fe Indian School. The IAC also held a joint meeting with the Legislative Health and Human Services Committee in Santa Fe.

Members of the IAC heard presentations from executive agencies to learn of their efforts on behalf of New Mexico's Indian tribes, pueblos and nations. The Indian Affairs Department (IAD) provided a summary of the annual State-Tribal Summit and the IAD's priorities. The Aging and Long-Term Services Department highlighted its outreach to Native American communities around the state. The state engineer and the chair of the Interstate Stream Commission provided an annual update on Indian water rights settlements. The Gaming Control Board discussed the current status of gaming operations in New Mexico.

The joint meeting with the Legislative Health and Human Services Committee focused on health care and associated issues for Native Americans in New Mexico.

A year after creating a working group, which included people from the industry, consumer advocates and legislators, to consider the operations of the small loan industry in the state, and in response to House Memorial 131 (2015), the Legislative Finance Committee produced a report on small loan regulation in New Mexico. The report was presented to the committee upon its completion.

Other major issues that the IAC considered in the 2015 interim included funding decisions by the state and their impact on New Mexico's Indian tribes, pueblos and nations; transportation boundary agreements and memoranda of understanding regarding busing of schoolchildren; and local infrastructure projects.

Finally, the IAC endorsed five bills for the 2016 legislative session: an appropriation for the Navajo-Gallup water project; a joint memorial calling for the protection of cultural items; a joint resolution to allow for the state funding of tribal colleges; an appropriation to provide services to urban Indians; and a bill related to school district transportation boundary agreements.

WORK PLAN AND MEETING SCHEDULE

**2015 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
INDIAN AFFAIRS COMMITTEE**

Members

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Rep. James Roger Madalena

Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. William P. Soules

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley

Sen. George K. Munoz
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Clemente Sanchez

Work Plan

The New Mexico Legislative Council created the Indian Affairs Committee (IAC) on April 27, 2015. The IAC addresses issues and policies that affect Native Americans in New Mexico. In view of the fact that the IAC aims to address issues and policies relating principally to New Mexico's Native American population, the IAC strives to conduct its meetings in locations that are accessible to the state's tribal members and their leaders. Moreover, meeting at the various Indian nations, tribes and pueblos in New Mexico facilitates government-to-government cooperation. The IAC meetings are essential to the work of the legislature in addressing the issues affecting this segment of its constituency.

The IAC proposes to explore and discuss the topics in each major issue area affecting Native Americans during the 2015 interim as follows:

A. State-Tribal Relations:

1. receive a report from the Department of Finance and Administration regarding how it interacts with and provides services to native communities, and how that can be improved; and
2. receive updates from the Native American liaisons or the similarly tasked individuals from state executive agencies to assess outreach efforts, challenges and successes;

B. Health:

1. receive a report on the impact of uranium mining and clean-up activities in the Grants mineral belt; and
2. examine issues surrounding the curtailing of operations at the Navajo Generating Station;

C. Development in Indian Country:

1. discuss capital outlay concerns and evaluate requests for capital outlay by tribal communities;
2. review transportation issues, including railroad crossings and road projects;
3. identify what help is available to those interested in starting a new business in Indian country;
4. receive a report from the Legislative Finance Committee and a task force requested to study New Mexico's consumer lending industry and state regulation of lending practices, including the impact on Native Americans;
5. consider the feasibility of an inland port near the Navajo chapters of Manuelito, Tsa-Ya-Toh and Rock Springs and receive an update on the Thoreau railhead;
6. discuss drilling on sacred sites in and around the Huerfano Chapter of the Navajo Nation, including Chaco Canyon, allottees, the checkerboard and the Bureau of Land Management;
7. consider opportunities for assistance and funding from the federal government;
8. discuss Indian gaming issues; and
9. receive a report on power lines on tribal land;

D. Education:

1. receive a report on the successes, challenges and opportunities for Native American student achievement;

2. review Native American study programs, initiatives and resources at state higher education institutions and tribal colleges;
3. receive an update on charter school education in Indian country; and
4. receive an update on school funding, federal and state impact aid and ongoing lawsuits; and

E. Annual Reports from Executive Agencies:

1. receive a report from the Office of the State Engineer and the Interstate Stream Commission regarding:
 - a. the status of proposed Indian water rights settlements requiring state financing;
 - b. the distribution of funds from the Indian Water Rights Settlement Fund to implement approved settlements; and
 - c. recommendations on the level of funding for the Indian Water Rights Settlement Fund necessary to timely implement Indian water rights;
2. receive a report from the Indian Affairs Department regarding the compiled reports from all state agencies on activities pursuant to the State-Tribal Collaboration Act, including information on policies, plans, contact individuals, training and programs and services from each agency; and
3. receive a report from the Tribal Infrastructure Board regarding the total expenditures from the Tribal Infrastructure Project Fund for the previous fiscal year, the purposes for which expenditures were made, an analysis of the progress of the projects funded and proposals for legislative action in the subsequent legislative session.

**Indian Affairs Committee
2015 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 15	Room 322, State Capitol, Santa Fe
July 20-21	Pueblo of Taos; Dulce
August 20-21	Navajo Technical University, Crownpoint; University of New Mexico-Gallup
September 30, October 1-2	Diné College, Shiprock; Mitten Rock; Huerfano
October 5	Kewa Pueblo, Joint Meeting with the Legislative Health and Human Services Committee
October 26-27	Southwestern Indian Polytechnic Institute, Albuquerque; Pueblo of San Felipe
November 9-10	Santa Fe Indian School; State Capitol, Santa Fe

AGENDAS AND MINUTES

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**June 15, 2015
Room 322, State Capitol
Santa Fe**

Monday, June 15

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:15 a.m. (1) **Indian Affairs Department (IAD): Programs and Priorities**
—Kelly Zunie, Secretary, IAD
—Moses Winston, General Counsel and Legislative Coordinator, IAD
- 11:15 a.m. (2) **Discussion of Focus Areas, Work Plan and Meeting Schedule**
—Peter Kovnat, Staff Attorney, Legislative Council Service
- 12:30 p.m. **Adjourn**

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

**June 15, 2015
Room 322, State Capitol
Santa Fe**

The first meeting of the Indian Affairs Committee (IAC) for the 2015 interim was called to order at 10:12 a.m. by Senator John Pinto, co-chair, on Monday, June 15, 2015, in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John Pinto, Co-Chair
Rep. Sharon Clahchischilliage, Co-Chair
Sen. Ted Barela
Rep. D. Wonda Johnson
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Sen. Nancy Rodriguez
Rep. James E. Smith
Sen. William P. Soules

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. Georgene Louis
Sen. John C. Ryan
Sen. Benny Shendo, Jr.

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Clemente Sanchez

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Sen. George K. Munoz

Staff

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

Guests

The guest list is in the meeting file.

Handouts

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

Monday, June 15

Welcome and Introductions

Senator Pinto welcomed the committee and members of the audience and asked committee members and guests to introduce themselves. He asked that Representative Clahchischilliaage, co-chair, chair the remainder of the meeting.

Discussion of Focus Areas, Work Plan and Meeting Schedule

Mr. Kovnat presented a summary of the proposed work plan and meeting schedule for the 2015 interim. He discussed issues of ongoing concern to New Mexico's Native American community and the importance of the committee's outreach efforts during the interim. Mr. Kovnat stood for questions on the details of the work plan and the proposed schedule.

Committee members discussed the work plan and requested that the following items be included: an in-depth examination of the issues surrounding the "plume" at the Navajo Generating Station; a presentation on the status of tribal infrastructure and capital outlay projects; testimony regarding drilling in the Chaco Canyon area and "checkerboard" drilling in the Eastern Navajo area and around other sacred sites; an update on Indian gaming, including the status of the Pueblo of Pojoaque; a discussion of elections issues on tribal lands; an update on uranium contamination issues and power systems on tribal lands; and reports from specific charter schools serving Native Americans, including information on school bus issues on tribal lands. Senator Rodriguez moved to adopt the work plan as amended, and Representative Smith seconded the motion. The motion passed without objection.

Committee members discussed the proposed interim meeting schedule and suggested scheduling to enable interested members to attend a regional transportation conference planned in Taos. The committee agreed to move the Tse Bonito meeting to Gallup. Members agreed to request an extra meeting day to coordinate a joint meeting with the Legislative Health and Human Services Committee. Senator Rodriguez moved to adopt the meeting schedule with the proposed changes, and Senator Martinez seconded the motion. The motion passed without objection.

Indian Affairs Department (IAD): Programs and Priorities

Secretary of Indian Affairs Kelly Zunie and IAD General Counsel Moses Winston presented information on the enabling legislation for the IAD and the Tribal Liaison Program. Secretary Zunie described the department as the coordinating agency for intergovernmental and interagency programs concerning tribal governments and the state. She reported that the department is revamping its web site to improve communications and provide up-to-date information on agency programs and projects. The department is bringing on two additional staff members, according to the secretary, at which point the IAD will be fully staffed. She further

reported that the department is making a concerted effort to ensure that capital outlay and tribal infrastructure project funds are spent responsibly and in a timely manner. Secretary Zunie stated that Mr. Winston is serving as general counsel to the IAD and as its legislative liaison and will be in attendance at all of the IAC meetings.

Mr. Winston elaborated on some of the duties of state agency tribal liaisons and observed that all executive agencies have a tribal liaison but that other agencies are not necessarily represented by a liaison. The Higher Education Department and the Tourism Department are in the process of hiring liaisons. In response to questions from the committee, Mr. Winston observed that the primary focus of the IAD in its coordinating and advocacy roles is to represent the interests of the executive branch.

Committee members expressed their concern about delays in executing capital outlay and tribal infrastructure projects through the IAD. They impressed upon Secretary Zunie their expectation that these projects be able to move forward more quickly in the future and that the interests of tribes be represented as well as the interests of the executive. One member suggested that the department may need to request additional funding to carry out its mission, and members encouraged the secretary to meet with individual tribal leaders to better understand tribal issues.

Public Comment

Joel Davis, representing the Fort Sill Apache Tribe, commented that the Fort Sill Apache Tribe has requested assistance from the department in many areas and that help for the tribe has not been forthcoming in many of those areas. He stated that the tribe would like to work collaboratively with the IAD and receive the same treatment as the other tribes.

Adjournment

There being no further business before the committee, the meeting adjourned at 12:45 p.m.

Revised: July 17, 2015

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**July 20-21, 2015
Pueblo of Taos, Dulce**

Monday, July 20 — Pueblo of Taos, Taos Pueblo Community Center

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:10 a.m. (1) **Welcome, Invocation and Status Update**
—Luis Romero, Governor, Pueblo of Taos (invited)
- 11:00 a.m. (2) **Capital Outlay Requests: Pueblo of Santa Clara**
—J. Michael Chavarria, Governor, Pueblo of Santa Clara
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Native American Taxation 101**
—Peter Breen, Native American Liaison, Taxation and Revenue Department
- 2:00 p.m. (4) **Wildlife Restoration, Wildfire Recovery and the Youth Conservation Corps**
—Jim Matison, Restoration Director, Wild Earth Guardians
- 3:00 p.m. **Tour**
- 3:30 p.m. **Recess**

Tuesday, July 21 — Dulce, Wild Horse Conference Room

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:05 a.m. (5) **Welcome, Invocation, Status Update and Ongoing Projects and Concerns**
—Ty Vicenti, President, Jicarilla Apache Nation (JAN)
—Robin Benedict, Director, JAN Department of Youth
—JC Knighthawk, Director, Jicarilla Game and Fish Department

- Frances Garibay, Director, JAN Senior Citizens Center
- Melissa Eaton, Director, JAN Gaming Regulatory Commission and Apache Nugget Corporation (ANC)
- Chad Eaton, Chief Executive Officer, ANC
- Commander Lyle Atole, JAN Veterans Group
- John Wheeler, General Manager, JAN Power Authority

12:00 noon

Lunch

1:00 p.m.

(6) [Update from the Human Services Department \(HSD\): Availability and Accessibility of Services and an Overview of the Supplemental Nutrition Assistance Program \(SNAP\)](#)

- Sean Pearson, Deputy Secretary, HSD
- Priscilla Caverly, Tribal Liaison, HSD

2:30 p.m.

(7) [Proposed Expansion of Mandatory Work Requirements](#)

- Sovereign Hager, Staff Attorney, New Mexico Center on Law and Poverty

3:00 p.m.

Adjourn

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

**July 20-21, 2015
Pueblo of Taos, Dulce**

The second meeting of the Indian Affairs Committee was called to order by Senator John Pinto, co-chair, on Monday, July 20, 2015, at 10:28 a.m. at the Taos Pueblo Community Center.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson
Rep. Georgene Louis
Rep. James Roger Madalena (July 20)
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Sen. Nancy Rodriguez (July 20)
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros (July 20)
Rep. Patricia A. Lundstrom (July 20)
Sen. Cisco McSorley
Rep. Debbie A. Rodella

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Sen. George K. Munoz
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Clemente Sanchez

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

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Michelle Jaschke, Researcher, LCS
Mark Edwards, Drafter, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, July 20 — Taos Pueblo Community Center

Welcome, Invocation and Status Update

Edwin Concha, lieutenant governor, Pueblo of Taos, gave an opening invocation. Senator Pinto then asked the committee members and the audience to introduce themselves. He then asked that Representative Clahchischilliage chair the remainder of the meeting.

Lawrence Lujan, chief utility officer and council member, Pueblo of Taos, presented an update on the development of a water and wastewater system that is part of the Taos water rights settlement. Mr. Lujan noted that the water/wastewater project had received capital outlay funding in fiscal year (FY) 2013 and FY 2014, and planning and design of the project included analyses and public comment required pursuant to the National Environmental Policy Act of 1969. He said design is complete and the next step is to hire a contractor. He anticipates the project will be completed by the spring of 2016.

The committee then discussed the funding for the water rights settlement. A committee member stated that \$12.7 million was appropriated for the Taos water settlement in the 2015 capital outlay bill. The funding for this appropriation was predominantly for the purchase of water rights, with some money allocated for the purchase of water/wastewater infrastructure in Taos but outside of the pueblo. Mr. Lujan noted that Luis Romero, governor, Pueblo of Taos, and other officials from the pueblo were in Washington, D.C., for meetings regarding the federal portion of the settlement funding.

Explaining more about the need for a combined water/wastewater project, Mr. Lujan stated that the homes along Veterans Highway Road had been relying on drinking water wells, but some homes were built with septic systems and the area water table made the well water non-potable. The new system will provide service for all of the residents along Veterans Highway Road.

Next, a committee member asked about the status of a memorial for veterans from the Pueblo of Taos and noted that the funding approval would expire if not used, so renewal or extension may be critical so that the funds are not lost. Mr. Lujan reported that the monument stones are ready, but installation is awaiting final approval.

Ezra Bayles, director, Health and Community Services Department, Pueblo of Taos, updated the committee on the pueblo's senior center. He noted that the center was funded with capital outlay funding and is now seeking funding to refurbish its interior and increase handicap accessibility, to get a large transport van and to create a meals program for seniors.

Capital Outlay Requests: Pueblo of Santa Clara

Before discussing the Pueblo of Santa Clara's current status, J. Michael Chavarria, governor, Pueblo of Santa Clara, raised a general concern about the direction of state funding for public infrastructure for Native American and rural communities. He stated that two funding sources, the Tribal Infrastructure Project Fund (TIF) and the Water Project Fund (WPF), are of significant importance to these communities. He further stated that the Pueblo of Santa Clara uses funding from the TIF to leverage additional federal and private funding for infrastructure projects.

Governor Chavarria noted that the 2015 capital outlay bill redirected \$2 million each from the TIF and the WPF for other purposes, primarily the Taos water settlement. Given these actions, he asked two related questions.

- 1) Will the 2015 appropriations out of the TIF and the WPF set a precedent for future capital outlay bills?; and
- 2) Will the legislature create an appeals process or some other mechanism to ensure that state funding is available to rural and Native American communities and not directed solely to urban centers?

Aside from the dedication of state funding, Governor Chavarria said that the process for moving funding for approved projects has become a serious challenge. Infrastructure funding is based on time-limited state bonds. If the funds are not spent and contracted for within the time limit, the funds are lost for that project. However, he indicated that the process to secure the funds, including planning documents, Department of Finance and Administration (DFA) questionnaires and approving intergovernmental agreements (IGAs), has become so lengthy that it puts projects in jeopardy. He requested that time deadlines for public infrastructure projects be adjusted so that the clock would not start running for a particular project until an IGA is in place.

Focusing on his pueblo, Governor Chavarria said that recent catastrophic wildfire and flooding events in the pueblo's watershed have caused approximately \$150 million in infrastructure damage and five presidential disaster declarations. To put the damage in context, he noted that the flooding and resulting siltation had damaged roads and commercial and public buildings, destroyed the existing water control and wiped out the fish population in Santa Clara Creek. Compounding the problem is the fact that the fires changed the geomorphic structure of Santa Clara Canyon, and future flood events are anticipated to result in river flows that will exceed four times the level of similar events prior to the fire.

As part of its recovery efforts, Governor Chavarria said the pueblo has been working with the Federal Emergency Management Agency, the Army Corps of Engineers, the Natural Resources Conservation Service and the Department of Housing and Urban Development (HUD). He highlighted two specific actions: 1) anticipating potential delays in federal or state funding, the Pueblo of Santa Clara has set aside \$5 million in a contingency fund to ensure that

recovery actions are initiated in a timely manner; and 2) the pueblo is seeking funding support for a flood prevention and disaster resiliency project through the HUD's National Disaster Resiliency Competition. If successful, the pueblo could receive up to \$20 million in grant money. He suggested that the state has a strong interest in having this be a successful effort and requested that the state build a partnership with the pueblo to make it happen.

The governor said that Secretary of Indian Affairs Kelly Zunie and Secretary of Homeland Security and Emergency Management M. Jay Mitchell had toured the pueblo, and Governor Chavarria extended an open invitation to committee members to be given a tour of Santa Clara's lands and a specific invitation to attend the pueblo's feast day on August 12.

The committee discussed TIF funding. A member noted that TIF funding represents 27% of infrastructure funding for tribal communities. Several members voiced a sentiment that the potential precedent set by the 2015 capital outlay bill should be addressed and negated. One member highlighted that the nature of the Taos water settlement meant that some of the redirected money will be used for non-Indian community water/wastewater service, thus heightening the concern about future TIF availability for tribal communities.

Motion

A motion was made by Senator Rodriguez and seconded by Senator Martinez for the committee to draft a letter asking that the redirection of funds out of the TIF to the Taos water settlement not create a general precedent for appropriating money out of the fund. **The motion was passed without opposition.**

The committee discussion then turned to other aspects of TIF funding. Two issues noted were that:

1) the time delays created by the approval process and securing the IGAs are potential challenges for all TIF projects; and

2) the funding source for the TIF itself is a concern. Legislation enacted in the 2015 regular session (House Bill 236) is designed to build the Severance Tax Permanent Fund, but it also will phase down the percentages going into dedicated funds. This was done in part because revenue projections for out years are not reliable.

Motion

A motion was made by Representative Louis and seconded by Senator Rodriguez to: 1) put an examination of TIF funding and timing issues on the agenda for the last committee meeting; and 2) invite the DFA and the Indian Affairs Department (IAD) to that meeting to comment on how to streamline the approval process or otherwise mitigate the time deadline challenge for TIF projects and to invite all of the tribal governments to that meeting. LCS staff was also directed to request an additional meeting day, if needed, to accommodate this agenda.

All tribal governments are to be invited to this meeting. **The motion was passed without opposition.**

Regarding the threat of forest fires faced by the Pueblo of Santa Clara and other communities, a member pointed out that the nature of New Mexico's forests is changing, with lower soil moisture content and higher elevation for reestablishment of mixed conifer forests. Governor Chavarria remarked that this change has created increased sediment transport by mountain streams into Cochiti Lake.

A committee member requested the minutes of the Tribal Infrastructure Board meetings for May 14 and 24, and notice for future board meetings. Moses Winston, general counsel and legislative coordinator, IAD, said the past meeting minutes would be provided to committee members and notice of future meetings would be sent to committee members.

Native American Taxation

Peter Breen, Native American liaison, Taxation and Revenue Department (TRD), presented a quick overview of the judicial decisions and statutes concerning tribal sovereignty and jurisdiction. He cited *The Handbook of Federal Indian Law*, published in 1941 by former Assistant Solicitor for the Department of the Interior Felix S. Cohen, as the seminal work on tribal jurisdiction. Mr. Breen summarized the sometimes conflicting rulings by federal and state courts regarding the jurisdiction of tribal, state and federal law, including different analyses of criminal versus civil jurisdiction, what constitutes reservation land, the effects of rights of way over tribal lands for roads and utilities and the ability to levy taxes. (See handout for case citations.)

Mr. Breen said the traditional approach to sovereignty analysis was based on what was called the "territorial approach" (e.g., upon whose land did the action take place?). However, in 1982, the U.S. Supreme Court adopted an interest-based approach in a case cited as *Mescalero Apache Tribe v. Jones*, a case involving taxation for tribal properties that were both on and off the reservation. In another case decided in 1982, *Montana v. U.S.*, the U.S. Supreme Court ruled that a tribe may exercise civil authority over non-Indians when: 1) the parties have entered into a consensual relationship; or 2) jurisdiction is essential for the existence of the tribe. Mr. Breen indicated that the approach used in these rulings has proven to be challenging when applied to other situations and has resulted in jurisdictional gaps, though some of the issues raised have been addressed by federal statutes.

With regard to rights of way, Mr. Breen noted a divergence between the analysis of federal courts and New Mexico's state courts. He said the U.S. Supreme Court has indicated that rights of way are an implied diminishment of tribal sovereignty; however, the state courts have not applied that analysis within New Mexico.

Turning specifically to taxation practices within New Mexico, Mr. Breen said that the severance tax issue of double taxation raised by the 1988 U.S. Supreme Court case *Cotton*

Petroleum v. New Mexico had been resolved legislatively in favor of the tribes and that gross receipts taxes (GRT) are handled by IGAs. He said that GRT concerns are now focused on a lack of incoming revenue as opposed to jurisdiction.

Regarding potential future disputes, Mr. Breen said a recent regulation promulgated by the United States Bureau of Indian Affairs exempts activities on leased tribal lands from state taxation. He said that the regulation had been upheld by a district court in Florida, but is also being challenged in a case in Palm Springs, California, involving land leased from the Agua Caliente Band of Cahuilla Indians. Given the extent of leased tribal land within Palm Springs, Mr. Breen believes the eventual ruling in this case might ultimately prove to be the controlling decision.

Mr. Breen indicated two areas of legal uncertainty in New Mexico: 1) tribal jurisdiction for reacquired lands within reservation boundaries; and 2) the definition of "pueblo grant" in New Mexico statutes.

With regard to reacquired lands, he noted that pursuant to federal statute (Public Law 108-66), lands reacquired by the Pueblo of Santa Clara or the Pueblo of San Ildefonso are considered non-alienable. However, he did not know how the courts would interpret their character for tax purposes.

Mr. Breen indicated said that a broader issue is raised by the term "pueblo grant". He noted the term's use in statutes governing gas and tobacco taxes, but not in the statute governing GRT. He stated that it is not a defined legal term, and he indicated that the TRD and the Office of the Attorney General may have differing interpretations.

Responding to a question, Mr. Breen said that the "pueblo grant" terminology might have a large effect within the collection of tobacco taxes. He said that the TRD has taken a position on the breadth of the term, but would like to have a more precise definition. A committee member said that the issue would be brought up in the tax committee, but noted that it would not be considered germane legislation in the upcoming 30-day session. James Rivera, council member, Pueblo of Pojoaque, requested that tribes be consulted if this issue is going to be addressed by the committee. A committee member suggested that the All Indian Pueblo Council would be a good entity to solicit comment from on this issue.

Wildlife Restoration, Wildfire Recovery and the New Mexico Youth Conservation Corps (YCC)

Jim Matison, restoration director, Wild Earth Guardians (WEG), stated that WEG started a program for watershed restoration and wildfire recovery in 1995. The program is funded through state, federal and private grants and has so far completed 50 projects in four states: New Mexico, Montana, Arizona and Colorado.

Mr. Matison highlighted a set of projects aimed at the restoration of the Valles Caldera watershed. The Valles Caldera program, started in 2013 as part of recovery efforts from the Las Conchas fire, has been funded through YCC grants. The crew in the YCC program ranges in age from 18 to 25 years old. For the Valles Caldera restoration effort, the program has hired 10 to 12 members from the Pueblo of Jemez annually, and seven crew members are now in their second or third year of the program. The program participants receive basic to intermediate training in various aspects of silviculture, including forest worker certification, chainsaw operation, class A and B sawyer certifications, first aid and CPR, fisheries monitoring, hydrology, erosion control and identification of plant species.

Samuel Heno, a program staffer and member of the Pueblo of Tesuque, elaborated on the value of YCC training for tribal members. He said that an important aspect is to combine the restoration skills and knowledge gained through the YCC with the cultural knowledge of the land within each tribe. He stated that one goal is to create work opportunities for tribal members through projects funded by the United States Forest Service's Collaborative Forest Restoration Program grants.

Mr. Matison said recovery work from the Las Conchas fire has included reseeded of burn areas, repair of pasture fences, contour filling in erosion areas, planting of native deciduous trees and removal of barbed wire fencing to promote elk calf migration. In addition, he highlighted an effort to redirect Redondo Creek into its historic channel to increase water retention in the stream.

Mr. Matison then showed before-and-after pictures of stream restoration projects from around the state. He said the restoration program has worked on many streams that suffered from lack of shady vegetation and increased temperatures, which often resulted in increased evaporation and fish kills. Stream restoration starts by improving the hydrological cycle by planting trees to provide shade, which leads to the in-migration of beavers. Beavers then create ponds and wetlands, slowing the flow of the stream. Slower flows allow heavy sediments to fall out and raise the local water table. That, in turn, leads to increased growth in riverine vegetation.

Responding to questions from committee members, Mr. Matison stated that New Mexico's YCC program is distinct from the Rocky Mountain Youth Corps. The YCC is a state grant program with a budget of \$3 million that funds 40 to 50 projects per year. Projects range from work on municipal parks, stream recovery, forest health and other efforts. In specific regard to the Valles Caldera recovery effort, he explained that timber is harvested on the caldera, milled into fencing lumber at the Walatowa timber yard at the Pueblo of Jemez and then used to create elk and livestock enclosure areas within the caldera to allow vegetation to recover.

A committee member asked if WEG's general stream restoration program includes wildfire prevention efforts as well as recovery projects. Mr. Matison said yes, the program included some small diameter forest projects as well. He also said the program had received approximately \$18 million in grant funding over the last five years.

Recess

Committee members were provided a tour of the Pueblo of Taos and then recessed at 3:45 p.m.

Tuesday, July 21 — Dulce, Wild Horse Conference Room

Welcome, Invocation and Status Update

Senator Pinto reconvened the committee at 10:10 a.m. Wainwright Velarde, council member, Jicarilla Apache Nation (JAN), gave an invocation, after which Senator Pinto asked the members of the audience and the committee members to introduce themselves.

Leon Reval, council member, JAN, welcomed the committee and said that the Jicarilla people originally settled in the area in the 1300s, and once numbered 10,000 people, but the current population is about 3,900 people. Next, Mr. Reval said Indian gaming, education, water resources, health care and the development of the Jicarilla Apache Nation Power Authority (JANPA) are important to the JAN.

Regarding tribal gaming operations, he stated that the JAN strongly supports the new gaming compact. Although it has relatively small gaming operations compared to some of the other tribes, the industry has created jobs and contributes to the regional economy. He said that the JAN currently operates a total of 200 class III slot machines, but no table games, out of three facilities: the Wild Horse Casino and Hotel, the Apache Nugget Casino (ANC) and the Jicarilla Travel Center.

Mr. Reval then turned to education issues. He stressed the importance of building a skilled and well-educated work force within the Jicarilla tribal community. He expressed a need to build native language and culturally connected curricula as methods for engaging and retaining students. He felt that this approach would achieve greater success than a testing and mandatory retention approach.

Speaking of water resources, Mr. Reval stated that the JAN had a negotiated settlement from 1992 for 40,000 acre-feet and is currently leasing some of its water to the City of Santa Fe. The JAN is also a partner in the Navajo-Gallup Water Supply Project and has pledged to provide the City of Gallup a 40-year lease for 7,500 acre-feet to be supplied by the project. He noted that a section of the project is designed to provide water to the southern portion of Jicarilla lands, although it may need some TIF funding.

Regarding health issues, Mr. Reval said that the JAN hopes to provide adequate dialysis care. Dialysis care requires three treatments per week, and patients had a minimum two-hour drive to reach the nearest dialysis unit prior to the JAN opening its own unit.

Finally, Mr. Reval touched upon the success of the JANPA, which was the result of a multi-year effort by the JAN to provide its own electric utility service instead of relying on a regional cooperative. The JANPA started providing service in the spring of 2014.

In response to questions about education, Mr. Reval said that the goal is to increase the number of leaders with college and advanced degrees. He also emphasized that Jicarilla children need to learn how to operate within both tribal and non-tribal cultures.

For the JAN Department of Youth (DOY), Robin Benedict, director, and Eldina Pesata gave a presentation. The DOY provides a variety of sports, arts and cultural programs throughout the year. The DOY participates in the National Youth Project Using Minibikes (NYPUM), which is a sport and motorbike safety program for teens and preteens founded in 1969. This is the only NYPUM program currently serving a Native American community.

For the Jicarilla Game and Fish Department, JC Knighthawk, director, and Kyle Taylor, staff biologist, gave a presentation. Mr. Knighthawk said that the department was established in 1952 to manage natural resources, but that mandate was expanded by a court ruling in 1982 that established the jurisdiction of tribes over their own wildlife. Mr. Taylor listed the key components for maintaining endangered species and game species populations as adequate water resources, a strong monitoring program and removing obstacles for migration. Mr. Taylor said that golden eagles and the roundtailed chub fish were the two endangered species of most concern. He said the department is known for its golden eagle recovery program and that it monitors the only existing population of roundtailed chub.

Regarding commercial game and fish populations, Mr. Knighthawk said that thousands of visitors come to fish the Jicarilla streams and hunt large elk, Merriam's wild turkeys and mule deer every year. The department has an extensive monitoring program to collar elk, pronghorns and migratory species, and it works in collaboration with the Ute Mountain Ute Tribe, the states of Colorado and New Mexico and other entities to determine migratory needs.

Frances Garibay, director, JAN Senior Citizens Center, said that her agency has 13 staff members and provides services, including transportation, meal service and health care. She said that the annual Spam carving contest is particularly popular. The program currently has 80 homebound clients. Although 70% of the program's funding is internally provided by the JAN, the rest comes from federal and state grants, so a significant portion of staff time is dedicated to grant applications. She noted that \$500,000 in state capital outlay funding helped build the current senior center. The program's current needs include a new heating and cooling system for the senior center, a new kitchen facility and vans to deliver heated meals for homebound clients.

John Wheeler, general manager, JANPA, said Dulce's electric service had been provided by the Northern Rio Arriba Power Cooperative (NORA), but that system relied on an old power line that was subject to frequent outages, and the NORA had a moratorium on new growth. The need for expanded and reliable service was the impetus to create the JANPA. It now employs 21

people, including 13 Native Americans, 11 of whom are Jicarilla Apache tribal members. The JANPA expects to be financially self-sufficient within five years.

The JANPA is currently negotiating with the Jemez Mountains Electric Cooperative (JMEC) to take over service for the southern part of the reservation along Highway 550. Within five to 10 years, the JANPA will own a state-of-the-art distribution system.

Responding to questions about the JANPA's relationships with the neighboring electric cooperatives, Mr. Wheeler said that all negotiations with the NORA had been settled and that the JMEC had its own reasons to negotiate with the JANPA. The JMEC currently has lines running over Jicarilla land without right-of-way agreements and faces considerable cost increases. He indicated that the negotiations have been amicable.

Chad Eaton, chief executive officer, ANC, and Melissa Eaton, director, Jicarilla Gaming Commission (JGC), presented on the JAN's gaming operations and regulation. The ANC operates three facilities and employs 148 people, only 31 of whom are non-Native American. The JGC ensures compliance with federal and tribal regulations concerning alcohol sales, audits of the facilities, surveillance of gaming areas, employee drug testing and testing of slot machines.

Lyle Atole, commander, JAN Veterans Group (JAN Vet), said that there are more than 400 Jicarilla Apache veterans, approximately 10% of the Jicarilla Apache population, and that the main needs for veterans are physical and mental health care, transportation to access health care, housing and house remodeling. JAN Vet works with other groups to tackle those needs. Commander Atole said two years ago the JAN Tribal Council established a Warriors Day observance to make sure that each veteran is personally thanked for his or her service.

Senator Martinez, co-chair of the Military and Veterans' Affairs Committee, issued an invitation to JAN Vet to give a presentation to that committee.

Update from the Human Services Department (HSD): Availability and Accessibility of Services and Overview of the Supplemental Nutrition Assistance Program (SNAP)

Sean Pearson, deputy secretary, HSD, Priscilla Caverly, tribal liaison, HSD, and Theresa Bellanger gave the presentation. Mr. Pearson said that the HSD has three Native American liaison officers: Priscilla Caverly for the Income Support Division (ISD) and Child Support Enforcement Division, Theresa Bellanger for Medicaid and Centennial Care and Barbara Alvarez for the Behavioral Health Services Division (BHSD). Ms. Caverly and Ms. Bellanger then briefly summarized a number of assistance programs run through the HSD and the department's tribal communication and cultural training programs.

Ms. Bellanger said Native Americans enrolled in Medicaid may choose a fee-for-service program or a managed care program through Centennial Care. She said that a client must opt in to the Centennial Care program. Centennial Care coordinates services for medical and behavioral health. Some of the advantages for a client in Centennial Care are benefits for

traditional healing care and rewards for healthy habits such as getting regular exams and dental checkups. She said Centennial Care tries to create partnerships with tribal governments, and she cited the audiology services at the Pueblo of Zuni as an example. Currently, 118,127 Native American New Mexicans are enrolled in Medicaid: 87,731 in the fee-for-service program and 30,396 in Centennial Care.

Ms. Caverly said that the HSD has various memoranda of understanding (MOUs) with tribal governments and organizations allowing the ISD to have workers placed in five different communities across New Mexico and the Food Distribution Program on Indian Reservations (FDPIR) to work in multiple locations.

Ms. Caverly further stated that three MOUs are being developed for the Temporary Assistance for Needy Families (TANF) Program. (See page 6 of the HSD handout for specific locations for the ISD, FDPIR and TANF.) She also noted that 30,000 children receive meals at school each day through the program, and the Food and Nutrition Service of the United States Department of Agriculture (USDA) provides 60% of the cost. (See addendum B of the HSD Liaison Report handout for statistics on income assistance by tribal affiliation.)

The Child Support Enforcement Division supplies legal assistance, but only works with tribes at their invitation. The division has 334 active cases. Child support collections exceeded \$3 million in fiscal year 2015. The BHSD augments mental health and substance abuse services provided through Medicaid, which is a \$3.4 million program. (See addendum C of the HSD Liaison Report handout for specific information regarding BHSD services for each tribe.)

Page 9 of the HSD Liaison Report handout lists a number of departmental efforts regarding cross-cultural training and collaboration policies. Ms. Caverly highlighted that eight hours of cultural competency training are now required for all HSD employees, and that all managers receive additional training on the HSD's communication, collaboration and consultation policy and the State-Tribal Collaboration Act. Further, about half of New Mexico's tribal communities are represented on the Native American Technical Advisory Committee (NATAC). The NATAC meets bi-monthly and gives interested persons an opportunity to meet directly with the Medicaid director.

Turning to the issue of the HSD's proposed work requirements for SNAP, Mr. Pearson was joined by ISD Director Marilyn Martinez. Mr. Pearson said that participation in SNAP increased 12.8% from 2014 to 2015 and that there are now 87,000 Native American participants in the program. He said that the SNAP proposals were built off of the federal education and training (E and T) requirements, and that the goal is to move people off of SNAP. He said that the HSD is working with the Workforce Solutions Department (WSD) to avoid duplicating E and T programs. He explained that SNAP participants may be divided into two separate populations: able-bodied adults without dependents (ABAWDs) and non-ABAWDs.

Mr. Pearson said that the SNAP rules were proposed on May 29, 2015, with anticipated implementation dates of October 1, 2015 for ABAWDs and March 1, 2016 for non-ABAWDs. He believes the proposal has built-in mechanisms that mitigate what might be harsh outcomes. Since the proposal, the HSD has held public hearings and sponsored two roundtable discussions with tribal leaders and the executive managers from the HSD as participants. He said that case managers would have flexibility to determine exceptions for good cause on a case-by-case basis. Case managers may make individual assessments as to what constitutes acceptable work activities, and the HSD can make geographic waivers based on local unemployment rates. Mr. Pearson further emphasized that the unemployment methodology differs for participants without dependents and those with dependents.

In response to a comment about limited HSD staffing and training, Mr. Pearson said that the vacancy rate for the support divisions was about 10%, but that the HSD created a computer program for staff training that allows for minimal staffing disruption. A further concern was raised by the condition of the HSD facility in Espanola. Mr. Pearson stated that capital outlay funding had been secured for rehabilitation of the building.

Further discussion about SNAP was then postponed until after the next presentation.

Proposed Expansion of Mandatory Work Requirements

Sovereign Hager, staff attorney for the New Mexico Center on Law and Poverty, said that the HSD's SNAP proposal would expand work requirements beyond the federal requirements to three separate populations: minors over the age of 15 who are in school; parents with children over six years old; and adults between the ages of 50 and 60 years old.

Ms. Hager said that the proposal would create additional responsibilities for an agency that already had challenges providing adequate notification to assistance program participants. She questioned whether the ISD has the capacity to administer the new regulations. She said that the burden of mishandled cases would fall on people who have few resources to address bureaucratic mistakes.

Ms. Hager also noted that the All Pueblo Council of Governors opposes the proposed SNAP regulations.

In response to a member's question, Mr. Pearson said that the HSD is expanding its requirements beyond the federal regulations with the goal to break a cycle of dependency and to move people into the work force.

When asked about the number of participants in SNAP and the resulting caseload for ISD staff, Ms. Martinez said that the current number of people covered by the work requirements within SNAP is 20,000, but the number is projected to grow to 70,000. She said the department is proposing a rolling enrollment to help accommodate the increase. The HSD has 980 caseworkers, has contracted with SL Start for 80 staffing positions and is coordinating with the

WSD to help handle the caseload. She said that historically, caseworkers each handle 700 to 1,000 cases. A concern was raised that if a significant portion of SNAP participants applied for exceptions, HSD staff might not be able to review them all.

Ms. Hager said many states have adopted a volunteer program specifically because of the numbers involved. She also questioned whether New Mexico has a cycle of dependence problem, stating that 85% of participants go back to work after receiving SNAP assistance.

Regarding the training that would qualify as part of the SNAP work requirements, Ms. Martinez said that would be determined individually based on what a given participant can do and what they need — résumé assistance, placement or other services. She said that two orientations per year are planned for each of the 34 offices around the state, but that if people are unable to reach an orientation session because they live too far away, they would qualify for a good cause exception.

Mr. Pearson said that the geographic unemployment exception would apply to areas with unemployment above 10%.

A committee member said that unemployment data do not capture information about out-migration, and without it, the unemployment figure alone may create a false picture of the job market.

Ms. Martinez said that there was one public hearing held in Santa Fe on July 17, but that the HSD also accepted comments made by phone and by email. The department responses will not be done until mid-August. A committee member raised a concern that the affected population has limited access to the internet to send in comments. Ms. Martinez said that comments can also be made directly to the USDA's Food and Nutrition Service, which had a representative at the public hearing.

Mr. Pearson said that if the federal agency denies the state's proposal, then the status quo will remain in effect. However, he believes it is more likely that only small changes would need to be made.

Asked if there is a requirement to do a cost-benefit analysis for the proposed regulations, Mr. Pearson answered no. However, the HSD has done a cost analysis that will be posted on its web site and sent to the committee, but it has not done a benefit analysis. The HSD is also looking at some of the options that other states have established to qualify as work activities.

Regarding program accountability, Mr. Pearson said that the HSD is audited every couple of months by the USDA on several of the programs that it administers, including SNAP. He said he could provide the letter of findings from the USDA to the committee.

A committee member then asked about how the HSD's other service programs are allocated around the state. Mr. Pearson indicated that it depends on the service. Child support services are court-mandated, Medicaid services depend on the eligible population and behavioral health services are sometimes driven by grant approvals. Once a provider has established a service, those contracts are often maintained as long as they demonstrate that they are continuing to provide that service. Asked specifically about behavioral health budgets, Mr. Pearson said he would provide them to the committee.

When asked if Fort Sill was included within the addenda to the HSD Liaison Report handout, Ms. Martinez said the data system needed to be updated and that the Fort Sill information is still combined into the "unknown" category used for out-of-state tribes.

Motion

Representative Smith moved to approve the minutes of the June meeting. Senator Shendo seconded, and the minutes were approved without objection.

Public Comment

Darlene Gomez, general counsel for the JAN, listed six issues within the Jicarilla community that she said are implicated by the proposed regulations for SNAP:

- 1) a complete lack of available child care;
- 2) a job market where for every minimum wage job available, 20 to 30 people apply;
- 3) the unemployment rate;
- 4) the unavailability of public or private transportation;
- 5) an unreliable communication network that periodically disables phone and internet access for the tribal government as well as individuals; and
- 6) a SNAP office that is sometimes unresponsive.

Adjournment

There being no further business before the committee, the meeting adjourned at 4:38 p.m.

Revised: August 19, 2015

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**August 20, 2015
Navajo Technical University
Crownpoint**

**August 21, 2015
University of New Mexico-Gallup
Gallup**

Thursday, August 20 — Navajo Technical University, Crownpoint

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:10 a.m. (1) **Welcome and Status Update**
—Rita M. Capitan, President, Crownpoint Chapter
—Dr. Elmer Guy, President, Navajo Technical University
- 11:00 a.m. (2) **Navajo Community Outreach and Patient Empowerment (COPE) Project**
—Rex Lee Jim, Vice President, Navajo Nation (Tenure 2011-2015)
—Zane James, President, Tsaile Chapter; Vice President, Chinle Agency Council
—Sonlatsa Jim-Martin, Program Manager, REACH Food Coalition
—Hannah Sehn, Planning and Partnerships Manager, COPE Project
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Native American Education: The Role of New Mexico's Charter Schools in Serving Native American Students and Communities**
—Kayla Dawn Begay, Co-Founder, Dził Dítł'ooí School of Empowerment, Action and Perseverance
—Arrow Wilkinson, Superintendent/Principal, Walatowa High Charter School
—Kara L. Bobroff, Executive Director, Native American Community Academy (NACA), NACA Inspired Schools Network
—Clarence Hogue, Jr., Governing Council, Dream Dine' Charter School

- 3:00 p.m. (4) [Inland Port Feasibility Study](#)
—David Lee, President, Tsayatoh Chapter
—Leslie Kedelty, Region 1 Representative, Economic Development
Department
—Michael Sage, Deputy Director, Greater Gallup Economic Development
Corporation
—Albert Lee, Program Manager, Eastern Regional Business Development
Office of the Navajo Nation Division of Economic Development
—Evan Williams, Deputy Director, Northwest New Mexico Council of
Governments

4:00 p.m. **Recess**

Friday, August 21 — University of New Mexico (UNM)-Gallup

- 9:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 9:05 a.m. (5) [Welcome and Status Update](#)
—Jackie McKinney, Mayor, Gallup
—Christopher Dyer, Ph.D., Executive Director, UNM-Gallup
- 10:00 a.m. (6) [School District Transportation Challenges and Solutions: The School District Perspective](#)
—Representative, Gallup-McKinley County School District (Invited)
—Don Levinski, Superintendent, Central Consolidated School District
(Invited)
—Barry Williams, Superintendent, Apache County School District
—Tommie Yazzie, Superintendent, Red Mesa Unified School District
—Lynette Michalski, Superintendent, Window Rock School District
- 12:00 noon **Lunch**
- 1:00 p.m. (7) [School District Transportation Challenges and Solutions: The Executive Branch Perspective](#)
—Paul Aguilar, Deputy Secretary, Public Education Department (PED)
—Nadine Groenig, Director of Indian Affairs, Arizona Department of
Education
—DeAlva Calabaza, Assistant Secretary for Indian Education, PED

- 3:00 p.m. (8) [School District Transportation Challenges and Solutions: The Legislative Branch Perspective](#)
- Senator Carlyle Begay, Legislative District 7, Arizona State Senate
 - Representative Jennifer D. Benally, Legislative District 7, Arizona State House of Representatives
 - Representative Albert "Ahbihay" Hale, Esq., Legislative District 7, Arizona State House of Representatives
 - Senator George K. Munoz, District 4, New Mexico Senate
 - Representative D. Wonda Johnson, District 5, New Mexico House of Representatives

5:00 p.m. **Adjourn**

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

**August 20-21, 2015
Crownpoint
Gallup**

The third meeting of the Indian Affairs Committee (IAC) for the 2015 interim was called to order at 10:21 a.m. by Senator John Pinto, co-chair, on Thursday, August 20, 2015, at Navajo Technical University in Crownpoint.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. Richard C. Martinez
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr. (8/20)
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. James Roger Madalena
Sen. Cliff R. Pirtle
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Cisco McSorley (8/20)
Sen. George K. Munoz (8/21)
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Rep. Nick L. Salazar
Sen. Clemente Sanchez

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

Staff

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

Guests

The guest list is in the meeting file.

Handouts

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

Thursday, August 20 — Navajo Technical University (NTU), Crownpoint

Welcome and Status Updates

Senator Pinto welcomed the committee and members of the audience and asked committee members and guests to introduce themselves. He asked that Representative Clahchischillia chair the remainder of the meeting.

Crownpoint Chapter President Rita Capitan welcomed the committee to Crownpoint and outlined the area's greatest needs, including: housing for teachers and students at NTU and for teaching staff at area schools; a care center located in Crownpoint to serve elderly residents of the Eastern Navajo Agency (ENA); larger school facilities for Crownpoint, including an auditorium and stadiums; and an office complex for the ENA. Ms. Capitan stated that the ENA currently has more than 50 departments but no central location or other adequate facilities in which to house those departments. The Crownpoint Chapter would like to capitalize on its proximity to Chaco Canyon and promote tourism in the area by developing a hotel in Crownpoint. A wellness center funded through the Tribal Infrastructure Project Fund and general obligation bond funding is now in development. Ms. Capitan observed that Crownpoint has a hospital and offices of the federal Bureau of Indian Affairs and the Navajo Housing Authority. She further reported that the hospital has provided many services to the area in the past but that administrative problems appear to be interfering with the adequate provision of hospital services now.

NTU President Dr. Elmer Guy updated the committee on progress at the university, noting that the hospitality center, which hosted the committee meeting, was built with capital outlay funding from the state legislature. The university has recently received capital outlay funding for lighting improvements as well. Approximately 2,000 students attend NTU, which offers programs from the certificate level up through a master of engineering degree. The National Science Foundation sponsors some programs at NTU, and students have received state and national awards for their work. Dr. Guy observed that NTU has limited housing for students and teachers but offers quality instruction.

A request has been submitted to the Higher Education Department (HED) to replace modular buildings currently in use at NTU with a dedicated math and science building and to update poor lighting and outdated facilities. In response to committee member questions, Dr. Guy reported that the current graduation rate is around 53 percent, with roughly two-thirds of those students going on to job placement and higher education. He stated that NTU is working with an economic development incubator program to try to prepare students for available jobs, and he gave a brief overview of funding sources available to the university.

Senator Shendo observed that the issue of providing capital outlay funding to tribal colleges continues to surface during legislative sessions, and he asked whether NTU is open to all students. Dr. Guy reported that NTU is accredited by the HED as a public institution and that anyone who meets the admissions requirements can enroll. He noted that most students are

Navajo or members of other tribes and that the university also offers a veterinary technician program as a result of its status as a land grant institution.

Noting that NTU serves as an economic engine for the area, a committee member expressed disappointment that State Director for United States Department of Agriculture (USDA) Rural Development Terry Brunner said that the USDA returned \$6 million in tribal set-asides available to New Mexico this year for lack of viable applications. The USDA has grants and very low-interest loans available for building facilities and infrastructure from the ground up. He suggested that NTU grant writers collaborate with the Crownpoint Chapter to apply for USDA funds to meet infrastructure and other needs in the area.

Navajo Community Outreach and Patient Empowerment (COPE) Project

COPE Planning and Partnerships Manager Hannah Sehn provided an overview of the COPE vision and mission. COPE's vision is to eliminate health disparities and improve the well-being of Native Americans. The program's mission revolves around the belief that the power to overturn long-standing, historical health inequalities lies inherently in native communities themselves. Working closely with communities and local partners, COPE strives to promote empowered native communities through three collaborative approaches: (1) community-based outreach; (2) increased access to healthy foods; and (3) local capacity and system-level partnerships.

Tsaile Chapter President and Chinle Agency Council Vice President Zane James described the planning that is in process to establish the Center for Advances in Training in Community Health (CATCH), in cooperation with the COPE program. The CATCH will provide an innovative program for community-led enterprises in health and economic development. Mr. James elaborated on the state, local and federal partnerships being developed to help establish the CATCH. The center will provide work force development opportunities focused on community health in areas of forecasted industry growth. Committee members commended COPE for its focus on incorporating native cultural values in its health and education outreach programs and services. Members suggested that the program reach out to colonias areas as well as tribal areas and include University of New Mexico (UNM) public health and teaching sites in its partnerships.

Native American Education: The Role of New Mexico's Charter Schools in Serving Native American Students and Communities

A panel of charter school leaders gave a presentation on the special character of Native American charter schools, their focus on native culture, tradition and empowerment of native students and their success in enrolling and graduating native children into higher education. Panel members also addressed committee members' questions regarding the challenges charter schools have faced, notably in establishing and maintaining facilities and purchasing and utilizing technology in their programming. In addition, some schools reported having to overcome opposition from local school districts and community members in developing their charter schools.

Dzil Dit'ooí School of Empowerment, Action and Perseverance Co-Founder Kayla Dawn Begay presented an update on progress in establishing Dzil Dit'ooí to serve residents of the Navajo and Red Lake areas. Ms. Begay stated that the school now has a modular building and has focused its curriculum on leadership skills training, agricultural education, empowerment through culture and a philosophy of wellness and perseverance. Walatowa High Charter School Superintendent/Principal Arrow Wilkinson reported an enrollment of 55 students, primarily from the Pueblos of Jemez and Zia, with a school emphasis on "whole child" services and community involvement in its curriculum of native language, culture and literature. Native American Community Academy (NACA) Executive Director Kara L. Bobroff reviewed the NACA's core values, goals and course of studies. The model has been highly successful in placing students on the path to success in college and in their communities. In response to committee member questions, Ms. Bobroff reported that 100 percent of NACA seniors are accepted into college and that the school's high success rate in so many areas is, in part, attributed to the commitment the school requires on the part of students and families upon enrollment to participate in college preparatory classes. Clarence Hogue, Jr., Dream Diné Charter School Governing Council member, described a program of experiential learning at the recently established school, including the ongoing development of native learning materials.

Committee members and panelists discussed the value of moving to year-round schooling, particularly to support native curricula in the areas of agriculture and animal husbandry. Committee members asked if these charter schools are located in public facilities in accordance with state requirements. Some of the charter schools are located in modular buildings and are working to secure more permanent facilities and to work through challenges in co-locating with local school districts. Others are located in tribal school facilities or enjoy local district support. The charter schools reported varying compositions of their governing boards.

Inland Port Feasibility Study

Northwest New Mexico Council of Governments (NWCOG) Deputy Director Evan Williams described a plan to establish an inland port in the Gallup area to address the economic displacement resulting from closure of the Pittsburg and Midway (P&M) coal mine. The chapters of Manuelito, Rock Springs and Tsayatoh are coordinating with the NWCOG to reuse assets left behind by P&M to develop job opportunities for area residents. Mr. Williams explained that an inland port is a specialized location developed to serve the intermodal transportation network. Ordinarily located along railroad lines, inland ports offer intermodal transfer facilities, international trade processing and related services.

A panel of representatives, including Tsayatoh Chapter President David Lee, Greater Gallup Economic Development Corporation Deputy Director Michael Sage and Navajo Nation Division of Economic Development Representative John Largo, addressed the committee to describe the planning process and the two potential sites that have been identified to establish the inland port. Economic Development Department Research and Marketing Director Elizabeth Davis told the committee that the closest inland ports for New Mexico are now located in El Paso, Texas, and the Santa Teresa/Columbus areas.

Committee members discussed funding available for the project and the status of prior appropriations. Ms. Davis and other panel members reported that the project will create ancillary jobs as well as inland port jobs, as trans-loading facilities are attractive to many industries. Members stressed the importance of local preparedness and state and national partnership development to ensure that local businesses are involved in all aspects of the project development and that the project serves as a model development. Panelists reported that parallel development tracks are under way with the transportation initiatives for housing, broadband and land-use planning.

Senator Pinto observed that development of transportation resources in the area is tied to improvement of the local road and highway network. He reported on his efforts to improve roads in Gallup and throughout McKinley and San Juan counties, as well as the entire northwest region, over the last 20 years. Senator Pinto urged his colleagues to focus on road improvements as a means of achieving economic health in the region.

Upon a motion duly made and seconded, the minutes of the meeting of July 20-21, 2015 were approved without objection. There being no further business on the day's agenda, the committee recessed.

Friday, August 21 — UNM-Gallup

Welcome and Status Updates

Senator Pinto reconvened the meeting at 10:12 a.m. and welcomed the committee and members of the audience. He asked committee members and guests to introduce themselves, and he asked that Representative Clahchishilliage chair the remainder of the meeting.

Gallup Mayor Jackie McKinney welcomed the committee and guests and thanked the committee for focusing on educational issues. He stated that Gallup's economic development depends on improving educational opportunities for area youths and providing jobs that will allow youths to contribute to their community. Mayor McKinney also stated that promoting a regional view of development for the northwestern area of the state is critically important.

UNM-Gallup Executive Director Christopher Dyer, Ph.D., described a wealth of new programs at the Gallup campus, including childhood development programs and an Early Childhood and Family Center supported, in part, by private foundations. He noted that the Navajo Nation is proactively coordinating with UNM to develop financial literacy programming and training in hazardous materials handling. Dr. Dyer also described programs for veterans and the Inside Out program that provides business management certificates for inmates to promote their successful reintegration into the community. In addition, Dr. Dyer reported the formation of an incipient coalition of area educational institutions, including tribal colleges, aimed at sharing faculty, programs and other resources. He stated that the university has recently acquired land to provide more student housing.

School District Transportation Challenges and Solutions: The School District Perspective

Representatives from the Gallup-McKinley County and Central Consolidated school districts in New Mexico and the Apache County, Red Mesa and Window Rock Unified school districts in Arizona addressed the committee regarding the ongoing challenges the districts face with regard to transporting children among districts and across state lines in the border area. In addition to the serious and sometimes deadly hazards children and their families face as a result of the unimproved condition of the roads in the area, some children reportedly face two-hour one-way bus rides to arrive at their assigned district schools. Some of these children reside much closer to out-of-state schools than to their assigned in-state school.

Transportation agreements between districts have lapsed or failed for lack of continuity within the school districts. An intergovernmental agreement (IGA) between the Window Rock Unified School District and the Gallup-McKinley County School District was approved by the districts and the State of Arizona, but it was stalled when the agreement did not receive approval from New Mexico's Department of Finance and Administration (DFA). Part of the issue in this regard is the legal requirement to pay tuition costs for children attending out-of-state schools in either New Mexico or Arizona and the special terms of the existing IGA that require payment of tuition to Arizona, where an equal exchange of students is exceeded.

In response to committee member questions, panelists reported that transportation costs and the high cost of maintaining heavily used vehicles drain funding from classrooms. Committee members and panelists also discussed the ongoing safety issues that arise from the poor and under-capacity condition of area bridges, as well as the traffic, feral dogs and other hazards that children face as they walk to areas where buses can pick them up. Panelists, community members and committee members stressed the importance of educating children, especially young children, close to home and the high cost, including the cost to families of keeping children safe, of operating transportation services in the area without coordinating IGAs or adequate local roads and bridges.

School District Transportation Challenges and Solutions: The Executive Branch Perspective

Deputy Secretary of Public Education Paul Aguilar stated that there appears to be some misunderstanding regarding the statutory requirements for executing IGAs. He presented information regarding the statutory requirement for the secretary of finance and administration to approve such agreements, and he clarified that the state is bound to comply with statutory requirements. Mr. Aguilar reported that some districts have "one-way" IGAs that allow them to send children to schools in neighboring states. He further elaborated on the process by which a school district can draw on supplemental funding to pay any required tuition fees to send children to school in neighboring states, noting that there are no provisions in New Mexico law for simply exchanging an equal number of students as provided in the previously described IGA. Mr. Aguilar reported that the longest bus ride for New Mexico students at present is 45 minutes and that many students across the state ride the bus for that length of time. In response to committee member's concerns regarding bus rides limiting accessibility to school breakfast programs, Mr.

Aguilar stated that there are federal after-school "take-home" snack programs to which students may be afforded better access.

Arizona Department of Education Director of Indian Affairs Nadine Groenig reported that she is new to her position but that the issues of roads, bridges and long-distance bus rides in the border area have persisted for over 40 years. She stated that there is an opportunity for an IGA, but any such agreement must accommodate the laws of both states. Ms. Groenig noted that Arizona does not currently provide any funding for the Arizona Indian Education Office.

Public Education Department (PED) Assistant Secretary for Indian Education DeAlva Calabaza reported that she is currently working on memoranda of understanding with Utah and Arizona regarding Indian education issues and that she is working with Mr. Aguilar on the transportation joint powers agreements for local school districts. In response to committee member questions, she indicated that the Gallup Office for Indian Education had not closed, but that those positions had been relocated to different areas.

Mr. Aguilar and Ms. Groenig agreed that the issues surrounding approving an IGA to enable children to cross state lines to attend school could likely be worked out at the staff level with the help of counsel to forestall any need for legislative action. Senator Rodriguez moved that the IAC send a letter to the governor and Secretary of Public Education Hanna Skandera requesting that Mr. Aguilar be directed to meet with Ms. Groenig as soon as possible to develop an IGA that will allow children from Arizona and New Mexico to cross the Arizona/New Mexico state line to attend school in a neighboring state. The IAC requested that the agreement note that there is a draft of an IGA between Window Rock Unified School District and the Gallup-McKinley County School District, some parts of which may be used as the basis for such an agreement. Senator Martinez seconded the motion, and it passed without objection.

On a motion duly made and seconded, the IAC voted to send a letter to Secretary of Finance and Administration Tom Clifford requesting an explanation by September 30 of why the Window Rock Unified/Gallup-McKinley County school districts IGA was not approved by the DFA and to consider approving similar future IGAs.

School District Transportation Challenges and Solutions: The Legislative Branch Perspective

Representative Johnson presented an overview of House Bill (HB) 319, an act that she introduced during the 2015 regular session that addressed transportation boundary issues between and among adjacent school districts and that would have established procedures and criteria for temporary transportation boundary agreements. The legislation passed overwhelmingly in the house, but it failed to reach the senate floor for a vote. Provisions of HB 319 would also have provided means for resolving boundary agreement issues.

Arizona House of Representatives District 7 Representative Albert "Ahbihay" Hale, Esq., gave an historical overview of efforts to meet school transportation needs in the border area and

of Arizona laws passed to facilitate student transportation between Arizona and New Mexico. Arizona State Senator Carlyle Begay addressed the committee, noting that, at present, an estimated 329 Arizona students attend school in New Mexico and 301 New Mexico students attend school in Arizona. He reported that Arizona is modeling its Office of Indian Education on that of New Mexico.

Members wanted to make sure that the school district representatives present at the meeting have information on the process for securing supplemental funding from the PED for out-of-state tuition for students. Senator Munoz requested that information be developed for the committee on whether or not Mexican students attending school in New Mexico are paying tuition to the state.

Committee members stressed that all of the transportation issues discussed during the day's meeting need to be addressed as soon as possible. Mr. Aguilar and Ms. Groenig reported that they are planning to meet immediately after the meeting to begin the process of developing an appropriate IGA intended to address transportation issues to enhance student safety and student educational opportunities.

Adjournment

There being no further business before the committee, the meeting adjourned at 3:32 p.m.

Revised: September 17, 2015

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**September 30-October 2, 2015
Shiprock, Red Valley, Huerfano**

Wednesday, September 30 — John Pinto Library, Diné College, Shiprock

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:10 a.m. (1) **Welcome and Status Update**
—Dr. Maggie George, President, Diné College
- 11:00 a.m. (2) **Ute Mountain Ute: Tribal Update**
—Manuel Heart, Chair, Ute Mountain Ute Tribe
- 12:00 noon (3) **Working Lunch: Road N57 Project and New Senior Center Building**
—Carol Etcitty-Roger, President, Gadii'ahi/Tó Koi Chapter President
- 12:30 p.m. (4) **Working Lunch: Upper Fruitland Senior Citizens' Building**
—Lenora Williams, Vice President, Upper Fruitland Chapter (invited)
- 1:00 p.m. (5) **San Juan Generating Station: Past, Present and Future**
—Ryan C. Flynn, Secretary of Environment
—Noah Long, Legal Director, Western Energy Project, Energy and
Transportation Program, Natural Resources Defense Council
—Ron Darnell, Senior Vice President of Public Policy, PNM Resources
—Cathy Newby, Director of Tribal Government and Customer Engagement,
PNM Resources
- 3:15 p.m. **Public Comment**
- 4:00 p.m. **Recess**

Thursday, October 1 — Red Valley Chapter House

- 10:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

- 10:05 a.m. (6) [Invocation, Welcome and Status Update](#)
—Lee Zhonnie, President, Red Valley Chapter
- 11:00 a.m. (7) [School Bus Transportation Issues](#)
—Larry Ute Joe, Senior Planner, Navajo Division of Transportation
- 12:00 noon (8) [Working Lunch: Shiprock Historical Society, Inc., Historical Museum](#)
—GloJean Todacheene, President, Shiprock Historical Society, Inc.
—Eugene B. Joe, Chief Executive Officer, Shiprock Historical Society, Inc.
- 12:30 p.m. (9) [Working Lunch: Newcomb Chapter Request](#)
—Lawrence John, Manager, Newcomb Chapter
- 1:00 p.m. (10) [The Impact of Uranium Mining and Cleanup Activities in the Grants Mineral Belt](#)
—Fernando Martinez, Director, Mining and Minerals Division, Energy, Minerals and Natural Resources Department (EMNRD)
—Paul Robinson, Research Director, Southwest Information and Research Center
—Jordon Johnson, Coordinator, McKinley Community Place Matters
- 3:00 p.m. (11) [Kirtland Youth Association Request](#)
—Charles W. Kromer, Jr., Executive Director, Kirtland Youth Association
- 3:30 p.m. **Recess**

Friday, October 2— Huerfano Chapter House

- 9:00 a.m. **Reconvene**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 9:05 a.m. (12) [Invocation, Welcome and Status Update](#)
—Wilson Ray, Sr., President, Huerfano Chapter
- 10:00 a.m. (13) [Venting and Flaring](#)
—Jon Goldstein, Senior Energy Policy Manager, Environmental Defense Fund
- 11:00 a.m. (14) [Allottees: A Conversation about Oil and Gas Development on the Checkerboard Lands](#)
—Etta Arviso, Navajo Allottee and Board Member, Diné Medicine Man Association
—Samuel Sage, Navajo Allottee and Community Services Coordinator, Counselor Chapter
—Delora Hesuse, Navajo Allottee

- 12:00 noon **Lunch**
- 1:00 p.m. (15) [**Oil and Gas Industry Perspective on Oil and Gas Development in the Region**](#)
—Wally Drangmeister, Director of Communications, New Mexico Oil and Gas Association
—Virgil Chavez, Superintendent of Capital Projects, ConocoPhillips Company
- 2:00 p.m. (16) [**Environmental Perspective on Oil and Gas Development in the Region**](#)
—Colleen Cooley, Diné Citizens Against Ruining Our Environment
- 3:00 p.m. (17) [**Executive Branch Perspective on Oil and Gas Development in the Region**](#)
—David Catanach, Director, Oil Conservation Division, EMNRD (invited)
- 4:00 p.m. (18) [**Federal Government Perspective on Oil and Gas Development in the Region**](#)
—Johnna Oberly, Director, Federal Indian Minerals Office, Bureau of Indian Affairs
—Victoria Barr, Farmington District Manager, U.S. Bureau of Land Management
- 5:00 p.m. **Adjourn**

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

**September 30-October 2, 2015
Shiprock, Red Valley, Huerfano**

The fourth meeting of the Indian Affairs Committee was called to order by Senator John Pinto, co-chair, on Wednesday, September 30, 2015, at 10:29 a.m. at the John Pinto Library at Diné College in Shiprock.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson (10/2)
Rep. James Roger Madalena (10/2)
Sen. Richard C. Martinez (9/30, 10/1)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr. (10/2)
Rep. James E. Smith
Sen. William P. Soules (10/1, 10/2)

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Cisco McSorley (9/30, 10/1)
Rep. Debbie A. Rodella (10/1, 10/2)

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. Georgene Louis
Sen. Cliff R. Pirtle
Sen. John C. Ryan

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar
Sen. Clemente Sanchez

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

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Michelle Jaschke, Researcher, LCS
Mark Edwards, Drafter, LCS

Wednesday, September 30 — John Pinto Library, Diné College

Welcome, Invocation and Status Update

Tommie Yazzie, vice president, Shiprock Chapter, Navajo Nation, gave an invocation. Senator Pinto then asked committee members and the audience to introduce themselves. Senator Pinto then asked that Representative Clahchischilliage chair the remainder of the meeting.

Dr. Maggie George, president, Diné College, welcomed the committee and said that the library in which the committee was meeting was the result of a \$5 million legislative effort led by Senator Pinto. She thanked the committee for its support of the dual credit program, noting that New Mexico took the lead in establishing a dual credit program, which was then copied by the State of Arizona. Dr. George said that the dual credit program was needed to help address the 52% student dropout rate in Indian country. Now, nearly 400 high school students are receiving college-level credit in mathematics and English at Diné College, setting them up to be successful in college when they graduate from high school. Dr. George noted that four New Mexico tribal colleges had formed a consortium, and the consortium was invited to work with the Higher Education Department on budget priorities. The other three tribal colleges in the consortium are running programs similar to Diné College.

Responding to questions, Dr. George said that Diné College offers two bachelor's degrees; a degree in bilingual education; and a degree in business and tribal management. The college is working to expand its curriculum to meet the work force needs in the area. Dr. George said that the college is trying to offer more public health training, but it is very expensive to provide. Currently, students seeking health care training are directed to San Juan College or Northern Arizona University. She said that local employers are also asking for graduates with training in energy industry-related accounting, procurement and finance management.

Daryl Begay, government and external affairs officer, Diné College, said that the college has worked with the Higher Education Department to develop a five-year capital infrastructure plan. He then presented three projects that the college is pursuing. In order of priority, the college is seeking funding for:

(1) a math and science building to house classrooms, laboratories and offices on its south campus. Mr. Begay said that the planning and design for the math and science building has been completed, and the college is now seeking \$5,625,000 for construction;

(2) roadway renovation of the access road and parking lot on the north campus. The access road is deteriorated, is a hazard for pedestrians and has limited wheelchair access. Mr. Begay said this project would cost \$454,000; and

(3) planning and design of an administration building on the south campus, projected to cost \$340,000.

Ute Mountain Ute — State Boundary Issue

Manuel Heart, chair, Ute Mountain Ute Tribe, could not attend the meeting as scheduled; however, Duane "Chili" Yazzie, president, Shiprock Chapter, Navajo Nation, took the floor to explain the boundary dispute between the Ute Mountain Ute Tribe and the Navajo Nation. The boundary line between the Ute Mountain Ute Tribe and the Navajo Nation was established by Congress based on the established state line between New Mexico and Colorado. However, Mr. Yazzie said, the boundary line was incorrectly surveyed and the Ute Mountain Ute Tribe and the Navajo Nation are currently in dispute over the issue. Mr. Yazzie stated that claims have been made that the fence line had been moved by someone on behalf of the Ute Mountain Ute Tribe. Mr. Yazzie asked that the State of New Mexico formally weigh in on the dispute, because it is a state-line issue. He said that the Shiprock Chapter of the Navajo Nation would send a formal letter to the committee outlining the specifics of the dispute for the committee's later consideration.

Gadii'ahi Chapter

Carol Etcitty-Roger, president, Gadii'ahi To'Koi Chapter, Navajo Nation, thanked the committee for funding it had received for its senior center. She then presented a proposal for road improvements for Navajo Road 57 (N57). The chapter is five miles northwest of Diné College's south campus, sits along the San Juan River and contains the communities of Gadii'ahi and To'Koi.

N57 is a six-mile road that serves two Navajo Nation chapters, Gadii'ahi and Beclabito, and is the only access road for the Gadii'ah/To'Koi communities. The road suffers from seasonal flooding due to inadequate culverts and drainage. Further, most of the road is unpaved, so it becomes an unusable mud track after heavy rains. As a result, children in the community miss school at times because school buses are not able to use the road. The N57 project would cost \$659,000. (See handout.)

Responding to a question, Ms. Etcitty-Roger said that the chapter had applied for Tribal Infrastructure Project Fund (TIF) funding. Inadequate school bus routes are a problem for many Navajo Nation chapters, and a regional system is being sought. A committee member asked if San Juan County was participating in the development of a regional system. An employee of San Juan County replied that the county believes it needs to get rights of way on these roads before it can participate. He said that getting the county's help on road maintenance, not new construction, is the key issue but that it is difficult to get rights of way on Indian trust lands. Similar road issues have been addressed in McKinley County by getting a memorandum of understanding (MOU) for road maintenance between the county and the Navajo Nation, and when state road funding is available, it is typically sent to the county. A committee member asked if San Juan County had a similar MOU for road maintenance. The San Juan County employee said there was one, but it lacked funding.

Upper Fruitland Senior Citizens' Building

Lenora Williams, vice president, Upper Fruitland Chapter, Navajo Nation, spoke about the need for an expanded and improved senior center in the Upper Fruitland community. The center has a bus service that delivers lunches to homebound individuals, but the center needs a place for physical and social activities. Hubert T. Harwood, president, Upper Fruitland Chapter, Navajo Nation, said that the expanded center could also act as a safe haven to prevent elder abuse.

Ms. Williams said that the chapter received capital outlay funding a few years ago for the architectural design phase, and it has received other amounts from the Navajo Nation and various agencies. The chapter had a groundbreaking ceremony for the center in 2014, but construction has not begun. The chapter has built up \$700,000 to fund the project so far, but administrative delays have pushed the cost up to \$1 million.

San Juan Generating Station: Past, Present and Future

Secretary of Environment Ryan C. Flynn outlined for the committee the effects of the federal Environmental Protection Agency's (EPA's) Clean Power Plan, Rule 111(d), on New Mexico's power plants. Referring to his handout, Secretary Flynn said that the rule is focused on electric power generation, which accounts for approximately one-third of total national greenhouse gas emissions. He said that the rule requires each state to develop its own plan by 2016 to reduce power plant emissions by 32% of the 2012 level by the year 2030. He said that although the Department of Environment (NMED) disagrees with some aspects of the structure and timing of the rule, the NMED will not fight the rule. He said that the NMED's position is that:

- (1) climate change is a real threat;
- (2) Congress has failed to address the issue, so the EPA rule is an attempt to do so; and
- (3) New Mexico is well-positioned to meet the requirements of the rule.

Regarding the effects of Rule 111(d), Secretary Flynn said that it would create a paradigm shift in power generation that will result in three primary outcomes: 1) power plant design will be driven by environmental factors as well as financial considerations; 2) coal-fired power generation will be dramatically reduced; and 3) the use of renewable energy sources and natural gas will dramatically increase. He said that nuclear power generation would also lose advantages under Rule 111(d).

Secretary Flynn said that neither proponents nor opponents of Rule 111(d) have good estimates of the costs involved. The EPA is estimating a national cost of a few billion dollars, while the United States Chamber of Commerce predicts that it will cost hundreds of billions of dollars. However, he said that New Mexico will be able to exceed the requirements of the rule because: 1) the scheduled retirement of two coal-burning units at the San Juan Generating Station to meet regional haze requirements will reduce the state's emission tonnage below the required targets; 2) a total of 174,000 tons of additional reductions will result from the retirement

of other plants in the state; and 3) the NMED is engaging many stakeholders in its development of its plan. The goal is to attain the best practicable emissions reduction, since Congress may change the target goals if it addresses the climate change issue at some point in the future.

Responding to questions, Secretary Flynn said that the courts have ruled that the federal Clean Air Act gives the EPA the authority to address climate change. The EPA's Rule 111(d) might be inefficient, given the way its authority was drafted, but the NMED agrees with the goal. He said that the NMED was however, challenging the EPA on other areas of Clean Air Act enforcement. As an example, he cited ozone regulation as a case in which the EPA's approach to regulation is workable for some areas of the country but not for others, such as those in western mountain regions.

Responding to other concerns of committee members, Secretary Flynn said that the NMED has not calculated the effect of EPA Rule 111(d) on coal contracts, but the consequences would be great. He said that there really is no comparison in job creation between coal and renewable energy industries. He said that the NMED is working with Public Service Company of New Mexico (PNM) to mitigate job losses in the energy sector.

If the EPA rejects New Mexico's reduction plan, the EPA has the power to develop its own plan for the state. In that case, the NMED would likely litigate and negotiate the issue simultaneously. Secretary Flynn cited the EPA's regional haze rule as an example. New Mexico did not submit a regional haze plan by the required 2010 deadline, and New Mexico ended up with an EPA plan instead. By developing its own plan for Rule 111(d), New Mexico will be in a better position to negotiate if the plan is rejected.

Noah Long, legal director, Western Energy Project, Energy and Transportation Program, Natural Resources Defense Council, said that the national use of coal power has declined since the high in the 1970s of over 50% of power generation to about 40% today. He said that trend will continue, noting that the power market in California is required to increase its use of renewable energy to 30% by 2030. Mr. Long said that those states that are moving quickly to renewable sources of energy have seen lower customer rate growth than those that are moving more slowly away from coal. Aside from emission controls, Mr. Long said that there are several other threats to the San Juan Generating Station, including that:

- (1) it was built in the 1970s and is now an old facility;
- (2) its high-altitude location has always made it less resilient compared to lower-elevation plants;
- (3) mirroring a national industry trend, the mining company under contract to the station lost 60% of its value last year, and, with the coal contract for the plant expiring in 2022, investors may start to leave; and
- (4) the plant is not competitive with other sources in kilowatt-per-hour costs.

In summary, Mr. Long said that the state should start planning now to replace the jobs and power generation from the San Juan Generating Station before the plant is truly at risk.

Ron Darnell, senior vice president of public policy, PNM Resources, gave the committee an overview of PNM services and the prospects for the San Juan Generating Station. (See handout.)

Mr. Darnell said that PNM is the largest investor-owned utility in New Mexico. It serves over 500,000 customers and provides 40% of the electricity used in the state. He said that the future of coal-power generation will depend on its economics, but that PNM is diversifying its power sources. PNM has pursued wind generation for many years and is now aiming to generate eight to 10 megawatts from geothermal sources in the Lordsburg area.

PNM has estimated the cost of upgrading the units at the San Juan Generating Station to meet the regional haze rules to be over \$1 billion. However, those upgrades would not help to meet the EPA Rule 111(d) carbon-emission standards. PNM's current plan is to close two units at the plant by January 1, 2018, but the Public Regulation Commission must approve the plan. Anticipating approval, PNM will own a little over 50% of the plant after 2018 and will have reduced its reliance on coal by over 36%.

Citing the natural gas power shortage a few years ago, Mr. Darnell said that power diversity adds security for customers. The current coal contract provides a hedge against volatility in natural gas costs. Further, he said, the utility must plan for 24-hour power generation and for the base load needs for peak usage times, which are problematic with solar and wind generation. Mr. Darnell also said that utility contracts are designed to smooth out price volatility over four- or five-year contracts. The result is rarely the lowest power price at any given moment, but it is a lower price over time.

Mr. Darnell said that in 2018, PNM will file a plan to serve its customers' power needs after the expiration of the 2022 coal contract. Considerations in that plan will include the cost of coal and the need to recapture the capital cost of the San Juan Generating Station, including upgrades to reduce mercury, nitrous oxide and other emissions required to meet the regional haze standard.

Cathy Newby, director of tribal government and customer engagement, PNM Resources, spoke about PNM's tribal outreach and job-loss mitigation efforts related to the retirement of two units at the San Juan Generating Station. She said that PNM works with 14 tribes, eight of which are customers. Other tribes are suppliers, and still others have involvement with PNM regarding transmission and distribution lines. She said that the unemployment rate within the Navajo Nation exceeds 50%, and the San Juan Generating Station is a big employer for the area, with 800 employees at the station and the mine.

Ms. Newby said that PNM has committed to retain current employees, but some of those jobs will be lost as employees retire or move on to other jobs. PNM has committed \$1 million over five years for job training focused on energy-sector jobs. PNM has partnered with Navajo Technical University and San Juan College to prepare students to take advantage of opportunities within a new job market through an American Indian engineering internship program. Participating students must be enrolled in New Mexico-based colleges and universities. Participants receive a broad range of work experience by working in six-month stints in different areas of energy production. She said that the energy sector jobs multiplier is five jobs in support industries for every energy sector job, so giving students a variety of experiences expands their marketability. The program is now in its third year of the five-year commitment.

Recess

The committee recessed at 3:28 p.m.

Thursday October 1 — Red Valley Chapter House

Senator Pinto reconvened the meeting at 10:23 a.m. He asked committee members, staff and members of the audience to introduce themselves, and then Lee Zhonnie, president, Navajo Red Valley Chapter, gave an invocation.

Welcome and Status Update

Ella Frazier, vice president, Red Valley Chapter, Navajo Nation, introduced chapter officials and staff. Mr. Zhonnie then said that the chapter has three pressing issues: 1) school access; 2) the condition of Navajo Road 13 (N13); and 3) the reopening of the community center. Mr. Zhonnie thanked the committee for holding a meeting earlier in the year focused on school access across the New Mexico/Arizona state line. He said that the issue is particularly important to a community like the Red Valley Chapter, which has residents and facilities on both sides of the border. He reported that the day before, Arizona announced that families can send their children to school on either side of the state line, depending on the families' needs.

Regarding N13, Mr. Zhonnie told committee members that the road is a major transportation corridor between Shiprock, New Mexico, and Chinle, Arizona. He said that N13 is deteriorating and needs to be widened to meet traffic demand.

Ms. Frazier said that the community center had been delivering 40 to 50 meals per day to senior citizens before it was shut down three years ago. The meals were subsidized by both New Mexico and Arizona. It was believed that the center was shut down because another center opened nearby in Arizona, Ms. Frazier said. A committee member said that the number of daily meals provided probably would not have justified a shut-down and requested background details from chapter staff in order to follow up on the issue with the Aging and Long-Term Services Department.

The committee then entered into a general discussion of the challenges faced by a cross-boundary community like the Red Valley Chapter. Ms. Frazier said that local services are limited. There are a number of schools in the valley and a convenience store nine miles away, but anything else requires a 60-mile round trip to Shiprock. Navajo Council Delegate Amber Kanazbah Crotty said that the relative isolation of the community has contributed to a spate of suicides recently, and the Navajo Nation has declared a state of mental health emergency in the Red Valley Chapter. A committee member asked about the potential for funding collaborative efforts among the Navajo Nation and the states of New Mexico and Arizona to meet community needs. Ms. Crotty said that the Navajo Nation is working to streamline its processes for collaboration with the State of New Mexico.

School Bus Transportation Issues

Larry Ute Joe, senior planner, Navajo Division of Transportation (NDOT), referred to his handout ("Navajo Nation School Bus Routes") to give the committee an overview of the challenges facing the road system within the Navajo Nation. He said that the 15,000-mile system includes approximately 6,000 miles of Bureau of Indian Affairs (BIA) roads and 5,000 miles of Navajo Nation roads and that less than 25% of these roads are paved. He said that during heavy rains, it is common for cars to get stuck in the mud, bus routes to be blocked and culverts to be washed out. He also said that the problems extend to residential subdivisions that have unpaved streets and no sidewalks.

Mr. Joe said that the need for repair greatly exceeds available funding. Needed improvements for school bus routes within the Navajo Nation are estimated at \$70 million, and the Navajo Nation receives some funding from the Federal Highway Administration, but only enough to build 19 miles of roads per year. He said that the NDOT must spread funding across 110 chapters when, for example, a single chapter, such as the Red Valley Chapter, has \$4.4 million in unmet road needs.

Mr. Joe said that, aside from construction needs, road maintenance is a critical need. Mr. Joe said that the priority request to the state is for assistance on road maintenance, not construction.

Melissa Kelly, chapter manager, Beclabito Chapter, Navajo Nation, gave a presentation on a proposed rehabilitation project for Navajo Road 5113 (N5113). Ms. Kelly said that the Beclabito Chapter is 18 miles west of Shiprock on New Mexico Highway 64. The main service facilities within the community are an elementary school building, a senior center and a gas station. The nearest health care facilities are in Shiprock or Red Mesa, Arizona. Ms. Kelley said that much of N5113 is a washboard gravel road, and the road is subject to flooding and culvert washouts. The project is to redesign the road, provide adequate drainage, re-gravel and chip seal the road and purchase additional rights of way. The project would be done in two six-mile phases. Ms. Kelly said that the chapter is seeking \$1,800,000 for phase one of the project. (See handout for details.)

Stanley Wauneka, chapter manager, San Juan Chapter, Navajo Nation, gave a presentation on a proposal to improve Navajo Road 366 (N366). He said that the San Juan Chapter is halfway between Shiprock and Farmington and that N366 is a five-mile dirt road used by the community and used as a school bus route. N366 gets graded four times per year, but it needs to be upgraded to a semi-paved road. Mr. Wauneka said that the chapter is requesting \$1,725,000 for chip sealing and graveling of N366.

The committee then entered into a general discussion on the road needs within the Navajo Nation in northern New Mexico. A committee member asked what the Navajo Nation is doing to generate its own road funds. Darryl Bradley, acting division director, NDOT, said that the Navajo Nation receives about \$12 million per year from an 18-cents-per-gallon gasoline tax, \$6 million of which is available for road maintenance.

A committee member asked why San Juan County is not doing more road maintenance. San Juan County Commissioner Wallace Charley said that the state constitution's Anti-Donation Clause is an obstacle that needs to be amended before the county can act. A committee member questioned the county's interpretation of the clause, and the committee member noted that the Anti-Donation Clause had not created an obstacle for TIF and other capital outlay funding. After some discussion, Representative Clahchischilliage asked Mr. Charley to ask the San Juan County attorney to examine the Anti-Donation Clause and provide the committee with the rationale for the county's interpretation of it in regard to road maintenance.

A committee member asked if the NDOT receives a set amount of revenue for school bus routes. Mr. Bradley said that it did not. The NDOT works with the chapters to address their priority needs, but the \$6 million road budget does not go far. The Navajo Nation gets an additional \$54 million in federal funds for roads and uses up to 20% of that for maintenance. The rest of the funding goes for bridges and major construction projects. The NDOT tries to maintain at least 15 miles of roads per chapter, but the maintenance includes periodic grading of dirt roads.

Jeffery D. Bond, transportation coordinator, Gallup-McKinley County School Board, said that similar road issues are being addressed in McKinley County. Mr. Bond said that the biggest issue is with ownership of the road, which includes the BIA and private owners. McKinley County has a good working relationship with the Navajo Nation chapters within the county, but the BIA is an obstacle. He said that, traditionally, the BIA and all the families with property rights along a road need to sign off on a road-maintenance agreement. However, he said, the BIA rarely responds to the county's inquiries.

Committee members requested that representatives from the NDOT, San Juan and McKinley counties and the BIA be invited to the next meeting so that the committee can address this issue.

Shiprock Historical Society

Eugene B. Joe, chief executive officer, Shiprock Historical Society, Inc., presented a proposal to purchase a building for a museum and visitor center, which would be run by the Shiprock Historical Society. The Shiprock Historical Society is a nonprofit organization founded in 2010 to increase public awareness and preserve the unique history of the Four Corners area. Mr. Joe said that the society has members from 19 Navajo Nation chapters in New Mexico, Arizona and Utah. The society's goals are to document all aspects of history in the area, including military history, the founding of settlements and the culinary changes that have occurred in the area. The society publishes four magazines a year covering different topics, such as the history of veterans and the Navajo code talkers. He said that the biggest consumers of the magazines have been the schools.

Mr. Joe said that the society is seeking \$250,000 to purchase a building and its surrounding land and \$400,000 to renovate the building.

Newcomb Chapter

David Randolph, Sr., president, and Lawrence John, chapter manager, Newcomb Chapter, Navajo Nation, gave a presentation on the chapter's infrastructure priorities. (See handout.) Mr. Randolph said that the chapter sits along U.S. Highway 491 and has facilities that serve many neighboring communities. Mr. John said that the majority of projects within the chapter's infrastructure capital improvement plan are those for road maintenance, safety and erosion control. He then outlined four projects: 1) street lights for the intersection of U.S. Highway 491 and Navajo Road 5001, costing \$216,000; 2) a bridge and road project for Navajo Road 5007, costing \$1,380,000; 3) a medical emergency helipad, costing \$220,000; and 4) a natural gas pipeline project, costing \$1,725,000.

A committee member asked if the Newcomb Chapter had sought TIF funding for its road projects. Mr. John said that the chapter had requested TIF funding for its non-road project, but not for roads. He also said that the natural gas pipeline project would be done in phases because of the large total cost.

Impact of Uranium Mining and Cleanup

Fernando Martinez, director, and David Clark, program manager, Mining and Minerals Division (MMD), Energy, Minerals and Natural Resources Department (EMNRD), gave the committee an overview of the history of uranium-mine regulation and cleanup in New Mexico. (See handout.)

Mr. Martinez said that most of the uranium mines are located in the Grants mineral belt. Mining activity was most prevalent during the period of the 1940s to 1960s, before most of the current environmental statutes and regulations were in place. The EPA has developed a five-year plan for mine cleanup, which involves participation from universities; tribal, state and federal agencies; and local communities. The objectives of the 2016-2020 EPA plan include identifying local water supplies, determining the degree of contamination and establishing long-term

management of uranium tailings sites. Often, there is no longer an existing mining company that can be held liable for cleanup costs of abandoned mine sites. He said that the federal and state agencies with jurisdiction over the mine sites (like the MMD) are working through cleaning up these abandoned sites and are about to start work on the Spencer mine.

Mr. Martinez said that the Tronox company's bankruptcy settlement secured approximately \$900 million for cleanup of the former Kerr-McGee sites on Navajo land. The next step in the cleanup process is a December meeting scheduled with Tronox partners.

Paul Robinson, research director, Southwest Information and Research Center, reviewed some of the long-term effects of uranium mining in New Mexico and provided some ideas on how the state could move forward on the issue. (See handout.) He called the viability of the uranium industry into question, stating that world uranium prices are too low to make mining profitable and that 75% of licensed capacity is now idle.

Mr. Robinson said that a key health risk from uranium mine sites is the migratory nature of contaminated water. To address the ongoing problem, he proposed that the legislature: 1) establish an abandoned mine fund; 2) pursue cleanup funds from companies with inactive mines now, while those companies still exist; 3) reestablish a legislative task force on uranium mines; and 4) re-post the draft task force report from 2009 on the legislature's website.

Jordon Johnson, coordinator, McKinley Community Place Matters, provided an assessment of health impacts from uranium mining. (See handout.) Mr. Johnson said that uranium mines create ongoing problems for local communities. He said that the Red Water community has had to be moved out four times and will need to be moved again in a few years to accommodate cleanup operations. Mr. Johnson said that the Red Water community has reported that residents are experiencing posttraumatic stress issues because of the disruptions in their lives and the uncertainty of health risks that they may experience.

Responding to questions, Mr. Martinez said that the MMD believes it now has a good inventory of abandoned mine sites. There are about 260 abandoned uranium mines in New Mexico, but half of these have not been remediated. He said that no one has a good estimate of the total cost for cleanup of those mines. The MMD oversees the permitting of new mines. Permittees are now required to submit a reclamation plan and provide financial assurances for the plans' implementation. The last major call on a reclamation bond may have been for the Arroyo coal mine in 1981, and that resulted in a good reclamation. Jurisdiction for mine cleanup overlaps among the MMD, the NMED, the Office of the State Engineer and other agencies. There are three mines in the permitting process currently; one new one and two that are coming off of inactive status.

A committee member asked about the health studies cited in the handout, and Mr. Robinson said that Navajo miners were used as baseline cohorts for studying the health impacts of smoking in mines. He also said that the 2009 report elaborates on the cancer rate studies cited

in his handout. Mr. Robinson noted that one family had to be permanently relocated because of uranium contamination and that 115 residents of Red Water have been moved temporarily several times.

Asked by a committee member about the long-term prospects for the uranium industry, Mr. Robinson said a continued decrease in the number of active nuclear power plants over the next few years is likely.

Kirtland Youth Association Request

Charles W. Kromer, executive director, Kirtland Youth Association (KYA), presented a proposal for capital outlay to complete a youth activity and service building. (See handout.)

Mr. Kromer said that the KYA is a combined Boys & Girls Club and service organization. The KYA provided breakfast, lunch and other services to 840 children ages five-14 in 2014. He said that the KYA received some funding for phase one of the building, and phase one was completed in 2011. However, the building sat empty until a sewer line was built to service it. Seventy-eight organizations currently use the building.

Mr. Kromer said that the KYA's current request for \$1,300,000 would be used to build phase two of the project. Phase two will add kitchen and classroom space to the building. The KYA has an agreement with the federal Indian Health Service to provide a family doctor and a pediatrician two days a week if the KYA can provide examination rooms. The classrooms can double as examination rooms, Mr. Kromer said. He said that phase two is a shovel-ready project, and the KYA operates the facility with no state funding, so investment in this infrastructure would have a multiplier effect for the state with respect to services provided to the community.

Recess

The committee recessed at 4:07 p.m.

Friday, October 2 — Huerfano Chapter House

Invocation, Welcome and Status Update

Wilson Ray, Sr., president, Huerfano Chapter, Navajo Nation, gave an invocation and welcomed the committee to the Huerfano Chapter. He thanked the committee and the legislature for its assistance to Navajo chapters and the Navajo Nation.

Venting and Flaring

Jon Goldstein, senior energy policy manager, Environmental Defense Fund, gave a presentation on the benefits and challenges of using natural gas as a power source. (See handout.) He said that the use of natural gas or methane has the potential to increase national energy security and reduce air pollution. However, Mr. Goldstein said, wasting natural gas through flaring, venting or well leakage can undermine some of the benefits of natural gas.

Mr. Goldstein said 7,000,000 metric tons of methane are lost each year nationally through waste, which is enough to meet the heating and cooking needs of 530,000 homes. He said that the waste in New Mexico alone represents \$101 million in lost product. Mr. Goldstein noted that waste methane has large short-term impacts on climate change. Compared to carbon dioxide, methane is 84 times more effective at retaining atmospheric heat over the first 20 years when released into the atmosphere, but its efficiency drops over time. He also said that waste methane can combine with other pollutants to cause respiratory health risks. Mr. Goldstein told committee members that National Aeronautics and Space Administration (NASA) satellite data have revealed a methane hotspot over the San Juan Basin.

Mr. Goldstein said that certain states have had larger flaring activities from oil production because the infrastructure in these oil-producing activities had not been set up to capture the resultant natural gas. He said that the North Dakota oil fields are an example of this, flaring as much as one-third of the produced natural gas. Mr. Goldstein noted that government agencies and industry are changing their perspectives on waste gas, and he pointed to goals set by Colorado to achieve zero emissions, which are the result of roundtable discussions between industry and environmental organizations.

Allottees: A Conversation about Oil and Gas Development on the Checkerboard Lands

Etta Arviso, Navajo allottee and board member, Diné Medicine Man Association, said that area residents need government services, such as schools, police and health care. Instead, residents are getting natural gas extraction sites and lots of truck traffic hauling chemicals. She said that the local communities have not received information on whether the companies can contain spills or leaks, and she expressed concern about potential contamination with hazardous materials and the potential effects on wildlife that these activities bring to the community. She said that the community needs to see plans and pictures of how retention wells will be constructed for wastewater, and she requested that monitoring reports be posted at the chapter houses in the drilling areas.

Delora Hesuse, Navajo allottee, said that her father was an allottee leader and that her own view is that the laws and regulations governing natural gas drilling are adequate to protect the environment and cultural artifacts. She said that she had personally examined extraction sites and was very impressed by the process and monitoring of environmental impacts. She felt the industry has a clear priority of safety. She then said that she was speaking for many people who are not as tied to past places and practices. She said that she was speaking for people looking to make business arrangements. She said that some sites are claimed to be sacred but have had development on them for many years.

Oil and Gas Industry Perspective on Oil and Gas Development in the Region

Virgil Chavez, superintendent of capital projects, ConocoPhillips Company, provided an example of the job creation provided by the oil and gas industry and gave an overview of the concepts of venting and flaring. (See handouts.) He said that ConocoPhillips is the largest producer of natural gas in the state and has 750 employees and about 1,000 contractors.

However, he said that it has been a tough year for natural gas prices and that industry layoffs are expected in the near future.

Mr. Chavez said that the industry uses pressure releases on storage tanks, and the EPA estimates that leaks account for less than 1% of natural gas releases. He said that flaring is often resorted to when a well produces natural gas with impurities, such as nitrogen, that pipeline companies will not accept. A producer is then left with the choice either to vent or flare. He said that the industry supports capturing more natural gas, and ConocoPhillips is working on new technology to minimize lost gas. ConocoPhillips has reduced emissions by 50% since 2013, Mr. Chavez noted.

Wally Drangmeister, director of communications, New Mexico Oil and Gas Association (NMOGA), said that methane is a major product for NMOGA members. The NMOGA has concerns about the costs and benefits of various regulation proposals. He said that the Environmental Defense Fund study inadequately examined the economics and the scope of the problem and that using it as a basis for regulation might close a greater number of wells than necessary.

Mr. Drangmeister then summarized the on-the-ground impacts of natural gas drilling in the Chaco Canyon area. (See handout.) He showed a map of the well locations and said that the sites closer to Chaco Canyon are older wells, and the newer wells are located about 10 miles away in the Mancos Shale area.

In the ensuing committee discussion, an audience member said that allotments are quasi-private land within the Navajo Nation. They are subject to some Navajo Nation, state and federal regulations, but allotments are not really part of the Navajo Nation, the audience member said. The Navajo Nation is starting to work out a process of buying these lands back.

Committee members discussed the need to balance preservation of the land with economic development. Concerns were also voiced over abandoned well sites and the need to ensure adequate reclamation efforts once a well shuts down. A committee member asked about the industry's public outreach and efforts to preserve Chaco Canyon. Mr. Drangmeister said that the NMOGA had a "good neighbor" program and will send a representative to discuss the natural gas industry and the industry's activities to any group, organization or school that requests a presentation. He also said that the industry must comply with all the regulations set by the EPA and the various land managers, including the National Park Service, and it uses horizontal drilling techniques to avoid surface impacts at significant sites.

A committee member asked about the typical period for temporary venting and flaring. Mr. Drangmeister said that it varies, but it is typically less than two weeks for flaring, which mostly occurs during the start-up of a well. For venting, he said pressure controllers are installed for the life of the well, and most companies have similar programs to the ConocoPhillips program to replace the high-bleed valves with low-bleed ones.

Responding to a question concerning market prices and projected royalties, Mr. Drangmeister said that the price of oil has been holding at around \$45.00 a barrel, and natural gas has been stable at around \$2.50 per thousand cubic feet without much seasonal flux. He said that while prices have been down, the state is seeing record production, and he would provide LCS staff with the most recent revenue study.

Asked about the methane hotspot in the NASA satellite data, Mr. Drangmeister said that there is little information on where the methane is coming from. The hotspot includes some methane from natural gas production, as well as methane from coal production and agriculture.

Environmental Perspective on Oil and Gas Development in the Region

Colleen Cooley, energy outreach organizer, Diné Citizens Against Ruining our Environment (Diné CARE), and Mike Eisenfeld, San Juan Citizens Alliance, briefed the committee on environmental concerns of area residents with respect to oil and gas development. (See handout.)

Ms. Cooley said that various aspects of oil and gas activity are a cause for concern, including that the U.S. Bureau of Land Management (BLM) permitted drilling activities for 240 wells using hydraulic fracturing (fracking) methods that were not included in the BLM's most recent resource management plan for the area. She said that the BLM has classified these as exploratory wells but that the impact seems to be the same as that for full development. She raised a concern that 30% to 50% of fluid used in fracking operations is left in the ground and could contaminate drinking water sources. She said that local residents have not seen any monitoring of water supplies that are near the wells. She said Diné CARE conducted door-to-door surveys of area residents and has heard of concerns over air pollution from production sites.

Ms. Cooley also voiced concerns about inadequate emergency response infrastructure to support industry development and inadequate public education and communication programs about the industry. She recommended a moratorium on the use of fracking pending the results of several studies on the practice.

Executive Branch Perspective on Oil and Gas Development in the Region

Scott Dawson, deputy director, Oil Conservation Division (OCD), EMNRD, briefed the committee on the development of a new state energy policy and implementation plan. (See handout.)

Mr. Dawson said that the OCD looks at both the geology and the engineering aspects for drilling units. He said that many wells in the San Juan Basin produce over 150,000 barrels in their first year. Noting that oil production in the San Juan Basin has increased dramatically over the last six years, he said that the use of horizontal drilling has reduced the potential impact on the landscape. Horizontal drilling allows several wells to be drilled from the same drilling pad.

Mr. Dawson discussed the state's new energy policy, which was announced on September 8, 2015. He said that the state had not updated its policy since 1991, and the EMNRD held eight listening sessions around the state in the development of the new policy. The goals of the policy are to promote economic growth and job creation. Points of emphasis in the new policy include access to federal lands, streamlining regulatory requirements and addressing the nexus between energy and water. He said that with an eye to job creation, all energy sources are part of the plan, and the state will consider appropriate incentives to increase market potential.

Mr. Dawson said that a major element of the policy is to promote energy infrastructure, including promoting new and expanded oil refinery capacity within the state. At the same time, the state will be working to recruit new manufacturing companies to use the production output or to develop state-of-the-art energy technologies.

Responding to questions, Mr. Dawson said that most permit applications have been preliminarily reviewed by a land management agency, such as the BLM or the State Land Office, prior to being submitted to the OCD. In those cases, the OCD is primarily focused on the engineering and geologic aspects of the permit application. No applications have been denied by the OCD.

Addressing concerns about accidents and potential contamination from well sites, Mr. Dawson said that all spills must be reported within 24 hours, and the OCD monitors the cleanup. When an operation drills through ground water, the process is to use fresh water for drilling, then install and cement a pipe. He said that Rule 34 provides direction on recycling and reuse of oilfield-produced water. Mr. Dawson said that the OCD currently has 17 well inspectors and is advertising for nine additional ones. He said that inspectors generally see 18 to 20 wells per day, and there are roughly 63,000 well sites in the state. The OCD's performance measure is to inspect 37,500 wells per year. Mr. Dawson said that the OCD refers penalty enforcement cases to the attorney general. A court ruling in 2009 requires those cases to be filed in the county in which the infraction occurred.

Federal Government Perspective on Oil and Gas Development in the Region

Victoria Barr, Farmington district manager, BLM, said that the BLM is in the process of developing an amendment to the 2003 resource management plan for the San Juan Basin. She said that this was being done with collaboration among the National Park Service, San Juan County and the Ojo Encino Chapter of the Navajo Nation, and she said that other Navajo Nation chapters had been invited. Speaking about agency responsibility under various federal laws, Ms. Barr said that the BLM is responsible for the base environmental analysis required by the National Environmental Policy Act of 1969 and that the BLM is doing that in consultation with the BIA. The BIA and tribal governments have the lead on the analysis required by the federal Native American Graves Protection and Repatriation Act, and the U.S. Fish and Wildlife Service is the permitting agency for incidental take permits.

Ben Shirley, transportation supervisor, BIA, said that his focus is on stretching available dollars to upgrade BIA roads in the region. He said that most BIA roads had not been constructed to meet large traffic demands from heavy load trucks.

Responding to questions from committee members, Ms. Barr said that federal approvals for drilling depend on the site in question. If the site is an allotment, the BIA approves the surface lease and the BLM issues a subsurface permit. If the allottee owns the mineral rights, the royalties go to the allottee. On allottee land, the BLM retains inspection and enforcement authority. However, the BLM has Indian Self-Determination and Education Assistance Act contracts with the Navajo Nation and the Jicarilla Apache Nation for inspection and enforcement. The rights of way for access roads on allottee and tribal lands are issued by the BIA. On public lands, the BLM has a system of rights of way for the state or counties to construct roads. In those cases, the BLM must complete a connected actions analysis as part of its environmental impact review.

A committee member asked who would be responsible for reconstructing a road that was damaged by heavy truck hauling, for which it was not designed. Ms. Barr said that it would depend on the terms and conditions of the right of way. Some counties require bonding for access roads, so the hauling or drilling company might be liable.

Adjournment

There being no further business before the committee, the committee adjourned at 2:40 p.m.

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 5, 2015
State Capitol, Room 322
Santa Fe**

Monday, October 5 — Joint Meeting with the Legislative Health and Human Services Committee (LHHS)

- 8:30 a.m. **Welcome and Introductions**
—Senator John Pinto, Co-Chair, Indian Affairs Committee (IAC)
—Representative Sharon Clahchischillige, Co-Chair, IAC
—Senator Gerald Ortiz y Pino, Chair, LHHS
—Representative Nora Espinoza, Vice Chair, LHHS
- 8:40 a.m. (1) **Tribal Employers and the Federal Large Employer Mandate**
—Rachel Sibila, Law Student; Author, "Play or Pay: Interpreting the Employer Mandate of the Patient Protection and Affordable Care Act as It Relates to Tribal Employers", *American Indian Law Review*
- 10:00 a.m. (2) **Health Update from the Pueblo of Santa Clara**
—J. Michael Chavarria, Governor, Pueblo of Santa Clara
- 11:30 a.m. (3) **Task Force Report on Breastfeeding in Indian Communities**
—Cindy Chavez, State Coordinator, New Mexico Breastfeeding Task Force (NMBTF)
—Tauf TamuPovi, Tribal Coordinator, NMBTF
—Lucinda Cowboy, Tribal Coordinator, NMBTF
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **Diné Food Sovereignty Alliance (DFSA)**
—Gloria Ann Begay, Project Manager, DFSA
—Noreen Kelly, Volunteer, DFSA
- 2:30 p.m. (5) **"Junk" Food Taxation in the Navajo Nation**
—Moroni Benally, Director, Diné Policy Institute
- 3:30 p.m. (6) **Care Coordination at Kewa Pueblo**
—Maria Clark, Chief Executive Officer, Kewa Pueblo Health Corporation
- 4:30 p.m. **Public Comment**
- 5:00 p.m. **Adjourn**

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

**October 5, 2015
State Capitol, Room 322
Santa Fe**

The fifth meeting of the Indian Affairs Committee (IAC), a joint meeting with the Legislative Health and Human Services Committee (LHHS), was called to order by LHHS Chair Senator Gerald Ortiz y Pino on Monday, October 5, 2015, at 8:45 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Ted Barela
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Nancy Rodriguez
Rep. James E. Smith
Sen. William P. Soules

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. Cliff R. Pirtle
Sen. John C. Ryan
Sen. Benny Shendo, Jr.

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Nick L. Salazar

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Michael Hely, Staff Attorney, LCS
Shawn Mathis, Staff Attorney, LCS
Nancy Ellis, LCS
Diego Jimenez, LCS
Erin Bond, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, October 5**Welcome and Introductions**

Senator Ortiz y Pino introduced his vice chair, Representative Nora Espinoza, and the co-chairs of the IAC, Representative Clahchischilliage and Senator Pinto, and asked members of both committees and staff to introduce themselves.

Tribal Employers and the Federal Large Employer Mandate

Rachel Sibila, who is pursuing a law degree and a master's degree in health administration at the University of Oklahoma, described a study that she conducted during her second year of law school titled, "Play or Pay: Interpreting the Employer Mandate of the Patient Protection and Affordable Care Act as it Relates to Tribal Employers" (see handout). In that report, Ms. Sibila explored the many ambiguities among federal statute, Indian treaty rights and judicial interpretations of requirements of the federal Patient Protection and Affordable Care Act (ACA). Certain provisions of the ACA expressly exempt Native Americans, but the employer mandate to provide insurance does not carve out Native American employers, she said. There currently is a split among the federal circuit courts regarding legislative intent, Ms. Sibila said, so clarification by the U.S. Congress or the U.S. Supreme Court is going to be necessary.

On questioning, members of the committees and Ms. Sibila discussed the following issues:

- the effects of tribal coverage of insurance premiums;
- the assumption that tribes with casinos have greater resources than those without;
- Indian Health Service (IHS) concerns about which mandates apply; and
- confusion about coverage for non-Native American employees of a Native American employer.

Health Update from the Pueblo of Santa Clara

J. Michael Chavarria, governor of the Pueblo of Santa Clara, presented a comprehensive outline of accomplishments and challenges that face the Pueblo of Santa Clara, and he emphasized the need to work together with state agencies and others to craft new solutions. Governor Chavarria referred to a community health profile conducted by the pueblo in 2007, with alcohol and substance abuse identified as major issues. The need for transitional-living facilities remains a top priority for the pueblo, he said. Last year's joint application to the IHS from five northern pueblos seeking construction of a large regional health care facility did not get

funding, Governor Chavarria said, but the pueblos will continue to seek other resources to build this needed facility.

Issues with managed care organizations (MCOs) continue, Governor Chavarria said, as health risk assessments (HRAs) are not being completed for Native Americans enrolled in the state's Medicaid program, community health workers are not being included in meetings with care coordinators and quarterly reporting requirements to Native Americans are not being completed. The Pueblo of Santa Clara is also very concerned with new work requirements for the state's Supplemental Nutrition Assistance Program (SNAP), he stated. The Human Services Department (HSD) and the United States Department of Agriculture have a duty to ensure that SNAP is responsive to the needs of Native American participants (approximately 80,000 in New Mexico), and a tribal consultation is scheduled for October 16 at the Pueblo of Zuni.

Senior citizen programs, funded through state and federal agencies, are highly valued at the Pueblo of Santa Clara, Governor Chavarria said, and the pueblo's 2016 capital outlay request includes renovations, equipment and vehicle purchases. The Santa Clara Regional Adult Day Care Center (SCRADCC) program serves adults with special needs, both Native American and non-Native American, and the pueblo is seeking additional funding for staff, transportation and operation and maintenance. He objected to the state using \$2 million from the Tribal Infrastructure Project Fund (TIF) to pay for non-Indian water users in the Taos water rights settlement at a time when there is great need for upgrading existing water infrastructure. He also noted that the delay in processing intergovernmental agreements (IGAs) has negatively affected many projects, and he asked that a performance period not begin until an IGA has been fully executed. State action also has been lagging with joint pueblo applications for federal funds following devastating impacts to the pueblo from the Las Conchas fire.

On questioning, members of the committees and Governor Chavarria discussed the following issues:

- effects of lost oil and gas tax revenue on tribal infrastructure and water projects;
- pros and cons of the state's use of TIF funds for the Taos water rights settlement;
- incomplete data from MCOs on Native American enrollments; and
- efforts to seek SCRADCC funding from additional sources.

Members of both committees approved motions to send a letter to the Aging and Long-Term Services Department seeking more funding for the SCRADCC and asking why the center's appropriation does not recur annually; and a letter to the HSD, copied to the Legislative Finance Committee, inquiring about the MCOs' lack of completed HRAs for Native Americans and details of how care is being coordinated for these individuals.

Task Force Report on Breastfeeding in Indian Communities

Lucinda Cowboy, tribal coordinator for the New Mexico Breastfeeding Task Force, described the health and bonding advantages of breastfeeding, including cost savings to families

of an estimated \$1,500 a year. Native American mothers start out breastfeeding at a rate of 92 percent, but those numbers drop off quickly as they return to work or do not get the support that they need to continue, Ms. Cowboy said. The goal of the nonprofit task force is to provide support for new mothers through education, advocacy and partnering with community resources. Ms. Cowboy described coordinated efforts in the pueblos and the Navajo Nation, and she urged increased funding for peer counselors, better education for employers and support for expanded family leave policies. The IHS has been a leader in baby-friendly hospitals that support breastfeeding, she said.

Diné Food Sovereignty Alliance

Gloria Ann Begay, project manager of the Diné Food Sovereignty Alliance, and Noreen Kelly, a project volunteer, described the two percent tribal tax on unhealthy foods vetoed by the previous Navajo Nation president but supported by current President Russell Begay and signed into law in 2014. Ms. Begay, a retired educator who now works as an advocate, said there is a scarcity of healthy foods in stores in the Navajo Nation, as well as a lack of jobs, housing, access to services and transportation (see handout). In the Navajo culture, living well is interconnected with food and language, Ms. Kelly explained. Health disparities drove this tax initiative, and environmental issues continue to challenge, with 70 percent of Navajo farmlands currently idle due to lack of water or to contamination. Backyard gardening in residential areas is supposed to be against the law in many areas in the Navajo Nation, she said, but some individuals are gardening in residential areas, and their children now are starting to understand where food actually comes from. Traditional foods, plants and remedies are being restored. Fresh food distribution is very challenging on the huge reservation. Ms. Kelly noted that data from the recent Colorado Gold Mine spill are hard to come by, but she does not believe that there is no residual contamination.

Junk Food Taxation

Revenue from the Navajo Nation tax on certain "unhealthy foods" is being placed into a community wellness development fund, according to Moroni Benally, director of the Diné Policy Institute, with \$300,000 raised after just the first quarter. Administration of the tax and retailer interpretation is a complex matter (see handout), with definitions of "healthy" food sometimes difficult to pinpoint. SNAP recipients are not subject to the tax, he noted, and they are in a group reported to have some of the worst eating habits. The tax dollars raised go to all chapters and are disbursed based on per capita population; each community is to design its own wellness project under strict legal guidelines. Reduced rates of diabetes and obesity will signal success of the effort.

Care Coordination at Kewa Pueblo

Marcia Clark, chief executive officer of the Kewa Pueblo Health Corporation, provided her perspective on Centennial Care and its four MCOs, whose services include physical health, behavioral health and long-term care and community benefits (see handout). Ms. Clark reminded members of the committees that New Mexico's tribes had strenuously opposed the state's Medicaid waiver that included mandatory enrollment of all Native Americans into managed care.

Ultimately, the federal Centers for Medicare and Medicaid Services (CMS) agreed with the tribes, allowing enrollment to be optional, except for those needing nursing facility level of care and those who are dually eligible; individuals in these latter groups would be required to enroll in managed care. Ms. Clark detailed the MCOs' community benefit meant to help keep individuals in their homes, but she asserted that services and coordination are so lacking as to be detrimental to their care. Citing quarterly reports from all four MCOs indicating that more than one-half of Native American enrollees had not completed the HRA to determine their needed levels of care coordination, she asserted that the state's lack of concern about these figures was troubling for taxpayers as well: Native Americans in long-term care are considered high-risk, and MCOs are receiving the highest capitated rate of \$3,700 a month, 2.7 times the annual income level of a single Medicaid recipient.

Ending her presentation with what she termed a positive note, Ms. Clark said that the CMS is moving in the direction of changing regulations for Native Americans, and soon New Mexico will no longer be able to argue that it is necessary to enroll Native Americans in managed care. At that time, there will be increased opportunities for facilities such as her own to address long-term care and improved care coordination for Native American members.

Recess

There being no more business before the committees, the LHHS meeting was recessed and the IAC meeting was adjourned at 3:25 p.m.

Revised: October 20, 2015

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 26-27, 2015
Albuquerque, Pueblo of San Felipe**

**Monday, October 26 — Hogan, Southwestern Indian Polytechnic Institute (SIPI),
Albuquerque**

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:10 a.m. (1) **Welcome and Status Update**
—Dr. Sherry Allison, President, SIPI
- 11:00 a.m. (2) **Sacred Item Sales and Return Resolution: Ten Southern Pueblo
Governor's Council**
—Fred S. Vallo, Sr., Governor, Pueblo of Acoma
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **State Resources Available to Native Entrepreneurs**
—Leslie A. Porter, Director, Office of Business Advocacy, Economic
Development Department (EDD)
—Wade Jackson, General Counsel, EDD
- 2:00 p.m. (4) **Native American Teacher Training Redesign**
—Salvador Hector Ochoa, Dean, College of Education, University of New
Mexico (UNM)
—Glenabah Martinez, Associate Dean for Educator Preparation and
Development, College of Education, UNM
- 3:00 p.m. (5) **Capital Funding Request for Navajo Nation Water Infrastructure**
—Jason John, Branch Manager, Water Management Branch, Navajo
Department of Water Resources
—Mark Maryboy, Consultant, Maryboy Management Group, Inc.
- 4:00 p.m. (6) **Aging and Long-Term Services Department (ALTSD) Capital Outlay
Process**
—Myles Copeland, Secretary-Designate, ALTSD
—Rebecca Martinez, Capital Projects Bureau Chief, ALTSD
- 5:00 p.m. **Recess**

Tuesday, October 27 — Casino Hollywood, Pueblo of San Felipe

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:05 a.m. (7) **Invocation, Welcome and Status Update**
—John Duran, Lieutenant Governor, Pueblo of San Felipe
—Pinu'u Stout, Department of Natural Resources, Pueblo of San Felipe
—Sara Candelaria, Elderly Services Director, Pueblo of San Felipe
—Alissa Chavez Lowe, Education Director, Pueblo of San Felipe
—Bruce Garcia, Language Coordinator, Pueblo of San Felipe
—Debra Haaland, Tribal Administrator, Pueblo of San Felipe
- 11:00 a.m. (8) **Overview of the Santa Fe Indian Center (SFIC): Resources, Partnerships and Goals**
—Kathryn Harris Tijerina, Vice Chair, SFIC
—Anne Wheelock Gonzales, Treasurer, SFIC
- 12:00 noon **Lunch**
- 1:00 p.m. (9) **Update on Class III Indian Gaming**
—Jeffrey S. Landers, Attorney Member and Chair, Gaming Control Board (GCB)
—Paulette Becker, Certified Public Accountant Member, GCB
—Donovan Lieurance, Acting Executive Director, GCB
- 2:30 p.m. (10) **Overview of the TIF Program and Changes to the TIF Guidelines**
—Kelly Zunie, Secretary, Indian Affairs Department (IAD)
—Moses Winston, General Counsel and Legislative Coordinator, IAD
- 4:00 p.m. **Adjourn**

**MINUTES
for the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 26-27, 2015
Albuquerque
Pueblo of San Felipe**

The sixth meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Monday, October 26, 2015, at 10:12 a.m. at Southwestern Indian Polytechnic Institute (SIPI) in Albuquerque.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson (10/27)
Rep. Georgene Louis (10/27)
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle (10/26)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros (10/26)
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez (10/27)

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Nick L. Salazar

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

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Mark Edwards, Staff Attorney, LCS
Michelle Jaschke, Researcher, LCS
Alexandria Tapia, Contractor, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are located on the New Mexico Legislature website (www.nmlegis.gov). Please see handouts for more presentation details.

Monday, October 26

Welcome and Status Update

Dr. Sherry Allison, president, SIPI, gave the invocation. The committee held a moment of silence for the four-year-old girl shot recently in Albuquerque. Senator Pinto then asked the committee members, staff and audience to introduce themselves. He then asked Representative Clahchischilliage to chair the rest of the meeting.

Dr. Allison welcomed the committee to SIPI. SIPI is one of two colleges run by the U.S. Department of the Interior (DOI). The other is Haskell Indian Nations University in Lawrence, Kansas. SIPI has 164 acres of land and is considered a federal enclave. The land was donated by a family, expressly for the education of Indians. At any one time, 65 different tribes are represented in the student population; currently, 50% of the students are Navajo and 30% are pueblo. However, all students at SIPI are registered members of federally recognized tribes.

Dr. Allison said that when she started, SIPI was in danger of losing its accreditation. It took five years to rebuild the entire system at SIPI to meet the accreditation requirements. She said that part of the accreditation issue was that the accrediting entity had additional requirements beyond the requirements of the DOI, including having a regular audit. Now, SIPI gets a financial review each year.

Dr. Allison then said that SIPI is focused on renovation of the campus infrastructure and building student enrollment and graduation rates. For the first time in 40 years, the campus buildings are starting to be renovated. SIPI is getting federal Title III funding for some of the renovations. Phase 1 has begun and will move the administration building across campus. The next phase will be to start work on a student union building to house a bookstore, cafeteria and meeting rooms. SIPI is working to change its culture from a federal program mindset to a college campus mindset.

SIPI's internal analysis determined that the college's full capacity is 702 students, but enrollment has been dropping and the college has hired a recruiting manager to increase enrollment. Dr. Allison said that SIPI prides itself in preparing students for four-year institutions elsewhere, but it needs to improve its own graduation rate, which is approximately 10%. The school will be hosting a tribal forum to look at the curriculum and how to build student interest. Responding to questions from committee members, Dr. Allison said that proposals to increase training for health care professionals and dental therapists would require some authority from the state legislature.

Committee members asked for more information about SIPI's early childhood development program. Dr. Allison said that SIPI offers an associate's degree and is working with New Mexico Highlands University to ensure that class credits can be transferred for students who want to pursue a four-year degree. She said that part of SIPI's ongoing curriculum development is to include native languages and cultural training into the program.

Turning to SIPI's current needs, Dr. Allison said that SIPI is seeking funding in three areas: 1) improvements to its library; 2) fencing to provide additional security for the campus; and 3) on-campus signage because the streets and buildings are not marked and emergency responders cannot currently find their way around campus. A committee member asked if there are adequate road signs off campus. Dr. Allison said that there are few existing signs and that they are hard to see on adjacent streets.

Motion 1

Representative Madalena made a motion, seconded by Senator Martinez, to have the committee work with the appropriate entities to seek appropriate signage on the nearby roads. The motion was approved without objection.

Sacred Item Sales and Return Resolution: Ten Southern Pueblo Governor's Council

Fred S. Vallo, Sr., governor, Pueblo of Acoma, related to the committee some of the challenges faced by pueblo governments to stop the sale of "items of cultural patrimony". As an example, he noted a recent auction of Acoma and Hopi items in Paris, France. He said that the Pueblo of Acoma had sued to stop an auction in Paris to prevent the sale of certain items and had filed a protest with the United Nations. He said that there are large gray and black markets in Native American cultural items. Federal laws against these sales are not adequate to stop these markets, and the pueblo is advocating for additional federal legislation. At the federal level, he said, the need is for tougher penalties, which are now misdemeanors, and a dedicated division within the DOI to monitor the markets. The pueblo is working to build recognition of the problem with eBay and other online marketers about the issue.

Governor Vallo provided a resolution by the Ten Southern Pueblo Governor's Council and said it is seeking two types of legislation: 1) a memorial condemning the sale of items of cultural patrimony; and 2) a method to prevent the sale of these items on state lands or at state facilities. He suggested that one method to stem the market in these items would be to make the lessees at local sales markets (e.g., the flea market at Expo New Mexico) liable for sale of stolen goods.

In the ensuing discussion, committee members raised the following ideas and concerns:

- the flea market may be a difficult target for action. It is so large and diverse, how would the state adequately police the market for sales of cultural items?;
- the need for a "knowledge" or "intent" requirement to violate the law, particularly for flea market and garage sale transactions;

- for items sold as arts or crafts, would a program requiring that those items be certified by the artisan and the seller where violations would result in fines scaled at four times the amount of the sale help slow the market in items of cultural patrimony?;
- the importance of retaining cultural significance and authenticity of pieces; and
- the opportunity to educate members of the public and visitors of the cultural and historic importance of items.

Ann Berkley Rodgers, Chestnut Law Offices, attorney for the Pueblo of Acoma, said that a large part of the problem stems from high-end sales events. She used an example of a sale at New Mexico Expo where the seller knew the item was legally protected. She feels that if the lessees at these shows are held liable, New Mexico would be less of a target by black marketers in these items.

Representative Clahchischilliage requested that the committee revisit this issue at its November 9-10 meeting and asked staff to work with Ms. Rogers on the wording of a potential joint memorial. The joint memorial will include language similar to the resolution from the All Pueblo Council of Governors and will be considered by the committee for endorsement at that time. It was requested that staff also work with LCS staff from the interim Courts, Corrections and Justice Committee to evaluate criminal issues associated with the proposed legislation.

Motion 2

Upon a motion made and duly seconded, the minutes of the August and September meetings of the IAC were approved by the committee.

State Resources Available to Native Entrepreneurs

Leslie A. Porter, director, Office of Business Advocacy (OBA), Economic Development Department (EDD), provided information to the committee about the OBA. The OBA was created in 2011 and functions as an advocate for businesses dealing with the state government. Its primary function is to help business owners break through regulatory roadblocks and red tape, while guiding business owners through the licensing and permitting processes. Ms. Porter highlighted the department's performance measures for the last five months. The OBA also manages the EDD's Business Resource Center — a one-stop shop that provides information about how to sustain and grow a business. The center cultivates strategic partnerships with other economic development or business service providers.

Wade Jackson, general counsel, EDD, discussed the programs, services and incentives provided through the department. Mr. Jackson described the provisions and guidelines for the Local Economic Development Act (LEDA) and the Job Training Incentive Program (JTIP). The EDD has also implemented a new program that funds economic development projects that produce sustainable outcomes, called the Local Economic Assistance and Development Support Program. Mr. Jackson also provided information for New Mexico FundIt and the Local Government Planning Fund under the New Mexico Finance Authority. The MainStreet program is another opportunity for communities to revitalize their traditional and/or historic commercial

districts. The Native American MainStreet program started with the Pueblo of Zuni, the first-ever Native American MainStreet program in the country. Mr. Jackson focused the rest of his presentation on the initiatives through the New Mexico Film Division to grow the industry in communities around the state.

In conclusion, Ms. Porter explained the various tax incentives offered to businesses to encourage and promote economic development around the state. The representatives from the EDD stood for questioning. Committee members made many inquiries about the presentation, including:

- specifics about qualifications and exemptions for the different programs;
- the application processes for the different programs;
- efforts being made by the EDD to reach out to tribal governments with information about the various programs and incentives available;
- the Pueblo of Zuni as the first Native American MainStreet;
- the importance of tracking businesses and individuals that come to the department for assistance;
- the IAC's interest in gathering information about how many Native Americans are utilizing the programs offered by the EDD;
- details about the OBA, including its operating budget and successes in overcoming regulatory hurdles faced by businesses; and
- successes of the different programs.

Committee members asked for additional information on job-creation numbers through the LEDA and JTIP. Members also expressed disappointment that the presentation did not address the EDD's efforts to reach out specifically to Native American businesses. The committee requested information detailing how many Native Americans are taking advantage of the programs and incentives along with an assessment of the EDD's success in serving this population.

Native American Teacher Training Redesign

Salvador Hector Ochoa, dean, College of Education, University of New Mexico (UNM), greeted the committee and introduced members of the faculty who were present at the meeting. Mr. Ochoa outlined the College of Education's eight initiatives aimed at better serving Native Americans and preserving their culture and heritage. In a collaborative effort, members of the faculty briefly presented their current programs:

1. the American Indian Language Policy Research and Teacher Training Center;
2. the American Indian educator mentor program;
3. the Family Listening/Circle Program: an intergenerational family prevention program;
4. Promoting Our Leadership Learning and Empowering Our Nations (POLLEN);
5. the Indigenous Research Lab;
6. the UNM native educational leadership Ed.D. cohort initiative;

7. Striking Eagle Native American Invitational (SENAI); and
8. early childhood transformative action groups at the Pueblo of San Felipe.

Mr. Ochoa noted that the programs are an effort to be responsive to the needs of the state and its Native American communities. Members inquired about the number of students in graduate and teacher education programs. The presenters explained that they are currently in the process of collecting assessment data so they can start tracking such information as graduation and retention rates. The College of Education is working on student exchange programs and distance education in an effort to keep students in their communities.

Committee members expressed concern over the increasing loss of native culture and, more specifically, native languages. Dr. Christine Sims, director of Native American language programs, UNM, shared the same concern and discussed efforts to preserve native languages, including training native language speakers to prepare and teach their native languages through on-site and on-campus workshops. These efforts have required a lot of outreach and community involvement, with hopes of helping students learn more about their own cultural identities.

Committee members praised the College of Education for its success and its important work. The presenters added that they are constantly working with communities, students and public schools to evaluate their curricula and figure out how best to serve their students.

Capital Funding Request for Navajo Nation Water Infrastructure

Jason John, branch manager, Water Management Branch, Navajo Department of Water Resources, addressed the committee about a funding request for water infrastructure in the Navajo Nation. Mr. John provided the IAC with a map illustrating all of the homes that do not have access to water within the Navajo Nation. The map shows more than 4,000 homes — approximately half of which are in New Mexico. A chart was distributed to committee members listing the current projects being funded through capital outlay funding and the Tribal Infrastructure Project Fund (TIF) program. Mr. John stated that the Navajo Nation has over \$700 million in water development needs. He discussed various projects listed on the chart. The Navajo Nation is requesting the financial support of the New Mexico Legislature in the amount of \$50 million to meet the needs of the projects listed.

Following the presentation, committee members inquired about the following:

- an explanation of the Navajo Nation's government structure;
- issues with disconnect and the need to follow projects from inception through completion;
- efforts to work closely with chapters to ensure completion of projects;
- New Mexico being the sole state that provides capital outlay to the Navajo Nation — neither Arizona nor Utah allocate capital outlay funds;
- the need to ensure that chapters are submitting the proper documentation for projects;
- proposed legislation acknowledging certified chapters;

- new audit requirements for capital outlay; and
- time constraints for the use of funding and concern about money being reverted.

A member of the committee asked how much money is being contributed to these water projects from the Navajo Nation. Moses Winston, general counsel and legislative coordinator, Indian Affairs Department (IAD), said that he would get that information to the committee.

Aging and Long-Term Services Department (ALTSD) Capital Outlay Process

Myles Copeland, secretary-designate, ALTSD, said that more than 21,000 American Indian elders reside in New Mexico, not including those in urban areas. The ALTSD's top services include congregate meals, home-delivered meals, transportation, recreation, information and assistance and adult daycare. Capital outlay funds help to address challenges facing the elderly, such as hunger and the lack of caregiving. The ALTSD is targeting entities that have not applied in the past two years or have submitted un-fundable applications. Secretary Copeland noted that the ALTSD is working with facilities to provide the technical assistance they need for the application process, adding that one does not need to be great at grant writing to run a great senior center. There are many worthy projects that just need guidance with the capital outlay process, a task with which the ALTSD is willing to help.

In response to questions from the committee, Secretary Copeland addressed how the ALTSD could help with specific projects. Members asked for updates on projects seeking funding around the state. The ALTSD is going to be sponsoring a training session on capital outlay for 2017, where it can assist attendees with their applications.

Recess

The committee recessed at 4:56 p.m.

Tuesday, October 27

Senator Pinto reconvened the meeting at 10:01 a.m. at Casino Hollywood in the Pueblo of San Felipe and asked Representative Clahchischilliage to chair the meeting. Committee members and staff were asked to introduce themselves. Representative Madalena provided an invocation in Towa.

Welcome and Status Update

Debra Haaland, tribal administrator, Pueblo of San Felipe, welcomed the committee to the pueblo and said that many tribal members were preparing for an upcoming religious event. Ms. Haaland thanked the committee for the work it does on behalf of Native Americans in New Mexico. Members of the pueblo addressed the committee with various issues.

Pinu'u Stout, Department of Natural Resources, Pueblo of San Felipe, addressed the committee regarding some of the issues facing the pueblo and other tribes in the state. Ms. Stout

expressed concern over the removal of cultural items and recounted a recent incident with actors filming in the area who admitted to taking items. State law lacks a prohibition from taking these types of items from private land with the landowner's permission. Ms. Stout requested the support of the committee to convene a work or study group to look at these issues and what it would entail to enact legislation to protect native artifacts.

Representative Clahchischilliage informed Ms. Stout that the committee had a presentation on this issue the previous day and shared the same concerns. A member of the committee requested that tribal, state and federal representatives be added to the work group being requested.

Sara Candelaria, elderly services director, Pueblo of San Felipe, explained some of the barriers to providing quality services to elders in the community. Ms. Candelaria inquired as to why tribes are not eligible for federal Title III funding. With an increased demand for services for seniors, there is more need for additional funding assistance and capital outlay.

Bruce Garcia, language coordinator, Pueblo of San Felipe, discussed efforts to preserve the Keres language. About \$30,000 for those efforts comes from the Public Education Department (PED), representing a \$20,000 decrease in funding. Mr. Garcia said the pueblo has worked hard to establish classes and Head Start programs to reach out to the younger generation, but more funding is necessary to develop curricula and standards for language preservation.

Alissa Chavez Lowe, education director, Pueblo of San Felipe, explained the issues of public transportation that the pueblo is facing when trying to provide support and services for students. The pueblo is currently working with the Rio Metro Regional Transit District to create a partnership. Ms. Lowe would like to see the PED expand definitions to include Head Start in funding, which would allow for increased opportunity to reach out to students at an earlier age. Funding would help meet the increasing expansion of online education. Ms. Lowe also expressed concern that for-profit schools be held to the same standards as public schools. There is a concern for ensuring that these schools are properly preparing students for gainful employment and college. Ms. Lowe thanked the members of the legislature for the funding for the pueblo's public library, which enables the library to offer more services to the community.

Committee members engaged in discussion about the presentation. A member recommended that a written statement from Ms. Candelaria be given to the ALTSD for response. Members expressed support for the need to preserve native languages and thanked Mr. Garcia for his work in that area.

Overview of the Santa Fe Indian Center (SFIC): Resources, Partnerships and Goals

Kathryn Harris Tijerina, vice chair, SFIC, provided background on the SFIC for the committee. The SFIC was formed in 2008 in response to many conversations proposing the need for a center. The SFIC is governed by an all-volunteer board of directors, the majority of whom are Native American. The center is designed by and for American Indian people with the

mission of supporting, promoting and enriching this vital, diverse community by identifying and serving the needs and interests of its people. Ms. Tijerina noted that Indian people are communal, and they desperately need a communal place in Santa Fe. There has never been funding for staff or a physical building. The SFIC is a virtual center and lacks a physical location.

Ms. Tijerina highlighted the populations the center serves, the value of Indian centers, programs offered by the SFIC and the needs of the community. Poverty, homelessness and alcohol-related deaths continue to be major issues in Native American communities. The SFIC proposed a 2016 budget in the amount of \$272,000 and requests that the IAC endorse an appropriations bill.

The committee discussed the following points with the presenters:

- additional resources to provide assistance to the SFIC, such as the Indian Health Service and the National Council of Urban Indian Health;
- challenges associated with registering urban Indian children with one tribe; and
- the outcome of a recent meeting with the IAD.

Motion 3

A motion was made by Representative Madalena, seconded by Senator Martinez, to direct staff to draft legislation for the full amount requested by the SFIC, citing the IAD as the fiscal agent. After discussion by the committee, the amount of the appropriation request was increased to \$372,000 to include services for urban Indians in Albuquerque and Santa Fe. The draft legislation would be brought before the committee at its final meeting for endorsement.

Update on Class III Indian Gaming

Representatives from the Gaming Control Board (GCB) met with the IAC to provide an update on the 2015 Tribal-State Class III Indian Gaming Compact. To date, 12 gaming tribes have signed on to the 2015 compact; those that remain under the 2007 compact are the pueblos of Laguna, Sandia, San Felipe and Santa Ana. There are currently 22 casinos operated by 14 tribes; two are included in the compact but are not operating a casino; one (the Pueblo of Pojoaque) is operating a class III gaming casino without a compact.

Jeffrey S. Landers, board member, GCB, outlined the provisions of the 2015 compact. On the issue of free play, the 2015 compact states that promotional credits that may not be exchanged for cash are not counted as revenue for calculating adjusted net win. Notable differences between the 2007 and 2015 compacts include regulatory oversight, hours of operation and a lower percentage of revenue share by the gaming tribes to the state.

The committee addressed the following topics with the GCB panel:

- the effectiveness of compulsive gambling funds;

- what is being done regarding free play with the tribes not under the 2015 compact;
- an update on the secretarial procedures lawsuit regarding the Pueblo of Pojoaque;
- an update on litigation between the Pueblo of Pojoaque and the five members of the GCB, as well as others named individually;
- deferred action on the issuance of licenses of vendors;
- the amount of regulatory fees;
- the meeting schedule of the GCB; and
- the increasing popularity of online sports betting and actions taken by other states regarding the issue.

The IAC extended the opportunity for the Pueblo of Pojoaque to respond to the GCB's update on the litigation and vendor licenses. Joseph M. Talachy, governor, Pueblo of Pojoaque, remarked that New Mexico is in a declining gaming market, making negotiations difficult. The Pueblo of Pojoaque views seeking secretarial procedures as its option. In regard to the injunction with the GCB, the pueblo is working to resolve the issue. The inaction by the GCB has caused vendors to be intimidated about doing business with the pueblo. Governor Talachy also expressed concerns about the increasing popularity of online gaming.

Overview of the TIF Program and Changes to the TIF Guidelines

Mr. Winston provided the committee with three separate handouts covering the TIF program, a project status update and proposed changes for the Tribal Infrastructure Board guidelines and procedures.

TIF Program Overview. There are 23 nations, tribes and pueblos located in New Mexico, including 54 chapters of the Navajo Nation. From 2006 through 2015, the TIF has funded 188 projects, totaling \$83,446,428. Mr. Winston provided a breakdown of project distribution by nation, tribe, pueblo and chapter, respectively. There are still over \$2.2 billion in tribal infrastructure needs and over \$89 billion in tribal water, wastewater and solid waste needs.

IAD TIF and Capital Outlay Project Status Update Report. In 2015, the Tribal Infrastructure Board funded 32 projects in the amount of \$14,273,958. Capital outlay allocations from the legislature totaled \$4,633,411 for the funding of 42 projects for 2015. This document provides a thorough breakdown of all projects, along with the current status of each one. Information for 2012 through 2014 is also included.

Changes to the Tribal Infrastructure Board's Guidelines and Procedures. Mr. Winston briefed the committee on the proposed changes. He said the changes address the duties of the board to comply with statute; the definition change for the term "project"; and revision of the early termination on incomplete projects clause.

The following are some questions raised and topics addressed in response to the presentation.

- A committee member requested the number of vetoes on capital outlay projects in tribal areas.
- Members discussed the implications of the change regarding early termination and the importance of entities using allocated money to avoid reversion of funds.
- A definition of the term "master plan" was requested.
- Several committee members expressed dissatisfaction with the proposed changes and the lack of input from tribal entities on the matter. There was concern that the proposal had inadequate tribal collaboration, and it was recommended that adoption of the changes be postponed to allow for tribal input.
- There is a need for increased communication and notification about upcoming meetings to the committee, tribal leaders and the public.
- There was discussion about the traditional interpretation by the legislature on use of capital outlay and the concept of "bricks and mortar".
- The IAD needs to take a more instrumental role in amending Tribal Infrastructure Board procedures.

In response to the discussion from the committee, Kelly Zunie, secretary of Indian affairs, added that the department has to be accountable for the spending and usage of money in the TIF; it is that accountability that keeps it viable. Accountability must be held among the board, the IAD and, most importantly, the tribes. Secretary Zunie added that there are other recommended changes, but in light of the perceived lack of tribal collaboration and adequate notice, the board has decided to limit the proposed changes.

Adjournment

There being no further business before the committee, the IAC adjourned at 4:12 p.m.

Revised: October 29, 2015

**TENTATIVE AGENDA
for the
SEVENTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 2, 2015
Room 307, State Capitol
Santa Fe**

Monday, November 2

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:05 a.m. (1) **[House Bill 236 \(2015\): Fiscal Impacts on Tribal, Water, Colonias, Education and Legislative Capital Funding](#)**
—Jeff Eaton, Research and Fiscal Policy Analyst, Legislative Council Service
- 12:00 noon **Lunch**
- 1:00 p.m. (2) **[Tribal Responses to House Bill 236](#)**
—TBD
- 3:30 p.m. **Adjourn**

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

**November 2, 2015
Room 307, State Capitol
Santa Fe**

The seventh meeting of the Indian Affairs Committee (IAC) for the 2015 interim was called to order at 10:10 a.m. by Senator John Pinto, co-chair, on Monday, November 2, 2015, in Room 307 of the State Capitol in Santa Fe.

Present

Sen. John Pinto, Co-Chair
Rep. Sharon Clahchischilliage, Co-Chair
Sen. Ted Barela
Rep. D. Wonda Johnson
Rep. Georgene Louis
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Rep. James E. Smith

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William P. Soules

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley
Sen. George K. Munoz
Rep. Debbie A. Rodella
Sen. Clemente Sanchez

Staff

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

Guests

The guest list is in the meeting file.

Handouts

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

Monday, November 2

Welcome

Senator Pinto welcomed the committee and members of the audience and asked committee members and guests to introduce themselves. He asked that Representative Clahchischilliage chair the remainder of the meeting.

House Bill (HB) 236 (2015): Fiscal Impacts on Tribal, Water, Colonias, Education and Legislative Capital Funding

Jeff Eaton, research and fiscal policy analyst, LCS, presented an overview of the impact of HB 236 on the Severance Tax Permanent Fund (STPF) and severance tax bonding capacity. The STPF was established by the legislature as a constitutionally protected endowment in 1976 to receive and invest severance taxes collected on natural resources extracted from New Mexico lands. Concerns about depletion of the corpus of the STPF resulted in the statutory changes contained in HB 236. The bill changes the percentage split between bond payments from the STPF and deposits to the STPF from the current 95/5 split to a phased in 86/14 split by 2022.

Members discussed how the legislation contained in HB 236 developed from an "equal cuts" model for fund beneficiaries to a series of phased-in cuts designed to minimize the immediate impact on the Tribal Infrastructure Project Fund (TIPF), the Colonias Infrastructure Project Fund and the Public School Capital Outlay Fund. A member noted that when it became evident that HB 236 was going to pass, the member sought a floor amendment to reduce the negative impact of the bill on the TIPF. Several members noted that passage of that amendment reduced the impact of the proposed cuts contained in HB 236 for the TIPF from an estimated \$12 to \$14 million to \$1.7 million over the next 10 years. Members also discussed the difficulty in deriving a reliable prediction regarding the actual amounts of the cuts over time. Mr. Eaton projected that the TIPF cutbacks will amount to \$170,000 annually over the next 10 years.

One member pointed out that the information presented about HB 236 does not address tribal concerns regarding the \$2 million that was taken from the TIPF to pay for a non-native portion of the Taos water rights settlement as part of the capital projects bill passed during the 2015 special session. A committee member provided an overview of how the capital outlay bill developed during the course of both the 2015 regular and special sessions, and the member described the terms of the ongoing Indian water rights settlement agreement. The member noted that the state is legally bound to provide the total \$12.5 million necessary to comply with the settlement terms at this point and that violation of the agreement would compromise the \$1.3 billion in federal funding that is conditioned on that agreement. The legislator observed that when difficult funding choices have to be made, funds such as the TIPF that appear to have unused fund balances are at risk of being tapped for other purposes, and the legislature enjoys that prerogative. The legislator stated that additional payments for water rights settlements will

have to be forthcoming from the state and, with respect to HB 236, he asserted that the burden of the cutbacks is shared by all of the beneficiaries of the STPF.

Tribal Responses

Gaylord Siow, second fiscale, Pueblo of Laguna, presented a statement from Pueblo of Laguna Governor Virgil A. Siow and described several infrastructure projects, including reconstruction of three roadways, within the pueblo that have been completed over the last three years utilizing the TIPF. Gaylord Siow noted that the pueblo supports the idea proposed by one member to direct gaming revenue to tribal infrastructure projects to ensure that sufficient funding is available. He reported that TIPF funds have helped the pueblo leverage other critical funding for infrastructure projects and asked if there has been any effort at the state level to monitor global oil prices to better predict severance tax bonding capacity for the state. Mr. Eaton responded that his estimate that HB 236 will result in a reduction of \$170,000 annually over the next 10 years is based on the estimate of the state's Consensus Revenue Estimating Group (CREG). Mr. Eaton stated that the CREG does not make revenue projections, but that a new revenue estimate is due in December. It was noted that oil and gas production in the state is at an all-time high, but that prices have been dropping, reducing revenue inflow to the STPF.

Andrew Othole, planning and development director, Pueblo of Zuni, expressed concern about the direction that the state is taking in reducing funding for tribal infrastructure. Mr. Othole stated that the issue of solvency for the STPF is a concern, but that the state is proceeding without understanding the full impact of reducing funds for the TIPF. He also expressed support for the idea of steering gaming revenue into tribal infrastructure, but noted that the Pueblo of Zuni is a non-gaming tribe and depends largely on seasonal cottage industries for revenue. Referencing the *Zuni* lawsuit, Mr. Othole stated that the lack of a tax base in the area has been a primary motivation for past and present legal action with respect to public school capital outlay and operational funding. He explained that the pueblo is targeting sustainable development as an economic driver for the area but that, at present, the unemployment rate ranges from 50 percent to 68 percent. Mr. Othole stated that basic principles of state policy, including a mandate for tribal collaboration, have been ignored in the process of reducing TIPF funding, and he called for a legislative inquiry to examine why tribal collaboration has not taken place and what the consequences will be for future tribal infrastructure development.

Jeff Haozous, chair, Fort Sill Apache Tribe, stated that if the purpose of the meeting was to hear tribal concerns with respect to the removal of funds from the TIPF, that purpose had been obscured. He observed that the \$2 million taken from the TIPF affects every tribe in the state, not just the Pueblo of Santa Clara, which had TIPF funding for an infrastructure project withdrawn in this process. Mr. Haozous stated that the responsible thing for the state to do is to raise severance taxes, not to take money from the most vulnerable populations. He asserted that it is not the purpose of government to endow funds, but rather to generate revenue and spend it appropriately.

Wainwright Velarde, council member, Jicarilla Apache Nation, shared his tribal commission's conclusion that tribes cannot just "roll over" and accept the TIPF changes. He stated that the Jicarilla Apache Nation understands the budget issues at hand for the state but that the infrastructure needs are so great and so visible on tribal lands that other solutions must be found. Mr. Velarde expressed the disappointment of the Jicarilla Apache Nation in HB 236, stating that it balances the budget on the backs of the poor. He also expressed appreciation for the amendment, but he observed that all of the tribes will now compete for fewer dollars. Mr. Velarde charged that the \$2 million taken from the TIPF for the water rights settlement was not fair or right and that HB 236 will create more problems than it resolves. He asked that a better legislative basis for action be established than "robbing the TIPF or reducing the fund". Mr. Velarde also called for a legislative inquiry with regard to the legality of the use of TIPF funds for water rights settlements, and he beseeched the committee to explore the possibility of using gaming revenue to restore funding for tribal infrastructure projects.

Jason John, water manager, Navajo Nation, described the vast extent of unmet need for water infrastructure projects on the Navajo Nation. He presented an overview of the water and wastewater projects that have been completed or are in planning phases using TIPF funding in the Ramah, To'hajiilee, Mariano Lake, Alamo, Counselor, Lybrook, Standing Rock and Shiprock chapters, among others. The Navajo Nation has been using around \$2 million per year in TIPF funding for water infrastructure projects, many of which have been identified by the Navajo Area Indian Health Service as critical needs.

Chavez John, director, Navajo Division of Community Development, protested the TIPF reductions on behalf of the more than 100,000 voters residing in the Navajo communities he represents. Chavez John elaborated on the tremendous need of those communities for basic services and infrastructure. He asked that the committee seek to reestablish state and tribal collaboration in accordance with the provisions of the State-Tribal Collaboration Act, noting that such collaboration has not taken place in the case of the TIPF funding reductions.

Casey Begaye, manager, Capital Improvement Office, Navajo Nation, reiterated the need to adhere to the provisions of the State-Tribal Collaboration Act and detailed the extensive planning that goes into the Navajo Nation's capital program. Gil Arviso, director for engineering services, Navajo Nation, stated that much of the criticism leveled at the Navajo Nation with regard to not planning and completing projects is inaccurate. He talked in detail about the planning processes, noting that the Navajo Nation invests its own capital in the planning and assessment process for all of the Eastern Navajo Agency chapters. He suggested that it would behoove the committee to reexamine the impact that the TIPF cutbacks will have on Native American populations, and that governor-to-governor and state/tribal collaboration are essential. It was noted that the State-Tribal Collaboration Act applies only to executive agencies, not to the legislative branch.

Members expressed support for increasing funding for TIPF purposes and for reexamining what the legislature and the executive branch might do to generate additional

revenue for tribal infrastructure. Some members expressed concern that the TIPF had become at risk for being used for purposes not contemplated in statute as a result of failure to both initiate and complete projects, particularly on the part of the Navajo Nation. One member asked if there was any movement to establish a New Mexico office of the Navajo Nation to more efficiently handle capital projects and related issues. Chavez John reported that the Navajo Nation is working on standardizing processes for capital projects, including assisting chapters with land use planning and procurement issues, and streamlining the approval processes.

Amber Kanazbah Crotty, council delegate, Navajo Nation, asked that the committee look at the human aspect of the funding cutbacks and described environmental and mental health emergencies that run throughout the many chapters she represents in both New Mexico and Arizona. Ms. Crotty stated that Navajo health issues were a primary driver for establishing the TIPF, and she noted that the jobs and services that result from infrastructure development are an important adjunct to that issue. She described the hardships for widows, orphans and the sick on the Navajo Nation and asked how the Navajo Nation can care for babies contaminated by uranium in utero without basic services such as running water and wastewater systems. Ms. Crotty explained that the recent water crises resulting from mining spill contamination of the San Juan and Animas rivers prevent children from safely playing near the rivers and that there is a real need for other infrastructure to serve Navajo youth and schoolchildren. She described a self-fulfilling system of neglect whereby children who are not able to access school bus services due to a lack of infrastructure do not attend school and are therefore not counted for the school system's operational funding. She said that the Navajo Nation has developed a state task force to identify and address these challenges and define their impact.

Ms. Crotty questioned how the hold harmless provisions for tribes reportedly included in HB 236 would actually function with less funding available, and she asked that the committee listen to the voices of those most in need. She asked Mr. Eaton to provide details of how the annual reduction of \$170,000 in funding for the TIPF had been estimated. In addition, Ms. Crotty asked that the committee consider amending HB 236 to take out the reductions to the TIPF in the upcoming legislative session.

Raymond Concho, director, Planning and Engineering Department, Pueblo of Acoma, reported that the pueblo had provided written comments to the TIPF Board regarding the funding reductions. Contrary to what the executive branch has claimed, he stated, the tribes do plan and develop infrastructure projects carefully and thoughtfully. Mr. Concho described \$150 million in road, water and wastewater infrastructure projects planned for the Pueblo of Acoma, noting that all efforts have recently been steered to water and wastewater projects. He pointed out that ownership of the Acoma infrastructure projects accrues to the state as well as to the pueblo. The preservation efforts now under way at the historic church (named one of the most important and most at-risk sites by a national historic preservation organization) benefit the state tourism industry and the cultural heritage of the pueblo and the state.

Mr. Concho described some of the green projects and practices that the pueblo has worked on with TIPF funding to preserve the unique structures and surroundings on Acoma Mesa, including a waterless composting project. He stated that the Pueblo of Acoma is in compliance with the executive order audit requirements to receive funding and has been in compliance with all of the TIPF guidelines and project deadlines. Mr. Concho asserted that the pueblo has the capacity to proceed with the many infrastructure plans it now has and asked what more the pueblo could do to access funding. He questioned the legality of taking \$2 million from the TIPF to pay legal costs in the water rights settlement case when those expenses do not comply with the TIPF guidelines. Mr. Concho informed the members that the New Mexico Tribal Planner's Roundtable, a group that provides opportunities for tribes to share best practices and programs, will be meeting on November 10, but that the Indian Affairs Department (IAD) has declined to attend. Mr. Concho thanked the committee for the opportunity to provide an update on pueblo plans and activities and to comment on TIPF issues. He invited the committee members to be among the first to use the new waterless composting facilities at the Pueblo of Acoma.

Committee members discussed alternatives for meeting tribal infrastructure needs. One member asked what the IAD is doing to help tribes access funding through the TIPF. Moses Winston, general counsel and legislative director, IAD, stated that the IAD now issues warning letters to tribes that are not in compliance with the requirement that they spend at least five percent of their allotted funds within a specified time frame. Acknowledging that it is unlikely that the provisions of HB 236 will be amended or repealed, some committee members asserted that they would help the tribes by looking for other revenue sources for tribal infrastructure. Similarly, noting that the \$2 million reduction in the TIPF is a separate issue, one member stated that there may be legal remedies for the tribes to pursue in that regard.

Adjournment

There being no further business before the committee, the meeting adjourned at 3:33 p.m.

Revised: November 5, 2015

**TENTATIVE AGENDA
for the
EIGHTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 9, 2015
Humanities Commons Room, Santa Fe Indian School
Santa Fe**

**November 10, 2015
Room 322, State Capitol
Santa Fe**

Monday, November 9 — Humanities Commons Room, Santa Fe Indian School, Santa Fe

- 10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee
- 10:05 a.m. (1) **Welcome and Status Update**
—Roy Herrera, Superintendent, Santa Fe Indian School
- 11:00 a.m. (2) **State Engineer and Interstate Stream Commission (ISC) Update on Indian Water Rights Settlements**
—Tom Blaine, P.E., State Engineer
—Deborah Dixon, P.E., Director, ISC
—Amy Haas, General Counsel, ISC
- 12:30 p.m. (3) **Working Lunch: Report on Small Loan Regulation**
—Sunny Liu, Analyst, Legislative Finance Committee
- 1:30 p.m. (4) **Funding Request from Sheep Springs Chapter, Navajo Nation**
—Sally A. Joe, Secretary/Treasurer, Sheep Springs Chapter, Navajo Nation
- 2:00 p.m. (5) **Funding Request from the Navajo Nation Department of Water Resources**
—Marlin Saggboy, Irrigation Supervisor, Shiprock Office, Navajo Nation
Department of Water Resources
- 2:45 p.m. (6) **Funding Requests from the Pueblo of Zia**
—David Pino, Governor, Pueblo of Zia
—Eric Ruiz, Lieutenant Governor, Pueblo of Zia
—Robert Medina, Tribal Attorney, Pueblo of Zia

- 3:30 p.m. (7) [High School Industrial Maintenance Program](#)
—Randy Pacheco, Dean, School of Energy, San Juan College
—Casmir I. Agbaraji, Ph.D., Dean of Instruction Services, Navajo Technical University
—Terry Dayish, Senior Consultant, Governmental Affairs, Arizona Public Service Company

4:15 p.m. **Recess**

Tuesday, November 10 — Room 322, State Capitol, Santa Fe

10:00 a.m. **Call to Order**
—Senator John Pinto, Co-Chair, Indian Affairs Committee

- 10:10 a.m. (8) [Update on School Bus Transportation Issues](#)
—Paul Aguilar, Deputy Secretary of Finance and Operations, Public Education Department (PED)
—Latifah Phillips, Assistant Secretary of Indian Education, PED
—Nadine Groenig, Director of Indian Education, Arizona Department of Education (Invited)
—Dr. Colleen W. Bowman, Interim Superintendent, Central Consolidated School District
—Carmen Moffet, Interim Superintendent, Gallup-McKinley County School District
—R. Barry Williams, Superintendent, Apache County School District, Arizona
—Tommie C. Yazzie, Ed.D., Superintendent, Red Mesa Unified School District, Arizona
—Jeffery Bond, Transportation Coordinator, Gallup-McKinley County School District
—Cindy Theodore, Transportation Coordinator, Central Consolidated School District

11:55 a.m. **Approval of Minutes**

12:00 noon **Lunch**

- 1:00 p.m. (9) [Ensuring Usable and Safe School Bus Routes: Questions of Jurisdiction and Rights of Way](#)
—Dave Keck, Public Works Administrator, San Juan County
—Doug Decker, County Attorney, McKinley County
—Darryl Bradley, P.E., Acting Division Director, Navajo Division of Transportation
—TBD

3:00 p.m. (10) [Consideration of Legislation for Endorsement](#)
—Peter Kovnat, Legislative Council Service

4:00 p.m. **Adjourn**

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

**November 9-10, 2015
Santa Fe Indian School and Room 322, State Capitol
Santa Fe**

The eighth meeting of the Indian Affairs Committee was called to order by Representative Sharon Clahchischilliage, co-chair, on November 9, 2015 at 10:12 a.m. at the Humanities Commons Room at the Santa Fe Indian School in Santa Fe.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Sen. Ted Barela (11/9)
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle (11/9)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr. (11/9)
Rep. James E. Smith
Sen. William P. Soules

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. D. Wonda Johnson
Rep. Georgene Louis
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Sen. George K. Munoz
Sen. Clemente Sanchez

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

Minutes Approval

Because the committee will not meet again this interim, the minutes for this meeting have not been officially approved by the committee.

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Michelle Jaschke, Researcher, LCS
Mark Edwards, Drafter, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, November 9 — Humanities Commons Room, Santa Fe Indian School

Representative Clahchischilliage called the meeting to order at 10:12 a.m. and asked the committee members and audience members to introduce themselves, which they did.

Welcome and Status Update

Roy Herrera, superintendent, Santa Fe Indian School (SFIS), welcomed the committee to the campus. He said that the SFIS teaches grades seven through 12 and has nearly 700 students currently enrolled, with 500 living on campus. Most of the students come from New Mexico's 19 Indian pueblos, the Navajo Nation, the Mescalero Apache Tribe and the Jicarilla Apache Nation. Superintendent Herrera said that the SFIS has a day bus to help off-campus students with their commutes. Seventeen other tribes from around the country are currently represented in the student population.

Superintendent Herrera said the SFIS is a leader among federal Bureau of Indian Education (BIE) schools. Highlighting some accomplishments, he said that of the 183 BIE schools nationally, only two, including SFIS, were able to administer the online PARCC exams for their students. The 2014 graduating class earned \$3.5 million in scholarships, including six students who received the prestigious Bill and Melinda Gates scholarships. The SFIS has a high school graduation rate of over 82%, outpacing the statewide rate for New Mexico of 70%. Superintendent Herrera said that 90% of graduating seniors planned to pursue post-secondary education.

The current priority for the SFIS is to create a safer and more welcoming entrance for the school from Cerrillos Road. Superintendent Herrera said that the SFIS has been in discussions with the New Mexico Department of Transportation (DOT) and working with the City of Santa Fe about an entrance design. The plan is for the SFIS to donate some of its road frontage to create space for a dedicated turning lane into the school. He asked the committee to support a \$900,000 general obligation (GO) bond request for the first phase of the project.

In the ensuing committee discussion, a question was raised whether the Constitution of New Mexico would bar state funds from going to the school. Mark Duran, lobbyist for the SFIS, said that this is not an issue and that the SFIS has been on both the GO and severance tax bond funding lists for the last 12 years. A committee member noted that Cerrillos Road is part of the state road system and asked whether the project was in the state transportation planning process (STIP). Superintendent Herrera said that it was, but discussions with the DOT revealed that the STIP process would take about 10 years. A committee member suggested that the two phases

should be viewed as separate projects. Phase 1 of the project is for infrastructure work on the campus grounds and should seek GO bonds, and phase 2 is for the turnout on Cerrillos Road and should be included as an "enhancement" in the local transportation improvement plan (TIP). Phase 2 should seek severance tax bond funding through the capital outlay process. Superintendent Herrera said that the SFIS had been in discussions with the DOT District 5 engineer and would inquire about being put in the local TIP.

Superintendent Herrera said the federal Bureau of Indian Affairs (BIA) also would need to approve the project. He explained that the BIA maintains the infrastructure on the SFIS campus, while the BIE manages the education programs.

Motion

Upon a motion by Senator Martinez, seconded by Senator Soules, the committee agreed without objection to send a letter to the Legislative Finance Committee (LFC) to support GO funding for phase 1 of the SFIS project.

Office of the State Engineer (OSE) and Interstate Stream Commission (ISC)

Tom Blaine, state engineer, Deborah Dixon, P.E., director, ISC, and Amy Haas, general counsel, ISC, gave the committee the annual status report on proposed Indian water rights settlements as required by statute (Section 72-1-11 NMSA 1978). Three settlements are currently pending implementation: the Navajo Nation water rights settlement within the San Juan River adjudication; the settlement of the water rights for the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso in the *Aamodt* adjudication; and the water rights settlement for the Pueblo of Taos in the Rio Pueblo de Taos/Rio Hondo *Abeyta* adjudication (known as the Taos settlement). The state entered into a settlement agreement with respective tribes for each of these settlements in 2005 and 2006, and federal authorizing legislation for each settlement was enacted in 2009 and 2010. A foundational element for each settlement is the construction of water delivery or utility infrastructure for the respective tribes that is to be paid for mostly with federal funding but requires some state matching funds (see OSE handout).

Navajo Nation Water Rights Settlement.

The presenters said that the foundational infrastructure for this settlement, the Navajo/Gallup water supply project (NGWSP), is currently under construction. The water supply for the project will come from the Navajo Reservoir on the San Juan River. The implementation of the settlement has two components: a legal process component and a funding/construction component. Within the legal component, a new environmental impact statement was completed for the project and federal authorizing legislation was enacted in 2009. In 2010, the state and the Navajo Nation entered into a conforming settlement agreement that included a partial final court decree. In 2013, the court issued two partial final judgments and decrees in the San Juan River adjudication, although four parties filed appeals to those rulings.

Within the funding and construction component, the state entered into a cost-sharing agreement with the federal government in 2011. The federal Bureau of Reclamation (BOR) estimates that the total cost of the NGWSP is \$1.66 billion, of which the state's share is \$50 million. The BOR is anticipated to credit approximately 75% of the \$40 million the state has already spent on water utility infrastructure for the Navajo chapters and the City of Gallup. In addition, the state has previously contributed \$13.6 million in direct funding to the NGWSP. Currently, the state is \$6 million from paying its obligation. However, any remaining balance will begin to be indexed in October 2016. The settlement agreement also has a clause whereby the state will seek \$10 million in federal funding for non-Indian irrigation systems in the San Juan River Basin, but receiving that funding is not a settlement requirement.

Ms. Haas said that Attorney General Patricia Madrid and Governor Bill Richardson represented the state in the 2005 settlement and Attorney General Gary King and Governor Richardson represented the state in the 2010 conforming settlement. Ms. Haas also said the state is waiting for the non-Indian irrigators to develop a plan with the BOR's Upper Colorado region. The ISC can then support the funding request, but the state is under no obligation if the funding is not appropriated by Congress.

A committee member asked if the OSE and ISC are going to make a separate budget request for the Navajo Nation water rights settlement. Ms. Haas said they have traditionally requested \$15 million for the water rights budget within the OSE each year to meet the state's obligations for all pending Indian water rights settlements instead of separating them out. She said that the ISC notes upcoming deadlines, such as the Taos settlement deadline for 2015, but how or whether to meet the obligation is left to the legislature.

Aamodt Settlement

In May 2006, the state, the City of Santa Fe, Santa Fe County and the Pueblos of Nambé, Pojoaque, Tesuque and San Ildefonso signed an agreement to settle the water rights claims for the four pueblos in the Nambé-Pojoaque-Tesuque (N-P-T) stream system. In 2010, federal legislation was enacted, and a conforming agreement was signed by the parties in 2013. The agreement has four central elements:

- 1) although the pueblos primarily have senior water rights, there are restrictions on when the pueblos may make a priority call on the N-P-T system;
- 2) aside from the amount of water allocated to the pueblos under the settlement, the federal government will acquire 2,500 acre-feet of water per year (AFY) for their economic development;
- 3) the federal government (the BOR) will construct a regional water system to deliver potable water within the N-P-T valley to the pueblo and non-pueblo communities. The

construction cost for the system will be shared by federal, state and county governments. The non-pueblo portion of the system is projected to deliver 1,500 AFY; and

4) there are incentives for non-pueblo residents currently on domestic wells to transfer to the regional system.

A committee member asked about a recent decision by Santa Fe County to suspend its cost share payments. In response, Tony Flores, deputy county manager, Santa Fe County, said that the county still supports the settlement, but wants to resolve right-of-way issues on county roads before resuming payments. He said that the BIA had sent a letter declaring to the county that some of its roads are trespassing on the lands of the Pueblo of San Ildefonso. He said the issue came up during the survey for placement of pipelines for the regional water system.

Asked by a committee member if the county's position would pose problems for the settlement, Ms. Haas emphasized that the state's financial responsibilities are considered separate from the county's. However, discussions are ongoing between the parties in an effort to keep the settlement on schedule. The settlement has no requirement for purchase of rights of way for the pipelines. The rights of way should be considered either a contribution made by the Pueblo of San Ildefonso or separate from the settlement.

Charlie Dorame, former governor of the Pueblo of Tesuque and chair of the Northern Pueblos Tributary Water Rights Association, commented that the right-of-way issue is about roads and would remain with, or without, the settlement. He asked for support for continuing funding of the water system so that it can remain on schedule to be completed by 2024.

James Rivera, former governor, Pueblo of Pojoaque, echoed Governor Dorame's statement saying that some activists are conflating the right-of-way and settlement issues to muddy the picture. He questioned whether anyone within the N-P-T valley would not understand the difference between the issues, as the OSE has held many local public meetings about the settlement since 2010.

Taos Settlement

Mr. Blaine said the funding is complete for this settlement. Ms. Dixon added that the budget request for water rights settlements would remain at \$15 million and that if the state can keep a \$15-million-a-year pace for the next five years, the remaining obligations for the *Aamodt* and Taos settlements will be complete.

A committee member noted that the projection for severance tax bond revenues for fiscal year (FY) 2017 is low and asked when the state's payments are due. Mr. Blaine said that the payment for the *Aamodt* settlement is due when construction begins, probably in 2018. For the Navajo settlement, it is due by the end of construction, but the balance is indexed after October 1, 2016. In the ensuing discussion, committee members raised the following points:

- there is urgency to pay the state's settlement shares early to avoid paying the indexing costs;
- the possibility exists to use general fund revenues for the settlements to avoid any severance tax complications; and
- a request should be made to the ISC and OSE for information on the economic multiplying effect of the federal funding for project construction for the settlements.

Report on Small Loan Regulation

Sunny Liu, analyst, LFC, gave a presentation on a draft study of the consumer lending industry in New Mexico. The study was requested by House Memorial (HM) 131 (2015). The study updated a report requested by HM 36 (1999). Mr. Liu interviewed representatives from 28 different business, governmental and consumer interest organizations for the study, and the Financial Institutions Division of the Regulation and Licensing Department contributed to the data collection for the report.

A major concern for consumer interest groups is the extent of rollover loans within the industry, and they recommend a cap on the effective annual percentage rate (APR) required of borrowers. Industry groups are concerned that capping loan rates will drive companies out of the market and result in limiting credit availability to many people. Industry representatives support disclosure of all loan terms to borrowers and expanded financial education, and they said that the state should wait until new federal consumer guidelines are finalized by the Consumer Financial Protection Bureau (CFPB) before taking any action.

Mr. Liu said the LFC study reviews the history of the small loan market in New Mexico and the status of loan regulation within other states. The study found that after the New Mexico Small Loan Act of 1955 was amended to add requirements for payday loans, the market trend has been that companies are issuing fewer payday loans and more installment loans. The report includes an overview of regulation proposals and a list of regulation efforts in other states, including a synopsis of an analysis of payday loan regulation in Colorado developed by the Pew Charitable Trusts.

In responding to committee questions, Mr. Liu said that there are no plans to include legislative recommendations. However, the study is still under refinement, and the LFC is continuing discussions with the various entities. He said that consumer interest and industry groups have some overlapping interests with regard to transparent transactions and protecting credit availability. Imposing rate caps has led the industry to leave some markets, but the LFC is working to define the distinctions between different loan instruments to clarify the data on that point.

A committee member asked if there is any analysis regarding the high-end APR rates, particularly on tax refund anticipation loan rates. Mr. Liu responded that the data sets are very limited. The Financial Institutions Division has difficulty getting the data from the industry, so there is not much for the LFC to analyze.

Mr. Liu said that the LFC had not set a time line to finalize the study, but it hopes to include the CFPB guidelines once they are finalized. Committee members recommended that LFC staff also review a 2013 study by the Center for Community Economic Development and attend a November 16, 2015 symposium by the National Center for American Indian Development as part of its effort to finalize the study.

Sheep Springs Navajo Chapter

Amber Krotty, delegate, Navajo Nation Council; Louise Charlie, vice president, Sheep Springs Chapter, Navajo Nation; and Sally A. Joe, secretary/treasurer, Sheep Springs Chapter, Navajo Nation, gave a presentation on two infrastructure projects the chapter is seeking this coming year. The Sheep Springs Chapter sits next to the Chuska Mountains north of Gallup and is accessed by State Highway 134. (Full project descriptions are in the Sheep Springs Chapter handout in the committee file.)

Ms. Joe said the first project is for construction of a regional multipurpose center. The center would be used: 1) as a place to promote the creation and sale of local artwork for economic growth; 2) to provide office space for the chapter; 3) as a recreation center for children for several Navajo Nation chapters; and 4) as an office for the Temporary Assistance for Needy Families (TANF) program. The land for the building site has been approved by the chapter, and two years ago the chapter received \$240,000 out of the Tribal Infrastructure Project Fund (TIF) for planning and design of the center. Construction is projected to cost \$5 million.

Responding to questions from the committee, Ms. Joe said that the all of the TIF funding for design of the regional center has been encumbered and the architect was expected to present the final design to the chapter on November 13, 2015. She also said the chapter is completing a proposal for 2016 TIF funding for construction and is looking at the possibilities for cost sharing from the chapter and the Navajo Nation.

Delegate Krotty said the second project request is for \$80,000 for a feasibility study for an earthen dam for irrigation. She said that the Navajo Nation is a "food desert" for affordable, nutritious food. The dam is part of the chapter's effort to create a locally available source of food. She said that the chapter already has a grant from the U.S. Department of Agriculture's (USDA's) Natural Resources Conservation Service (NRCS) for farming education. The NRCS grant is part of a tri-county effort in San Juan, Cibola and McKinley counties to reestablish local community gardens. However, providing irrigation water will be challenging, as the Navajo Nation has a six-year waiting list for feasibility studies. A committee member suggested that the chapter seek assistance from the USDA's Farm Services Administration (FSA) as well, reporting that the FSA's \$16 million set-aside for Native American communities is being underutilized.

Shiprock Irrigation System

Marlin Saggboy, irrigation supervisor, Shiprock Irrigation Project (SHIP), presented a \$448,808 funding request for the purchase of heavy equipment for irrigation system maintenance.

The SHIP serves 1,000 farmers along the San Juan River. (Full project description is in the committee meeting file.)

A committee member noted that funding for capital outlay projects will be challenging for FY 2017.

Native American High School Dual Credit Program

Randy Pacheco, dean, School of Energy, San Juan College (SJC); Tony Otero, coordinator, School of Energy, SJC; and Terry Dayish, senior consultant, governmental affairs, Arizona Public Service Company (APS), presented a request for funding to expand an industrial maintenance education program. (Details of the funding request are in the handouts in the committee meeting file.) Navajo Technical University (NTU), APS and SJC are partners in sponsoring a program wherein high school students receive training for jobs in the electric power industry and earn college credits. The program started in 2012 and currently has 12 students, but the sponsors would like to expand the program to 48 students over the next five years.

Mr. Dayish said the program was necessary because the industry has changed. Jobs that used to be available to high school graduates now require at least an associate's degree. Mr. Otero said the program has 20 instructors who are working in the industry. Participating students can receive a program certificate and an associate's degree in applied sciences. He said the program has a 90% graduation rate and 85% to 90% of the graduates are being hired locally at starting salaries ranging from \$40,000 to \$50,000 per year. After five years, a graduate can earn as much as \$100,000 per year.

Mr. Pacheco said the program is currently hosted at the Four Corners Power Plant and focuses on jobs in oil and gas power production and the mining industries. SJC has the second-highest number of degrees offered to Native American students in the country, but Mr. Pacheco believes it can become number one. The program is receiving interest from other states, and the sponsors would like to expand the training into the Navajo chapters. The goal for the dual credit/industrial training program is to build it into a bachelor's of applied science (B.A.S.) degree program. The projected costs to expand the program are \$960,000 over five years. The up-front costs to install a modular classroom with equipment and establish a B.A.S. degree program will require nearly one-half of the five-year total. The first year request is for \$442,000.

Responding to committee questions, Mr. Pacheco said that the program is reaching out to the Aztec, Bloomfield and Farmington school systems to become future program partners. Currently, APS provides the classroom, the Central Consolidated School District (CCSD) provides classroom equipment and student transportation from Kirtland and Shiprock and NTU develops the curriculum and certification program. While training is offered on a variety of equipment, including turbines and generators, the partners are not trying to duplicate other programs already offered. For example, he said that Santa Fe Community College has a good program in renewable energy, so they chose not to offer that.

The committee recessed at 4:15 p.m.

Tuesday, November 10 — State Capitol, Room 322

Call to Order

Representative Clahchischilliage called the meeting to order at 10:08 a.m. and asked the committee members to introduce themselves, which they did.

Proposed Legislation

Mr. Kovnat presented five pieces of legislation submitted for committee endorsement.

#1 — Joint Memorial: Protection of Cultural Property, discussion draft .202320.2

Mr. Kovnat said that he had followed up with Ann Berkley Rodgers, attorney, Pueblo of Acoma, and Pinu'u Stout, director, Natural Resources Department, Pueblo of San Felipe. State law is broader than federal law with regard to protection of cultural items, and while federal protection is limited to tribal properties under the federal Native American Graves Protection and Repatriation Act, state law includes items of non-native origin.

Motion

The committee unanimously approved a motion by Representative Smith, seconded by Senator Martinez, to endorse the legislation. Representative Smith will be the sponsor in the house of representatives, with Senator Cisneros taking the lead in the senate.

#2 — Appropriation: \$372,000 for Services Provided to Urban Indians in Santa Fe and Albuquerque, discussion draft .202317.1

Motion

The committee unanimously approved a motion by Senator Martinez, seconded by Representative Smith, to endorse the legislation. Senator Martinez will be the sponsor.

#3 — Joint Resolution: Constitutional Amendment to Allow State Funding of Tribal Colleges, discussion draft .202270.3

Motion

The committee unanimously approved a motion by Representative Smith, seconded by Representative Madalena, to endorse the legislation. Representative Clahchischilliage will be the sponsor.

#4 — Appropriation: \$6 million for the Navajo Water Gallup Supply Project, discussion draft .202399.1

Motion

The committee unanimously approved a motion by Senator Pinto, seconded by Representative Smith, to endorse the legislation. Representative Lundstrom will be the sponsor.

#5 — School Districts Transportation Boundary Agreements, discussion draft .202402.1

Mr. Kovnat said that this bill would require the Public Education Department (PED) to step in to resolve student busing disputes between school districts. Currently, there is a departmental rule that allows, but does not require, the PED to resolve these disputes. The committee noted that a letter requesting a message from the governor would be needed.

Motion

Without objection, the committee accepted a motion by Representative Madalena, seconded by Representative Smith, to amend the bill to remove the limitations on what would justify a transportation boundary agreement.

Motion

The committee unanimously approved a motion by Representative Smith, seconded by Representative Madalena, to endorse the legislation as amended. Senator Munoz will be the sponsor in the senate, and Representative Johnson will be the primary co-sponsor in the house.

Representative Clahchischilliage informed the committee that she and Senator Pinto would be co-sponsoring a joint memorial requested by Diné College and would contact the rest of the committee when it is ready.

Update on School Bus Transportation Issues

Representative Clahchischilliage noted that this item was a continuation of the committee discussion in a meeting in Gallup earlier in the interim regarding who pays for, and has jurisdiction for, students that cross the Arizona-New Mexico state line to attend school.

Latifah Phillips, assistant secretary of Indian education, PED, said that her office is working on a draft memorandum of understanding (MOU) between districts. When the draft is ready, the PED will send it to the Arizona school districts for review. She said the PED is confident that a cross-border agreement for the 2016-2017 school year can be reached among the various school districts. Nadine Groenig, director of Indian education, Arizona Department of Education, said a draft local MOU was provided to the committee as a handout.

Dr. Colleen W. Bowman, interim superintendent, CCSD, said her district is working on cross-county issues between San Juan and McKinley counties. She said there has been a history of parents sending their children to Gallup for school despite living within the boundaries of the CCSD. She said that 21 students this year are cross-county students, nine of whom ride the bus. To resolve the issue, the districts need to acknowledge parental choice. Given that they have no

evidence of children coming from the Gallup district to the CCSD, she said the children are likely traveling to be in school in the area where their parents work.

Carmen Moffet, interim superintendent, Gallup-McKinley County School District (GMCSA), said that some students are traveling between Navajo chapters for school, citing Naschitti to Tohatchi as an example. The GMCSA has a turnaround bus stop at the county line where students are dropped off and from there they need to walk or get a ride home. Superintendent Moffet hoped the Navajo Nation Division of Transportation (NDOT) would agree to provide transportation for these students from the county line to their home chapters.

R. Barry Williams, superintendent, Apache County School District, Arizona, said he was very encouraged by these most recent discussions and he welcomed the report on a local MOU, but said that it is an interim measure. The issue extends through many Navajo chapters up and down the state border and needs a broad, long-term solution. He said the governing factors for an agreement should be: 1) a school's proximity to a student's home; 2) the transportation needs of the student's family (e.g., where the parents work); and 3) most importantly, the safety of the student.

Lynette Michulski, superintendent, Window Rock Unified School District, Arizona, said the district is currently reviewing the draft MOU, and the initial reaction was encouraging.

Lee Zhonnie, president, Red Valley (Arizona) Chapter, said that Red Valley has a high school located right on the state line with a surrounding community on both sides. He said a big issue is how federal funds are paid to the school, and the chapter is being penalized because of cross-border accounting disputes.

Cindy Theodore, transportation coordinator, CCSD, said that the district transports 4,300 students daily over 4,500 miles. She said that transportation funding is not keeping up with the wear and tear on the buses. Five buses were scheduled for replacement this year, but funding was only available for one. Two bus routes continue to be served by buses that are over 12 years old, which violates PED regulations. However, she questioned the viability of a 12-year expectation, as the bus routes for the CCSD are long mileage routes.

Jeffery Bond, transportation coordinator, GMCSA, said the border issue is not the only student transportation challenge. School district boundaries are also an issue. The GMCSA is a huge district, and many of the district's buses have over 200,000 miles on them. He said 10 buses needed to be replaced this year, but the district was only able to replace five. Last year, 12 needed replacement but only five were replaced, so the district is running behind. Other challenges include a shortage of qualified bus drivers, which reduces routes and road conditions. Mr. Bond said that these challenges contribute to longer commute times for students. He said that the GMCSA had an agreement with Cibola County, but it needs to reach agreements with San Juan and Sandoval counties.

Delegate Krotty said that the issue needs to be resolved because children from cross-border communities end up excluded from their neighbors when they cannot attend the same schools. She said this has adverse effects on students. Mel Begay, delegate, Navajo Nation Council, said that a typical school day lasts until 4:00 p.m., and if a student is bused to the county line and then must walk three to six miles to get home, the student is likely to be walking after dark during the winter months. He said that cuts into the productivity of a child's critical school years.

Priscilla Manuelito and Kevin Mitchell, school board members, GMCSO, said they are glad to be working through the issue with the CCSD. The issue has been a source of controversy for a couple of years, but the focus needs to be on the schoolchildren.

Albert Paul, resident, Beclabito Chapter, Navajo Nation, said the same issue exists between the CCSD and Aztec Municipal School District.

Committee members asked for an update on bridge and road problems. Mr. Bond said it is still a major challenge. Over 100 bridges within the GMCSO are rated for 10 tons or less; however, an empty school bus weighs 10 tons and a full one can weigh up to 15 tons. The district is trying to acquire smaller buses, but having fewer students per bus creates other problems. Repair work for both the bridges and the roads in the district is complicated because of jurisdiction over rights of way. Some stretches of road on allottee land require multiple permissions. In addition, if a bus cannot cross a bridge, larger emergency vehicles would also be prohibited. Most of the bridges are World War II Army surplus bridges, and no one has evaluated the support substructure for them.

Turning to the cross-boundary busing issue, committee members asked: 1) whether a local MOU would be sufficient or if a state-level intergovernmental agreement (IGA) would be needed; and 2) if the parties involved could set a schedule to resolve the issue before the second semester of the 2015-2016 school year.

Responding to the committee's desire to resolve the issue before the spring semester, Ms. Phillips agreed that the PED would host a follow-up meeting before the end of the year and invite the committee members as well as the school districts.

Ensuring Usable and Safe School Bus Routes: Questions of Jurisdiction and Rights of Way

Representative Clahchishilliage started the discussion by saying that this agenda item was a follow-up to discussion at the committee's meeting in Mitten Rock. At that meeting, San Juan County Commissioner Wallace Charlie noted that ownership of the rights of way is an obstacle to having the county perform road maintenance and repair on reservation land because of the Constitution of New Mexico's Anti-Donation Clause and ownership of the rights of way.

Dave Keck, public works administrator, San Juan County, said the county faced four challenges to working on roads on the Navajo Nation:

- 1) a lack of funding; the county has no tax base on the nation;
- 2) working without a right of way may equal "trespassing" and getting permissions can be very complicated;
- 3) concerns about the Anti-Donation Clause; and
- 4) questions about sovereign immunity and jurisdiction for lawsuits.

Mr. Keck said San Juan County has an informal agreement with the BIA to take care of roads in the checkerboard area, but never has had a formal written agreement. The county helps maintain some 400 miles of roads; however, without a formal agreement, it could be asked to abandon those roads. The county does have an IGA with the NDOT to construct or maintain some roads, which has worked well to replace some bridges and to improve gravel roads in the Shiprock area.

Doug Decker, county attorney, McKinley County, said the legal obstacle to county work on reservation land is not the Anti-Donation Clause, but a possible "takings" challenge. Without a right of way, a county could be considered a trespasser. He said McKinley County has 335 miles of existing roadway without any express right of way. Normally, these roads would be considered adversely possessed by the county, but adverse possession is not viable against a sovereign nation. These are BIA federal lands and cannot be adversely possessed. The complication is that several decades ago, the BIA subdivided the land and allotted the subdivisions to individual residents. Now those allottees are considered to be private landowners who must give permission for road work.

Mr. Decker used the washout of the Manuelito Canyon bridge as a example of the problem. The bridge was washed out in 2010, and the county received federal disaster funding to fix it, but the work has been held up for five years because not all of the 696 allottees on this stretch of road have given their permission. The county is on its thirteenth extension to use the federal funding, but a solution may be possible if the local Navajo chapter accepts the responsibility for the right-of-way issue. McKinley County has had success working on roads when local chapters take a lead in the process.

Darryl Bradley, P.E., acting division director, NDOT, spoke to the necessity of collaboration between the Navajo Nation and the counties. He said that the number of road miles within the Navajo Nation overwhelms the NDOT's maintenance budget. Working with the counties extends the work that is able to be done.

In conclusion, Mr. Decker indicated that the county's goal is to get the roads fixed. He said a solution would be for the state to allow funding to be used on roads that do not have express rights of way.

Motion

On a motion by Representative Smith, seconded by Senator Martinez, the committee approved the minutes of the November 2, 2015 meeting without objection.

Adjournment

The committee adjourned at 4:26 p.m.

ENDORSED LEGISLATION

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR TEMPORARY
TRANSPORTATION BOUNDARY AGREEMENTS BETWEEN AND AMONG ADJOINING
SCHOOL DISTRICTS; ESTABLISHING PROCEDURES AND CRITERIA FOR
TEMPORARY TRANSPORTATION BOUNDARY AGREEMENTS; CREATING A
RESOLUTION PROCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 22, Article 16 NMSA
1978 is enacted to read:

"[NEW MATERIAL] TEMPORARY TRANSPORTATION BOUNDARY
AGREEMENTS.--

A. School districts may enter into temporary
transportation boundary agreements with an adjoining school
district or adjoining school districts to transport students
living within a specified area to a school within the adjoining

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1 school district.

2 B. No temporary transportation boundary agreement
3 shall be valid unless it has been approved by both the local
4 school board representing the school district in which the
5 student resides and the local school board of the proposed
6 attendance school district."

7 SECTION 2. A new section of Chapter 22, Article 16 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] TEMPORARY TRANSPORTATION BOUNDARY
10 AGREEMENTS--PROCEDURES AND CRITERIA.--

11 A. A temporary transportation boundary agreement
12 shall not duplicate transportation services that are not
13 required to implement the provisions of this section unless
14 specific justification for provision of duplicate
15 transportation services are provided within the agreement that
16 meet the requirements of efficiency and economy.

17 B. The temporary transportation boundary agreement
18 shall include a legal description of the adjoining area outside
19 of the school district's boundaries in which transportation
20 services shall be provided under terms of the agreement.

21 C. The agreed-upon temporary transportation
22 boundary line and the existing school district boundary line
23 shall be shown and highlighted on United States geological
24 survey maps, or their equivalent, that are attached to the
25 agreement.

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1 D. The duration of the temporary transportation
2 boundary agreement shall be determined by the local school
3 boards that are part of the agreement based upon the length of
4 time that the agreement shall be in effect.

5 E. Upon review and findings that conditions of the
6 temporary transportation boundary agreement and applicable
7 rules and state and federal laws have been complied with, the
8 state transportation director and the secretary shall approve
9 the temporary transportation boundary agreement.

10 F. All school boards participating in the temporary
11 transportation boundary agreement shall review the agreement
12 annually. Any revisions to the agreement shall be submitted to
13 the department for approval prior to the initiation of service.
14 If no changes are made in the agreement, it may be continued
15 for an additional year.

16 G. Transportation funding for students who receive
17 transportation services within the area approved through the
18 temporary transportation boundary agreement shall be provided
19 by the school district in which the students attend school.

20 H. Termination of a temporary transportation
21 boundary agreement may be accomplished by one or both school
22 districts through notification to the department and school
23 districts that the agreement has been terminated."

24 **SECTION 3.** A new section of Chapter 22, Article 16 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] NONREIMBURSABLE TRANSPORTATION SERVICES.--

2 A. Students who attend an out-of-district school as
3 a matter of choice are ineligible to be counted for the
4 transportation distribution from the department. Such students
5 shall be counted on the first reporting date as ineligible
6 student riders.

7 B. School districts shall establish local policies
8 that shall be in accordance with applicable state and federal
9 laws and rules governing the transportation of ineligible
10 students who live outside of the school district boundaries.

11 C. School districts that, by local policy, choose
12 to provide transportation services to ineligible students shall
13 do so at no additional cost to the school's transportation
14 fund. Such students may board the bus at the last legal stop
15 on an approved route if space is available. School districts
16 shall not add additional services or equipment to accommodate
17 ineligible students. Ineligible students shall not generate
18 funding through the transportation formula."

19 SECTION 4. A new section of Chapter 22, Article 16 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] TRANSPORTATION BOUNDARY DISPUTES--
22 RESOLUTION PROCESS.--

23 A. When transportation boundary disputes arise
24 between local school boards that cannot be resolved within
25 thirty days, the local school boards shall use the following

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1 resolution process:

2 (1) local school boards shall first request
3 their respective local government entities, including counties,
4 municipalities or chapter houses, to conduct an examination of
5 the issues relating to the transportation boundary dispute and
6 provide written recommendations for resolving the dispute
7 within thirty days;

8 (2) if the local school boards cannot agree on
9 the local government entities' recommendations, one or more of
10 the local school boards may file a written complaint with the
11 department after all efforts to negotiate a resolution to a
12 transportation boundary dispute have failed;

13 (3) the department shall establish criteria to
14 resolve transportation boundary disputes; and

15 (4) upon request from one or more school
16 boards, the department shall conduct a complete review of the
17 issues related to a transportation boundary dispute and shall
18 render an opinion in writing to the requesting local school
19 boards within ten days. The opinion shall specify whether
20 conditions exist that require a temporary transportation
21 boundary agreement based upon department criteria.

22 B. If the local school boards are unwilling or
23 unable to negotiate a temporary transportation boundary
24 agreement consistent with department criteria, the department
25 shall develop a temporary transportation boundary agreement.

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1 The local school boards shall comply with the requirements set
2 forth in the temporary transportation boundary agreement. The
3 temporary transportation boundary agreement shall be reviewed
4 annually by the department. The department shall rescind the
5 temporary transportation boundary agreement when the conditions
6 requiring the agreement no longer exist.

7 C. The decision of the department shall be final."

8 SECTION 5. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2016.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO SUPPORT PROGRAMS THAT PROVIDE SERVICES TO URBAN INDIANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Three hundred seventy-two thousand dollars (\$372,000) is appropriated from the general fund to the Indian affairs department for expenditure in fiscal year 2017 to support programs that provide services and promote wellness, education and self-sufficiency to Native Americans domiciled in Bernalillo and Santa Fe counties, but who are not domiciled on tribal land. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 shall revert to the general fund.

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1 HOUSE JOINT RESOLUTION

2 52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

3 INTRODUCED BY

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8 FOR THE INDIAN AFFAIRS COMMITTEE

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10 A JOINT RESOLUTION

11 PROPOSING TO AMEND ARTICLE 4, SECTION 31 AND ARTICLE 12,
12 SECTION 3 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW TRIBAL
13 COLLEGES TO RECEIVE STATE FUNDS.

14
15 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. It is proposed to amend Article 4, Section 31
17 of the constitution of New Mexico to read:

18 "A. No appropriation shall be made for charitable,
19 educational or other benevolent purposes to any person,
20 corporation, association, institution or community, except for
21 a tribal college, not under the absolute control of the state,
22 but the legislature may, in its discretion, make appropriations
23 for the charitable institutions and hospitals, for the
24 maintenance of which annual appropriations were made by the
25 legislative assembly of nineteen hundred and nine.

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1 B. As used in this section, "tribal college" means
2 a tribally, federally or congressionally chartered post-
3 secondary educational institution located in New Mexico that is
4 accredited."

5 SECTION 2. It is proposed to amend Article 12, Section 3
6 of the constitution of New Mexico to read:

7 "A. The schools, colleges, universities and other
8 educational institutions provided for by this constitution
9 shall forever remain under the exclusive control of the state
10 [~~and~~]. No part of the proceeds arising from the sale or
11 disposal of any lands granted to the state by congress [~~or any~~]
12 shall be used for the support of any sectarian, denominational
13 or private school, college or university. No other funds
14 appropriated, levied or collected for educational purposes,
15 shall be used for the support of any sectarian, denominational
16 or private school, college or university, except for a tribal
17 college.

18 B. As used in this section, "tribal college" means
19 a tribally, federally or congressionally chartered post-
20 secondary educational institution located in New Mexico that is
21 accredited."

22 SECTION 3. The amendment proposed by this resolution
23 shall be submitted to the people for their approval or
24 rejection at the next general election or at any special
25 election prior to that date that may be called for that

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HOUSE JOINT MEMORIAL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

A JOINT MEMORIAL

REQUESTING THE ATTORNEY GENERAL AND CULTURAL AFFAIRS DEPARTMENT
TO WORK WITH TRIBAL AND COMMUNITY LEADERS TO MAKE
RECOMMENDATIONS FOR ENHANCED PROTECTION OF CULTURAL ITEMS AND
CULTURAL PROPERTIES FROM THEFT, WRONGFUL SALE OR ALIENATION.

WHEREAS, pursuant to the Cultural Properties Act,
"cultural property" means a structure, place, site or object
having historic, archaeological, scientific, architectural or
other cultural significance; and

WHEREAS, under the Cultural Properties Act, the
unauthorized appropriation of cultural property is a violation
of state law; and

WHEREAS, the theft, wrongful sale or alienation of
cultural property is damaging to all cultures and communities
in New Mexico; and

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1 WHEREAS, the federal Native American Graves Protection and
2 Repatriation Act describes the rights of Indian tribes with
3 respect to the treatment, repatriation and disposition of
4 Native American human remains, funerary objects, sacred objects
5 and objects of cultural patrimony, referred to collectively in
6 the statute as cultural items, with which they can show a
7 relationship of lineal descent or cultural affiliation; and

8 WHEREAS, "cultural patrimony" is defined under the federal
9 Native American Graves Protection and Repatriation Act as an
10 object having ongoing historical, traditional or cultural
11 importance central to the Native American group or culture
12 itself, rather than property owned by an individual Native
13 American, and which, therefore, cannot be alienated,
14 appropriated or conveyed by any individual regardless of
15 whether or not the individual is a member of the Indian tribe
16 or Native Hawaiian organization and such object shall have been
17 considered inalienable by such Native American group at the
18 time the object was separated from such group; and

19 WHEREAS, it is a federal crime to steal, misappropriate or
20 sell cultural patrimony or cultural items under the federal
21 Native American Graves Protection and Repatriation Act; and

22 WHEREAS, the Native American nations, tribes and pueblos
23 in New Mexico are ancient communities, each with a unique
24 culture, heritage, language and world view, that have worked
25 steadfastly to maintain and protect their spirituality and

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1 traditional cultural practices; and

2 WHEREAS, the theft, wrongful sale or alienation of
3 cultural patrimony is not only illegal, it is also deeply
4 offensive because it strikes at the heart of what it means to
5 be tribal people and at the core of cultural belief systems in
6 ways that impact what is significant and sacred; and

7 WHEREAS, despite the illegality of the practice, New
8 Mexico continues to be a target for those who engage in the
9 theft, sales and purchase of cultural items; and

10 WHEREAS, this misappropriation of cultural items has
11 surpassed the reach of state and federal law, with sales
12 occurring internationally in galleries and at auctions, leaving
13 Native American nations, tribes and pueblos in New Mexico with
14 little recourse;

15 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
16 STATE OF NEW MEXICO that the attorney general and the cultural
17 affairs department be requested to work with tribal and
18 community leaders to review the Cultural Properties Act and
19 applicable federal laws to make recommendations for enhanced
20 protection of cultural items, take steps to prevent the theft,
21 wrongful sale or alienation of cultural items and cultural
22 properties and discourage such acts by way of the creation and
23 enforcement of treaties, laws and joint powers agreements to
24 curtail these destructive practices; and

25 BE IT FURTHER RESOLVED that copies of this memorial be

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underscored material = new
~~[bracketed material]~~ = delete

1 transmitted to the secretary of cultural affairs, the secretary
2 of Indian affairs, the governor, the attorney general, the New
3 Mexico congressional delegation and the appropriate interim
4 legislative committees.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE INDIAN WATER RIGHTS SETTLEMENT
FUND FOR THE STATE'S SHARE OF THE NAVAJO-GALLUP WATER SUPPLY
PROJECT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Six million dollars
(\$6,000,000) is appropriated from the general fund to the
Indian water rights settlement fund for expenditure in fiscal
year 2017 and subsequent fiscal years to pay the state's share
of the Navajo-Gallup water supply project. Any unexpended or
unencumbered balance remaining at the end of a fiscal year
shall not revert to the general fund.

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