

Nevada Indian Commission Board of Directors Meeting Minutes

Thursday March 5, 2020
10:00 AM

Meeting Locations: Department of Tourism and Cultural Affairs
Laxalt Building, Second Floor Commission Chambers
401 North Carson Street
Carson City NV 89701

Grant Sawyer State Office Building
555 East Washington Avenue, Room 1400
Las Vegas NV 89101

I. Convene Meeting, Roll Call of Commissioners and Establish Quorum

Chairman Richard Arnold convened the March 5, 2020 Nevada Indian Commission Board of Directors Special Meeting at 10:00 AM. Director Montooth conducted a roll call and **a quorum was established.**

Members Present:

Chairman Richard Arnold
Vice-Chair Kostan Lathouris
Commissioner Kelly Krolicki
Commissioner Lori Pasqua (*arrived during Agenda Item III*)
Commissioner Brian Wadsworth

Others Present:

Executive Director Stacey Montooth
Sari Nichols, Program Officer, Nevada Indian Commission
Tori Sundheim, Deputy Attorney General
Richard Bowlen, American Indian Alliance UNLV
Kelly Clark, USDA Rural Development Native American Outreach Coordinator
Marla McDade Williams, Strategies 360
Dominique Etchegoyhen, Nevada Department of Conservation & Natural Resources
Jude Hurin, Deputy Director Nevada Department of Motor Vehicles
Ward Patrick, Administrator State Public Works Division representing the Department of Administration
Delaney Mercer, Tribal Liaison, for the Department of Health and Human Services
Clarice Charlie Hubbard, Intertribal Council of Nevada (on behalf of Desiree Quintana Executive Director)
Tiffany Davis, Tribal Liaison for the Silver State Health Insurance Exchange
Scott Anderson, Chief Deputy Secretary of State (on behalf of Secretary of State Barbara Cegavske)
Erik Jimenez, Senior Deputy State Treasurer (on behalf of State Treasurer Conine)
Elizabeth Hill, U.S. Small Business Administration, Native American Relations Liaison for Nevada
Lee Bonner, Tribal Liaison for Nevada Department of Transportation.
Kailey Taylor, Tribal and Legislative Liaison for the Department of Wildlife
Anthony Smokey, Washoe Tribal member, working for ITCN
Clifford Bannelos, Tribal State Environmental Liaison for the Inter-Tribal Council of Nevada
Janet Bryan Weed, Environmental Director Yomba Shoshone Tribe
Crystal Harjo, Emergency Management and Tribal Health Coordinator, Division of Emergency Management

Others Present:

Jackie Conway, Emergency Management Tribal Coordinator, Division of Emergency Management
Tammy Smith, EEO Administrator, Division of Human Resource Management
Marty Meeden, Washoe Native Education Director
Chairman Anthony Sampson, Pyramid Lake Tribal Nation

II. Invocation

Commissioner Wadsworth gave the invocation.

III. Welcome and Introductions

Chairman Arnold welcomed everyone to the meeting and said unlike a normal regularly scheduled meeting, they would focus on just a few items that have to do with the Senate Bill 264, including some policy development and overviews of the legislation, and figuring out where the NIC is going to go forward.

IV. Initial Public Comment

Scott Anderson, Chief Deputy Secretary of State and tribal liaison for the Secretary of State’s Office, highlighted the importance of the upcoming Census. There’s \$675B at stake for the states and if underreported, Nevada won’t get their fair share. The Census determines redistricting of the state and also determines representation in Congress. So it’s vital that Nevada is properly represented and properly responds to the Census questionnaires.

Director Montooth stated she was in total agreement. She said everyone in Indian Country counts, and it’s vital that their communities fill out the Census form and be counted. The Director announced the Walker River Paiute Tribal Nation in Schurz, Nevada would be holding an event on March the 13th at noon and there will be all kinds of events wrapped around the Census.

Commissioner Lathouris said the Census was important for the native people in Nevada and that each respective tribe and native people should be accurately represented in the Census. Tribes have come a long way, and tribes are getting stronger and those numbers should accurately reflect the native populations within the state.

Ms. Janet Bryan Weed with the Yomba Shoshone Tribe spoke of a need for an improved process for the handling of newly discovered ancestral remains on private property. Currently there is no anthropologist readily available that can go directly to the sites, therefore causing discoveries to be declared a crime scene. That allows officers to collect the remains and artifacts and ship them to the Washoe County Coroner’s Office. There is a need to have reports processed immediately and sent to the Indian Commission as well as SHPO. This is a breakdown in proper protocol.

V. Approval of the January 13, 2020 Commission Meeting Minutes (For Discussion and Possible Action)

Chairman Arnold said he thought the summary minutes were easier to follow than the verbatim minutes from before. There were some spots where pronouns needed to be changed to actual names or organizations. Commissioner Wadsworth thought on page 4 “Commissioner Pasqua had another ask” should be changed to “Commissioner Pasqua had a question.”

Motion: Approve January 13, 2020 Commission Meeting Minutes with noted changes

By: Commissioner Krolicki

Second: Commissioner Wadsworth

Vote: Passed unanimously (Commissioner Wadsworth abstained)

VI. Executive Director Report (For Discussion and Possible Action)

Director Montooth said she would be happy to answer any questions in reference to her Nevada Executive Director's Meeting Report.

Commissioner Wadsworth asked about the 2020 Achievement Awards. Were they on track to have those in November of this year? Director Montooth replied that they haven't discussed the awards except in the capacity that it could be wrapped around a summit which is required through AB 264.

Chairman Arnold had a question in the report about "partnering with State Historic Preservation Office to hold meetings regarding law enforcement management of Native American burials disrupted on private land per Nevada Revised Statute." He said he wasn't sure about the use of the word "disrupted." Was it just burials that were disturbed?

Director Montooth said that was actually her own chosen description and it speaks directly to what was addressed during public comments by Ms. Weed from the Yomba Tribal Nation. The Director has been in communication with the Nevada State Historic Preservation Officer, Ms. Rebecca Palmer, regarding this gap. Specifically, when ancestors are disturbed, there is a specific protocol that is not being adhered to. Law enforcement agencies are often called in and perhaps are hasty and ancestors are taken right to a coroner's office without a proper inspection from either tribal representatives or a qualified anthropologist who can identify whether or not they are in fact historical or if a crime has been committed.

Commissioner Lathouris said that sounded like a huge problem because NAGPRA wouldn't touch the topic since it's private lands. So, the question is have there been any meetings with the state's Historic Preservation Office? Are there any meetings coming up and what have been the proposed solutions to this, or are any solutions considered? Perhaps maybe submitting a state equivalent of that NAGRA?

Director Montooth said the State Historic Preservation Officer did meet with a handful of tribal representatives, and the Director is scheduled to meet with Ms. Rebecca Palmer next Wednesday. They've not addressed any solutions; that's what that initial meeting is to discuss. They will also talk about including tribal representatives in any sort of solutions or any suggested solutions.

Commissioner Pasqua said she wondered how many tribes have tribal monitors to go to these sites? Could the Commission look for some way to work with the state to get tribal monitors going?

Director Montooth said that was an excellent suggestion and she would bring that up with the SHPO when she meets with Ms. Palmer next week.

Commissioner Lathouris said that sounded like it would perfectly fit into what they needed to discuss, which was what the policy will be for collaboration between the state and tribes.

Chairman Arnold clarified that the wording in the report about Native American burials could be settled by changing "disrupted" to "disrupted/disturbed." He asked if there were other questions for the Director and there were none. Chairman Arnold said he would accept a motion.

Motion: Approve the Executive Director's Report as presented

By: Commissioner Lathouris

Second: Commissioner Pasqua

Vote: Passed unanimously

VII. Unfinished Business

AB 264 Implementation

A. Breakdown of the Nevada Indian Commission's Role Within AB 264 (For Discussion and Possible Action)

Deputy Attorney General Tori Sundheim presented the breakdown of the NIC's role within AB 264 and implementation options according to existing statutory authority. She said she would try to clarify the respective roles for the Nevada Indian Commission, including statutory options for implementation.

Ms. Sundheim read the enabling authority: "The purpose of the Commission shall be to study matters affecting the social and economic welfare and wellbeing of American Indians residing in Nevada, including but not limited to, matters and problems relating to Indian Affairs and to Federal and state control responsibility policy and operations affecting such Indians. The Commission shall recommend necessary and appropriate action, policy and legislation, or revision of legislation, and administrative agency regulations pertaining to such Indians. And then finally, the Commission shall make and report from time to time its findings and recommendations to the legislature, to the Governor and to the public and shall also report at least biennially."

Ms. Sundheim said Assembly Bill 264 is about tribal coordination and collaboration with the State of Nevada. The Assembly Bill itself says that it is an act relating to governmental administration requiring the Nevada Indian Commission to implement a policy that promotes collaboration between a state agency and Indian tribes, requiring the Governor to meet with the leaders of Indian tribes, requiring certain employees of state agencies to receive certain training, and providing other matters properly relating hereto. AB 264 was modeled after New Mexico's State and Tribal Collaboration Act.

Under AB 264, the Commission has four main responsibilities. The first responsibility is to develop the official Nevada public policy for the method of collaboration between state agencies and tribal nations. Second is to maintain and publish names and contact information for leaders of tribal nations and state tribal liaisons. Third, it's to submit to the Governor and legislative commission state agency reports and all activities, findings and recommendations of the Commission. And then finally, to hold a state and tribal summit annually to address matters of mutual state and tribal concerns.

Ms. Sundheim read Section 6.1 of the bill: "The Commission shall develop and implement a policy that: A) promotes effective communication and collaboration between a state agency and Indian tribes. B) promotes positive government to government relations between this state and Indian tribes. C) promotes cultural competency in providing effective services to Indian tribes, and D) establishes a method for notifying employees of a state agency of the provisions of Sections 2 to 8 inclusive of this Act and the policy that the Commission develops pursuant to this section." It further states that in the process of developing the policy, the Commission shall consult with representatives of Indian tribes and of state agencies.

There are important definitions that are set forth in AB 264. The first is "policy." Policy means an official public policy of a state agency that creates a common practice relating to a class of issues. In this case that refers to the Commission's policies, so the state agency would be the Nevada Indian Commission creating an official public policy with respect to collaboration and coordination. The second definition is "state agency." State agency means an agency, bureau, board, commission, department or division of the executive department of state government.

VII. Unfinished Business (continued)

AB 264 Implementation

A. Breakdown of the Nevada Indian Commission's Role Within AB 264 (For Discussion and Possible Action)

"Indian tribe" means a Federally recognized American Indian tribe pursuant to 25 Code of Regulations Sections 83.1 to 83.12. However, looking at NRS 233A.100, Subsection 3, it adds that the Indian Commission may cooperate with and secure the cooperation of state, county, city and other agencies, including Indian tribes, bands, colonies and groups in inter-tribal organizations in connection with its study or investigation of any matter within the scope of the Indian Commission's responsibilities. "Indian tribe" as it's defined here, only applies to Federally recognized tribes, but the other section, NRS 233A.100 provides broad authority to include any tribes or bands or organizations.

The second responsibility is: "Shall publish on its internet website an accurate list of the names and contact information for leaders of tribes and for the tribal liaisons of each state agency."

The third responsibility is the report. The law states the Commission shall periodically submit to the Governor and the Director of the Legislative Council Bureau for transmittal to the Legislative Commission a compilation of the reports submitted pursuant to Subsection 3 which is the state agency reports that would be sent to the Nevada Indian Commission, and in addition, a report on the activities and any findings and recommendations of the Commission or action by the legislature. This is the only place where the law really mentions a timeline. It says on or before July 1st of each year each state agency that communicates with Indian tribes on a regular basis shall submit that report. So, on or before July 1st, 2020. That is something that the Commission should discuss in deciding how to manage those reports and compile them.

The fourth major responsibility is the Governor State Tribal Summit. The law says, "At least once each year the Governor shall meet with the leaders of Indian tribes and a State Tribal Summit to address matters of mutual concern." So, that is the Commission's fourth main responsibility under this law.

Commissioner Pasqua said she had a question on Section 7.3. Is there a specific amount of time they have to meet with tribal people? How often throughout that year do they have to meet with somebody? Ms. Sundheim said that is up to the Commission's interpretation. That's something that the Commission will have to coordinate and establish. All the law says is that the state agencies have to provide that report on or before July 1st of each year.

Commissioner Lathouris said there were several issues with language, like the use of "periodically submit" and "reasonable effort to collaborate" that are ambiguous. So that's one of the reasons why they were here today, to establish a policy that will address some of those concerns. That way both the state agencies and the tribes have the same understanding going forward.

Commissioner Lathouris said the definition of "policy" as well as the definitions of "agreement" and "program" go to show exactly what type of actions the state agencies might have a duty to collaborate on. He said he thought that's why those are defined as they are in 3.5, 4.3 and 4.7. And it's important to be mindful of those. Those are the three categories of actions underneath 6.3, "that a state agency shall make reasonable efforts to collaborate with tribes on."

VII. Unfinished Business (continued)

AB 264 Implementation

A. Breakdown of the Nevada Indian Commission's Role Within AB 264 (For Discussion and Possible Action)

Chairman Arnold said it might be interesting to track involvement, and they could do so in the form of a questionnaire to go out to the agencies to maybe consider each year how many times they are interacting. For example, an agency says no, they haven't interacted with a tribe, and a tribe says well yes, they have or no, they're not, and the agency says yes, we are. If there are some disconnects there, it might be just an easy way to track some of that information and then help to further refine any policies.

Commissioner Krolicki said she also had concerns with the ambiguity of language like the use of "regular basis." Different agencies might define "regular basis" differently than others.

Commissioner Wadsworth said he thought an important part of the policy that they were going to be developing in Section 2, it says, "In the process of developing the policy pursuant to Subsection 1 the Commission shall consult with representatives of Indian tribes and other state agencies". That means it's definitely going to be collaboration between not just state agencies on how to define "regular basis" but also what the tribes see as "regular basis". It's definitely going to be collaborative effort in reaching out to the tribes as well as state agencies in developing this policy.

Ms. Sundheim said that was correct. It's not defined what "regular basis" means, and so the appropriate place to define that would be in the policy.

Commissioner Lathouris said he wanted to make a note so that way, the Commission would get credit for doing their job. Section 6.2 says: "In the process of developing the policy pursuant to Subsection 1, the Commission shall consult with representatives of Indian tribes and of state agencies." That's one of the reasons why the Commission was having the meeting today was to do that consultation. Commissioner Lathouris said he appreciated having the representatives from tribes and state agencies at the meeting to go over the policy discussions about how these policies should look.

Ms. Sundheim moved on to the topic of implementation options. The Commission has **five main implementation options under NRS 233A:**

1. Commission has broad authority to create advisory committees.
2. Commission can assign tasks to individual commissioners by vote.
3. Commission can negotiate and contract for services, facilities, studies and reports. (Executive Director serves as the contracting officer)
4. Commission can prescribe regulations for your own management.
5. Commission can also cooperate with and secure the cooperation of various state and tribal governments.

Commissioner Arnold said in addition to the five implementation options, there's one other resource that they have as a Commission -- the staff of the Commission itself. Staff can provide a wealth of information that spans across tribal nations and state agencies. They can help guide the Commission to meet their mandate.

Commissioner Pasqua said she had somewhat of a concern about the tribal liaisons that are going out to tribal lands. Is the Commission training them and getting them prepared to talk to the tribes?

VII. Unfinished Business (continued)

AB 264 Implementation

A. Breakdown of the Nevada Indian Commission's Role Within AB 264 (For Discussion and Possible Action)

Commissioner Lathouris said he thought 7.2 might address that: 'Requires that training be completed as provided by the Division of Human Resource Management of the Department of Administration in consultation with the Commission.' So, the Commission's policy should provide some guidance for what the training should include so that it's consistent across the board.

Ms. Sundheim said she thought that was more of a policy question of how the Commission is going to be working with the state. Under the Commission's authority, they have the policy of the DHRM training, so if that's something that they want to address, then certainly there's authority in the statute to address it through those avenues.

Director Montooth said when it comes to designing the special training piece, that is an excellent opportunity for them to have that kind of committee. They do have the expertise of the Nevada Human Resources Department, but when it comes to cultural competency, that's going to be best guided by not just the tribal nations, but by the Native Americans represented in the whole entire organization.

Commissioner Lathouris said as a lawyer, he pays attention to certain key words in documents. In this case, he went through and identified any provisions stating "shall" because that's a non-discretionary duty. That's something the Commission has to do. And in a way, that creates a checklist for the Commission when they're thinking about this policy.

Commissioner Lathouris went through the provisions: Section 6.1, "Shall develop and implement a policy, and then it describes the policy". Section 6.2, "Commission shall consult with representatives of the tribes and state agencies". Section 6.3, "A state agency shall make a reasonable effort to collaborate with tribes. Section 6.4, "The state agency shall designate a tribal liaison." Section 6.5, "Must follow the policy". "Must" is similar to "shall", non-discretionary. Section 6.6, "Commission shall publish". Section 7.1, "Governors shall meet with leaders of tribes". 7.2, "State agency and state agency managers shall provide a training provided". 7.3, "Shall submit a report to the Commission, and that report must include certain things", and it creates a list. And 7.4, "Commission shall periodically submit to the Governor" certain things. Commissioner Lathouris explained those are non-discretionary duties, and should be the guidelines right there for what they should accomplish, if not today, then over future meetings.

VII: B. The Nevada Indian Commission Policy (For Discussion and Possible Action)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said the idea that he saw going forward with the policy process was they would have the state agency representatives and the tribes at the same table talking about what policy would best work for them based on requirements underneath the law. And in order to get the discussion going, Commissioner Lathouris thought it might be best to look to a policy that's already been established through consultation with tribes across the nation with Federal agencies. The Department of the Interior, which is the U.S. department responsible for managing and upholding the government-to-government relationship between the Federal government and tribes, has created a policy on consultation with tribes. This was done with tribes and the Federal government years ago and could be an excellent resource for the Commission.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said perhaps the Commission could use the Department of Interior's policy as a template for the NIC policy. The Department of Interior's policy includes guiding principles, which would be a good place to start when discussing their own policy. What is the Commission's guiding principle? It's going to be to uphold requirements under AB 264. They should establish that any policy they create isn't going to supersede AB 264; rather, it's going to complement it.

The policy from the Department of Interior talks about a government-to-government consultation. The Federal government and tribes have a government-to-government relationship, but that's not necessarily the case between tribes and states. Maybe the Commission's policy should be to try to strive for a government-to-government relationship as much as possible with tribes. The Commission will need to identify who the appropriate tribal and departmental officials will be. Who is it that the department or the state agencies in this case should be reaching out to, or who is it from the state agency that the tribes should be reaching out to?

The Commission can use the language from the Department of the Interior document, but instead of "departmental officials" they can say "state agency officials" are authorized to speak for the state agency, and exercise delegated authority in the disposition and implementation of state agency action.

The Commission's policy should establish a process for tribes to have a meaningful opportunity to participate in the collaboration process. They need to also establish what exactly collaboration should look like and make sure it's clear that it's a deliberative process. It's not something that accidentally happens, but something that is deliberate, meaning that there should be written notice. And the policy should establish the minimum requirements of what that written notice should include and also establish that this should be done in a good faith manner. The whole idea is that state agencies will seek and promote cooperation, participation, and efficiencies with the state agencies and those tribes that have overlapping jurisdiction for special expertise.

The Department of the Interior policy has definitions that won't apply to the NIC, but some might. For example, they talk about departmental action with tribal implications. NIC already knows what state agencies should be required to collaborate based on AB 264 and what will trigger the need to collaborate. They define tribal official as an elected or appointed tribal leader or official designated in writing by an Indian tribe to represent the tribe in government-to-government consultations. That's a definition that the Commission could also include. It doesn't necessarily have to be a tribal chair, but somebody who's been delegated that authority in writing. That writing requirement provides assurance to a state agency that who they're meeting with actually has the authority.

Another section of the policy addresses accountability and reporting. That's important, especially because one of the AB 264 requirements is to submit an annual report. The Commission is going to submit a report based on reports from the state agencies or the tribes about what collaborative efforts are being done. In their case it wouldn't be the state agencies reporting to the secretary, but to the Nevada Indian Commission. Those reports should include topics on which collaboration was held, what type of training was done, and the engagement of senior leadership in these efforts. This is the type of information that the Nevada Indian Commission itself would also want to know about whether or not collaboration is successful under AB 264 and whether changes need to be made.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said the Department of the Interior policy details that reports should include feedback from the tribes with whom the state agencies have consulted. The report should reference the documents and correspondence with the tribes and address the implementation of the state agency action and it should include a description of budget expenditures and execution of those collaboration efforts and narratives describing significant consultation efforts and forthcoming consultation opportunities.

The Department of the Interior policy includes a description of budget expenditures, narratives describing the efforts, and talks about potential collaboration opportunities including feedback from tribes. This will be crucial from the Nevada Indian Commission's perspective in having effective reports to the Governor's Office.

The Department of the Interior policy also talks about training. It says training is "to seek to enhance mutual understanding of cultural perspectives and administrative requirements between tribal and the Federal officials to promote inter-governmental relationships". Training in Nevada would probably be focused more on the specific tribal history within the State of Nevada rather than a general Federal Indian law policy or training.

Section 6 talks about innovative and effective consultation practices and it allows for some flexibility because consultation or collaboration is not going to be the same between all state agencies for all tribes. Tribes are domestic dependent nations. They have sovereignty. They don't have to do consultation or collaboration the same as other tribes. Collaboration might look different from one tribe to another, and so the NIC policy should allow for that flexibility. Guidelines can be altered if both the state agency and the tribe have a written agreement like the protocol.

Section 7 talks about consultation guidelines, and it says that consultation guidelines are meant to establish the uniform practices and common standards. That's key regarding training and what type of initial written notice should be done. They talk about what it means to initiate consultation, about the notice and how much time should be given. What is adequate notice to tribes? Nevada law, AB 264, says that state agencies should make "reasonable" efforts, but doesn't explain exactly what is reasonable.

There has to be "adequate notice" about a program, a policy or an agreement. Adequate notice entails providing a description of the topic to be discussed and a timeline of the process and possible outcomes. It should include sufficient detail of the topic to be discussed to allow tribal leaders an opportunity to fully engage in consultation. It should give tribal leaders the opportunity to provide feedback prior to consultation, including any request for technical assistance or request for clarification of how the consultation process conforms to the policy that is created.

The DOI policy discusses what the process would be for tribes to initiate consultation, which is addressed under AB 264. It talks about the roles of tribal liaison officers, which is also under AB 264. There are guidelines for response to request for consultation, if a tribe asks for consultation, how is the response is supposed to be done.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said the DOI policy has guidelines for stages of consultation, including the most important initial planning stage where a state agency would reach out to a tribe as soon as possible, trying to initiate meetings. There's a proposal development stage where the state agency would disclose the scope of the action, either being policy agreement or program. There's an opportunity for the parties to collaborate together and develop processes that would maximize tribal participation.

Commissioner Lathouris said he thought the NIC policy should establish what a reasonable time period is. The written protocols could also be very important for the parties themselves to identify what would be reasonable. Identifying what the reasonable time periods are would provide comfort and assurance to both state agencies and tribes about how long each party should wait before they get a response.

The DOI policy discusses different forms that collaboration can take, either negotiated rulemaking, tribal leader task force, series of open tribal meetings or single meetings. And that is something that would be good too, talking to state agencies about how collaboration could look. Maybe it's just with one tribe. Maybe you could do it with multiple tribes. Or maybe even multiple state agencies and multiple tribes to try to be more efficient and maximize input. But identifying potential ways that collaboration could look might be helpful.

The Commission's policy should express any limitations, either under tribal law for the tribe or limitations for the state agency under state law so that way there's reasonable expectations on both sides.

When the state agency does take its action, what happens at that point? The Department of the Interior policy does not require that the tribe consent to whatever the departmental action would be. And it's the same thing under AB 264. The idea is to have a good relationship, to have that sharing of information, to hopefully have a respectful relationship going forward. And so the policy doesn't require consent, but it does require that if the state agency is going to take action, they have to tell the tribe about it and get feedback from that tribe. The policy also does state that it's open to changes based on requests or recommendations to improve the policy.

Commissioner Pasqua thanked Commissioner Lathouris for his very organized presentation. She said she really liked what she was seeing here.

Chairman Arnold said he agreed and thought the DOI policy was a good foundation for them to build upon. The Commission is mandated to bring tribes and agencies together in developing a policy, so the sooner they can get a policy draft in place, the better. There are a lot of complexities to dealing with tribes in consultation or collaboration or coordination. Sometimes tribes may have their own definition of what consultation is and maybe their own policy. Having a policy that spells things out would be a plus for everyone.

Chairman Arnold detailed some of the complexities of tribal boundaries and tribal lands and interactions between tribes and state and federal agencies. The Commission needs to make sure that they are doing the best job to be all-inclusive and making sure they are addressing the needs and concerns of those tribes.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said if anyone had specific things that they think a policy can or should address or specific examples of what's happened in the past, he would welcome seeing them. If the Commission was okay with forming a subcommittee, they could draft up an AB 264 version of the DOI policy where they take out anything that's not applicable and subbing in direct language from AB 264 and then adding onto it the concerns or suggestions that are made today and at future meetings. And then they can disseminate that document to all state agencies and tribal nations for comment.

Chairman Arnold said the DOI policy had obviously been vetted and accepted to the degree practicable as far as the tribe interfacing with DOI and Federal agencies. The Commission could adapt that policy to AB 264. Is the Department of the Interior's federal policy a good place for the Nevada Indian Commission to use to start synthesizing a collaboration policy with the Nevada Native tribes? The Chair said he would like more input from tribal representatives to make sure everyone was on the same path going forward. He opened the floor to public comments for some input.

Ms. Janet Bryan Weed, Environmental Director, Yomba Shoshone Tribe said this policy is really quite overdue. And if the tribes years ago would have had this in place, Indian tribes would still be in control of the waters in Nevada. But should they accept the Interior's language as is? The Nevada Indian Tribes really need to understand what the state is looking at. The foundation work needs to be done first because tribes need to understand what's really happening and how this could affect them. The NIC should also examine the New Mexico policy because New Mexico has tribes that mirror the tribes in Nevada.

Mr. Richard Bowlen, American Indian Alliance, said the Department of the Interior guidelines are a good starting point. They have about ten different bureaus or agencies under them, and there's probably some flexibility built in there to accommodate the different missions of each of those groups. Mr. Bowlen said it would be important to include the section that talks about if they initiate consultation, it doesn't relieve them of their responsibility to continue to get the tribes to participate. Some of the smaller tribes in Nevada don't have staff or resources as far as initiating consultation and to allow tribes to join in if the process is already started.

Commissioner Lathouris said he completely agreed with Mr. Bowlen. Many times there's a lack of understanding that tribes vary in structural capacity, so they need to make sure that the NIC policy addresses the need for ongoing reasonable periodic efforts to include tribes.

Clifford Bannelos, Tribal State Environmental Liaison for the Inter-Tribal Council of Nevada, suggested that the Commission also examine a 1984 EPA policy, a Federal policy, on consultation. They also have a regional consultation coordination policy that the Commission can look at. Most federal agencies have consultation policies or something of the sort. They're just kind of guidance documents. Mr. Bannelos urged Commissioners to include in their policy regular performance evaluations of the people doing this work.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said the performance evaluation part was a great suggestion in terms of how to enforce that the policy in AB 264 is being carried out. Commissioner Lathouris said he would like to request that the Deputy Attorney General's Office explore that and provide a report to the Commission on what kind of enforcement mechanisms there are regarding AB 264.

Chairman Anthony Sampson, Chairman of Pyramid Lake Paiute Tribe, reminded the Commissioners that tribes are "full government" with legislative, executive and judicial systems fully in place. Any time tribes engage in anything with Nevada state it is vetted through tribe policies. Tribes have the Nevada ITCN Executive Council with 28 sitting Chairs. Tribes are moving governments. They move within the Interior within the guidelines of the Interior Department. But under the Constitution of the United States they are sovereign nations. It's important to treat tribes as such, and remember that the good neighbor policy that's within this bill that's going to be brought forward.

Chairman Arnold said it's very important that they hear from tribal leaders and state representatives as well or state agency representatives. AB 264 is an opportunity for tribes and the states to enhance the working relationships between both parties or both entities. The Commission wants to develop a policy that will capture that.

Ms. Crystal Harjo, Nevada Division of Emergency Management, had some comments about AB 264 in terms of consultation and training. The Federal Emergency Management Agency (FEMA) has a FEMA tribal consultation policy that was re-released July of last year. It's FEMA Policy #101-00202, and it is available online at their website. For training, FEMA has an independent study course online that is available. It is independent study 650B, Building Partnerships with Tribal Governments. This course is broad in nature and it's basically an overview of how federal and local partners can work with tribal nations in regard to training exercise collaboration efforts.

Mr. Bowlen said he sent a letter to the Commission regarding setting up an advisory commission for higher education and in particular UNLV. So when it was appropriate, he'd like for the Commission to address that letter and how an advisory commission might fit within the whole collaboration scheme.

Director Montooth said she would be happy to share Mr. Bowlen's suggestions with the Commission. She said she agreed that 264 is at the heart of Mr. Bowlen's request, and she thanked him for his feedback.

Mr. Bowlen said there has never been (that he's aware of) within the entire Nevada system of higher education, any type of workforce study done as far as the tribes' needs. It would be great if they could do something so a lot of tribes could get some tribal historic preservation officers in place to enforce this item. Those tribal historic preservation officers are few and far between in the State of Nevada. They are badly needed, and the universities can help with that.

Commissioner Lathouris said he was going to request that Mr. Bowlen's letter be included as part of the documents at their next meeting and that this item be agendaized for the next meeting as well. There needs to be a discussion of the information or the need for an advisory committee for higher education in the State of Nevada regarding American Indian populations.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Lathouris said the feedback he heard after presenting a report on the Department of the Interior policy as a potential foundation was: there needs to be an assurance of good faith within the policy, there needs to be inclusion about state agencies' duties to have ongoing efforts to have collaboration with tribes, the Commission should review the EPA 1984 and EPA original policies and review the FEMA tribal consultation policy and their independent study course for potential training, the Commission should consider enforcement of the policy in AB 264 be at performance reviews and that the Deputy Attorney General will explore and report on other enforcement mechanisms under AB 264, and that the Department of the Interior policy might be a good foundation.

Mr. Scott Anderson, Deputy Secretary of State, asked if there was timeline or deadlines where agencies could get back to the Commission with additional comments? And does this have to go through the regulation process or is this an internal policy of the Commission and how will the notifications be going out once the draft policy is available?

Commissioner Lathouris said he assumed that the Deputy Attorney General's Office would have something to say about this regarding timelines and whether it's a regulation. At this point, they don't have a draft policy, and so in spirit of AB 264 they are trying to get this process going as early as possible including getting feedback to include in the draft policy. The Commissioner said his goal was to have something in writing ASAP as a draft and at that time, they could develop timelines for comments and feedback.

Ms. Sundheim said the policy is tied directly to the statute. The statute only says the Commission must develop this policy, but in consultation with state agencies and tribal nations. There's no timeline that is spoken to directly by statute, but there is also no regulatory process that's attached to that. So it's going to depend on the timeline that the Commission establishes.

Director Montooth said they only have one hard deadline and that is July 1, 2020, and that's specific to the reports that are required by Nevada agencies to the Nevada Indian Commission. The Director asked Mr. Anderson how long would he need to get the feedback to their agency?

Mr. Anderson said Commissioner Lathouris wanted to get this done "quickly."

Commissioner Lathouris said he would like to see the Nevada Indian Commission have another meeting about this matter, so they can review and approve and also give another period of time, another open meeting for people to come in and give feedback and suggestions, and then consider those, circulate the document and establish timelines at that point. And to that extent, Commissioner Lathouris said he would like to make a motion to appoint an advisory committee to draft a draft policy for consideration by the next Nevada Indian Commission meeting, and to also try to identify potential timelines.

Motion: Appoint an advisory committee to draft a policy for consideration by the next Nevada Indian Commission meeting, and to also try to identify potential timelines

By: Commissioner Lathouris

Second: Unidentified speaker

Vote: NONE. MOTION RESCINDED.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Commissioner Krolicki said they really needed to get the ball rolling, and then they can create some type of timelines and then they can have some answers as to when they would like agencies to respond and to comment.

Mr. Jude Hurin with the Department of Motor Vehicles provided an overview of what the Department of Motor Vehicles is looking at. Internally right now they are working with the Pyramid Lake Paiute Tribe on a pilot program regarding our drivers' license credentials and so forth. With the implementation of this bill and understanding that this is at the beginning stages of everything, one of the things that his Department looked at was creating an internal DMV committee to work with the point of contacts with the tribes and eventually build that collaboration. And to that end, Mr. Hurin would like the point of contact list for each of the tribe members so that staff can proactively start reaching out to them and start fulfilling the law.

Commission Lathouris said it sounded like what the Department of Motor Vehicles was doing is exactly what AB 264 was striving to accomplish. So kudos to the DMV!

Mr. Hurin said in order for DMV to reach out to the contacts for each of the tribes to establish regular meeting times to identify current issues, they need a points of contact list for each of the tribes.

Director Montooth said she had good news. That list is available on the newly launched Nevada Indian Commission website. So, if you pull up www.indiancommission.org it's on the Home Page. There's an icon that says Tribal Nations. All 27 tribal nations, bands and colonies are listed, along with land mass, the citizenship numbers, and how or when the tribe was legally established. All the contact information for each tribal nation is listed there.

Ms. Sundheim said she wanted to note something about the advisory committee issue. There's a motion on the table to create an advisory committee and for that committee to bring a draft of the policy to the Commission during the next meeting. But before that happens, the Commission needs to decide how many members, who should be on the committee, how often they'd like them to meet, and then they should specify exactly what that committee's charge is, so what it is specifically that the Commission is delegating to them. Ms. Sundheim said she thought all of that would need to be explored prior to a separate meeting at which point they could approve all of the details of that committee and give them that authority to act and start meeting. It would require a lot of discussion about the membership organization prior to and during that meeting.

In the interim, it's still a good idea to move forward with exploring all of those options and getting those details down. In the interim, the executive director and the staff are already welcome to communicate with all the tribal liaisons if they want to work through a timeline and start putting the beginnings of a draft together.

Commissioner Lathouris said in response to that, he had a question. If he, as a Commissioner, wanted to put forth a draft for consideration, was there anything stopping him from just submitting that draft to the staff so that way they could use it as a foundation or a beginning document? Sometimes getting a preliminary document going is the hardest part, and Commissioner Lathouris just wants to get the ball rolling.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Ms. Sundheim said that Commissioner Lathouris was more than welcome to submit any draft to the staff to start moving forward. Staff could even share that with tribal liaisons for their input to begin with. The only thing that the Commission has to do is approve the final version. But there is nothing to prevent any drafts from being circulated from anybody.

Commissioner Lathouris asked if that was the case, what would be the point of an advisory committee in this context?

Ms. Sundheim said in this context, it's a chicken and egg question. It's a policy decision whether the Commission wants to have an advisory committee, but the potential benefits of an advisory committee would be to show in a transparent manner how exactly they are meeting statutory requirements. So that would be one benefit of having an advisory committee, and to also have another forum where people know to go to help in that development of that policy.

Commissioner Lathouris asked would it be possible for the Commission to say that they give a certain amount of time to receive feedback before they even draft a draft policy so that way there's time for tribes and state agencies to give input? It's an informal kind of policymaking, but it still gives an opportunity for feedback. And then once they have that draft policy, then they do proper notice periods where they make sure all interested parties have the draft, they have a chance to respond to it. But it's just as a way to get feedback and then to get a draft circulated as soon as possible.

Ms. Sundheim said all of those things are discretionary and they're all options or avenues that the Commission can take. It is entirely up to the Commission. If they do want to create an advisory committee, then from a procedural standpoint it would make sense today to vote to put the logistics together and to put on an agenda for the next meeting for approval of what that advisory committee is, who it's composed of and exactly what it does.

Commissioner Lathouris said he wanted to rescind his original motion and make a new motion.

Motion: Nevada Indian Commission staff will reach out to representatives from the tribes and the state agencies to solicit feedback conceptually regarding collaboration policy under AB 264. Feedback should be received within 45 calendar days from the issuance of that request.

By: Commissioner Lathouris

Second: Commissioner Pasqua

Vote: NONE. THIS MOTION WAS AMENDED.

Commissioner Krolicki needed clarification: did this mean they would be drafting a policy and forming an advisory committee?

Commissioner Lathouris responded it would be just conceptual feedback at this time. Were there any concerns or issues about collaboration or AB 264 that they wanted to bring forth before a draft was done, so hopefully that draft would address those concerns. The Commissioner said he wanted to make sure to get as much feedback as possible before they even start putting pen to paper.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

a. Review of the Department of Interior Guidelines for Tribal Nation Consultation New Mexico Tribal Nation Collaboration Law and Other Guidelines

Chairman Arnold said this really kind of formally opens up the lines of communication between state agencies and tribes as is requested in the legislation to bring those parties into the discussion. That's part of the intent in allowing people to know that the Commission is working on this policy to move it forward.

Commissioner Lathouris asked if that 45 days was enough time for responses?

Mr. Erik Jimenez with the State Treasurer's Office said he thought that was reasonable, and to the extent that the tribal liaisons want to start to organize a little bit too, that also would be beneficial to help the Commission on their journey.

Mr. Cliff Bannelos, Inter-Tribal Council, said he thought a 60-day period would be better based on how often tribal councils meet. And were they actually forming an advisory committee at this time?

Commissioner Lathouris replied an advisory committee was not being formed at this time. That is something that could be potentially done at a later date. The Commissioner did think the 60-day suggestion was a good one and said he was open to amending his motion to 60 days.

Commissioner Pasqua asked if there was a time crunch? What's the timeline?

Chairman Arnold said legislatively, there is no deadline that is prescribed.

Commissioner Lathouris said maybe they should consider having as a default option part of a policy, and maybe they can use the Department of the Interior policy guidelines on reporting as a basis for theirs. So that way, the state agencies will have something to look to as guidance for what the report should look like.

Amended Motion: Nevada Indian Commission staff will reach out to representatives from the tribes and the state agencies to solicit feedback conceptually regarding collaboration policy under AB 264. Feedback should be received within 60 calendar days from the issuance of that request.

By: Commissioner Lathouris

Second: Commissioner Pasqua

Vote: Passed unanimously

Commissioner Lathouris said if necessary, he would like to make another motion to include a notice that the state agency reporting requirements shall comply with Section 7.3. Director Montooth asked if it would be acceptable for the Commissioner and her to get together and collaborate prior to her sending out the request to the different agencies and to the tribal liaisons just to make sure that it's succinct yet comprehensive? Commissioner Lathouris said absolutely yes, so a motion was not necessary.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

b. The Nevada Indian Commission's List of Names & Contact Information

Director Montooth said she was thrilled to share the good news earlier about the contact information for the 27 tribal nations. The State of Nevada Department's Tribal Liaisons are listed on the recently new launched website. Every Nevada Department has communicated with staff and have given them liaison information.

c. The Nevada Indian Commission's Report to the Governor

Director Montooth said this was addressed earlier. Again, the only concrete deadline as per AB 264 is for the annual report, and the onus is on state agencies to submit a written report to the Nevada Indian Commission regarding their interface with tribal nations. Vice-Chair Lathouris outlined that they will include verbiage in the email to all the liaisons when requesting feedback to get them started on the draft policy and that NIC will alert liaisons of that pending July 1 deadline and make suggestions as per the DOI regulations about what should be included in that report.

Commissioner Lathouris said in addition to email notification, he would request also a letter and phone call, if need be, until a response is given.

Director Montooth said it's standard protocol in the NIC Office to always contact tribal nations in four methods: email, phone calls, letters and fax. If the timetable allows, she will make sure that this is included in her Executive Director's report at the Intertribal Council of Nevada's next meeting.

d. Governor State-Tribal Summit

Director Montooth said it would not be practical to plan for a summit in conjunction with the grand opening of the Steward Indian School Cultural Center and Museum in May or in conjunction with the Father's Day Powwow in June. There was suggestion that the summit be in conjunction with the American Indian Achievement Awards in November, and that would also acknowledge Native American Heritage Month. The Director said there was no requirement for the summit to be in the state capitol. It could be in conjunction with tribal nation celebrations on a reservation.

Commissioner Lathouris asked if the American Indian Achievement Awards could be moved to a different date? Director Montooth asked wasn't National Indigenous Peoples Day in September? That might be an option. Nothing was finalized regarding the summit.

e. Role of the Division of Human Resource Management of the Department of Administration regarding Nevada Tribal Nations Consultation

Director Montooth provided information updates about the training component of AB 264. She said much work has been done in this area. Crystal Harjo with Emergency Management told Director Montooth the required training for all Emergency Management workers for the State of Nevada is a FEMA course that provides a comprehensive overview of the history of American Indians in this country. They've been able to identify two professional Native Americans, a certified educator and a college professor, who have agreed to participate in the formal process in the training. The Nevada Indian Commission believes that it's important to have a brown face telling the history and giving the stories of their people.

Ms. Tammy Smith, Division of Human Resource Management, said in Section 7.2 of 264, they have tasked DHRM with creating this training. DHRM is hoping to roll it out as a pilot to the tribal liaisons. DHRM wants some input from tribal members as to what is working and what is not working so that staff can understand what they need to share with the state agencies when they do have the relationships with the tribes.

VII-B. The Nevada Indian Commission Policy (For Discussion and Possible Action) (continued)

e. Role of the Division of Human Resource Management of the Department of Administration regarding Nevada Tribal Nations Consultation

Ms. Smith went on to say they have a professional trainer on their staff, and she has crafted a presentation called “Bridges of Poverty” to focus on that cultural competency about the tribes. The trainer presented it in Wyoming and Montana to groups that have the need to have that communication with the tribes, and it was well received.

DHRM has received a request by the community college in Lake Tahoe and they want to participate as members of the training to help get this information out to everybody that is going to be involved in consultation. The focus on is that cultural or competency and the best way of communicating.

Ms. Smith said they are building on the “Bridges of Poverty” program, but also want to gather information about the great training programs in Minnesota and New Mexico to see what’s working well for them.

Director Montooth said a really important part about the training is the tribal input. They have to have feedback from the tribes; it’s critical that they have information from each tribal nation. They need to know from them what is it that they want state workers to know about their specific band, tribe or nation. ITCN has been extremely successful with surveying, online surveys, to the tribal nations. And that might be an avenue that the Commission can take as well.

Commissioner Lathouris said in his experience as an instructor for the Department of the Interior University instructing classes regarding the Department of the Interior policy, the most positive and worthwhile training included a mock consultation or a mock collaboration which gives people an ability to envision different scenarios. They break up into groups where they will do a mock consultation with one another and each side only gets certain information, and the whole idea is for them to be able to find out that information and kind of come to an agreement.

Ms. Smith said the Bridges of Poverty program will have several breakout sessions using mock consultations. It should be a day and a half training with focus on the needs of consultation and cultural competency.

Chairman Arnold said he would like to see the materials they propose to use for training, not to evaluate them, but just for information purposes. In AB 264, one of the things is that there is provision about cultural competency and it’s supposed to be in concert with the Commission. So he just wants to “be part of the equation.”

Ms. Sundheim told the Commissioners that the staff of the Nevada Indian Commission and the Executive Director can always share anything with them individually. The only time they are violating Open Meeting Law is when you send it to everybody and then everybody hits “reply all” and starts discussing. But individual feedback and talking directly with Director Montooth is fine.

VIII. Agenda Items for Future Meetings (For Discussion and Possible Action)

Commissioner Lathouris said he wanted to make sure that his list of agenda items on Page 10 of the minutes that were approved earlier are applied to the next meeting. And also, he wanted to make sure to include the agenda item they discussed earlier regarding Richard Bowlen and evaluating the need for creating an advisory committee for higher education for American Indians in the State of Nevada. And finally, the agenda needed to include an update regarding training development pursuant to AB 264.

There was a group discussion about agendas in general, approving agendas as part of an agenda, changes to agendas, and how Open Meeting Law applied to agendas. Could changes be made to agendas the day of the meeting? Et cetera.

Ms. Sundheim clarified what was allowed: Commissioners were actually allowed to add things on the agenda up until three days prior to the meeting. The Open Meeting Law requires that the agenda be posted three days prior to the meeting, and no additions can be made in-between that notification date and the date of the Commission meeting. They can always put items on an agenda and then skip them if they want. They can always remove items. You just cannot add any items that the public was not previously notified in accordance with that three-day in advance notice.

Chairman Arnold said he would like to have a standing agenda item focusing on tribal liaison updates.

Commissioner Wadsworth had a question. What was the status of the Washoe Tribal Nation's project of painting an "S" on a mountain? Director Montooth said this project didn't come to fruition and staff hasn't had any further communication with them. Ms. Sari Nichols said they just got the right of way back from Carson City, so whenever the Washoe Tribal Nation was ready, it's all systems go. Commissioner Wadsworth said he really wanted to see that project completed and hoped the Commission would help keep that project moving forward.

Chairman Arnold said he would have staff follow-up on that and get an update at the next meeting.

IX. Scheduling and Location of Future Meetings (For Discussion and Possible Action)

Commissioners discussed the timeline for the state tribal liaisons to get back to them with feedback regarding the draft policy for AB 264.

Director Montooth and Commissioner Lathouris talked about a time to get together to craft the verbiage for the letter/notice that would be going to the state tribal liaisons asking for feedback. They decided they wanted that completed by mid-May.

Director Montooth suggested they do a wrap-around session with the grand opening of the Stewart Indian School Cultural Center on May the 9th. She proposed a meeting on May 8th and surprisingly, that worked for everyone. The location is still to be determined.

Commissioner Lathouris asked that for the May 8th agenda, the topic of the formation of the advisory committee be on that agenda. Even if they don't approve a draft, they can create that advisory committee to do the draft.

X. Final Public Comment

Ms. Sari Nichols said she wanted to piggyback on what the Executive Director said about the tribal contact lists. Their new website is NevadaIndianCommission.org and all the tribal contact lists are there.

Ms. Nichols brought up the topic of meeting minutes and how they were going to be done by a transcription service. Commissioner Wadsworth said in NRS it states that “the Executive Director shall provide the minutes.” Are they okay with having a transcriptionist do the minutes on behalf of the Commission or as on behalf of the Executive Director? Ms. Sundheim answered yes. The group discussed the merits of verbatim verses summary minutes, but no definitive decision was made on the topic.

Mr. Bannelos, Intertribal Council, announced the next ITCN board meeting would be on Friday, March 27th. He said he would like to have the Commission meeting minutes available to share. An unidentified speaker said, “it’s possible that they won’t be available for that.”

There were no further public comments.

XI. Adjournment

After thanking everyone for their participation, Chairman Arnold said he would entertain a motion to adjourn.

Motion: Adjourn the March 5, 2020 Nevada Indian Commission Board of Directors Meeting
By: Commissioner Wadsworth
Second: Commissioner Lathouris
Vote: Passed unanimously

The meeting was adjourned at 1:24 PM.