

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON TRIBAL AFFAIRS**

March 16, 2021

8:04 a.m.

MEMBERS PRESENT

Representative Tiffany Zulkosky, Chair
Representative Dan Ortiz
Representative Zack Fields
Representative Geran Tarr
Representative Mike Cronk

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Tribal Contracting, Compacting & Consultation

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

NATASHA SINGH, General Counsel
Tanana Chiefs Conference
Fairbanks, Alaska

POSITION STATEMENT: Presented a PowerPoint and answered questions during the discussion of Tribal Contracting, Compacting & Consultation.

NICOLE BORROMEO, Executive Vice President & General Counsel
Alaska Federation of Natives
Anchorage, Alaska

POSITION STATEMENT: Presented a PowerPoint and answered questions during the discussion of Tribal Contracting, Compacting & Consultation.

ACTION NARRATIVE

[8:04:29 AM](#)

CHAIR TIFFANY ZULKOSKY called the House Special Committee on Tribal Affairs meeting to order at 8:04 a.m. Representatives Cronk, Ortiz and Zulkosky were present at the call to order. Representatives Tarr and Fields arrived as the meeting was in progress.

Tribal Contracting, Compacting & Consultation

[8:05:08 AM](#)

CHAIR ZULKOSKY announced that the only order of business would be a presentation on Tribal Contracting, Compacting, and Consultation.

[8:05:30 AM](#)

NATASHA SINGH, General Counsel, Tanana Chiefs Conference (TCC), shared TCC represented Interior tribes and were federal government contractors, co-signers with Indian Health Service (IHS) and providers of health care to Interior Alaska on behalf of the federal government.

[8:06:27 AM](#)

NICOLE BORROMEO, Executive Vice President & General Counsel, Alaska Federation of Natives (AFN), shared AFN had existed since 1966 and was originally instated to negotiate a fair and just settlement of Alaska Native land claims, and subsequently to deal with pressing issues facing the Alaska Native (AN) community. As of 2020, AFN included nine for-profit corporations, 164 village for-profit corporations, and 12 non-profit consortia that contracted and compacted with the federal government under the Indian Self-Determination and Education Assistance Act (ISDEAA), and 169 federally recognized tribes. Ms. Borromeo shared personal credentials.

[8:08:05 AM](#)

MS. SINGH offered AN had 10K years of stewardship including intact knowledge systems, especially "geographic intelligence" of place. There were different ethnic and political groups, and separate tribal governments. The three sovereigns were tribes, federal government, and state governments. Tribes were recognized in the federal relationship in the US constitution.

[8:10:15 AM](#)

MS. BORROMEIO added when Alaska became a state in 1959 there was a question regarding the land AN had lived on for millennia. After years of negotiations, the Alaska Native Claims Settlement Act of 1971 (ANCSA) was embarked upon, the largest private land claim settlement in US history, 44 million acres. In 1994, all 229 tribes were finally federally recognized in Alaska, which is how AN got added to the "list act." Federal government was silent on AN status from ANCSA until 1994, she reiterated.

[8:13:16 AM](#)

MS. SINGH pointed out different entities had different missions and sometimes purposes got mixed up. The ANCSA for-profit regional corporations were often the most successful businesses in Alaska, she shared. There to make shareholders' dividends, they did an amazing job doing that, she said. Sister organizations, the tribal non-profits included TCC, she shared. These shared the same traditional territories, but non-profits assisted tribes in providing social services, she shared. Tribes were the governing bodies of the people who protected children, issued marriage and divorce certificates, dealt with public safety, and implemented an intricate body of health care. A goal of TCC was to expand what was able to be done through agreements.

MS. SINGH shared slide 2 on compacts, or government-to-government agreements. Child foster care, or Title IV-E agreements, were an example of federal - state partnerships, which tribes could join too; the Indian Health System (IHS) an example of a federal - tribal partnership, which was between the feds and the state; child custody issues fell under the realm of state - state; state - tribe agreements would be addressed during Ms. Borromeo's upcoming presentation on child welfare; and tribe - tribe agreements involved fish commission, child custody arrangements, and more.

[8:17:02 AM](#)

MS. BORROMEIO added compacts were agreements between two sovereign entities.

MS. SINGH shared slide 3 on the ISDEAA. In this law championed by former President Richard Nixon, tribes and tribal organizations could contract or compact with the federal government to provide programs, functions, services, or activities that the federal government would otherwise provide for ANs and American Indians (AIs). Before the ISDEAA was

passed, the federal government did not have a successful AI policy. Control over programs and peoples had been requested from, and granted by, Nixon. It's a Republican-grown and -supported policy with bipartisan support, Ms. Singh noted. These agreements were not race-based, she continued: tribal government was able to determine who they served, which was why non-Native peoples were able to be served.

MS. BORROMEO reiterated the ISDEAA was a political status and not race-based, adding a historical note dating back to the Marshall trilogy.

[8:22:00 AM](#)

REPRESENTATIVE FIELDS asked if the Marshall Trilogy was from the 1830s.

MS. BORROMEO replied yes, the trilogy of cases regarded how the federal government related to Native people. While tribes were not recognized as full sovereigns like the US or Great Britain, attributes of sovereignty were in place, characterizing them as domestic-dependent nations. Cherokee Nation v. Georgia (1831) tweaked how states dealt with tribes, she shared.

MS. SINGH added tenets of Federal Indian Law were in place until Congress explicitly took them away, which is why there were still tribes in Alaska. Congress did not remove them.

MS. BORROMEO added Congress did not take lightly that the Federal Government owed tribes Federal Trust Responsibility.

[8:26:15 AM](#)

REPRESENTATIVE FIELDS asked what the term "trust" meant in this context.

MS. BORROMEO replied that the trust responsibility unique to Indian Law referred to the Federal government's need to act in the best interest of federally recognized tribes.

MS. SINGH added ISDEAA was the only successful policy because it was the first time it was not dictated to tribes what they would do; moreover, tribes were given power and authority to do so themselves.

MS. SINGH shared slide 5, contracts v. compacts, the latter of which gave tribes much more flexibility and local control. She

shared as an example Fairbanks' methamphetamine epidemic: under a compact, it would be understood a tribe had the knowledge of how to keep its people off drugs; instead of taking over control, under the compact the tribe would be granted the power to decide what was best for themselves.

[8:34:14 AM](#)

MS. SINGH shared IHS's agreement with the Department of Health and Social Services (DHSS) and what it entailed: community health; health services, including dental, behavioral health, and optometry; research and data; technology; health training; rural energy; sanitation and health facilities management and construction; and wellness and prevention. On the Bureau of Indian Affairs/Department of the Interior side were child/family services, economic development, education, employment and training, elder services, natural resources, public safety, transportation, and tribal justice.

[8:39:20 AM](#)

CHAIR ZULKOSKY asked presenters to touch on the idea of leveraging partnerships, particularly in terms of the savings aspect and in terms of increasing program efficiency, vis a vis compacting.

MS. SINGH replied there were different programs under the same roof, and patients and tribal member clients may as well have been dealing with separate entities as "internal silos" to coordinate care and provide better service to clients at a lesser cost. With the state of Alaska's non-adherence to separate "silos," it would be the same fit-together, albeit on a larger scale.

MS. BORROMEO added in addition to cost savings, programs would become more efficient. It was especially important in terms of Alaska's size, she added, to let tribes handle certain components themselves. There is less a focus on intervention, for example, as tribes work on preventing interventions.

[8:46:13 AM](#)

MS. SINGH presented slide 8 on state compacting opportunities currently being explored: education, public safety, transportation, and others. She noted the fact that some tribes did not want to take on responsibility for their schools was an example of tribal self-determination. Others, such as the

village of Beaver, were interested in implementing tribes' own decisions in terms of education.

[8:48:43 AM](#)

REPRESENTATIVE ORTIZ asked if there had been discussion as to what compacting would look like in terms of education, compared to how it looks now.

MS. BORROMEO replied that it all started with willing participants, and Commissioner Michael Johnson, Alaska Department of Education & Early Development (DEED), has been a willing participant, but conversations were in beginning stages. She added there needed to be buy-in from the entire district and region.

[8:51:30 AM](#)

REPRESENTATIVE CRONK asked if there was any possibility of a Native boarding school or regional school in the Interior.

MS. SINGH replied TCC did not like to be involved with the like, as boarding schools, while they could be successful, took away from student count and thus education in the villages.

[8:53:08 AM](#)

REPRESENTATIVE FIELDS asked if education compacting could be done in such a way that teachers were able to maintain continuity of retirement and benefits.

MS. SINGH replied yes, it would be a barrier to recruitment to have a different system in which the benefits didn't match.

[8:54:06 AM](#)

CHAIR ZULKOSKY added that Joel Isaak, Project Coordinator, State-Tribal Education Compacting, DEED, has been having ongoing conversations with stakeholders about the prospect of compacting within education.

[8:54:43 AM](#)

MS. SINGH went over consultation, a formal process to "communicate in a good way," on slide 9. In terms of IHS, tribes were asked what they thought before changes were made so input could be made before regulations were put into place.

Consultation spoke to respect and transparency, and these elements were present whether they happened formally or informally, she added.

[8:57:27 AM](#)

REPRESENTATIVE CRONK asked what compacting would look like in terms of education.

MS. SINGH replied that when villages were involved and education was working for local people, things would stay the same. Compacting would be presented as an option when the status quo was no longer working, she explained. In a village where tribal members were in the juvenile justice system, the tribe could pull the village together by developing a case plan. Specific visions for specific communities, whether specifically named compacting in education or not, was the idea, she stated.

[9:02:12 AM](#)

CHAIR ZULKOSKY asked if there would be a spectrum in terms of those interested in compacting and those not.

MS. SINGH replied yes, and pilot programs were key in determining the level of interest. Tribes choosing not to participate were expressing self-determination, she reiterated, the goal always being local control and local voice.

[9:06:28 AM](#)

The committee took an at-ease from 9:06 a.m. to 9:07 a.m.

[9:07:06 AM](#)

MS. BORROMEO shared a PowerPoint on the Alaska Child Welfare Compact ("compact"). Alaska Native children made up 15 percent of the state's general population, she shared, but represented 60 percent of the kids in state custody. Disparities of this nature generally indicated a system failure, and Alaska was no exception, she said. In terms of retention difficulties, the state had a difficult time recruiting and retaining a proficient workforce, she shared. The Office of Children's Services (OCS) typically operated at a 30-percent vacancy rate and required its frontline workforce to carry caseloads more than three times the national average, she put forth.

[9:13:42 AM](#)

MS. BORROMEO shared the compact was a product of a 25-year partnership between state and tribal representative between child welfare workers and invited stakeholders, with the shared goals of strengthening Alaska's compliance with the Indian Child Welfare Act (ICWA), passed in 1978 to keep AN children in AN homes with the goal of not removing children who weren't in crisis just because they "looked like" they were in crisis by a social worker who may not have understood concepts such as generational living.

MS. BORROMEO shared the compact was also a product of Tribal Title IV-E Agreements, a special section of the Social Security Act, which provided federal money to states and to tribes for foster care, transitional independent living programs, guardianship assistance, and adoption assistance. Tribes received a higher reimbursement rate than states for covered services, resulting in significant General Fund savings, she noted. She mentioned Kristie Swanson, Program Coordinator, OCS, was someone whose expertise could be sought in this field.

MS. BORROMEO shared the compact was an intergovernmental agreement between the State of Alaska and 18 federally recognized Alaska Native tribes and tribal organizations to improve the life outcomes of Alaska's children and families by transferring negotiated child welfare services and supports along with their respective revenue streams from OCS to the Tribal co-signers, with the goal of providing higher quality services and supports at a lower cost. The compact was modeled after the compacts the federal government routinely negotiated with tribes and tribal organizations under the ISDEAA, was the first ever government-to-government agreement negotiated and executed at the state level and was proud to recognize the inherent authority of federally recognized Alaska Native tribes to provide child welfare services and supports to their members. She said it was helpful to consider tribes as local governments exercising local control and explicitly pointed out there was nothing to be afraid of in the word "tribe."

[9:18:36 AM](#)

MS. BORROMEO shared a list of 18 tribal co-signers representing 161 tribes, willing to provide services throughout the state: Aleutian Pribilof Islands Association, Arctic Slope Native Association, Association of Village Council Presidents, Bristol Bay Native Association, Central Council Tlingit and Haida Indian Tribes of Alaska, Cheesh'na Tribal Council, Chugachmiut, Cook

Inlet Tribal Council, Copper River Native Association, Native Village of Eyak, Kawerak, Inc., Kenaitze Indian Tribe, Maniilaq Association, Mentasta Traditional Council, Nome Eskimo Community, Aleut Community of St. Paul Island, Sun'aq Tribe of Kodiak, and Tanana Chiefs Conference.

MS. BORROMEIO shared the compact was conceived under Governor Bill Walker and has grown since April 2017. During fiscal year 2018 (FY 18), tribal co-signers developed/redesigned their programs and built capacity and infrastructure. Also, the state began sharing Protective Services Reports, and provided training and technical support. In FY 19, tribal co-signers began performing Initial Diligent Relative Searches (IDRSs). Furthermore, the parties negotiated four new scopes of work for Ongoing Relatives Searches (ORSs), Family Contact, Licensing Assists, and Safety Evaluations. Still, the state declined to sign due to the change in administration to Governor Dunleavy.

MS. BORROMEIO shared in FY 20 parties worked out differences and signed all five pre-negotiated scopes, including IDRSs, ORSs, Family Contact, Licensing Assists, and Safety Evaluations. Negotiations will happen in May 2021 for FY 21, she added.

[9:28:19 AM](#)

CHAIR ZULKOSKY asked regarding support of the compact, what it looked like from a tribal co-signer's perspective if the state made assertions of support, what it looked like in terms of functionality.

MS. BORROMEIO replied that impediments to state support would be funding stopping even though tribes are taking on more; underwriting will become more of a challenge. Furthermore, folks will constantly need to be educated on what the compact is and how it came about.

CHAIR ZULKOSKY asked if funding flowed through the administration's budget from the Department of Health and Social Services or the OCS, and what amount had been set aside.

MS. BORROMEIO replied it came out of OCS's budget, was a line item at \$1.6 million, and has met implementation challenges. The state would have to infuse money "without needing X, Y, and Z," she said.

CHAIR ZULKOSKY asked if there was an idea of what the annual investment would be to make [the compact] fully functional from the tribe's perspective.

MS. BORROMEEO replied that it would depend on the co-signers and how many children a particular tribe had in custody, but a good number may be \$5 million.

[9:36:51 AM](#)

REPRESENTATIVE TARR asked about the May 2021 meeting and if anything should be done in advance to prepare.

MS. BORROMEEO replied thinking about direct appropriations to the compact would be helpful as that would be a strong signal the legislature supported the compact and what it was trying to accomplish. Drafting legislation to cement the compact in statute would also be very helpful, she said.

[9:38:40 AM](#)

REPRESENTATIVE FIELDS asked if any legislation had been drafted.

MS. BORROMEEO answered no.

[9:38:54 AM](#)

REPRESENTATIVE TARR asked, if Alaska got federal funds for child abuse prevention and family violence prevention, whether the compact would be an allowable purpose in which to spend them.

MS. BORROMEEO replied that the funds had not yet been looked at closely but may be able to be steered toward the compact.

MS. BORROMEEO said applying the federal compact model to child welfare service has caught the attention of Casey Family Programs, the largest foster care program in the US, which in turn has donated money and hired consultants. Services needed to be higher quality and rendered in a more cost-efficient manner, and that was the goal of the compact, she restated. The number of children in state custody also needed to go down, she emphasized.

[9:43:44 AM](#)

REPRESENTATIVE FIELDS asked about the savings to the general fund while taking care of children through a compact rather than through the state.

MS. BORROMEO replied that the numbers changed on an annual basis, but the state was reimbursed for foster care through the federal government at a rate of 50 percent, and through the tribe it was closer to 60 or 70 percent.

[9:46:08 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Tribal Affairs meeting was adjourned at 9:46 a.m.