# MINUTES
# State-Tribal Relations

**Senator Troy Heinert, Chair**
**Representative Elizabeth May, Vice Chair**

**Friday, January 26, 2018**

**Commons Room**
**Wakinyan Wanbli Multipurpose Building**
**Sinte Geleska University- Antelope Lake Campus**
**101 Antelope Lake Circle**
**Mission, SD 57555**

The meeting of the State-Tribal Relations Committee was called to order by Senator Troy Heinert at 10:07 a.m. (CST) on January 26, 2018, in the Multipurpose Building, Sinte Geleska University, Mission, South Dakota.

A quorum was determined by the following members answering the roll call: Senators Phil Jensen, Kevin Killer, and Lance Russell; Representatives Shawn Bordeaux, Oren Lesmeister, Steve Livermont; Representative Elizabeth May, Vice Chair; and Senator Troy Heinert, Chair. Excused: Representative John Lake and Senator Jordan Youngberg.

Staff members present included Jessica LaMie, Legislative Attorney.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office.*

**Approval of the Minutes**

**A MOTION WAS MADE BY SENATOR JENSEN AND SECONDED BY REPRESENTATIVE BORDEAUX TO APPROVE THE MINUTES OF THE DECEMBER 14, 2017, STATE-TRIBAL RELATIONS COMMITTEE MEETING. The motion prevailed unanimously on a voice vote.**

**Mr. Keith Horse Looking** gave an opening prayer.

**Chair Opening Remarks**

**Senator Troy Heinert** welcomed everyone to the Rosebud Reservation and asked for guests in attendance to introduce themselves. He outlined the agenda for the day which included a tour of Todd County Middle School, guided by the school superintendent, the school principal, and the school fellow.

**Tour of Todd County Middle School**

The committee visited Todd County Middle School (TCMS), which is a recipient of a Native American Achievement School Grant. TCMS began addressing gaps in performance by deciding to stop pushing content when student is not ready and instead offer content at an appropriate current level for the student. The school embraces the Oceti Sakowin Essential Understandings by making cultural connections to various content areas. By meeting children where they are at and giving them material they are ready for, 70% of students have shown growth in the 2017-2018 school year, and 65% have already met their growth goal for the year.

The committee sat in on a Lakota language class. There are approximately 176,000 enrolled tribal members in South Dakota but only approximately 2,000 are fluent in Lakota. The average age of a fluent Lakota speaker is over 70 years of age. TCMS has begun offering Lakota language classes in a contextual learning setting. Parents will also be

offered classes. The committee was presented with the concept of offering language credit to students before high school, because it is easier to learn a language at a younger age.

TCMS wants the school to be a family-like environment and practices trauma informed instruction. TCMS has a recovery room where students can go to reflect on the reasons for negative feelings or behaviors. Since the implementation of a recovery room, the school has seen a 56% reduction in office referrals and 52% reduction in suspensions.

TCMS believes the steps taken since receiving the Native American Achievement School Grant are not necessarily innovative but what they should have been doing all-along. The grant has given TCMS the ability to investigate what works for students. When asked what TCMS needs from the state, representatives from TCMS responded that they wish they could test students at their performance level rather than grade level. Students may still test behind their age level, but students will be ready for high school if TCMS is able to continue the current programing.

**Public Testimony**

The committee returned to Sinte Geleska University for lunch, public testimony, and committee discussion.

**Ms. Michelle Dauphinais Eschols, Piscataway, NJ** talked about legislation regarding childhood sexual abuse and the Native American boarding school system (Handout #1). The current law has a statute of limitations. The Native American boarding school system does not fit into the traditional law and expressed a need to account for that. To do that, legislation is needed. The South Dakota Supreme Court issued an opinion that a group of sisters could not bring a case of childhood sexual abuse because of the statute of limitations and the claim could not be brought against the Native American boarding school. SB 196 would address the issues brought up by the South Dakota Supreme Court. She outlined SB 196 and provided talking points (Document #2). In her research the court made it clear that the Legislature needs to clarify its intent. This is a situation that is outside of the traditional elements of the law.

**Representative Steve Livermont** asked where Saint Paul Indian Mission School is located. She responded that it is in Marty, South Dakota.

Senator Heinert explained the statute at issue was enacted in 1991 and amended in 2010.

**Senator Phil Jensen** asked about statistics regarding suicide and childhood sexual abuse. Ms. Dauphinais Eschols stated that victims of childhood sexual abuse are ten times more likely to attempt suicide.

**Representative Elizabeth May** asked where the statistics used in the presentation were from. Ms. Dauphinais Eschols stated that the statistics were the same ones used by Minnesota when Minnesota's statute of limitations laws were amended.

**Representative Oren Lesmeister** asked how many boarding schools today are under the same management, and, even if the statute was changed, how could anyone effected file a claim that is under different management. Ms. Dauphinais Eschols responded that that while ownership or management may have changed hands over the years the burden is on the plaintiff to file suit against the proper parties.

**Representative Shawn Bordeaux** asked about similar legislation from 2010.

**Senator Lance Russell** believed that the 2010 legislation was brought by the Catholic Church.

**Senator Kevin Killer** clarified the church came in response to the 2010 legislation that was brought by the plaintiffs from the original case. He also clarified that in 2010 the case at issue was eight days away from its scheduled court date.

Senator Heinert believed the original court case was improperly handled because a statute that was enacted after the original case was pending in court was applied to that case.

Senator Russell stated that the current statute extended the statute of limitations by allowing a victim to bring a claim until age forty. Typically, a tort claim is required to be filed within a few years of injury or knowledge of injury. Ms. Dauphinais Eschols stated in case law there is evidence of the court not applying the forty-year age limit and applying a traditional statute of limitations., Additionally, because the victims in the original case are over the age of forty, that provision is useless to them.

Senator Russell asked if any churches have established funds for victims of childhood sexual abuse in the Native American boarding school system or reached out to victims. Ms. Dauphinais Eschols stated that she is aware of cases that have settled but not of any funds created to help victims.

Representative Lesmeister asked what is the average age of a person who would come forward and attempt to use the proposed legislation, if it were to pass. Ms. Dauphinais Eschols stated that the average age of a victim under the described circumstances is sixty years of age or more. Representative Lesmeister stated that it would be a large expansion to amend the number of years and would be impractical.

Senator Heinert thanked Ms. Dauphinais Eschols for her testimony because most people are not aware there were Native American boarding schools within our lifetime and more education is needed on the issue.

**Mr. Ike Schmidt, Legislative Affairs Office, Rosebud Sioux Tribe,** thanked the committee for the opportunity and spoke to the committee on issues of Native American gaming, economic development, health care services, relationships with the federal government, and cigarette taxes.

Representative Bordeaux stated that for most legislators it can be difficult to address Native American issues. It is extremely beneficial for the Legislature to hear from the tribes on what issues are effecting Native American communities. There is a complex interplay between the state and the tribes because the town is owned by the state, but the town is surrounded by federal land. For example, there is a downed light pole, which was installed by the state, along the highway, located on tribal land. The light pole is still down because it is not clear who is responsible for the repair; the state, the Rosebud Sioux Tribe (RST), or the electrical co-op.

Representative May asked if the pole was outside of the city limits. Senator Heinert clarified that the pole is along Highway 18 in the state right of way, but the state says RST or the co-op needs to fix it.

Representative Lesmeister asked when the Flandreau Santee Sioux Tribe (FSST) renegotiated their gaming contract why they did not include the other tribes. Mr. Schmidt stated that FSST took the lead by threatening a lawsuit, which would not have included the other tribes. FSST was able to negotiate for around 500 gaming machines, but RST has only 250 machines.

Representative Bordeaux asked how can the state, counties, and tribes work together to get accurate, useable data to start better addressing issues facing the tribes. Mr. Schmidt stated that data is very important; however, it is hard to collect data on the population. Without accurate data, thousands of dollars are being lost.

Senator Heinert stated that the census is coming up and people receiving forms of assistance should be employed by temporary jobs such as census data collectors. However, if a person receiving assistance were to take such a job

it would count against them. In the current system it is not advantageous for persons receiving assistance to seek these kinds of employment opportunities. There should be a grace period or a period of weaning people off assistance. Any form of assistance reform would require input from the Department of Social Services, the Department of Health, and the Housing Development Authority, but it all starts with having accurate census data.

Representative Bordeaux stated that some tribes employed their own census takers and got worse results than the federal census takers.

Representative May asked how do we help build up persons on assistance programs and keep them up when as soon as they try to better themselves they are cut off from the necessary assistance. People are cut off from assistance programs too soon and then end up right back where they started.

Senator Heinert stated that some of the assistance programs are controlled by the federal government but the state needs to approach the federal government and urge changes and extension of programs.

**SENATOR RUSSELL MOVED, SECONDED BY REPRESENTATIVE MAY THAT LRC STAFF ARRANGE FOR DSS AND DHS TO ATTEND THE NEXT SCHEDULED MEETING TO DISCUSS FEDERAL REGULATIONS REGARDING ASSISTANCE PROGRAMS AND POSSIBLE EXTENSION OF BENEFITS TO INDIVIDUALS AS THEY SEEK EMPLOYMENT OPPORTUNITIES.** The motion prevailed on a roll call vote with 8 members voting AYE, 0 members voting NAY, and 2 members excused. Those voting AYE: Jensen, Killer, Russell, Bordeaux, Lesmeister, Livermont, May, and Heinert. Those excused: Youngberg and Lake.

**Ms. Lynn Colombe, Todd County Tribune, Mission,** stated if the desire is to increase the expectations of people who receive assistance services, then there needs to be increased skills training. Career and technical education needs to have more support in high schools. Additionally, there are safety concerns because no one from the state is monitoring regulations on the reservations, for example the height of stop signs and construction regulations.

Representative Bordeaux commented that people are aware of gaps between jurisdictions and will abuse those gaps. The jurisdictional gaps make some issues extremely difficult to address.

Mr. Schmidt stated that when trust lands are moved out of a trust it costs a lot in tax dollars. Outside the boundaries of a reservation it is extremely difficult to move land from fee into a trust. The automatic response from the state is to oppose moving lands from fee to trust, but he hopes in the future to make the process easier.

Representative Bordeaux stated that conversations about all of these issues cannot happen until all the right people are at the negotiating table. He added that there are issues with water permits and the state giving away water. He has a piece of legislation, modeled after Oregon, to create a commission where all the tribes are at the table with the Secretary of Tribal Relations to discuss issues affecting all tribes in the State of South Dakota. Mr. Schmidt stated that is a great idea.

**Committee Discussion**

Representative Lesmeister commended the educators at TCMS on their efforts to improve the educational experience of their students.

Representative Bordeaux added that TCMS is doing a good job of spending the grant money in the way it was intended and, in doing so, is showing growth in their students. He thanked TCMS for letting kids figure out who they are and advancing at their own pace. This process will nurture children to be future leaders in the state and tribes, and he urged them to continue what they are doing.

Representative May stated that TCMS is doing a great job, and it is encouraging and uplifting to see positive progress. She is going to take the message of TCMS to other schools in the state and urge them to visit TCMS and to look at their model. She asked if there is something in place to track the program's progress.

**Sage Fastdog, Native American Achievement School Grant Fellow, Rosebud Sioux Tribe,** answered that there are metrics in the Native American Achievement School matrix that measure consistency between programs. It takes time to do something well and, if the rug were to be pulled out from underneath the program, it would be devastating.

Representative May stated she is uplifted by what TCMS is doing; however, the committee is only ten of one hundred five legislators. She encouraged TCMS to have as much information available as possible to show progress. She believed the program at TCMS needs to be implemented throughout the state.

**Jonathan Santos Silva, Sr., NACA Inspired Schools Network, Kyle,** stated that the math assessment will give the ability to measure raw school data and growth data. While students may not be proficient at the state assessment, a growth assessment shows progress towards proficiency. If the Legislature is interested in specific pieces of information or data, there is potential in incorporating that information.

Senator Heinert commented that Indian education has come a long way in the last sixty years, but there is still a long way to go. The program at TCMS has come a long way in the last two years. It has been a tremendous turn around, and the program needs to be advanced further.

**REPRESENTATIVE BORDEAUX MOVED, SECONDED BY SENATOR RUSSELL, THAT THE STATE-TRIBAL RELATIONS COMMITTEE INTRODUCE A RESOLUTION DURING THE CURRENT LEGISLATIVE SESSION SUPPORTING THE PROGRAM AT TODD COUNTY MIDDLE SCHOOL.** The motion prevailed on a roll call vote with 8 members voting AYE, 0 members voting NAY, and 2 members excused. Those voting AYE: Jensen, Killer, Russell, Bordeaux, Lesmeister, Livermont, May, and Heinert. Those excused: Youngberg and Lake.

**SENATOR RUSSELL MOVED, SECONDED BY REPRESENTATIVE LESMEISTER THAT LRC STAFF ARRANGE FOR THE SECRETARY OF EDUCATION, THE PRINCIPALS OF ALL SCHOOLS WITH A PREDOMINANTE NATIVE AMERICAN POPULATION, AND THE SUPERINTENDENTS ALL SCHOOLS WITH A PREDOMINANTE NATIVE AMERICAN POPULATION TO THE NEXT SCHEDULED COMMITTEE MEETING TO BRIEF THE COMMITTEE ON WHAT CAN BE DONE TO FACILITATE THE PROGRAM AT TODD COUNTY MIDDLE SCHOOL AND IMPLEMENT THE PROGRAM AT OTHER SCHOOLS ACROSS THE STATE OF SOUTH DAKOTA.** The motion prevailed on a roll call vote with 8 members voting AYE, 0 members voting NAY, and 2 members excused. Those voting AYE: Jensen, Killer, Russell, Bordeaux, Lesmeister, Livermont, May, and Heinert. Those excused: Youngberg and Lake.

Senator Jensen informed the committee of a piece of legislation that would propose a constitutional change to the appointment of the Secretary of Tribal Relations. The legislation would require the tribes to suggest nominations and advise and consent to the Governor's appointment of the secretary. Additionally, he has another piece of legislation that would give the committee subpoena powers.

**SENATOR JENSEN MOVED, SECONDED BY REPRESENTATIVE BORDEAUX, THAT THE STATE-TRIBAL RELATIONS COMMITTEE SUPPORT THE TRIBAL GOVEMENTS SUBMITTING THE NAMES TO THE GOVERNOR AND ADVISE AND CONSENT FOR THE APPOINTMENT OF THE SECRETARY OF TRIBAL RELATIONS DEPARTMENT.** The motion prevailed on a roll call vote with 7 members voting AYE, 0 members voting NAY, and 3 members excused. Those voting AYE: Jensen, Killer, Bordeaux, Lesmeister, Livermont, May, and Heinert. Those excused: Russell, Youngberg and Lake.

Representative May stated that in 2016 there was legislation (HB 1012) to provide for an additional position in the Office of Economic Development. The legislation was intended to get all tribes involved, but the legislation was

tabled. It was suggested there were alternate methods of achieving the intended results of HB 1012. There was an agreement that a status report would be issued, but no status report has been issued. She wanted to bring this to the committee's attention and to encourage follow up on the issue.

Senator Heinert stated that many items get pushed aside and the Department of Tribal Relations cannot handle every item when it comes to nine separate tribal governments.

Representative Lesmeister thanked the committee chair for following with having a meeting in Mission, because the visit was well worth their time.

**A MOTION WAS MADE BY SENATOR JENSEN SECONDED BY REPRESENTATIVE LESMEISTER, THAT THE STATE-TRIBAL RELATIONS COMMITTEE MEETING BE ADJOURNED.** The motion prevailed on a voice vote.

The committee adjourned at 3:48 p.m (CST).