

# MINUTES **Amended 10-23-2017**

## State-Tribal Relations



Senator Troy Heinert, Chair  
Representative Elizabeth May, Vice Chair

**First Meeting, 2017 Interim  
Wednesday, May 31, 2017**

**Room 413 – State Capitol  
Pierre, SD**

The first meeting of the State-Tribal Relations Committee was called to order by Senator Troy Heinert at 10:00 a.m. (CDT) on May 31, 2017, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined by the following members answering the roll call: Senators Troy Heinert, Phil Jensen, Kevin Killer, Stace Nelson, and Lance Russell; Representatives Shawn Bordeaux, Don Haggar, Oren Lesmeister, Elizabeth May, and Craig Tieszen.

Staff members present included Jessica LaMie, Legislative Attorney; Emily Kerr, Legislative Attorney; Lucas Martin, Fiscal Analyst; and Paul Giovanetti, Senior Legislative Secretary.

*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. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.*

An opening prayer was offered by **Mr. Skyman Redday, Sisseton-Wahpeton Sioux Tribe, Agency Village.**

### **Election of Officers**

**Ms. Jessica LaMie, Legislative Attorney, Legislative Research Council** opened the floor to nominations for committee chair.

**A MOTION WAS MADE BY SENATOR NELSON, SECONDED BY REPRESENTATIVE BORDEAUX, THAT SENATOR HEINERT BE NOMINATED AS COMMITTEE CHAIR.**

**A MOTION WAS MADE BY REPRESENTATIVE HAGGAR, SECONDED BY REPRESENTATIVE LESMEISTER, THAT NOMINATIONS FOR COMMITTEE CHAIR BE CLOSED.**

**SENATOR HEINERT WAS ELECTED CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE BY ROLL CALL VOTE WITH 8 VOTING AYE AND 2 EXCUSED. Those voting AYE: Jensen, Nelson, Russell, Bordeaux, Haggar, Lesmeister, May, and Tieszen. Those EXCUSED: Killer, and Heinert.**

**Senator Troy Heinert** took the gavel and opened the floor to nominations for vice chair.

**A MOTION WAS MADE BY REPRESENTATIVE LESMEISTER, SECONDED BY SENATOR HEINERT, THAT REPRESENTATIVE BORDEAUX BE NOMINATED AS COMMITTEE VICE CHAIR.**

**A MOTION WAS MADE BY SENATOR JENSEN, SECONDED BY REPRESENTATIVE HAGGAR, THAT REPRESENTATIVE MAY BE NOMINATED AS COMMITTEE VICE CHAIR.**

**REPRESENTATIVE MAY WAS ELECTED VICE CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE BY SECRET BALLOT.**

The State-Tribal Relations Committee recessed at 10:15 a.m. Senator Heinert reconvened the State-Tribal Relations Committee at 10:30 a.m.

### **Update from the Department of Tribal Relations**

**Mr. Steve Emery, Secretary, Department of Tribal Relations (DTR)**, introduced to the committee two new policy analysts for the department, Ms. Alissa Olson and Ms. Hannah Kagey. In the past few months the DTR has worked on public safety concerns regarding methamphetamine on the reservations; held public meetings with the tribes addressing SB 176 ([SL 2017 ch 42](#)); worked on various agreements and issues among the tribes and state agencies including the Departments of Agriculture, Corrections, Education, Game, Fish, and Parks, and the Governor's Office of Economic Development (GOED); worked with the Pennington County State's Attorney Office and law enforcement on an alternative sentencing program; coordinated work with the State Department of Veterans Affairs to begin a memorial at Capital Lake for the Dakota, Lakota, and Nakota Code Talkers; and worked with the Department of Revenue on the new tribal veteran license plates.

**Representative Shawn Bordeaux** asked what major issues tribal members raised regarding SB 176. Secretary Emery stated that he, the Governor, and the Lieutenant Governor discussed the details of the bill with tribal members. Individuals are still allowed to protest; however, it cannot be on the highway due to safety concerns. Tribal law enforcement officers are willing to assist local law enforcement officers to manage any protest. Secretary Emery also stated that the Keystone XL pipeline has not been permitted yet and any questions regarding the subject should be addressed to the Public Utilities Commission.

**Representative Don Haggar** asked that considering the current methamphetamine epidemic, how many Memorandums of Understanding (MOU) have the tribes entered into with the State Highway Patrol. Secretary Emery stated that there have been no MOUs, however the State continues to meet with the tribes.

**Representative Oren Lesmeister** asked if the work being done to bring law enforcement agencies together could also incorporate tackling the methamphetamine problem. Secretary Emery stated there is potential and the tribes are now providing information to the State.

**Senator Stace Nelson** commended Secretary Emery on the veteran plates but stated the plates do not allow for the veteran to show their branch of service. Secretary Emery stated that idea had not been raised during development of the plates, and he will bring that suggestion back to the Department of Revenue.

Senator Nelson asked if there are currently any issues with veterans living on the reservation gaining access to services or if there are any issues with tribal members being able to join the military. Secretary Emery stated that he is not aware of any issues with tribal members being able to join the military. The State Departments of Veterans Affairs and the DTR are working with the federal Veterans Administration (VA) to obtain housing for native veterans. At the federal level, there is a proposal that the co-payment, required by the VA for medical trips, would be covered by Indian Health Service.

**Senator Lance Russell** brought up that tribal members were not included in the drafting of SB 176. He asked if the administration is proactive in ensuring tribal members are included in the legislative process. Secretary Emery stated SB 176 came towards the end of session, and the DTR did not have time to effectively communicate with the tribes.

Representative Bordeaux asked what the DTR was working on in regards to economic development because this is a major concern for all members. Secretary Emery stated one of the major issues is that most land is in federal trust and the lack of adoption of the Uniform Commercial Code by the tribes makes development difficult. The department is talking with a couple of tribes about this issue.

Representative Bordeaux stated agriculture is an area prime for development opportunities and having expertise from the State could assist in development on the reservation.

**Representative Elizabeth May** stated that agriculture is a common interest for South Dakota. The reservations have the highest level of poverty with the highest rate of unemployment. She encouraged the DTR to work with the tribes and explore where the State can assist the tribes and build relationships centered around agriculture development.

Representative May asked if the DTR has worked with the tribes and the South Dakota Brand Board to investigate the missing cattle taken from ranchers. Secretary Emery replied that he has had meetings with the South Dakota Brand Board; however, because the tribe does not have any brand laws the board is unable to do anything about the missing cattle. The tribes need to pass brand laws for the board to be able to act.

Senator Nelson stated GOED is not supportive of small rural adventures which hurts small towns across the State. The office needs to look at impoverished, rural communities. Secretary Emery stated GOED has lent money to the reservations for economic development. However, due to jurisdictional issues there is a risk when a project fails the State would lose money.

Representative Lesmeister asked what are the DTR's top priorities and how can the committee assist the DTR. Secretary Emery listed public safety, healthcare improvement, and education as top priorities. The biggest hurdle is getting MOUs and opening lines of communication among government entities to work with each other on issues.

#### **Overview of Child Protection Cases from Department of Social Services**

**Ms. Virgena Wieseler, Director, Division of Child Protective Services, Department of Social Service** provided an overview of Child Protection Services (CPS) ([Document #1](#)).

**Senator Phil Jensen** asked for an update on the two girls found starving to death on Pine Ridge. Ms. Wieseler replied that CPS did not handle that case, as it was handled by federal authorities.

Representative Bordeaux asked if the department has resources available for individuals who face losing their children. Ms. Wieseler gave a brief overview of the resources the department has available to direct parents to the right program.

Representative Bordeaux asked if there was an effort by the department to place children in non-native homes or if native placements are given priority. Ms. Wieseler stated issues regarding native children in foster care are addressed with the State Tribal Child Welfare Consultation Workgroup. The workgroup includes Indian Child Welfare Act (ICWA) directors from the nine tribes, the Director of CPS, the seven CPS regional managers, and staff from the central office. The workgroup meets quarterly and discusses issues between State and tribal foster care.

Representative Bordeaux asked if the department assists with enrollment of native children. Ms. Wieseler replied the choice to enroll children as tribal members is the parent's. The ICWA directors work with regional managers in transferring cases between state and tribal courts.

Representative Bordeaux stated there are concerns about native children in the foster care system. Ms. Wieseler replied CPS is concerned with keeping children safe. The department does not make the decision to remove the children. Rather, removal results from investigations by law enforcement and subsequent decisions by the courts on the safety of the children.

**Senator Kevin Killer** asked if the workgroup meetings are held on the reservations. Ms. Wieseler replied in the past the workgroup has met on the reservations, but the highest attendance has occurred when the meeting is centrally located in Pierre.

Senator Heinert asked if adequate resources are available for parents and if the unavailability of these resources has an impact on the case outcome. Ms. Wieseler replied that staff in local offices spend most of their time transporting parents and children to various services.

Senator Heinert asked if indigenous ceremonies and events are recognized and honored as services. Ms. Wieseler replied they are recognized as appropriate services.

Representative May asked for a definition of safety. Ms. Wieseler answered the department needs to determine if a child is in present danger where there is not an adequate and capable caretaker present, along with physical abuse, sexual abuse, or neglect. These situations are unsafe for the child. If the child is not in present danger, then the department looks to see if they are in a situation of impending danger, where if current behaviors continue the child could be in present danger.

Representative May asked about funding sources and if there is a difference if a child is Native American. Ms. Wieseler replied that CPS has several funding sources; however, the race of a child does not matter.

Representative May asked about the number of cases CPS staff members have on average. Ms. Wieseler replied in FY16 the average CPS worker had a caseload of 30 children.

#### **Update from the Office of Indian Education and Information on Feather Tying Ceremonies at Graduations**

**Mr. Mato Standing High, Director, Office of Indian Education, Department of Education**, presented information regarding the paraprofessional tuition assistance scholarship program ([SL 2016 ch 100](#)), the Native American achievement schools grant program ([SL 2016 ch 86](#)), the consolation requirements of the federal Every Student Succeeds Act (ESSA), and the Indian Education Summit.

Representative Bordeaux asked about the process to fully implement the Oceti Sakowin Essential Understandings and Standards into the schools. Mr. Standing High replied the Oceti Sakowin Essential Understandings and Standards were a set of standards developed by the elders in the State. The standards are a required part of the State standards. The current focus has been to apply these standards in the social studies curriculum. The department is looking at applying the standards across all curriculums.

Representative May asked about the requirement of the Native American achievement schools grant program. Mr. Standing High replied that schools are required to show achievement amounting to college or career readiness to meet the needs within their home communities. This would include technical school programs for contractors, plumbers, and electricians.

Representative Bordeaux asked about feather tying ceremonies and if students have a right to incorporate this ceremony into graduation. Mr. Standing High stated the department does not have a policy that addresses this issue and should be addressed at the local level with the local school board. Feather tying is an honor and is important to the students.

**Ms. Darla Black, Vice-President, Oglala Sioux Tribe**, stated that feather tying is a rite of passage and when a young man enters adulthood he receives a feather and a young woman receives a plume. These individuals have completed something of value to the tribe. The rite is significant to native people.

## **Overview of Methamphetamine Issues on the Reservations from the Division of Criminal Investigation and the Federal Bureau of Investigation**

**Mr. Bryan Gortmaker, Director, Division of Criminal Investigation,** stated the division is invested to end methamphetamine trafficking on the reservations. The Northern Plains Safe Trails Drug Enforcement Task Force (NPSTDETF) began in 1999 which includes law enforcement members from the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), the Division of Criminal Investigation (DCI), the South Dakota Highway Patrol, and local city, county, and tribal members. There are two locations for the task force, Pierre and Rapid City. All prosecutions go through the federal United States Attorney's Office.

**Mr. Preston Patterson, Special Agent, Federal Bureau of Investigation and Division of Criminal Investigation,** stated he is a DCI Agent who was cross deputized by the FBI and acts as the liaison between the Unified Narcotics Enforcement Team (UNET) and NPSTDETF. The trend on the reservations is consistent with other communities in the State. The reservations are experiencing greater harmful effects due to extreme poverty. Methamphetamine is not being made on the reservation but is being imported. The consequences are an increase in crime, homicide, and aggravated assault. Since it is so addictive, persons addicted to meth commit secondary crimes including burglaries, automotive thefts, and EBT fraud to purchase the drug. Meth is not coming directly from Mexico but from source cities in Colorado, California, and Washington. The dealers are funneling the drug into South Dakota through Rapid City because profit margins are so high. The price of methamphetamine has decreased in the source cities. In 2008, one pound of the drug would bring in between \$16,000-\$18,000. That same pound in 2016 brings in \$2,000-\$4,000. However, the cost on the reservation has not changed. One gram of the drug cost approximately \$100-\$150.

**Mr. Dan Cooper, Special Agent, Federal Bureau of Investigation,** stated the focus of NPSTDETF is on long-term investigations with the goal to eliminate drug trafficking organizations and networks. Local law enforcement focuses on small crimes and the FBI builds on those cases to eliminate the larger group. An FBI case can eliminate between twelve and thirty-two offenders from a community with a minimum sentence of ten years in federal prison. This motivates others within the community to provide information on individuals to build the case against the drug trafficking organization. The biggest obstacle is when law enforcement agencies do not work together.

Representative Hagggar asked what has been done in the last sixteen years to facilitate coordination between law enforcement agencies. Mr. Cooper replied that the group consists of five agents and efforts to meet with local law enforcement continues. Representative Hagggar stated that this is a crisis with seventeen deaths directly related to drug use on the reservation last year. The local police force has been reduced, and he asked how many MOUs the FBI entered into with the tribes. Mr. Copper replied that they have not entered any MOUs but have offered to cross deputize tribal officers.

Senator Jensen asked if Mara Salvatrucha (MS-13) has been involved in the dealing of methamphetamine on the reservations. Mr. Patterson replied that the links lead back to the drug cartel, but law enforcement is not seeing the cartel directly establishing and running drug trafficking efforts on the reservations. Mr. Cooper stated that ninety-nine percent of the drug is coming from cartels in Mexico being sent to members in the source cities. From there, the drug is funneled to the reservation by local community members.

Representative May stated methamphetamine is destroying communities, families, and businesses because law enforcement is not willing to arrest the individuals. Families live in fear because they have been threatened. She asked if Bennett County is working with the task force. Mr. Patterson replied the county is cooperative, but they have not dedicated a member to work full-time with the task force.

Representative May asked how long does it take after information is provided to law enforcement for law enforcement to act on the information. Mr. Cooper replied that to investigate and build a full case takes a great deal of time. Law enforcement agencies need to work together to share information to build these cases.

Representative Bordeaux asked what the committee needs to do to assist to end the gaps of information. Mr. Cooper replied that the committee needs to convince local law enforcement to get involved in the task force. Mr. Patterson replied that having a dedicated law enforcement officer to attend meetings, communicate and share information, and act as a liaison between the different agencies is extremely important.

Representative Lesmeister asked if there is evidence that drug traffickers in the State are beginning to align with each other to counter the task force's efforts. Mr. Patterson replied there is no doubt that alignment is occurring throughout the state but not to hamper our efforts. Mr. Cooper replied if criminals do begin to align it benefits law enforcement investigations because more people are connected to a single criminal activity.

Representative Lesmeister asked if either agency has heard of coordinated paid killings on the reservations. Mr. Cooper replied that murder is a part of the meth problem, however, there is no evidence of paid killings.

Senator Nelson asked if the task force has done everything possible to build the relationships with local law enforcement. Mr. Cooper replied that the task force is federal and depends on active relationships among the tribes and federal government, but resources could include paid overtime and equipment.

Senator Jensen asked if the task force has adequate resources to conduct a drug raid. Mr. Patterson replied DCI will bring in additional members so that any raids conducted are tactically sound.

**Representative Craig Tieszen** stated cooperation works. Criminal entities depend on jurisdictional issues where there is confusion on who can enforce the laws in the area the criminals are operating. To end this problem, all agencies need to work together.

Senator Heinert stated resources are key to combatting the drug problem and asked what the FBI has done to lobby the federal government for more officers and funding. Mr. Cooper did not have information on that subject.

Senator Heinert stated meth is destroying communities and affecting the daily lives of constituents and asked if a saturation effort has been planned. Mr. Cooper replied the BIA has conducted saturation efforts but this requires coordination. Mr. Cooper stated there needs to be an effort from the court system to deal more effectively with drug offenses.

#### **Public Testimony from Members of Tribal Law Enforcement**

**Mr. Marlin Enno, Chief Administrator, Rosebud Sioux Tribe Law Enforcement Services, Rosebud,** stated the Rosebud Sioux Tribe has created their own drug task force, because the tribe was not getting the resources through the Northern Plains Task Force. He is concerned that federal budget cuts will impact their ability to effectively combat the problem.

Senator Killer asked if Rosebud Sioux Tribe law enforcement has coordinated with the federal task force. Mr. Enno stated the task force is focused on investigating potential conspiracy charges to take down large drug organizations. Tribes need to focus on issues at the local level to stop drug and other related crime problems. The Rosebud Sioux Tribe is looking to work with other tribes.

Representative Bordeaux asked if the Law Enforcement Training Academy is providing opportunity for officers to train in the State. Mr. Enno stated that the BIA regulates training on the reservations. The tribe and the BIA are open to local training but there needs to be a coordinated effort between the BIA and the State.

Senator Russell asked what can the State provide for habitual offenders. Mr. Enno stated aftercare, healthcare, and rehabilitation is needed on the reservations. Offenders need these services but the wellness centers are underfunded.

Representative Haggar asked with the current methamphetamine epidemic how many MOUs have the tribe entered. Mr. Enno stated his police force does not care what uniform an officer wears. The obstacle is the tribal government needs to warm up to the idea of entering a MOU with other law enforcement entities.

### **Committee Discussion on Future Topics and Meeting Dates**

Senator Heinert stated the committee had a great turn out at the last State-Tribal Relations Committee meeting held in December, in Rapid City, during the Lakota Nation Invitational (LNI), and recommended the committee meet during LNI this year.

Senator Nelson stated the committee should consider having the next meeting at Vermillion, to receive the brief on Professor Damgaard's research and have the Department of Education come and discuss the mismanagement of the GEAR UP grant.

Representative Lesmeister stated the meth problem is a major issue, and the committee should consider having all tribes, including tribal leaders from Minnesota, Nebraska, North Dakota, and Wyoming provide input. This problem is not just a South Dakota problem but a nationwide epidemic.

Senator Russell stated at the December meeting the committee should re-examine the meth issue and look at bringing legislation to assist these communities. He commended consideration of the GEAR UP grant and recommended this topic for discussion at the next meeting. The focus should not be on what happened but on what the department has done to correct the mismanagement and prevent anything like it from happening in the future.

Senator Jensen stated the committee should consider the review of sales tax both on and off the reservation.

Representative May stated the committee should consider agriculture as a topic, especially branding. She stated that at least one member of the brand board should be from one of the reservations. She reiterated the GEAR UP grant concerns, as \$62 million was to go to Native American children and the mismanagement is a failure in policy.

The committee discussed potential dates for future meetings and locations.

### **Adjournment**

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

The committee adjourned at 3:25 p.m.