



**First Meeting
2004 Interim
July 15, 2004**

**Room 412
State Capitol
Pierre, South Dakota**

The first meeting of the 2004 interim of the Legislature's State-Tribal Relations Committee was called to order by Chair Representative Stan Adelstein at 9:30 a.m. (CT), July 15, 2004, in Room 412 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Sam Nachtigal; and Representatives Stanford Adelstein, Jim Bradford, Kent Juhnke, J.E. "Jim" Putnam, and Thomas Van Norman. Senators Gil Koetzle, Michael LaPointe, Patricia de Hueck, and Brock Greenfield were excused.

Staff members present included Tom Magedanz, Principal Research Analyst, and Teri Retrum, Senior Legislative Secretary.

(NOTE: For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

Opening Remarks

In opening remarks, **Chair Stanford Adelstein**, stated that South Dakota has a tradition of carefully protecting a person's right to vote. Chair Adelstein said that he did not sense that any part of the discussion of the voter identification legislation was directed toward any party, person, or group of people. He said that the committee will be addressing very important issues today when it hears testimony from invited guests and others concerning the voter identification legislation and other topics scheduled on the agenda.

In order to stay on point, Chair Adelstein distributed and read copies of "Rules for Testimony with Regard to Voter Identification" (**Document #1**).

Voter Identification Legislation and Issues

Mr. Chris Nelson, Secretary of State, distributed copies of "South Dakota Voter ID Law" (**Document #2**). He briefly reviewed the following:

1. SDCL 12-18-6.1. Voters required to provide identification before voting;
2. SDCL 12-18-6.2. Affidavit in lieu of personal identification;
3. SDCL 12-18-6.3. Verification of identity—Provisional ballot if identity not verified;

4. SDCL 12-19-2. Application for absentee ballot – Contents – Form – Address to which ballot sent – Stamping date of receipt – Delivery;
5. SDCL 12-19-2.1. Application in person or by authorized messenger – Delivery of ballot to messenger;
6. SDCL 12-19-9.1—Nursing facility, assisted living center, or hospital having multiple absentee ballot requests; and
7. ARSD 5:02:05:25. Personal identification affidavit.

Mr. Nelson said that the new law is not connected in any way to the "Help America Vote Act." He commented that requiring a voter to provide identification before voting is not unique to South Dakota—eleven states require some form of identification before voting; nine states require no identification; the other states fall somewhere in between.

Mr. Nelson said that the voter registration requirement laws were sent to the Department of Justice for preclearance to determine whether they would negatively affect Native American voters. The Department of Justice has approved the laws for preclearance. Mr. Nelson said that the laws were not designed to prevent legal voters from voting.

Regarding the congressional election on June 1, 2004, Mr. Nelson cited the following facts:

- 56.7% of registered voters voted—Highest voter turnout percentage in South Dakota;
- 74,000 more people voted in South Dakota in the June election than ever before;
- 14.7% voter turnout increase statewide from 2002 to 2004;
- 11.3% voter turnout increase in Corson County;
- 10.6% voter turnout increase in Dewey County;
- 17.7% voter turnout increase in Shannon County;
- 14.9% voter turnout increase in Ziebach County;
- 188 people statewide signed a personal identification affidavit;
- 1.97% of the total number of registered voters who voted in South Dakota on June 1, 2004, signed personal identification affidavits.

Mr. Nelson noted that his office knows that there were people in South Dakota who were not offered the option of signing a personal identification affidavit. He said that those instances did not occur in just one segment of the population but statewide. Mr. Nelson stated that it was wrong for those people not to be offered the option of signing the affidavit—the law was not being applied properly. He said that his office was made aware of it and tried to fix the problem and that the county auditors also have been informed of the problem. Mr. Nelson

said, however, that on June 1, 2004, the public was assured that every person who voted was who they said they were. Mr. Nelson said that some of the people who had forgotten their personal identification went home and returned with the identification; even some who were given the affidavit decided not to sign it and went home to get their identification.

Mr. Nelson said that his office took this matter very seriously and provided training to county auditors before the election and implemented a public relations campaign enlisting the help of the media to relay the new voter identification law. He commended the media for doing a good job in their efforts. Mr. Nelson said that the office also encouraged local officials to conduct their own public relations campaign and showed the committee newspaper clippings of those efforts. Mr. Nelson said that he went on a speaking tour and sent letters to every tribal office in South Dakota offering to speak and answer questions about the issue. He said that two of those tribal offices responded, one of which was the Cheyenne River Sioux Tribe—Mr. Nelson said that he did visit that tribe and had a very productive meeting. He said that arrangements are pending to speak at the Sisseton-Wahpeton Community College in September or October.

Mr. Nelson said that the voter identification law is on the books and will be part of the upcoming November election. He said that it is crucial that every election worker understand the law and apply the law correctly. Mr. Nelson said that his office will be releasing sets of recommendations to the county auditors. Mr. Nelson showed a polling place key with 39 boxes to represent all possible options for a voter along with a list of appropriate responses from an election worker. He also informed the committee that the Office of the Secretary of State will be holding a hearing on what is legal concerning signage placed outside a polling place.

Ultimately, Mr. Nelson said that he did not believe that it is too much to ask that each person placing a ballot in the ballot box is who they say they are. He said that the process does not disenfranchise any voter who is eligible to vote.

Mr. Thomas Shortbull, Former State Senator who is currently serving as a Federal Election Assistance Commission Advisor, talked about laws concerning the state and the tribes that were passed in the South Dakota Legislature from 1973 to 1975. Mr. Shortbull said that in his opinion one of the reasons for the success was that all nine tribal chairs were involved in the process. He said that the Legislature might want to consider that type of forum again.

Mr. Shortbull said that the new voter identification law resulted in confusion and should be repealed. He questioned: "What was broken in South Dakota that they had to fix it?" Mr. Shortbull said that there is no federal mandate to have the voter identification requirement. He said that the main focus should be on how people are being registered to vote.

Mr. Shortbull said that the perception among many Native Americans is that the Legislature took this action to punish them for helping to reelect United States Senator Tim Johnson.

Mr. Shortbull said that when people go to the polling places, they should feel that they are voting in a welcoming and accepting environment. He said that Indian people have fought in foreign wars for the right to vote. Mr. Shortbull said that nothing that he has heard convinces

him that the way people have voted in South Dakota should have been changed and urged that the new law be repealed.

Public Testimony

Ms. Jennifer Ring, American Civil Liberties Union, testified that there are fewer people on the reservations in South Dakota who have drivers' licenses and other types of photo identification than in other parts of the state.

Ms. Ring said that there is particular concern about the provisions for absentee voters. She said that the voting laws in South Dakota are retrogressive with regard to those living in nursing homes. County auditors do not visit the tribal counties to assist residents of nursing homes in absentee voting.

Ms. Ring noted that just because the Justice Department has precleared the voter identification law does not mean that the final determination has been made regarding its status. Ms. Ring said that she agreed that word had gotten out about the photo identification; however, she expressed uncertainty about whether the affidavit option was clearly articulated.

Ms. Ring said that the former Attorney General said that there was no evidence of anyone voting fraudulently. She advocated the repeal of the voter identification law.

Mr. Oliver Semans, Rosebud Sioux Tribe, said that South Dakota must uphold the sanctity of the voting box. He said that people on the reservations believe that voting has been made more difficult under the new voter identification law. Mr. Semans said that older people who want to vote are embarrassed to have to show photo identification before being allowed to vote. He said that it does not make sense to require them to show photo identification when a poll worker knows them and can vouch that they are who they say they are.

Mr. Semans said that people in some areas of the reservations have to travel one hundred miles to vote. He noted that tribal officials have a good relationship with the county auditor in Tripp County.

Mr. Semans said that it is wrong if one person is denied the right to vote and stated: "The law is punishing people who have done nothing wrong." Mr. Semans urged repeal of the voter identification law.

Mr. Tom Katus, Rapid City, South Dakota, distributed copies of the following:

- "Final Report of the Western Dakotas Pilot Project of the Evolving Roles of Tribal People in Nation States" (**Document #3**);
- "Implementing HAVA: The Newest Means to Voter Suppression in Indian Country" (**Document #4**);
- Photographs of signs in front of polling places that noted the requirement of photo identification but no mention of the option of an affidavit (**Document #5**); and

- "Bunk and Blather Continues: Shallow and Biased News Reporters Contribute to Voter Suppression" (**Document #6**).

Mr. Katus said that the new voter identification law should be repealed. He said that the process was not broken and this new law did not make the process better. Mr. Katus said that the poll watchers on reservations are trained by the tribal colleges. He said that he has no problem with the Secretary of State and that the problem is with the law.

Mr. Bruce Whalen, Pine Ridge, South Dakota, said that he was a poll watcher in Pine Ridge for the June 1 election. He said that approximately 2,000 votes were cast and over 300 voters were provided with personal identification affidavit forms. Mr. Whalen said that never did he see an election official tell anyone that they could not vote.

Mr. Whalen maintained that the problem was not with the voter identification law but with the proceedings before voting—not a lot of parking area, three doors which led to a lot of human traffic going back and forth in the voting area and might have disrupted the process; people were escorting voters into the voting place, going into the voting booth and helping them vote; some poll watchers disregarded election officials—for example, food was being served while voting was going on, and poll watchers were chastised when they told the election officials that it was improper to serve food in the polling place.

Mr. Whalen said that people seemed to be very happy to take part in the credible political process and that he did not hear anyone speak against the voter identification law.

Mr. Whalen provided written testimony further documenting his comments (**Document #7**).

Ms. Julie Pearson, Pennington County Auditor, testified that she supports the voter identification law. She said that her views have nothing to do with a political party or race but rather with her belief that no one who is not eligible to vote should be allowed to vote. Ms. Pearson said that she wants to be able to assure the people of South Dakota that the persons who want to vote are who they say they are. Ms. Pearson said that all county auditors were trained to require photo identification or to sign a personal identification affidavit to confirm the identity of the voters. She said that the training was adequate and that she does not believe that poll workers ever intended not to let a person vote.

Committee Discussion and Questions

Responding to questions posed by **Representative J.E. "Jim" Putnam**, Mr. Nelson said that the voter identification law was brought forth by the Legislature, not the Office of the Secretary of State. He said that the impetus was to make sure that everyone who voted was who they said they were. Mr. Nelson said that before this new law, there was no affidavit involved. He also said that conventional affidavits would typically have to be notarized; however, there is currently no notarization required for a signature of the personal identification affidavit.

Mr. Julian Brown, representing the Lower Brule Sioux Tribe, said that, under federal law, the notice of perjury in the language of the personal identification affidavit has the effect of notarization.

Representative Jim Bradford expressed his opinion that South Dakota had a very good voting system before this new law and said that he is against the new voter identification law. He asked whether the Office of the Secretary of State keeps a record of who has attended training.

Mr. Nelson responded that it is the responsibility of the county auditor and the local state's attorney; however, the Office of the Secretary of State provides tools for them to use. He noted that those efforts are currently in the process of being revised after the June 1 election.

Representative Bradford asked about those in nursing homes. Mr. Nelson said that every auditor visits people in nursing homes and other care facilities to let them vote. He said that procedure is only required for a general election but that many auditors also visit the same facilities in a primary election.

Representative Thomas Van Norman said that there are instances when an individual is ill and lives quite a distance from a polling place. In those instances, Representative Van Norman said that the individual should be allowed to send a fax or some other type of document to verify identification. He said that the voting process needs to make it easy for all people to vote.

Chair Adelstein said that the committee cannot initiate such legislation but that a request could be made to the Executive Board to explore such an option in cases of illness.

Representative Van Norman requested that the committee present such a request to the Executive Board.

Mr. Nelson said that he is working on a message procedure in which such an individual can receive a ballot and return a ballot by messenger, specifically in Todd and Shannon Counties. He said that he tried to bring a bill forth in the Legislature for that purpose, but it did not pass the Legislature.

Representative Van Norman thanked the Secretary of State for his efforts and asked about provisional ballots. Mr. Nelson said that eight provisional ballots were distributed.

Responding to a question posed by Chair Adelstein concerning the perception of some on the reservations that the voter photo identification law was meant to punish Native American voters, Mr. Semans said that when an attempt at voter fraud was made during 2000, it was not painted as an individual wrong but as a wrong done by a race. He questioned again, "If a poll worker knows who a voter is, couldn't that work?" Mr. Semans said that he wants people on the reservations to feel just as comfortable voting as those voting elsewhere.

Representative Kent Juhnke commented on some of the things that he observed while serving as a poll watcher. He said that he saw no problems with the new law in Lower Brule but did witness some problems in Spring Creek.

Mr. Semans said that people on the reservations have very little understanding of laws that are passed by the State Legislature. He said that they believe that the state does not trust them when it requires them to have photo identification. To address some of that problem, Mr. Semans reiterated his opinion that a poll watcher should be able to vouch for a person if the worker knows that person.

Representative Juhnke said that the law is meant to affect everybody.

Mr. Shortbull said that it is wrong if there is one qualified voter who does not vote in November because of confusion over the new law. He said that a decision should be reached soon in the redistricting case—if the litigation goes against the state, it might be because there has not been any significant legislation passed for Indian people over the years.

At the request of Chair Adelstein, **Mr. Tom Magedanz**, LRC, distributed copies of a letter from **The Honorable John Yellow Bird Steel**, President of the Oglala Sioux Tribe, outlining his position on election requirements (**Document #8**). In his letter, President Yellow Bird Steele urged the Legislature to seriously consider repealing the identification requirements.

Outside Medical Assistance Programs for South Dakota Reservations

Mr. Charlie Abourezk and **Mr. Paul Iron Cloud**, Former President of the Porcupine Health Clinic, discussed outside medical assistance programs for South Dakota Reservations. Mr. Abourezk said that he met in Italy with health and cultural administrators who are interested in sending some physicians, vans, and medical supplies to reservations. He is exploring the possibility of the state working with the Italian government on such an endeavor.

Mr. Abourezk said that Indian Health Services is being funded at only forty to fifty percent of what is needed on the reservations and that this offer might be able to help relieve that burden.

Chair Adelstein noted that he spoke with some of the same officials and said that they indicated to him that Italian doctors are particularly interested in the risks and high incidences of diabetes among Indian people. He said that they would like to explore the possibility of some sort of cross-cultural exchange. Chair Adelstein said that the Governor indicated to him that he might be interested, but only if the tribes are interested.

Responding to Representative Putnam, Chair Adelstein said that the Governor is going to look into whether tribal governments are interested.

Representative Bradford said that the state and the tribes need to work cooperatively in health care.

Mr. Abourezk said that the Italian health officials want to work in the epidemiology area. He said that perhaps the state would be able to work on waivers of liability.

Mr. Iron Cloud said that there has been a "big outbreak of diabetes" on the reservations. The state and the tribes need to do more with good attitudes and with everyone working together on health issues—health care is a big issue on reservations.

Representative Van Norman expressed his opinion that the proposal is a great one to bring forward. People are suffering from diabetes, and any education and medicine that anyone can bring to the reservations would be welcome.

The committee recessed at 12:27 p.m. and reconvened at 1:50 p.m.

Bear Butte Issues and Developments and the Bear Butte Forum

Mr. Doug Hofer, Director of Parks and Recreation, Department of Game, Fish and Parks, distributed copies of a base map of Bear Butte along with Bear Butte Forum Recommendations and the department's actions (**Document #9**). In discussing the map, Mr. Hofer said that, in addition to state-owned property, some parcels are owned by the United States as trust lands. Some of the other land adjacent to Bear Butte is purchased and owned by certain tribes. Mr. Hofer said that state and tribal issues surround Bear Butte—it has always been that way and always will be that way.

Mr. Hofer gave a brief history of Bear Butte. Bear Butte became a state park in 1961. The drive to make Bear Butte a state park was led by community members of the City of Sturgis, South Dakota. In the 1970s, there was disagreement between the state and the tribes over religious practices on the Butte. The disagreement went to the United States Supreme Court, which ruled that religious freedom at Bear Butte encompasses not only Native Americans but all people. Since that time, Bear Butte State Park has tried to balance all the uses of the park—religious, recreation, ceremonial, campground, educational, and so on. In all these areas, it is crucial to involve Native Americans in the process because Bear Butte is a sacred site. Seventeen tribes are known to have a connection to Bear Butte.

Mr. Hofer said that Bear Butte is visited by a diverse population. He said that visitors come from every state in the Union and from Europe and other countries. Mr. Hofer said that communication is key to the successful management of Bear Butte. He said that the Bear Butte Forum was founded in 1997 to bring together those individuals with an interest in Bear Butte in order to communicate and address issues.

Mr. Ken Rost, District Park Supervisor, Department of Game, Fish and Parks, discussed the recommendations from the Bear Butte Forum and the department's actions. He said that removal of the upper parking lot to provide more privacy for the ceremonial campground probably was the most important forum issue that the department has completed. Mr. Rost reported that the Game, Fish and Parks Commission has approved the forum recommendation to make a rule to prohibit leaving human remains (ashes) at the mountain. He said that the commission also has approved the prohibition of possession or consumption of alcohol at Bear Butte east of Highway 79. Mr. Rost noted that there are still areas of disagreement; however, he said that continued discussion is very valuable to the Bear Butte Forum.

Mr. Rost said that many people visit Bear Butte—tourists, hikers, foreign tourists, college groups, elementary and secondary school groups, religious groups (conventional religious groups and out-of-the mainstream religious groups). He noted that there have been some altercations among the various religious participants. Mr. Rost said that the forum has been very helpful in developing communication and trust among tribal religious leaders and the state.

Mr. Jim Jandreau, Park Manager, Bear Butte State Park, said that he is a member of the Lower Brule Sioux Tribe and that the forum has gone a long way toward building trust. He said that he deals with problems in the park by using common sense and hiring qualified people that he can trust to work in the park. Mr. Jandreau commended the Department of Game, Fish and Parks for its understanding of how he is trying to do things at the park. He said that it is an issue of trust and accountability.

Mr. Jandreau introduced **Mr. Sonny Richards**, a Medicine Man and religious leader who Mr. Jandreau said has been a mentor to him. Mr. Richards said that he has been going to Bear Butte since 1965, and he told a story about a fire that began on Bear Butte on August 26, 1996. The fire was first reported to have been started by a Native American sweat lodge, which turned out to be untrue; the fire was started by a cigarette. Mr. Richards said that he has been a member of the Bear Butte Forum since 1997. He stated that many non-Indian visitors have little understanding or respect for the mountain, and he expressed support for limiting the length of stay in the ceremonial campground. Mr. Richards said that he is concerned about the Sturgis Bike Rally and the resulting camping at Bear Butte.

Representative Putnam asked whether there was anyone at the park to tell visitors the rules of the park. Mr. Richards said that there are signs at the Bear Butte ceremonial grounds that outline the rules of the area.

Representative Bradford said that all groups need to work together and that he is glad to see the efforts that are being made. He asked what more needs to be done before the Legislature convenes in order to avoid controversy.

Chair Adelstein asked for recommendations.

Mr. Richards said that the visitor center has been there since 1965 and that it is now inadequate. A new visitor center would make education efforts easier and better.

Mr. Hofer discussed land ownership at Bear Butte and noted that some private land extends well up the side of the mountain. Another problem area concerns activities at the Sturgis motorcycle rally and their effects on Bear Butte. He stated that seventeen different tribes are involved with Bear Butte.

Chair Adelstein asked that the department let committee members know when a forum will be held in case some of the committee members want to attend.

Committee Discussion and Selection of Study Topics

Representative Putnam said that he is interested in the committee meeting on one of the reservations so that it can learn from the tribal leaders and members what their concerns are.

At this time, Chair Adelstein allowed **Mr. Steve Emery**, Rosebud Sioux Tribe, to speak briefly about acquisition of off-reservation land in trust. Mr. Emery expressed his concern about the acquisition of land in the Black Hills, particularly land adjacent and contiguous to the reservations, because it is sacred. In his opinion, Mr. Emery said that it is appropriate for the committee to study this issue.

Mr. Emery distributed copies of a Westlaw Download Summary Report on 25 USCA s 465 (**Document #10**) and of Title 25—Indians regarding Part 151—Land Acquisitions (**Document #11**).

Representative Van Norman agreed that the committee should study the issue of acquisition of off-reservation land in trust. He also suggested that the committee study the voting issue. Representative Van Norman said that there should be a way to get maps to make it clear to people where to vote and advocated more education on voting procedures. He suggested that the Secretary of State be requested to come to the committee to discuss voting issues and help develop solutions. Representative Van Norman submitted declarations from individuals involved in voting on the reservations (**Document #12**).

Representative Bradford cautioned the committee not to select so many topics that none would be given justice.

Mr. Magedanz distributed copies of a study topic proposal for the State-Tribal Relations Committee provided by Senator Michael LaPointe, Vice Chair of the committee (**Document #13**). Senator LaPointe noted in his proposal "To have the State-Tribal Relations Committee study which tribal governments in South Dakota have tribally-adopted Uniform Commercial Codes (UCC), and to study the similarities and differences to the State of South Dakota's UCC."

Representative Van Norman said that the Cheyenne River Sioux Tribe has adopted the UCC and works with the Office of the Secretary of State to record UCC filings with the Office. He said that economic issues on the reservations should be reviewed as a whole.

Representative Putnam expressed his opinion that the committee should study the trust land acquisition issue, including Bear Butte, and voting, and the UCC issues. He restated his desire that the committee meet on a reservation.

Chair Adelstein asked for a vote on whether the committee wanted to study trust land and the voting issues. The committee voted unanimously on a voice vote to study acquisition of off-reservation land in trust, including Bear Butte, and voting issues.

Public Testimony

Ms. Twyla Turney, representing the President of the Oglala Sioux Tribe, addressed the committee. She spoke in opposition to the new voter photo identification law. Ms. Turney said that it is not cheap for reservation residents to get a photo ID. She said that she is

concerned about the elderly and how they would get a photo ID. Ms. Turney also stated that a lot of her relatives do not want a photo ID.

Ms. Turney said that Bear Butte is very sacred to the Oglalas. She said that they prepare prayer cloths for the ceremonies on Bear Butte and do not dispose of them afterward. Ms. Turney said that they should not be disposed because they will dispose themselves.

As a liaison of the Springfield Prison, Ms. Turney said that there need to be opportunities for employment when an inmate is released.

For the record, Ms. Turney submitted documents from Ms. Marletta Pacheco concerning the prison system (**Document #14**).

Mr. Richard Blue Shirt spoke regarding his wife not receiving needed medical care in the Women's Prison in Pierre. He asked that she receive early release so that she can get the health care that she needs.

Representative Van Norman asked that the committee designate someone to check with the warden at the prison to make sure that Mr. Blue Shirt's wife is receiving the proper medication.

Representative Putnam said that an early release would need to be dealt with by the Board of Pardons and Paroles.

Next Meeting Date

The committee agreed to hold its next meeting on the Rosebud Reservation. The date and time will be determined.

Adjournment

There being no further business, Chair Adelstein adjourned the meeting at 4:10 p.m.



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