

MINUTES **Amended 12-14-17** State-Tribal Relations



Senator Troy Heinert, Chair
Representative Elizabeth May, Vice Chair

Second Meeting, 2017 Interim
Monday, October 23, 2017

Ballroom – Muenster University Center
University of South Dakota
414 E. Clark Street
Vermillion, SD 57069

The second meeting of the State-Tribal Relations Committee was called to order by Senator Troy Heinert at 1:00 p.m. (CDT) on October 23, 2017, in the Ballroom, Muenster University Center, University of South Dakota, Vermillion, South Dakota.

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

Staff members present included Jessica LaMie, Legislative Attorney; Emily Kerr, Legislative Attorney; 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>.

Approval of the Minutes

A MOTION WAS MADE BY SENATOR RUSSELL AND SECONDED BY REPRESENTATIVE LESMEISTER TO APPROVE THE MINUTES OF THE MAY 31, 2017, STATE-TRIBAL RELATIONS COMMITTEE MEETING.

A SUBSTITUTE MOTION WAS MADE BY SENATOR NELSON AND SECONDED BY SENATOR JENSEN TO AMEND THE MAY 31, 2017, STATE-TRIBAL RELATIONS COMMITTEE MINUTES AS FOLLOWS:

On Page 7, Paragraph 5,

Insert, the next meeting at Vermillion, to receive the brief on Professor Damgaard's research and have after the word "having".

The motion prevailed unanimously on a voice vote.

A MOTION WAS MADE BY SENATOR RUSSELL AND SECONDED BY REPRESENTATIVE LESMEISTER TO APPROVE THE MINUTES OF THE MAY 31, 2017, STATE-TRIBAL RELATIONS COMMITTEE MEETING AS AMENDED. The motion prevailed unanimously on a voice vote.

Chair Opening Remarks

Senator Troy Heinert stated the role of the committee is to educate the Legislature on the issues that affect the tribes. This morning, the committee received a presentation on the GEAR UP grant. The goal is for public testimony to allow individuals to speak about how there can be better relations between the state and the tribes.

Public Testimony

Mr. Frank Kloucek, Scotland, a former legislator, addressed the issue of the GEAR UP grant. He provided the committee a Mid-Central Educational Cooperative contract ([Document #1](#)) and a report from the Office of the Inspector General, US Department of the Interior ([Document #2](#)). He recommended the committee have Dusty Johnson, former Chief of Staff to Governor Dugaard, and Roger Campbell, former Director of Indian Education, South Dakota Department of Education, come and address what happened with the GEAR UP grant. He also recommended the Legislature conduct a forensic audit of the College Access Challenge Grant Program to American Indian Institute for Innovation (AIII). He stated that conflict of interest is a big issue in South Dakota. The Legislature needs to implement performance based contracts with oversight. He finished by stating term limits have hurt the state, and there has been a loss of knowledge in the Legislature.

Senator Stace Nelson asked if Representative Schoenfish has responded to questions regarding the GEAR UP grant. Mr. Kloucek stated that he submitted ten questions that were put together by a non-partisan group of constituents and Representative Schoenfish has not responded.

Senator Nelson asked if there were any recommendations for legislation regarding the mismanagement of the GEAR UP grant. Mr. Kloucek responded that the state needs to retain greater oversight and conduct additional forensic audits of the grants that have been handed off to the private sector.

Senator Lance Russell asked why Mr. Rick Melmer was not on his list of recommended people to testify. Mr. Kloucek stated he is not opposed to adding Mr. Melmer's name to the list, but that Mr. Melmer is involved in a lawsuit and he would likely be unwilling to answer any questions from the committee.

Representative Oren Lesmeister sought clarification on his oversight recommendation, as to whether the oversight should come from the Legislature, state government, or the federal government. Mr. Kloucek replied when he was a legislator, the Legislature would include sunset clauses on departments and programs to see if the money was spent properly. The oversight needs to come from the executive branch. The Department of Education and the local level school districts should have oversight on grants and how the funds are spent.

Senator Kevin Killer asked if Mr. Kloucek knew exactly how much in federal dollars passed through the state and if he knew of some instances that the federal government did not provide oversight. Mr. Kloucek replied that he did not know how much federal money flowed through the state. He stated he knew of projects through the Office of Economic Development, Department of Transportation, and Department of Education that has not had federal oversight but never to the extent of GEAR UP.

Mr. John Billion, Sioux Falls, a former legislator, stated he is concerned with the lack of oversight with the GEAR UP grant. If the state's audit process was working effectively, discrepancies in the management of the grant would have been realized. He suggested that the Legislature should work on an effective oversight program for all state grants and an improved audit process. Whether it be the Department of Education or the Legislature, someone needs to take responsibility.

Senator Russell asked for suggestion on how to strengthen the process for flow-through grants. Mr. Billion responded that for all grants, consideration should be given to who oversees the program and conducts performance evaluations. The individuals who evaluate should have no conflicts of interest.

Representative Shawn Bordeaux expressed his concern with the division in the Legislature. He understands that funding and contract mismanagement needs to be brought up and individuals need to be held accountable. He asked what can the Legislature do to hold the system accountable. Mr. Billion replied the problem is the state has a rural population and "everyone knows everyone" in South Dakota. The state needs to be careful in how grants are evaluated to prevent any conflict of interest. People in charge of administering a grant cannot have a close personal relationship with the program evaluator.

Representative Lesmeister thanked Mr. Billion for bringing to light the disrespect that has gone on with the Native American people. Mr. Billion responded that he believes there is a will do better and that people need to sit down and ask how to make this state better, especially ways to help all the people of South Dakota.

Senator Nelson stated that the GEAR UP misconduct goes beyond disrespect and instead robbed Native American kids of their futures. The money from GEAR UP could have been used to help many kids through high school and to graduate from college. He asked Mr. Billion if he had ever seen anything like this in his lifetime. Mr. Billion responded that there has always been some tendency to not look as closely as we should at how money is spent. A great deal can be done for less money to help a larger number of people.

Senator Heinert added that Mr. Billion was right that there are things we can do better, but the state also needs to ask what do our families, our communities, and our children want to learn. Senator Heinert asked attendees to consider how these groups want to learn and what is culturally relevant in our education system. He hopes that the committee and the Legislature start understanding and listening to tribal education directors and tribal schools rather than simply stating there is an achievement gap. It is time to recognize there may be different achievement goals.

Senator Nelson stated a few legislators have tried to expose the corruption that robbed Native American children of the funding and asked how this committee and the Legislature can effectively move forward. Mr. Billion stated it will be very difficult. Individual prejudices, family history, and upbringing influence how an individual decides what actions to take. However, the state needs to improve and work harder with the tribes to bring prosperity to the Native Americans.

Mr. Christian Skunk, Lower Brule, a University of South Dakota junior and former GEAR UP student stated he is heartbroken over the incident that occurred in Platte. He stated the media portrays that students were being robbed but overlooks that GEAR UP gave students the opportunity to meet individuals and build connections to motivate them to excel in school and push them to set the goal to attend college. Students successes were encouraged. He stated that it is because of the GEAR UP program that he is currently a student at the University of South Dakota. The program fell victim to poor oversight but also achieved successes because some of the program students are in college.

Senator Killer thanked Mr. Skunk for his leadership and stepping up, as a college student, to speak with the committee about what is portrayed in the media versus his own experience. Senator Killer asked what GEAR UP provided to help him succeed. Mr. Skunk replied that GEAR UP utilized effective individuals to motivate and mentor students. There is more to programs like GEAR UP than money. It is about the success of student participants.

Representative Elizabeth May stated it was good to hear how the GEAR UP program was helpful to a student. She asked for him to elaborate how the program worked, what did not work, and how the program helped prepare him to attend the University of South Dakota. Mr. Skunk replied that GEAR UP was offered in a classroom setting during

the summer which gave him insight on what he would be studying in the following year. The program prepared and motivated him to reach the next academic level. Mr. Skunk stated that he wished the coursework was dual credit because of the rigorous academic work participants completed in the six-week summer session. Dual credit would have offered students a head start on degree completion.

Representative May stated that education has moved to a one size fits all model. She asked for insight on what the Legislature could do better to help children in school. Mr. Skunk suggested legislation focusing on better resources for Indian education in communities across South Dakota and not just on the reservations. He stated that education on Native American issues should be taught to all students, teachers, and administrators and should go beyond the standardized history textbooks. Representative May stated the state might need to look at integrating Native American history into American history.

Representative Bordeaux asked how does the Legislature take a program like GEAR UP to a broader, statewide audience that serves all Native students both on and off the reservations, and what from the GEAR UP program could be modeled through the Board of Regents. Mr. Skunk replied the GEAR UP program provided students the confidence in completing the work needed to prepare for college. However, GEAR UP went beyond teachers lecturing in the classroom. Current college students and graduates used videos, discussions, and interactive learning to allow student participants to engage in an active learning environment.

Representative Bordeaux asked if the money from GEAR UP would have been better utilized as a stipend to students and if Mr. Skunk would have benefited from a weekly or monthly stipend. Mr. Skunk stated he believed a stipend would not have aided in the purpose of GEAR UP. Students had no expenses to attend and all meals and transportation were included.

Representative Lesmeister asked what degree Mr. Skunk was seeking, would he do the GEAR UP program again, and if he would recommend the program to other students. Mr. Skunk replied that his major is political science with a minor in business administration. He would absolutely do the GEAR UP program again because some of his lifelong friends went through the program. He would recommend the program, as he participated, to every eighth-grade student in the state.

Representative Lesmeister pointed out almost every student who is asked that question would do the GEAR UP program again and would recommend it to their peers. The benefits to educational engagement have been overshadowed by what has happened with its finances.

Senator Nelson asked Mr. Skunk how long he was in the GEAR UP program and if he ever met Brinda Kuhn, Keith Moore, Kelly Duncan, or Rick Melmer. Mr. Skunk replied that he was in the program for a total of four summers. He stated that he believed he met Brinda Kuhn as a part of the united program and that he saw Keith Moore but never actively engaged with him. Mr. Skunk stated Rick Melmer would come to the end of summer celebrations but Mr. Skunk never interacted with him. Mr. Skunk said he does not know Kelly Duncan.

Senator Nelson asked Mr. Skunk if he thought it fair if Dan Guericke, Stephanie Hubers, and Stacy Phelps are the only people held accountable for GEAR UP. Mr. Skunk stated that maybe the first two people, but because of his experience with Mr. Phelps, Mr. Skunk sees Mr. Phelps as the scape goat for the entire investigation, as the two people who took the money were not Native American.

Senator Russell asked which years Mr. Skunk participated in the program, the number of students in the program, and how many students have gone on to post-secondary schools. Mr. Skunk replied that he attended the program during the summer from 2011 to 2014, and there were between 300 to 400 students which were the same students each year except the incoming freshman and outgoing senior classes. He believed there are approximately thirty GEAR UP students at the University of South Dakota and approximately five at Black Hill State University right now,

to the best of his knowledge. He stated there would be greater participation in college enrollment if there were more scholarships for the students.

Senator Heinert asked when Mr. Skunk will graduate. Mr. Skunk replied that he will graduate in May of 2019.

Committee Discussion

Senator Heinert discussed having a meeting during the Lakota Nation Invitational and Lakota Nations Educational Conference and opened the floor for committee discussion on issues regarding Native Americans and the tribes throughout Indian Country.

Representative Lesmeister stated he has spoken with individuals in his district who would be able to testify at the Lakota Nation Invitational as a follow up on worsening drug problems. The State-Tribal Relations Committee needs to bring the state and tribal governments closer together and focus on finding solutions.

Representative Bordeaux stated the tribes have other issues that need to be addressed and are being overshadowed. He stated the Department of Transportation did not address issues on Highway 83 until someone was killed. The current condition of tribal and state relations is problematic, and the committee needs to work to improve the system. There is a desire to see both the state and the tribes come together to promote economic development.

Senator Nelson recommended the committee request an additional meeting date from the Executive Board. The GEAR UP grant needs to be addressed, because it was millions worth of mismanaged grant funding.

A MOTION WAS MADE BY SENATOR RUSSELL AND SECONDED BY SENATOR NELSON TO REQUEST THE EXECUTIVE BOARD APPROVE A FOURTH MEETING PRIOR TO THE LEGISLATIVE SESSION. The motion prevailed unanimously on a voice vote.

Senator Killer stated that methamphetamine issues are a huge topic that needs to be addressed, as well as healthcare, including proposed block grants from the federal government and the impact on the Native American healthcare system.

Representative May stated there are many problems on the reservations and one of the key issues is getting all entities: tribal, state, and federal governments to work together. All are South Dakotans. The meth epidemic is spreading everywhere, and tribal and state governments need to figure out how to tackle the issue together. The committee needs to send a letter to tribal leaders encouraging them to participate in this process. The state has informed the tribes that the agricultural issue of cattle theft is a jurisdictional issue, and this needs to be addressed with all governmental entities. The roads on the reservations are in poor condition, and there is no clear jurisdictional responsibility. For anything to get accomplished by this committee, the committee needs to get all interested parties to the table. Lastly, every year the Department of Education states that Native American children are driving down the state test scores, but the money from the GEAR UP program created huge personal, financial gains for some individuals. Department leadership should be held responsible for the mismanagement of funds.

Senator Nelson stated that he was disgusted, angry, and upset at the mismanagement of GEAR UP. This corruption affects our children's future and hurts the economic development of the tribes and the state. Senator Nelson encouraged South Dakotans to refer to their state constitution which says the legislature can summons and subpoena to impeach the highest officers of the state. The Legislature is not just policy makers and bill passers as the Governor tried to infer to shut down inquiries into this mismanagement. This theft from Native Americans that the Governor tries to pass off, the buck stops in his office. The Department of Education may have mismanaged this but it is the Governor's cabinet and he is responsible. Legislators under the Constitution are duty bound to hold the

executive branch in check. Senator Nelson urged everyone not to listen to the [']siren song of a bureaucrat,['] but to listen to the Constitution. He reminded committee members that they are not, [']bucket carriers for the executive branch, ['] and the committee needs to send that message loud and clear so not only does the, [']skinny gentleman in Pierre, ['] hear it but also every one of their constituents.

REPRESENTATIVE TIESZEN RAISED A POINT OF ORDER STATING THAT SENATOR NELSON'S COMMENT ON THE GOVERNOR'S APPEARANCE WAS DISRESPECTFUL. The Chair ruled that Senator Nelson was out of order.

Representative Bordeaux suggested the committee revisit establishing a commission to address lingering issues.

Representative Tieszen stated that he has been on this committee for ten years, and at first, he was frustrated because the committee seemed to lack tangible legislative accomplishments. He stated he changed his perspective because the charge in statute says the committee is to build relationships with tribes. The problem is that committee members and tribal leaders change. He stated he was disappointed that there were no tribal leaders at the meeting and maybe the committee would have been better off visiting the reservation communities to work on establishing relationships.

Representative Bordeaux stated it is difficult to figure out how to serve our people. The committee needs to build bridges between state and tribal governments. Members need to educate the native people why it is important to participate in South Dakota politics. Committee members need to engage with constituents and show them how much state government affects the reservations. The committee must give the tribal governments a reason to participate, and the committee needs to learn how to engage them.

Senator Heinert stated he appreciated the time the committee spent in Vermillion, and he has gained greater knowledge of the GEAR UP grant. This committee opens an avenue for constituents to address the Legislature. Recently, Sturgis canceled its homecoming because of racism. The main issue is that Native Americans are viewed as historical figures. The state needs to foster relationships that accept Native Americans being who they are and define what it means to be a "modern day Lakota". Education is whatever standards the state decides to impose on the school districts and the state does not consider Native American values. This committee needs to foster the connection between tribes and the state. He expressed concern for the Low-Income Energy Assistance Program funding, which will leave some constituents without heat this winter. The committee needs to be the bridge to show the tribal members what the state can offer all South Dakotans, regardless of race.

The next meeting will be held during the Lakota Nation Invitational and Lakota Nations Education Conference in Rapid City, South Dakota on December 14, 2017.

A MOTION WAS MADE BY SENATOR RUSSELL SECONDED BY SENATOR NELSON TO HAVE STAFF COMPILE EXAMPLES OF STATE LAWS REGARDING OPEN RECORDS, RECORDS RETENTION, CONFLICT OF INTEREST AND ENFORCEMENT, INCLUDING CIVIL AND CRIMINAL PENALTIES. The motion prevailed unanimously on a voice vote.

A MOTION WAS MADE BY SENATOR JENSEN SECONDED BY SENATOR NELSON TO SUMMON AND SUBPOENA IN ACCORDANCE WITH INTERIM RULE #15 AND IN ACCORDANCE WITH SDCL 2-6-23: FOR THE PURPOSE OF IMPROVING STATE-TRIBAL COMMUNITY RELATIONS, AND FOR STUDYING AND CONSIDERATION OF INFORMATION REGARDING DIVERSIONS OF MONIES INTENDED FOR NATIVE AMERICAN YOUTH EDUCATION, MEANT TO IMPROVE LONG-TERM ECONOMIC DEVELOPMENT OF THESE YOUTH'S IMPOVERISHED COMMUNITIES, IN ORDER TO COMPILE AND PRESENT DRAFT LEGISLATION, AND/OR POLICY RECOMMENDATIONS TO THE LEGISLATIVE RESEARCH COUNCIL EXECUTIVE BOARD THAT THE JOINT-TRIBAL RELATIONS COMMITTEE ISSUE OFFICIAL LEGISLATIVE SUMMONS TO THE FOLLOWING PERSONS COMMANDING THEIR APPEARANCE BEFORE THE NEXT JOINT-TRIBAL RELATIONS COMMITTEE MEETING: TOM OSTER, TAMERA DARNELL, BRINDA KUHN, KEITH MOORE, RICK MELMER, AND KELLY DUNCAN, WITH SUBPOENAS SENT TO THE

DEPARTMENT OF EDUCATION, MIDCENTRAL EDUCATION COOPERATIVE, AND EACH NAMED INDIVIDUAL COMMANDING ALL RECORDS, DOCUMENTATION, VOUCHERS, CHECKS AND MEMORANDA ON EACH INDIVIDUAL'S SERVICE CONTRACT OR EMPLOYMENT AGREEMENT RELATING TO ANY GRANT ADMINISTERED OR MANAGED IN ANY WAY BY THE STATE OF SOUTH DAKOTA. Chair ruled the motion out of order because the State-Tribal Relations Committee is a statutory committee and does not have the statutory authority to subpoena.

SENATOR NELSON RAISED A POINT OF ORDER STATING THE INTERIM RULES APPLY TO THE STATE-TRIBAL RELATIONS COMMITTEE AND GIVE SUBPOENA AUTHORITY. Chair ruled the point of order was out of order because the State-Tribal Relations Committee is a statutory committee, not an interim committee, that the interim rules do not apply.

SENATOR NELSON CHALLENGED THE CHAIR'S RULING THAT SENATOR JENSEN'S MOTION WAS OUT OF ORDER. CHALLENGE WAS SECONDED BY SENATOR RUSSELL.

SENATOR NELSON RAISED A POINT OF ORDER REQUESTING SENATOR HEINERT RECUSE HIMSELF FROM THE VOTE ON THE MOTION BECAUSE OF A CONFLICT OF INTEREST BECAUSE SENATOR HEINERT'S MOTHER IS LISTED ON THE GEAR UP MAP. Chair ruled the point of order was out of order because he felt no conflict of interest existed, and claimed there is no statutory definition for what a conflict of interest is.

THE QUESTION BEFORE THE COMMITTEE WAS SENATOR NELSON'S CHALLENGE OF THE CHAIR'S RULING THAT SENATOR JENSEN'S MOTION WAS OUT OF ORDER. The challenged failed on a roll call vote for lack of a majority with 5 members voting AYE, 5 members voting NAY. Those voting AYE: Jensen, Nelson, Russell, Livermont, and May. Those voting NAY: Killer, Bordeaux, Lesmeister, Tieszen, and Heinert.

The Chair's ruling on Senator Jensen's motion was sustained.

Adjournment

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

The committee adjourned at 4:35 p.m.